

# General Terms and Conditions of Purchasing

Version 1/2009

## 1. General Information

1. Only our terms and conditions of purchasing apply; we do not recognise supplier conditions that oppose and deviate from our terms and conditions of purchasing unless we have expressly agreed to their validity in writing. Our terms and conditions of purchasing also apply when we accept the delivery of a supplier without reservations in knowledge of supplier conditions of purchasing that oppose or deviate from ours.
1. 2. All agreements made between the supplier and us in regard to the execution of this contract must be recorded in writing in this contract.
1. 3. Our terms and conditions of purchasing apply on to contractors as defined by § 310 Para. 1 BGB (German Civil Code).
1. 4. Our terms and conditions of purchasing also apply to all future transactions with the supplier.

## 2. Orders

2. 1. Only written orders are binding. Any orders and agreements made in person or by telephone require our written confirmation to become effective.
2. 2. Passing commissions on to third parties or bringing in subcontractors is allowed only with our written permission. Even if permission is granted, the third party is considered to be a vicarious agent of the supplier.
2. 3. If, after the commission is granted, we become aware of circumstances due to which serious doubt arises as to whether the supplier has properly settled the order, we are authorised to rescind the contract in regard to the existing deliveries without compensation.
2. 4. The use of our inquiries, orders, and the connected correspondence for advertising purposes is not permitted.
2. 5. Insofar as the supplier performs work on our premises or on the premises of our customers in connection with the execution of the commission, it is obliged to observe any applicable legal regulations, the provisions of the local Trade Supervisory Office, regulations for the prevention of accidents, and emission limit regulations for the safety of the employees and for the prevention of property damage. The supplier releases us from all claims under public and private law that may be made on us due to any violations of these regulations.  
Regardless of the warranty obligation of the supplier, we have the right to enter its factory during the usual business hours and check the productions of the goods intended for us. The sole responsibility of the supplier for its conformity with the contract and the faultlessness of the products is not affected hereby.

## 3. Prices and Conditions of Payment

3. 1. The price listed in the order is binding. If nothing else has been agreed upon in writing, the price comprises free delivery including packaging. The return of the packaging requires a separate agreement.
3. 2. The legal value added tax (VAT) is not included in the price.
3. 3. Insofar as nothing else has been agreed upon in writing, we will pay with a 3% discount within 14 days or the net price within 30 days calculated from delivery and receipt of the invoice.
3. 4. All payments are made with the reservation of our rights in regard to defective deliveries. Insofar as notices of defects are known by the settlement date, we are authorised to reduce payment by an appropriate amount.
3. 5. We reserve the right to pay the invoice of the supplier with discountable bills of exchange; we will bear all fees and expenses incurred.
3. 6. If we are to make any prepayments, these prepayments are not due until we have received an absolute suretyship to secure this prepayment, due as soon as demanded from a major German bank, cooperative bank, or public savings bank to the amount of the prepayment.
3. 7. The transfer of debts that we owe to the supplier requires our written permission. Third parties may not collect these debts. We are authorised to set off these debts against debts owed to us by the supplier. Insofar as debts from other companies belonging to the same parent company as the supplier are due to us, we may withhold our payment until the debts owed to us by the other company of the supplier's group are paid.

## 4. Delivery Time

4. 1. The delivery dates or periods named in the order are binding. The delivery period starts when the order is received by the supplier.
4. 2. If the delivery date or period has been marked as "probable," "approximate," or similar in individual cases, there may be 10 days at the most between the named deadline or the completion of the named period and the actual delivery.
4. 3. If the agreed-upon delivery date is not observed or the agreed-upon delivery period is exceeded, we are authorized to rescind the contract or demand compensation due to non-fulfilment including the costs of a covering transaction after a fruitless completion of an appropriate extension, as we choose.
4. 4. The supplier is obliged to inform us immediately in writing if circumstances arise or become known to it that result in the agreed-upon delivery date or agreed-upon delivery period not being able to be observed.
4. 5. Force majeure, labour disputes, unrest, or other circumstances for which we are not responsible that lead to disturbances in our manufacturing or that of our customers exempt us from a receiving or compensation obligation for their duration and to the extent of their effect. At the end of the disturbance, we will inform the supplier immediately.
4. 6. In case of a default of delivery, we are authorised to demand a contractual penalty of 0.5% of the delivery value per each completed week, but not more than 5%. We are authorised to enforce the contractual penalty in addition to the fulfilment and the damage due to default; we are obliged to declare the reservation of the contractual penalty to the supplier within 10 workdays at the latest, calculated from the acceptance of the late delivery.

## 5. Passing of the Risk, Shipping

5. 1. Insofar as nothing else has been agreed upon, delivery is to be free. Without consideration of the agreed-upon pricing in individual cases, risk is transferred to us with the transfer of the delivery object at the required place of receiving.
5. 2. Our delivery regulations must be observed in individual cases. The supplier must pay any extra expenses due to the non-observation or incorrect issuance of consignment notes. The same applies to any extra expenses due to incomplete, incorrect, or late shipping papers. If we do not require a certain type of shipping, the cheapest should be selected. The goods to be delivered must be packed properly. If our shipping or packaging regulations are not observed, we are authorised to refuse the acceptance of the goods without coming into default of acceptance. The same applies in case too little or too many of an ordered good is delivered.

## 6. Inspection for Defects - Warranty

6. 1. We are obliged to inspect the goods for any deviations in quality or quantity within an appropriate period; the complaint is on time insofar it is made within a period of five workdays, calculated from the receipt of the goods or, in case of hidden defects, from discovery, unless the quality assurance agreement between the supplier and us has made another provision.

6. 2. We have a right to legal warranty claims without omissions. Independent of this, we are authorised to demand an elimination of the defect or a replacement delivery, as we choose. In this case, the supplier is obliged to bear all necessary expenses for the purpose of the elimination of the defect or the replacement delivery. We are authorised to eliminate the defect ourselves at the cost of the supplier if there is a danger of default or any other special reason for urgency. The right to compensation, especially to compensation for non-fulfilment, remains expressly reserved.
6. 3. The legal warranty obligation amounts to 24 months, calculated from the passing of the risk.
6. 4. The acceptance of the goods or the approval of any drawings or design suggestions shown to us do not release the suppliers from its sole responsibility for the faultlessness of the delivered goods.
6. 5. Welding or cementing work taking place within the scope of the elimination of defects, require our express, written permission.
6. 6. Any delivery of goods by contracting partner is in compliance with all applicable legal obligations, e.g. Directive (EC) No. 1907/2006 (REACH). The contracting partner shall inform us without delay about changes concerning the delivered products, their availability and their quality, especially resulting from REACH, and agree on suitable measures on a case-by-case basis. The same applies, once and as far the contracting partner detects or should have detected that such changes could occur. A legal obligation of the purchaser (downstream user) to pre-register or register the delivered goods does not exist.

## 7. Drawings, Models

7. 1. Documents or manufacturing materials of all types, including samples, drawings, models, tools, or technical regulations with which we provide the supplier or for which we pay may be used only for deliveries to us. They and the goods manufactured using these materials may not be passed on to third parties or used for the supplier's own purposes.
7. 2. The documents and manufacturing materials mentioned in Item 7.1. must be returned to us in perfect condition without delay and without the supplier keeping copies or individual items or they must be destroyed as soon as the commission has been completed and we have demanded the return or destruction. A right of retention is excluded in this respect.
7. 3. Changes to the documents and manufacturing materials mentioned in Item 7.1 may be made only with our written permission. We agree that the ownership of the semi-finished goods and finished goods manufactured according to our information, drawings, models, and so on already belong to us at the point of manufacturing. The supplier is to store these goods for us free of cost. The same applies to special equipment, such as moulds required for manufacturing, even if this equipment was manufactured or purchased at the cost of the supplier.

## 8. Provided Materials

8. 1. The material we provide may be used only for our order.
8. 2. The supplier cannot plead damage to the provided materials that would have been able to be recognised during a proper inspection after the processing of the materials. Our provision of materials does not excuse the supplier from its warranty obligations.
8. 3. The supplier is liable for the loss of or damage to the materials provided. We must be informed of any damage immediately. The supplier must provide for appropriate insurance protection at its own cost.
8. 4. The material we provide remains our property during all processing steps. The supplier will process or convert the materials for us. If our reserved goods are processed with other materials that do not belong to us, we become co-owner of the new goods to the relation of the value of our material to the other materials processed at the time of processing.
8. 5. If the material we provide is inseparably mixed with materials not belonging to us, we become co-owner of the new goods to the relation of the value of our reserved goods to the other materials mixed at the time of mixing. If the mixing takes place in such a way that the material of the supplier can be seen as the main material, it is agreed that the supplier transfers a proportional co-ownership to us; the supplier maintains the sole ownership or the co-ownership with us at its own cost.

## 9. Product Liability, Indemnity, Liability Insurance Protection

9. 1. Insofar as the supplier is responsible for damage to the product, it is obliged to indemnify us from the damage claims of third parties in this respect at first demand since the cause is in the supplier's realm of responsibility and organisation and the supplier itself is liable vis-à-vis third parties.
9. 2. Within this scope, the supplier is also obliged to repay any expenses in accordance with § 683, 670 BGB and §§ 830, 840, 426 BGB that arise from or in connection with a recall action that we carry out. We will inform the supplier – as much as possible and reasonable – about the content and extent of the recall measures to be carried out and give the contractor an opportunity to respond.
9. 3. The supplier is obliged to have product liability insurance with a lump sum coverage of €2.5 million for each case of personal injury/property damage; if we have more far-reaching damage claims, they remain unaffected.

## 10. Proprietary Rights

10. 1. The supplier guarantees that no rights of third parties are infringed upon within the Federal Republic of Germany in connection with its delivery.
10. 2. If a third party makes a claim on us for this reason, the supplier is obliged to indemnify us from these claims the first time we request it in writing; we are not authorised to make any agreements with the third part - without the permission of the supplier - especially to agree upon compensation.
10. 3. The indemnification obligation of the supplier refers to all expenses that necessarily arise from or in connection with the claims of a third party.
10. 4. The period of limitation amounts to 10 years, calculated from the closing of the contract.

## 11. Jurisdiction, Place of Fulfilment, Applicable Right, Severability Clause

11. 1. Insofar as the supplier is a merchant entered in the commercial register, Gummersbach, Germany, is agreed upon as the place of jurisdiction. We are authorised, however, to sue the supplier at its place of business as well.
11. 2. Insofar as nothing else is in the order confirmation, our place of business is the place of fulfilment.
11. 3. The law of the Federal Republic of Germany applies with the exception of the UN Sales Convention.
11. 4. In the case that one of these conditions becomes completely or partially invalid, the validity of the other conditions is not affected.