

Updated: November 2018

Applicable in business transactions with companies, legal persons under public law and public-law special funds.

Section 1 Scope of application

Our Terms and Conditions of Purchase apply exclusively. We only recognise general terms and conditions of the supplier that contradict or deviate from our Terms and Conditions of Purchase insofar as we have expressly agreed to them in text form. The acceptance of goods or services from the supplier (below: contractual object) does not signify any agreement.

Section 2 Conclusion of contract, modifications of the contract

1.
Orders, framework agreements, acceptances, call-offs, delivery contracts and other legal transactions to be concluded between us and the supplier, and modifications and additions to these, require the text form.
2.
Enquiries from us to the supplier are merely invitations to the supplier to issue a quotation.
3.
Cost estimates are binding and not to be remunerated unless anything was expressly agreed otherwise.
4.
The supplier must confirm our order immediately, if possible within 10 working days of receipt, in text form, otherwise we are entitled to cancel our order.
5.
Within the framework of what is reasonable for the supplier, we can request changes to the design and execution of the contractual item. In this case the effects, in particular concerning additional and lower costs, as well as the delivery dates, must be regulated appropriately and by mutual agreement. Changes by the supplier require our prior approval in text form in order to be effective.
6.
The supplier is obliged to personally apply its general and specific expert knowledge to check drawings, calculations, specifications and other requirements provided by us for errors and contradictions, and where applicable to immediately notify us of any existing concerns in text form and clarify these.
7.
The supplier bears the procurement risk for the goods.

Section 3 Prices, payment terms

1.
The agreed price is a fixed price including packaging DDP place of destination in accordance with the order (Incoterms® 2010). The respective valid statutory VAT must also be shown.
2.
We can only process invoices when we receive them separately from the delivery and they are formulated in accordance with the specifications of our order. The supplier is liable for all consequences arising due to non-compliance with these obligations unless it proves that it is not responsible for these.
3.
Unless agreed otherwise in writing, we can choose between payment within 14 days with 3% discount or within 60 days net. These payment periods commence after the complete provision of the

contractual performance as well as receipt of the documents in accordance with Section 5. 2., however not before the agreed delivery date.

4.

The supplier is not entitled to cede or pledge rights from the contractual relationship to third parties without our prior written consent. This does not apply to monetary claims. We can however pay the supplier with the effect of discharging our debt.

Section 4 Subcontracts, delivery, delivery period

1.

The supplier must provide the supplies and services (hereinafter jointly referred to as “deliveries”) itself. The supplier may only award subcontracts after our prior written consent. The supplier shall be liable for the faults of its vicarious agents, subcontractors and suppliers as for its own fault.

2.

If orders have not yet been fully fulfilled, we are entitled to request changes to the design, delivery and delivery period insofar as we have an understandable interest therein, the supplier is technically capable of making the change and the requested change is reasonable for the supplier.

3.

Agreed dates and periods are binding. Compliance with a delivery date or delivery period is determined by the receipt of the delivery and receipt of the documents stated in Section 5. 2. at the place of destination stated in the order.

When a date is agreed by stating a calendar week, the latest delivery date is the last working day of this week (= Friday).

If an acceptance was agreed or is stipulated by law, this means the successful acceptance by a person authorised by us to do so.

4.

Partial, over- and under-deliveries are only permitted if and insofar as we have agreed to these in advance at least in text form.

5.

In the event of a delay in delivery, we are entitled to demand 0.5% of the agreed total price for each complete week of the delay, however a maximum in total of 5%, as a contractual penalty. The supplier remains free to prove that the damage was less than the contractual penalty. We reserve the right to assert this contractual penalty until the final payment. Further legal rights remain unaffected.

6.

The supplier is obliged to inform us immediately in writing as soon as it becomes aware that it is not possible for it to fully or partly fulfil its delivery. It must inform us of this immediately in writing stating the reasons and the probable duration of the delay.

Section 5 Transfer of risk, documents, packaging

1.

Unless agreed otherwise in writing, the risk shall pass to us in accordance with DDP place of destination in accordance with the order (Incoterms® 2010). This also applies if exceptionally we bring in our own transport persons. If an acceptance is agreed or is stipulated by law, the risk shall pass to us with the successful acceptance.

2.

The supplier is obliged to precisely state our order number, the preferential origin, the country of origin of the goods, the statistical goods number and quantity, and the weight on all shipment documents and delivery notes. The supplier shall not have fulfilled its delivery obligation until we have received these proper shipment documents and delivery notes as well as all the documents listed in the order. Until then we are entitled to store the delivery at the supplier's expense and risk.

3.

The products being delivered must be packed in the customary manner or at our request must be provided with special packaging in accordance with our instructions. We will only assume the costs of special packaging after prior agreement.

4.

If the supplier does not take the packaging or empty containers back for us free of charge at our request, we are entitled to send the packaging back carriage paid to its starting place, or instead in consultation with the supplier to charge it for the appropriate costs of disposal.

Section 6 Quality, liability for defects, inspections

1.

The supplier warrants that on handover to us or to our customers, every product shall be free from legal and material defects and shall correspond to the recognised state of the art, the relevant laws (e.g. the REACH regulation), the safety and accident prevention regulations, and the usual and technical quality assurance standards (e.g. DIN, VDE, VDI, TÜV, former trade association guidelines). If these standards take different forms, the German version shall be applicable.

2.

The supplier must undertake an outgoing goods inspection. If the supplier manufactures the product itself, it shall also undertake inspections during production.

3.

We will examine the products after receipt for obvious defects, externally identifiable transport and packaging damage, and identity and quantities, by means of a comparison between the supplier's delivery documents and the order details as well as individual samples. There is no further duty of inspecting the incoming goods. We will inform the supplier immediately of defects discovered during this. In this respect the supplier renounces the objection of delayed notification of defects.

This duty of inspecting incoming goods does not exist if an acceptance has been agreed or is stipulated by law.

4.

If initial or selection samples are requested, the supplier must submit the initial sample test report in accordance with VDA Volume 2 together with the samples and may only commence series production with our prior written agreement.

5.

We expect the supplier to constantly adjust the quality of the products to the state of the art, and to point out any necessary or possible and useful improvements and technical changes to us. However, in all cases changes to the product require our prior written consent.

6.

In the event of defects, instead of rectification we can also request a subsequent delivery of the defective products. The supplier must then bear all the expenses for the purpose of rectification, or for replacement deliveries to the respective place of use of the products. On request we will inform the supplier of the place of use.

7.

After the fruitless expiry of an appropriate grace period or – insofar as due to urgency it is no longer possible to set a grace period – after informing the supplier, we are entitled to undertake the remedying of the defect ourselves, have this undertaken by a third party or procure a replacement elsewhere; the supplier must compensate us for the costs incurred here unless it is not responsible for the defect.

8.

The limitation period for claims due to defects is 36 months from the transfer of risk.

9.

If the supplier rectifies products or fully or partially replaces them, the limitation period in respect of this defect as stipulated in Section 6. 8. shall commence afresh unless the rectification effort involved was negligible or an express act of goodwill by the supplier.

10.

In all other respects the legal provisions additionally apply.

Section 7 Property rights

1.

The supplier warrants that no third-party rights shall be violated through the production, sale and intended use of the products, including at the place of use of the end product, which we will communicate on request (if not stated in the order).

2.

If we are claimed against by a third party on account of infringement of its intellectual property, the supplier shall be obliged on first written request to indemnify us against such claims.

This duty of indemnification by the supplier relates to all expenses, costs and damages we incur from or in connection with being claimed against by a third party (including costs of legal action).

3.

Section 6. 8 applies to the limitation period for claims on account of legal defects.

Section 8 General liability, product liability, indemnity, liability insurance protection

1.

In the event of our being claimed against by a customer or third party on the grounds of product liability, the supplier shall be obliged on first written request to indemnify us against such third-party claims if and insofar as the damage was caused or partly caused by a fault in the product supplied by the supplier. However this does not apply in cases of liability based on fault if the supplier is not responsible for the breach of duty.

2.

In any case the supplier shall assume the costs and expenses corresponding to its share of the cause or fault, including the costs of any legal action or recall action; this also applies in the event of discernible or impending serial defects.

Insofar as possible and reasonable we shall inform the supplier of the content and extent of the recall measures to be implemented and give it the opportunity to comment.

3.

The supplier must bear damages arising from non-compliance with these Terms and Conditions of Purchase, unless it is not responsible for such non-compliance. In all other respects the supplier shall be liable for the fault of its vicarious agents, sub-suppliers and subcontractor as for its own fault.

4.

The supplier undertakes to maintain product liability insurance (with extended product cover) with an appropriate sum insured of at least € 1 million for personal injury and damage to property as well as recall and shall prove its insurance cover to us on request.

Section 9 Provision of parts

1.

All parts provided by us (referred to below as “provided items”) remain our property. The supplier shall store the provided items separately from other articles belonging to it. Our ownership must be indicated on the provided items themselves and in the business books. The provided items must be surrendered to us at any time at our request and insofar as they are no longer required for the order.

2.

The provided items must only be used for the products ordered by us and must neither be used by the supplier for its own purposes nor made accessible to third parties.

3.

The supplier must immediately inform us in writing of all defects and damage the provided items exhibit at the time of being handed over to the supplier. The supplier shall bear the risk of accidental deterioration and accidental loss as long as the provided items are in its possession.

4.

The treatment or processing and the combining and mixing of the provided items by the supplier shall always be undertaken for us, without obliging us. We shall acquire joint ownership of the newly produced goods according to the ratio between the net invoice value of the provided items and the other materials or the newly produced goods.

5.

The supplier is obliged to insure the provided items at their as-new value at its own expense against destruction or damage by fire, storm and hail, theft, burglary, embezzlement, earthquake, vandalism, environmental risks and mains water.

The supplier hereby assigns to us all claims from this insurance, and we hereby accept this cession.

Section 10 Means of production, tools

1.
Tools and other means of production provided by us remain our property.
Tools or other means of production manufactured on our behalf and paid for by us (referred to jointly below as “tools”) shall pass into our ownership with full payment. The transfer of ownership shall be replaced by the supplier borrowing the tools from us.
2.
The supplier is obliged to use the tools exclusively for the manufacture of the products ordered by us. They must neither be used by the supplier for its own purposes, nor made accessible to third parties.
3.
The supplier shall store the tools separately from other articles belonging to it. Our ownership must be indicated on the tools themselves and in the business books. The tools must be surrendered to us after the termination of the respective supply relationship and at any time at our request.
4.
The supplier must arrange for all necessary maintenance and inspection measures in good time at its own expense. The supplier must report any damage and/or impairments to us immediately in writing.
5.
The supplier is obliged to insure the tools at their as-new value at its own expense against destruction or damage by fire, storm and hail, theft, burglary, embezzlement, earthquake, vandalism, environmental risks and mains water.
The supplier hereby assigns to us all claims from this insurance, and we hereby accept this cession.

Section 11 Rights to documents and models

1.
We reserve the rights of ownership and the copyrights to all technical drawings and other documents that we make available to the supplier.
2.
Products that are manufactured in accordance with the documents we have drafted (such as drawings, models and the like) or in accordance with confidential information we have provided or using our tools must neither be used by the supplier itself nor offered or supplied to third parties.
3.
Documents and articles of all kinds, such as samples, drawings, tools, models etc, that we make available to the supplier must be sent back to us unasked free of charge as soon as they are no longer required for executing the order. Such documents must neither be used by the supplier for its own purposes, nor made accessible to third parties.

Section 12 Confidentiality

1.
Insofar as no more extensive confidentiality agreement is concluded, the supplier is at least obliged to keep all the details of our orders, e.g. number of units, technical design, terms etc., and all the illustrations, drawings, calculations and other documents and confidential information (referred to below as “confidential information”) that it knowingly or accidentally receives from us strictly secret. They must only be used by the supplier for the fulfilment of the order, and must neither be used for the supplier’s own purposes nor made accessible to third parties. The supplier must send the confidential information back to us at any time on request or unasked as soon as it is no longer required for the execution of the order.
2.
Products that are manufactured in accordance with the documents we have drafted (such as drawings, models and the like) or in accordance with confidential information we have provided or with our tools or with tools modelled on these also constitute confidential information within the meaning of the above paragraph.
3.
The obligation to ensure confidentiality shall also continue to apply after the end of the business relationship; it shall only expire if and insofar as the confidential information has become generally known.
- 4.

In the event of a contravention of these obligations of confidentiality the supplier undertakes to pay a contractual penalty in the amount of 20% of the order value unless the supplier is not responsible for the contravention. Otherwise in the event of particularly serious infringements we are entitled to dissolve the entire contractual relationship with the supplier without notice and without compensation, and if appropriate to reclaim payments that have already been made. A particularly serious infringement shall exist in particular if the supplier discloses knowledge it has acquired or received to third parties that are in competition with us.

5.

Advertising with reference to the business relationship is only permitted with our written consent.

Section 13 Place of performance, applicable law, place of jurisdiction, arbitration tribunal

1.

The place of performance for all deliveries and services is the place of destination stated by us in the order. The place of performance for all payments is our registered office.

2.

The law of the Federal Republic of Germany applies with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG).

3.

If the supplier is a merchant, legal person under public law or a public-law special fund, the place of jurisdiction for all suppliers whose place of business is within the EU is the court with competence for our registered office. However we are also entitled to invoke the court with competence for the supplier's registered office.

If the supplier has its place of business outside the EU, all disputes arising in connection with this supply relationship shall be definitively decided in accordance with the Arbitration Rules of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS) without recourse to the ordinary courts of law. The place of the arbitration proceedings shall be Frankfurt am Main, Germany. The language of the arbitration proceedings shall be German. The applicable substantive law is the law of the Federal Republic of Germany.