

General Terms of Purchase

1. General - Scope

- 1.1. Our Terms of Purchase shall apply to all current and future business relationships. Contrary or supplementary terms of the supplier or terms of the supplier that deviate from our Terms of Purchase shall not form part of the Agreement even in knowledge thereof unless we consented explicitly to their applicability in writing. Our Terms of Purchase shall also apply if we unconditionally accept the delivery of the supplier in knowledge of contrary terms of the supplier or of terms of the supplier that deviate from our Terms of Purchase.
- 1.2. All agreements made between ourselves and the supplier for the purpose of performing this Agreement must be set out in writing in this Agreement.
- 1.3. Our Terms of Purchase shall only apply vis-à-vis entrepreneurs pursuant to Section 14 German Civil Code (BGB).

2. Offer – Offer Documents – Written Form

- 2.1 The supplier is obliged to accept our order in writing within a period of 5 working days (Mondays-Fridays).
- 2.2. We shall retain the rights of title and copyright to images, drawings, calculations and other documents; they may not be made accessible to third parties without our explicit written consent. They are to be used exclusively for production on the basis of our order; they must be returned to us unrequested after completion of the order. They must be kept confidential vis-à-vis third parties; to this extent the provision in Paragraph 11 of these Terms of Purchase shall apply by way of supplement.
- 2.3. Only those orders given in writing shall be legally binding. Any orders placed verbally or by telephone shall require subsequent written confirmation to be legally valid.
The same shall apply to verbal collateral agreements and amendments to the Agreement. Orders, delivery calls as well as amendments and supplements may also be made by data transmission or mechanically readable data carriers after prior written agreement.
- 2.4. There shall be no payment for visits or the preparation of offers, projects etc.

3. Prices – Forwarding - Packaging

- 3.1. The price shown in the order shall be binding. In the absence of any other written agreement, the delivery “free house” including packaging to the address stated by us shall be included in the price.
- 3.4. The statutory value added tax is included in the price.
- 3.3 We shall have right of offset and retention to the extent specified by law.
- 3.5. We must be informed immediately of every delivery after execution by a forwarding advice, which is subdivided exactly into type, quantity and weight.
- 3.4 We shall only accept the quantities or units we have ordered. Any deliveries in excess of or below shall only be permitted after prior agreement with us. In the case of agreed part consignments the residual quantity must be specified.
- 3.4 Forwarding shall be made at the risk of the supplier. The risk of any deterioration including accidental loss shall therefore remain with the supplier up to delivery to the address specified by us or point of use.
- 3.7. The duty of the supplier to take back packaging shall be in compliance with the statutory provisions.

- 3.8 The goods must be packed in such a manner that transport damage is avoided. Packaging material is only to be used to the extent necessary to achieve this purpose. Only environmentally friendly packaging material may be used.

4. Correspondence – Invoicing - Payment

- 4.1. Forwarding advices, consignment notes, invoices and all correspondence must contain our order number. The supplier shall be solely responsible for all consequences resulting from the failure to observe this duty, in particular delays or failure to process insofar as he is unable to prove that he is not responsible.
- 4.2. Invoices must be submitted to us separately in a correct and proper form with all accompanying documents and data after delivery has been made. Erroneous or incomplete invoices shall first be viewed to have been received by us as from the date of correction.
- 4.3. In accordance with Sub-paragraph 1 of this Paragraph, we can only process invoices if they specify the order number in accordance with our order.
- 4.4. Payments shall be made within 30 days, deducting 1.5% discount.
If the above payment date falls on a Saturday, Sunday or public holiday, the payment date shall be postponed to the next working day without the supplier making use of the right to return the discount.
- 4.5. Insofar as certificates, such as clearance certificates, documents of origin, proof of material inspections or other types of certificates are covered by the Agreement, they shall form an essential part of the delivery and must be sent to us together with the invoice. They must be submitted to us no later than 10 days after receipt of invoice.
The payment period for invoices shall not start before receipt of the agreed certificate.
- 4.6. In the case of advance payments the supplier must provide appropriate security, e.g. bank guarantee, on request.
- 4.7. Discount deduction shall also be admissible in the case of offset or retention due to defects.

5. Delivery Period

- 5.1. Delivery may be made for the Meerbusch office only between 8 a.m. to 11.15 a.m.
- 5.2. The delivery date specified in the order is binding (fixed date).
The date of receipt of the goods at the point of receipt or point of use or the punctuality of successful acceptance shall be decisive for compliance with the delivery date or delivery period.
- 5.3. The supplier shall be obliged to inform us immediately in writing if circumstances arise or become recognisable from which it is evident that the agreed delivery date cannot be observed.
- 5.4. In the case of delivery on a date earlier than agreed and insofar as we have not been informed of this premature delivery, we shall reserve the right to return the goods at the expense of the supplier.
If no return is made in the case of premature delivery, the goods shall be stored until the delivery date at the cost and risk of the supplier.
In the event of premature delivery, we shall reserve the right to make payment on the agreed due date.

- 5.5. In the event of a delay in delivery we shall be entitled to statutory claims. If we demand damages, the supplier shall be entitled to prove that he is not responsible for infringement of duty.

Notwithstanding the statutory provisions, we shall be entitled in the event of a delay in delivery to demand lump sum damages for default of 1% of the delivery value per completed week (7 calendar days), but no more than 10% of the delivery value. The supplier shall be entitled to prove to us that no damage or a considerably lower damage has arisen as a result of the default.

6. Product and Quality Assurance – Environmental Friendliness – Spare Parts

- 6.1. The supplier shall guarantee and warrant that all deliveries and services comply with the state-of-the-art, the pertinent legal provisions and the provisions and guidelines of the authorities, institution for statutory accident insurance and prevention and specialised associations. If the supplier has reservations as to the product version we require, he must inform us thereof immediately in writing.

Certificates pursuant to Paragraph 4 (4) of these Terms of Purchase shall form an essential part of the delivery in accordance with the specified provision.

- 6.2. The supplier must perform quality assurance that is suitable in terms of nature and extent and corresponds to the state-of-the-art and must give us proof thereof on request. Insofar as we deem necessary, he shall conclude a corresponding quality assurance agreement with us.
- 6.3. The supplier shall undertake to use environmentally friendly products and procedures for his delivery or service and also in the case of ancillary supplies or ancillary services from third parties within the framework of statutory requirements and economic and technical possibilities.
In this respect the supplier shall be liable for the environmental compatibility of the products and packaging materials supplied and for all consequential damage arising from the infringement of his statutory duties to dispose. On our request the supplier must issue a materials certificate for the goods delivered.
- 6.4. The supplier shall undertake to supply spare parts for the period of usual technical use but at least for 5 years after the last delivery of the object at appropriate conditions.
- 6.5. If in individual cases deviations are necessary from the requirements specified in this paragraph, the supplier must obtain our written consent. The warranty obligation of the supplier shall not be restricted by this consent.

7. Examination of Defects – Liability for Defects - Warranty

- 7.1. We shall be obliged to check the goods within an appropriate period for any quality and quantity deviations. The complaint shall be viewed to be punctual if it is received by the supplier within a period of 5 working days (Monday - Friday) starting from the receipt of goods or, in the case of concealed defects, starting from their discovery.
- 7.2. References to technical specifications, standards, product descriptions, catalogue pages, verbal or written advertising information must be qualified as explicit confirmation as to characteristic/condition.
- 7.3. We shall be entitled to the statutory defect claims without restriction.
In addition we may retain payments to an appropriate extent and/or offset these with our own claims in the event of faulty or incomplete delivery.
- 7.4. If the supplier culpably fails to satisfy his warranty obligation within an appropriate period set by us, we may take the requisite measures ourselves or have them taken by third parties at his cost and risk, irrespective of his warranty obligations.

- 7.5. In exceptional cases we may eliminate defects without prior agreement ourselves in satisfaction of our duty to minimise damage without affecting the warranty obligation of the supplier. We may then charge the requisite expenses to the supplier. However, the right to eliminate the defect ourselves shall be restricted to those cases in which, due to the special urgency and/or the otherwise inappropriately high damage to be expected, it is no longer possible to inform the supplier of the defect and the pending damage and to set him a deadline, albeit short, to remedy the situation himself.
 - 7.6. The statute of limitations for the warranty claims shall amount to 36 months starting from the passing of risk.
 - 7.7. In the case of parts which cannot remain in the plant during the examination of the defect and/or elimination of the defect, any existing warranty time shall be extended by the period of operational interruption.
 - 7.8. Beyond the statutory interruption the warranty period shall start anew for new parts delivered or repaired by the supplier as from this date unless the supplier acts in execution of a duty (presumably) incumbent on him to provide warranty but rather merely for reasons of goodwill. The obligatory nature of the service here is to be decided by the objective horizon of the recipient. Occasion, extent, duration and costs of the work to eliminate the defects shall be decisive here.
8. Product Liability – Indemnification – Liability Insurance Protection
- 8.1. Insofar as the supplier is responsible for damage to any product, he shall be obliged to indemnify us against all damage claims of third parties based on an infringement of official safety regulations or by virtue of German or foreign product liability provisions and laws. This shall apply at least to the extent that the cause is to be found in his area of management and organisation and he himself is responsible in external relationships.
 - 8.2. Within the framework of his liability for cases of damage within the meaning of Subparagraph 1, the supplier shall also be obliged to reimburse any expenses pursuant to Sections 683, 670 German Civil Code (BGB) as well as pursuant to Sections 830, 840, 426 German Civil Code (BGB) arising from, or in connection with, a recall campaign of ours. We shall notify the supplier insofar as possible and reasonable about the content and extent of the recall measures to be performed and shall give him an opportunity to comment. Other statutory claims shall not be affected by this.
 - 8.3. The supplier shall insure himself against all risks arising from product liability, including the risk of recall, to an adequate extent and shall submit to us the insurance policy for inspection on request.
Any additional damage claims to which we are entitled shall not be affected.
9. Third Party and Property Rights
- 9.1. If claims are asserted against us by a third party due to a case of infringement of copyright, patent or brand by the object of delivery, the supplier shall be obliged to indemnify us against these claims. If a third party asserts a right against us, we shall notify the supplier immediately. We are not entitled to recognise third party claims before he has had adequate opportunity to defend third party rights in a different way, in particular to conclude an agreement.
 - 9.2. The duty of the supplier to indemnify shall refer to all expenses we sustain arising from, or in connection with, the assertion of third party rights.

- 9.3. If third party rights are infringed by a supplier service, the supplier shall, at his own expense,
- a) give us the right to use the delivery, or
 - b) render the delivery free from infringement, or
 - c) take back the delivery, reimbursing the payment made by us.

10. Reservation of Ownership - Provision

- 10.1. Insofar as we provide parts to the supplier, we shall retain ownership to said parts. Any processing or conversion by the supplier shall be made on our behalf. If our reserved goods are processed together with other objects that do not belong to us, we shall acquire the co-ownership to the new object in the relationship of the value of our object (purchase price plus value added tax) to the other objects at the time of processing.
- 10.2. If the object we provide is inseparably mixed with other objects not belonging to us, we shall acquire the co-ownership to the new object in relationship of the value of the reserved property (purchase price plus value added tax) to the other mixed objects at the time of mixing.
If the mixing is performed such that the supplier's object is to be viewed as the main object, it shall be deemed to have been agreed that the supplier transfers to us proportionate co-ownership; the supplier shall keep the sole ownership or the co-ownership for us.
- 10.3. Insofar as the collateral rights attributable to us pursuant to Paragraph 1 and/or Paragraph 2 exceed the purchase price of all our reserved property not yet paid for by more than 10%, we shall be obliged on request of the supplier to release collateral rights as we so choose.
- 10.4. Reservation of ownership of the supplier:
The supplier shall reserve ownership to his goods and all existing demands and those arising in the future from our business relationship with the supplier until such times as all claims arising from a current business relationship have been settled in full. We recognise the prolonged or extended property reservation of the supplier.

11. Confidentiality – Passing on of Order

- 11.1. The supplier shall be obliged to keep all images, drawings, calculations and other documents and information strictly confidential. They may only be disclosed to third parties with our explicit consent. The duty to maintain confidentiality shall also apply after the end of this Agreement; it shall expire if and to the extent that the production know-how in the images, drawings, calculations and other documents become generally known.
- 11.2. The supplier is not entitled to pass on the order or essential parts of the order to third parties without our prior written agreement.
- 11.3. The supplier is obliged to maintain confidentiality on all business and operational secrets as well as all information otherwise described as confidential becoming known in connection within the performance of the Agreement. Passing on such information to persons who are not involved in the conclusion, performance or processing of the Agreement shall require prior written approval. Insofar as nothing to the contrary is agreed, this obligation shall end after expiry of 5 years after the respective information has become known and in the case of continuing obligations not before they come to an end.

The supplier shall impose this obligation on his employees and any third parties deployed.

12. Venue – Place of Performance

- 12.1. Insofar as the supplier is a merchant, our registered office is the venue; however, we are entitled to bring action against the supplier also at the court of his place of residence.
- 12.2. Insofar as nothing to the contrary has been explicitly agreed, the place of performance for the delivery obligations is the consignment address or location requested by us, and for all other obligations of both parties our registered office.

13. Final Clauses

- 13.1. In the event of individual parts of these general Terms of Purchase being legally ineffective, this shall not affect the efficacy of the remaining provisions.
- 13.2. We shall treat the personal data of the supplier in accordance with the Federal Data Protection Act (*Bundesdatenschutzgesetz*).
- 13.3. If the supplier discontinues payments or if an application is made for insolvency proceedings on his assets or for court or out-of-court settlement proceedings, we shall be entitled to rescind the Agreement.
- 13.4. The contractual language is German. Insofar as the Contracting Parties also make use of a different language, the German wording shall take priority.
- 13.5. The law of the Federal Republic of Germany shall apply exclusively, ousting the UN Convention on the International Sale of Goods dated 11 April 1980 (CISG).
- 13.6. All agreements shall be required in writing; this shall also apply to their cancellation.

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