

Conditions of Purchase and Procurement 0605

I. General

Our orders and commissions are governed exclusively by these provisions. We do not recognize any contradictory or divergent conditions of the Supplier/Contractor unless we have expressly agreed in writing to their application. Our terms and conditions of purchase shall apply only in relation to entrepreneurs within the meaning of § 310 paragraph (1) BGB (German Civil Code).

II. Supplier's Declaration

The Supplier is required to only supply products which are originating products according to the applicable regulations of the preferential treaties and, upon request, provide information sheets confirmed by the customs office in charge.

For products, which are not originating products within above meaning, Supplier shall provide us with separate declarations showing the particular country of origin. General data such as EC or EFTA are not sufficient.

Certificates and documentary evidences of origin shall be submitted to us without request and at own cost in due time. Supplier shall be liable for damages due to false declarations or to the failure or delay in submitting such documents.

III. Delivery & Performance Dates

1. Agreed delivery and performance deadlines and dates are binding. The date of delivery of goods along with their shipping documents at the destination specified by us shall determine compliance with said deadlines or dates.

2. In the event of delay on the Suppliers part the statutory provisions in this respect shall apply. Moreover, the Supplier must notify us in writing without delay once it becomes aware of the likelihood of failure to meet a delivery or performance date, giving the reasons for the delay and its likely duration. If the Supplier fails to notify us of the impending delay he shall not be entitled to plead that it was beyond his control.

3. If we are unable or cannot reasonably be expected to take receipt of or formally accept the delivered items or services as a result of force majeure or other circumstances beyond our control, for instance labor disputes, breakdowns or operational restrictions, we shall be exempted from our obligation to take delivery/acceptance as long as these circumstances prevail, and the Supplier shall not be entitled to assert any claim for damages in this event.

IV. Liability for Defects, Complaints

1. We are entitled without restriction to assert our statutory rights in the event of defects; in each case we shall be entitled, at our choice, to require the Supplier or Contractor either to remedy the defect or deliver/manufacture a new item. Furthermore, we expressly reserve our right to damages, and in particular to damages in place of performance.

2. If the attempted remedy or replacement is unsuccessful, or if the Supplier fails to fulfill his obligations to provide a remedy or replacement promptly within the period set by us, or refuses said fulfillment of his obligations or is unable to provide a remedy or replacement, we shall be entitled to assert our statutory warranty rights without granting any further period of grace.

3. In the event of imminent danger or in particularly urgent cases we shall be entitled to undertake the remedy or replacement ourselves at the Suppliers or Contractors cost.

4. Complaints shall be deemed to have been made in time if they are lodged within two weeks of receipt of the supplies in the case of visually identifiable defects, and otherwise within two weeks of their discovery by us or of their being reported to us by our costumers. However, if a longer period is reasonable in any individual case then this period shall apply. Defects which could not be detected via random sampling shall be deemed hidden defects.

5. In accordance with the provisions of §§ 478 & 479 BGB, we shall also be entitled to assert rights of recourse against the Supplier if the end customer is not a consumer but an entrepreneur.

V. Product Liability

1. The Supplier hereby acknowledges his unlimited and sole liability for all warranty claims, as well as for any product liability claims provided there is sufficient evidence that the grounds for such claims lie in products he has supplied. Accordingly the Supplier is also liable for all claims asserted by third parties as a result of personal injury or material damage allegedly caused by a defective product supplied by him.

2. If it transpires that we shall have to undertake recall action against third parties, the Supplier shall assume all liability in this respect, including for the cost risk.

3. If the Supplier is responsible for product damage he hereby undertakes to exempt us in this respect, on first demand, from third-party claims for damages in so far as the cause lies within his sphere of influence and organization and he himself is liable in respect of legal relationships with third parties.

4. The Supplier undertakes to maintain product liability insurance with suitable coverage which must be not less than 2,500,000 euros per instance of personal injury or material damage. Said insurance cover must be maintained for the duration of this Contract, to wit until the expiry of all prevailing limitation periods for the lodging of complaints. The above is without prejudice to our rights to assert more extensive claims.

VI. Documents, Equipment

1. Any drawings and other documents as well as equipment such as devices, models, tools, dies, matrices, moulds and specimen furnished to Supplier or his agents in accordance with information provided by us, shall remain our property, may only be used for drawing up the offer and making delivery and/or performing services as ordered and must not be reproduced or made available to third parties except with our prior written consent. They shall be kept carefully by the Supplier at his own expense and risk, and shall, at our request, be returned to us without delay after our inquiry has been dealt with or after delivery has been made or service performed as ordered.

2. Documents and equipment forming part of the purchase order shall be binding on Supplier, who shall nevertheless examine such documents and equipment for any discrepancies and notify us in writing without delay of any errors he discovers or presumes to exist. If Supplier fails to do so, he cannot cite such discrepancies/errors at a later date. In such cases performance of the order shall not begin or be continued unless our written instruction has been given to do so. Supplier shall retain sole responsibility for any drawings, plans or calculations made by him, even if these received our approval.

VII. Standard Specifications and Operating Conditions

Provided no further - reaching requirements are specified in the order and/or contract, supplies and services shall be provided for in regular commercial quality and, as far as standard specifications such as DIN, VDE, VDI, DVGW and equivalent standards exist, in conformity with such standards. Supplies and services shall be manufactured respectively performed to ensure that on the day of their delivery respectively completion they meet the operating and service conditions as described by us and comply with statutory requirements as applicable at the place of ultimate use.

Drawings, standards and regulations cited by us shall always apply in their latest version.

VIII. Supply of Material

Material furnished by us to the Supplier shall remain our property and shall be kept properly at his own expense.

The manufacturing and processing of such material shall be for us and our behalf. In case the material is incorporated or processed into other goods not belonging to us, the property in the whole or part of such other goods (as the case may be) shall be and remain with us.

IX. Inspection, Control, (Formal) Acceptance

1. On request the Supplier shall furnish us with inspection reports on products manufactured and/or services rendered by him, the details of said reports to be agreed upon subsequently.

2. We and our agents are hereby entitled to inspect the contractual supplies or work on the Suppliers or Contractors premises at any time during the production process and prior to delivery. Moreover, the Supplier or Contractor must ensure that we are able to exercise the same right on the premises of his own suppliers and subcontractors.

3. If a final inspection or formal acceptance testing by us or a third party contracted by us has been arranged to take place on the Suppliers or third party premises, we must be notified in writing of their readiness for said final inspection or acceptance testing at least 14 days in advance.

4. The Supplier shall provide free of charge the equipment, tools and services necessary to undertake the final inspection or acceptance testing.

5. The costs of inspection, controls and acceptance testing shall be met by the Supplier with the exception of the costs of the personnel assigned by us. In the event of renewed inspections, controls and/or acceptance testing being required for reasons attributable to the Supplier, all costs incurred shall be met by the Supplier.

6. Inspections, controls and works acceptance testing within the meaning of the present Section IX. shall not release the Supplier or Contractor from his warranty or other liability obligations.

X. Shipment & Risk

1. All delivery notes, shipping notes, waybills, etc., must always bear the order date specified by us. The Supplier must furnish us with separate shipping notes for each destination immediately after dispatch of each individual consignment. An invoice does not count as a shipping note. Each consignment must be accompanied by a neutral packing slip and by a delivery note.

2. If deliveries received by us are not accompanied by the proper shipping documentation all additional costs incurred as a result shall be met by the Supplier, and in this event we shall also be entitled to refuse to take receipt of the delivery.

3. Any and every risk in relation to consignments shall not transfer to us until after delivery of the supplies to the agreed destination.

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XI. Prices

1. The agreed prices are fixed prices plus the statutory value added tax. Unless otherwise agreed, said prices are for delivery duty paid (DDP) to the point of destination, including packaging costs, in accordance with the prevailing version of the Incoterms. If, in exceptional cases, an ex Works price has been agreed, we shall only pay the costs of shipment by the most economically favorable method.
2. Any increase or decrease in prices as a result of changes of execution is subject to our written consent. We also reserve the right to either accept or refuse any excess or short delivery.
3. Unless otherwise agreed, any quoted prices are binding, and we are not obliged to indemnify the Supplier against any excess costs incurred.

XII. Invoicing and Payment

1. Invoices shall not accompany the consignment, but shall be submitted to our Invoice Control Department separately for each purchase order in duplicate immediately after delivery or performance of service, showing value-added tax and complete order number.
2. Payment periods shall not begin unless due delivery respectively due performance of the services have occurred and we have received the invoice and all documents agreed upon such as Supplier's declaration and inspection certificates.
3. Unless otherwise agreed, payment shall be effected at our discretion either within 14 days with 3 % discount or within 60 days without discount. Delivery of supplies or performance of services prior to the agreed date shall have no bearing on the period of payment tied to said date.
4. Supplier is not entitled to assign his contractual rights to third parties either wholly or in part without our approval in writing. We hereby give our consent to advance assignments under retention of title agreements existing between Supplier and his sub-suppliers with the proviso, that our counterclaims, even if acquired by us after notification of assignment, can be set off against such assigned claims for payment. Within the ordinary course of business we are entitled to resell supplies purchased under retention of title.
5. For orders, for which we have applied or already received an insurance cover against the risk of manufacture from the Federal Republic of Germany, Supplier agrees to comply with an eventual request of the Federal Government to stop the manufacture without delay and to allow the Federal Government to verify the costs of manufacture. Compensation shall consist of the respective portion of the amount insured under the Federal cover which is being paid out.

XIII. Confidentiality

The Supplier or Contractor undertakes, even after the end of the business relationship, to treat our enquiries and orders and the associated information as strictly confidential. The Supplier will also impose a corresponding obligation on its agents and representatives. The Supplier or Contractor is not entitled to use his business relationship with us for advertising or promotional purposes except with our prior written consent.

XIV. Place of Performance and Jurisdiction

1. Unless otherwise agreed, the place of performance is the place of delivery or service address stipulated by us. The place of payment is Leonberg.
2. If the Supplier or Contractor is a businessman our domicile shall be the place of jurisdiction. However, we are also entitled to institute legal proceedings against the Supplier or Contractor at his own domicile. The Contract is subject to German law, to the exclusion of UN sales law.

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