

Terms of Purchase

Our GENERAL TERMS OF PURCHASE are valid only for entrepreneurs, legal entities under public law or special funds under public law within the meaning of § 310 Paragraph 1 Sentence 1 of the German Civil Code (BGB).

I. General Information

The following terms of purchase exclusively apply to any purchase orders and delivery requests placed by us. In the case of permanent business relations they also apply to any future transactions, even though they are not specifically referred to and provided that they were made available to the contractor during a previously placed purchase order. Different terms of sale of our contractor in his offers, confirmations of purchase orders and other documentation will not apply to us, even if we do not explicitly disagree. Unconditional acceptance of deliveries or acceptance of performance or payment does not automatically result in the acknowledgement of any different or additional terms of sale of our contractors. Our contractor's different terms of sale are not binding without our explicit, written acknowledgement.

II. Placing of Purchase Orders

1. Our written purchase orders are final. Additional verbal agreements are not made. Deviations are only admissible if confirmed by us in writing.
2. Our company and/or authorised persons and/or our clients are only entitled to enter the contractor's premises during the processing of purchase orders upon prior notice and only during normal working hours in order to check the correct purchase order processing. To avert any risks we may be allowed to enter the contractor's premises without prior notice and outside normal working hours. Upon request the contractor will provide the relevant documentation and devices that are required for the checks where possible and practicable with regard to the contractor's operational requirements.

III. Prices

All prices stated in our purchase orders are fixed prices. Packaging will only be paid for if payment was explicitly agreed to. The contractor has to dispose of the packaging at his own expense as requested. We are entitled to refuse acceptance of excess deliveries and/or to return excess deliveries at the contractor's expense and risk.

IV. Payment

1. Unless otherwise agreed in the placement of the purchase order, payments are made upon complete performance without any deficiencies and upon receipt of the invoice as net payment within 60 days or within 14 days with a 3-% discount in a currency of our choice. Time delays due to incorrect or incomplete invoices will not affect the periods allowed for discounts.
2. We are authorised to offset claims from an order against the contractor's claims. Where the conditions for offsetting claims do not yet prevail, we are entitled to exercise our lien for securing any outstanding claims from other purchase orders.
3. The basis for timely payment is the fact that the purchase order has been completed without any reasons for complaints. This also includes the timely and prior provision of acceptance certificates, drawings or other documentation etc. by the contractor.
4. Where instalments were agreed, these are to be identified on the invoice and to be requested in writing 30 days prior to the due date.

V. Delivery Period

1. The contractor is obliged to adhere to the agreed period of delivery.
2. As soon as the contractor recognises that he will be partially or completely incapable of complying with his contractual duties in time, he has to inform us accordingly without delay stating the reasons and suggesting a new binding date of delivery. Failure to do so will result in the contractor being unable to refer to this impediment towards us. Is the contractor responsible for any delivery or performance delays, and in the event that, due to the particular urgency of the matter, we are unable to inform the contractor of any defects and a pending loss and set a date for remedial action, we are entitled to withdraw from the contract without previously determining a period of grace. Other legitimate claims that we qualify for are not affected. In the event of a pending delivery or performance delay caused by the contractor, we are also authorised to request special measures to be taken, such as e.g. overtime, additional shifts, outsourcing at the contractor's expense, to realise the agreed date of delivery.
3. In the case of disturbances caused by acts of God or other unforeseeable, extraordinary and accidental circumstances, such as operational disturbances, strikes, closures, lack of means of transport, authority interventions, energy supply shortages and other miscellaneous circumstances that are beyond our responsibility, the acceptance period will automatically be extended appropriately, if we are prevented from timely compliance of our duty to accept through no fault of our own. Should acceptance of performance be made impossible or unreasonable for us due to the aforementioned circumstances, we are entitled to withdraw from the contract. In the case of an extended period of acceptance or of withdrawal from the contract, the contractor is not eligible to demand compensation.

VI. Contractual Penalties

In the event of the contractor's/supplier's default we are entitled to impose a contractual penalty of 0.1% of the net purchase order value per working day but not more than 5% of the net purchase order value. The contractual penalty may be asserted up to the final payment of the invoice. A paid contractual penalty can be offset against a potential compensation claim.

VII. Quality Assurance / Obligation to Examine and Give Notice of Defects

1. The contractor will perform, maintain and upon request give evidence of an effective quality assurance. The contractor will apply a quality assurance system according to DIN ISO 9001 and following. We are entitled to check the QA system or have it checked by a third party instructed by us.
2. The contractor is obliged to quality assurance measures and checks during the manufacturing process and prior to delivery, so that incoming goods controls in our or the recipient's premises can be omitted. This excludes any defects that become manifest (apparent defects) of the delivered objects.

VIII. EU-Directives

The contractor is obliged to carry out any deliveries and performances in accordance with the currently valid European legal regulations. In particular, he has to comply with the general health and safety requirements according to EU-directives, especially the Pressure Equipment Directive 97/23/EC, the Machinery Directive 98/37/EC, the Low Voltage Directive 73/23/EC, the Electromagnetic Compatibility (EMC) Directive 89/336/EC and directive 98/655/EEC on the use of work equipment in their most recent versions as well as the relevant pertinent standards as far as they have to be translated into national law or at least to be complied with failing appropriate translation. In accordance with the regulations the delivered object has to be marked with the CE mark; in addition, the delivery must be accompanied by the relevant EU conformity declaration, the operating manual, or the officially required certificates respectively. Furthermore, evidence has to be provided pursuant to the aforementioned directives/laws that the product was successfully type-tested.

IX. Place of Performance

The place of performance for all rights and duties resulting from the delivery or performance is the location of receipt of the goods or the place of use (dispatch address) stated in our purchase order or any subsequent correspondence.

X. Rights in Case of Defects/Notice of Defects

1. The delivered item must have the guaranteed and/or agreed properties, it must provide the guaranteed and/or agreed performance and it must adhere to the most recent standards of technology in its design and material. It may not have any defects neutralising or reducing its value or its suitability for regular use or the use expected or requested in the purchase order.
2. If the contractor is provided with drawings, materials or components, technical specifications, information on material quality or instructions for implementation, he is obliged to check these for completeness, correctness and suitability for the required purpose. Unless the contractor raises any objections during an acceptable period, we are also unreservedly entitled to the legal and contractual rights regarding defects to this extent.
3. At the time of completion all deliveries must meet the valid legal and official regulations and requirements as well as the German Accident Prevention Regulations and the environment protection requirements.
4. The contractor is obliged to inform us without delay of any measures taken according to § 8 of the German Equipment and Product Safety Act (GPSG). In this case we may, irrespective of any ulterior statutory laws, demand from the contractor to repair, replace or take back the items that are already in our possession.
5. Unless otherwise agreed in writing or where longer periods apply by act of law, we are eligible to the statutory and contractual rights in the case of any defect which becomes apparent within 36 months upon delivery and acceptance. It will be assumed in our favour that a defect occurring within the stated period has already been existent at the time of transfer of risk or, respectively, prior to the start of the period of limitation of our rights in case of defects.
6. The contractor refrains from the objection of a delayed notice of defects. In the case of notice of defects, the period of limitation for our rights regarding defects is extended by the length of period between the notice of defects and their elimination. If the delivered item is replaced completely, the period of limitation starts anew for that particular item. If only part of the item is replaced, the period of limitation starts anew for this particular part. In any case, the period of limitation will end not later than 48 months after the original delivery and acceptance.
7. The contractor commits himself to remove all defects and any resulting damages in situ at the building site free of charge, whereby removal of defects has to be completed as soon as possible after receipt of the notice of defect. If, due to a delay caused by the contractor and due to the particular urgency of a matter, we are unable to inform the contractor of any defects and a pending loss and set a date for remedial action, we are entitled without previously determining a period of grace to obtain a replacement of our choice on the contractor's expense, to remove the defects ourselves or to have them removed by a third party without our rights being affected in any way. If the contractor defaults the removal of defects, we are entitled, in urgent cases of the aforementioned type, to withdraw from the contract and to compensation instead of performance without previously determining a period of grace. We reserve the right to assert any further legal claims.

8. Defective goods remain at our unrestricted and free disposal up to the replacement delivery.
9. Where in the frame of regular business transactions defective goods have been brought to another location by us prior to the discovery of any defects, the contractor will be charged those transport, travel,

labour and material expenses additionally arising from the fact that the goods were brought to a different location in the event of supplementary performance or a rescinded transaction.

10. In all remaining cases the contractor is fully liable in accordance with the statutory regulations.

XI. Drawings and Patterns

Drawings, patterns, documents and the like, which we make available or which are produced and paid for upon our instructions, become or remain in our possession and may not be used or duplicated by the seller/contractor for other purposes. The seller/contractor is liable for any loss, damage or misuse; in particular, it is unlawful to pass on information to third parties. In the case of non-compliance we will reserve the right to assert claims of compensation and reimbursement of expenses. The aforementioned drawings, documents and the like have to be returned to us at the date of delivery at the latest without further requests.

XII. Property Rights

The contractor is obliged to release us from any claims, for example those arising from culpably caused violations of patent and other commercial property rights, copy rights or rights of third parties. Potential licence fees are imposed on the contractor.

XIII. Company Secrets

The contractor is obliged to treat our purchase orders and all related commercial and technical details with confidentiality. He is fully liable for all damages caused by a culpable violation of his obligation to confidentiality.

XIV. Shipping Instructions

1. Shipping is to be carried out exclusively to the address stated in the purchase order. Correctly filled shipping documents must be presented upon arrival of the goods at the latest, otherwise we are entitled to refuse acceptance. Any costs arising from delays in receipt or acceptance are imposed on the contractor.
2. All services are on the contractor's account free delivery to the point of use including packaging, unless explicitly agreed otherwise in the purchase order. If we instruct the contractor to ship the ordered materials, he must choose the most economic.
3. The contractor is on principle charged with transport insurance, etc.
4. As a matter of principle, the contractor has to package, mark and dispatch hazardous substances in compliance with the currently valid regulations. Apart from the hazard category the accompanying documents also have to state all details laid down in the relevant transport regulations.
5. Transport risks, especially the risk of an accidental loss of goods or accidental reduction of their value, will not be passed over to us until arrival of the goods at our premises or at a previously agreed location.

XV. Billing

Invoices are to be provided for each delivery. The time allowed for payment starts with receipt of the invoice. Payment is effected subject to the correctness of delivery or service. Payment does not constitute the acceptance of conditions and prices and does not affect our rights in the case of defects.

XVI. Claims

Claims against us can be assigned, as long as we consent to the assignment. Consent is generally granted to assignments occurring in the frame of an extended reservation of ownership of our contractors towards their pre-suppliers.

XVII. Service Agreements

The following also applies to services of assembly, repair and other work performances (e.g. also engineering design services):

1. When performing his work the contractor always has to take into consideration any valid laws and statutory regulations of his occupational insurance association, accident prevention regulations as well as the currently valid rules of the German Temporary Employment Act. He is solely responsible and liable for all damages (also accident damages) caused by himself, his representatives or any persons employed to assist in the performance. He will exempt us from all compensation claims made against us in connection with his contractually outstanding services or deliveries. In addition, the deployment and payment of staff has to occur in compliance with all legal and tariff regulations. These are, in particular, the statutory levies, especially social and health insurance fees, hours of work agreements, tariff wages plus agreed supplements/allowances, paid release from work, especially tariff leave or public holidays.
2. If the contractor employs a sub-contractor – which is subject to our consent – he has to ensure that the deployment and payment of the sub-contractor staff is also in accordance with the aforementioned tariff and legal regulations; we particularly point out the regulations of the Temporary Employment Act. We reserve the right to randomly check and examine the relevant contracts in connection with the deployment of sub-contractors.
3. The contractor is liable for any property he provides/contributes.

XVIII. Reservation of Ownership

1. Any material we provide for the performance of a purchase order remains our property and has to be distinctly marked as such and to be stored separately immediately upon arrival at the contractor's premises. It may only be used for the intended production. Any remaining items have to be returned to us without delay.
2. The contractor is liable for all damages occurring during the treatment/processing of the items handed over to him up to the full amount required for a new purchase. We reserve the right to assert further claims.
3. The contractor processes any material provided by us for the performance of a purchase order exclusively on our behalf, i.e. we obtain ownership of the produced items. §§ 947, 948 of the German Civil Code remain unaffected. The contractor has to store the items that are our property, or partly our property, free of charge.
4. The contractor has to inform us immediately of any imminent or completed attachment as well as of any other restriction of our rights.
5. He is obliged to insure the material provided by us against all regular risks. Any complaints regarding damages to the material provided by us have to be directly registered against the deliverer.

XIX. Termination of Contract

1. If we terminate the contract, the contractor receives the part of the agreed price equivalent to the actually occurred costs, proof of which has to be provided. The same rules apply in the case of a partial termination of the contract.
2. If we terminate the contract for reasons that the contractor is responsible for, he is liable for any damage arising from the termination.

XX. Transfer of Rights and Duties

The contractor may not transfer any rights and duties from this contract without our written consent. The regulations of number XVI. remain unaffected.

XXI. Place of Jurisdiction, Applicable Law, Severability Clause

1. The exclusive place of jurisdiction is Mönchengladbach.
2. The legal relationship between us and the contractor is exclusively covered by the legislation of the Federal Republic of Germany, as it is applied for relations between German business people. The application of the German International Private Law and the United Nation Convention on Contracts for the International Sale of Goods (CISG) is explicitly excluded.
3. If a regulation shall become invalid or unenforceable, the other regulations shall remain valid. Instead of the invalid or unenforceable regulations the parties shall use those that are closest to their commercial intentions.

XXII. Advertising

The use of this purchase order for advertising purposes as well as the inspection of the parts manufactured by the contractor on our behalf is subject to our written consent.