

Allgemeine Einkaufs- und Lieferbedingungen (AELB)

I. Validity of our Purchasing Terms and Conditions

1. These purchasing terms shall be valid for all contracts concluded by us as the purchasing or ordering party, unless otherwise agreed expressly and in writing. Any general terms of supply of the Supplier which deviate from the our Purchasing Terms and Conditions will not become subject of the contract even if they are not explicitly opposed by us. Our Purchasing Terms and Conditions shall also be applicable even if we accept a delivery of the Supplier without reservation and although we are aware of the Supplier's conditions to the contrary or is aware that these conditions deviate from our Purchasing Terms and Conditions.
2. Our Purchasing Terms and Conditions in their most recently revised form at the material time shall also be valid for future transactions with the Supplier.
3. The Incoterms 2010 are valid in supplement as far as they do not contradict any of the clauses of our Purchasing Terms and Conditions or of any other agreement between us and the Supplier.
4. Any rights that we are entitled to in accordance with statutory provisions and beyond those stated in the AELB shall remain unaffected.

II. Formation of Contract and Amendments

1. The contract shall become effective with the order or delivery request by us if the Supplier does not, within one week of receiving the order or delivery request, object in writing or submit a counter-offer. Decisive for deadline adherence is the date the objection or counter-offer is received by us. As long as our order is not fully accepted by order confirmation, we are entitled to withdraw the order free of charge without giving reasons. The withdrawal is early enough if it is sent to Supplier before we have received the order confirmation. Deviations from our orders must clearly be highlighted and are only valid if explicitly accepted by us in written form.

III. Scope and Content of the Obligation to Supply

1. The scope of the Supplier's obligation to supply is based on the specifications and performance descriptions transmitted at the time of the conclusion of the contract or, if these are lacking, on the information provided in the Supplier's quotations and brochures.
2. Unless otherwise agreed to explicitly and in writing, all deliveries must comply with the DIN and/or VDE standards in their most recently revised form at the material time and with any other industry-standard norms or EU standards.
3. We will accept only the amounts or quantities ordered. Over- or underdeliveries are permitted only after prior agreement with us. If partial quantities have been agreed to, the Supplier shall inform us at each partial delivery of the quantity still due for delivery.
4. The Supplier shall assume, at his own cost, the obligation to properly dispose of the goods at the end of the utilisation period. Statutory provisions shall be adhered to in the disposal.

IV. Changes to the Order Performance

1. If, during performance of the contract, it becomes apparent that deviations from the originally agreed specifications are necessary or expedient, the Supplier must immediately notify us thereof. We shall then state in writing what if any modifications the Supplier should make to the original order. If this leads to a change in the costs incurred by the Supplier in the fulfillment of the contract, both we and the Supplier shall be entitled to request an appropriate adjustment to the compensation owed to the Supplier.
2. We may at any time demand changes in the construction or execution of the order or delivery item. If - as a consequence thereof - the agreed delivery periods can no longer be fulfilled, or an increase in the agreed prices is associated with the changes, the Supplier must immediately notify us and submit a reasonable written proposal regarding the delivery period and / or the price increase. Otherwise, the originally agreed delivery periods and prices remain applicable also to the modified order.

V. Delivery Time

1. The delivery dates and deadlines agreed to shall be binding. The delivery period shall commence on the date of order. Decisive for deadline adherence of the delivery date or deadline shall be receipt of the goods by us or by the recipient designated by us. If delivery other than "free factory" ("frei Werk") (DDP as per Incoterms 2010) is agreed and we have agreed to take over the transport of the goods, the Supplier must make the goods available in good time, taking into consideration the time required for loading and shipment, as agreed with the forwarding agent. In other cases, pursuant to Clause 4, the Supplier shall be liable for delays in delivery caused by the forwarding agent.
2. If the Supplier anticipates difficulties with respect to meeting the delivery deadline or similar circumstances which might prevent the Supplier from delivering the goods on schedule or from supplying the goods to the agreed quality, the Supplier shall notify us thereof immediately, stating the reasons and expected length of the delay.
3. In case of force majeure, labor disputes with the exception of illegal lockouts, inculpable operational disturbances, unrest, government measures and other inevitable events in our region, we shall – without prejudice to the remaining rights – be entitled to withdraw from the contract in whole or in part unless such events are of insignificant duration or cause only an insignificant reduction in our requirements.
4. In case of delayed delivery we are entitled to the statutory rights.
5. Notwithstanding the above, we are entitled to charge the Supplier a contractual penalty from the date of delivery default. The contractual penalty shall be payable at a rate of 0.5% for each week commenced but shall not exceed 5% of the total order value of the delivery. The right to assert further claims is expressly reserved. The right of mitigation by court is excluded. The contractor's obligation to pay a contractual penalty arises with the occurrence of the delay. The payment of contractual penalties does not release the contractor from his obligation to fulfil the contract and its liabilities resulting therefrom.

VI. Passing of Risk, Transfer of Ownership, Documents

1. Risk and ownership shall pass to us on delivery of the goods to us or to the recipient designated by us. If the Supplier is obligated to provide any setting up or installation work, then risk passes to us only on start of operations. All deliveries to us shall be free from reservation of title and free from any other rights of third parties. Such reservations are null and void even we do not explicitly disagree or dissent.
2. Every delivery must be accompanied by a delivery note. Invoices stating the order number must be sent to us concurrently with dispatch of the goods. To prevent delay in processing by us, invoices must not be attached to the delivered goods but must be sent by separate mail; otherwise Clause VII. 3 applies accordingly.

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VII. Prices and Payment

1. The price stated in the order shall be binding. Unless otherwise agreed in writing, the price shall include, in particular but not limited to, the costs for packaging, any miscellaneous equipment required for shipping and transport to the delivery address stipulated by us as well as customs duties and other official duties and levies.
2. The statutory value added tax is not included in the price.
3. If the Supplier's invoices do not indicate our ordering department and date of order nor our order number as communicated to the Supplier, the payment period is extended by another 2 weeks.
4. In the case of any delivery or service provided that is not in accordance with the agreement concluded, in particular defective deliveries, we shall be entitled to withhold payment, without forfeiting rebates, discounts or similar payment abatements, until proper fulfillment thereof.
5. Payments shall be made either within 14 calendar days with a 3 % discount or within 30 days net after proper performance of the service in accordance with the agreement and receipt of the properly prepared invoice. If it is agreed that the Supplier may also submit partial invoices, a cash discount will be granted for all partial and final invoices paid within the agreed discount period, even if the payment of another partial or final invoice is not made within the agreed discount period. All payments shall be subject to invoice verification in case there should be any objections at a later date. Rights reserved to negotiation of bills of exchange; without a separate agreement, this does not affect the legal consequences of default with respect to the purchase price claim. In the event of payment default, the Supplier may levy default interest of 2% over and above the respective base interest rate, unless we prove damages to a lesser amount.
6. Payments shall only be made to the Supplier. The Supplier is only entitled to offset counterclaims against payments due if the claims have an unappealable legal status or are undisputed. The Supplier only has a right to withhold payment if the counterclaim is based on the same contractual relationship.

VIII. Warranty Claims and Recourse

1. The Supplier guarantees and warrants that all products and services comply with the most recent, state-of-the-art technology, with the relevant legal provisions and the regulations and guidelines of authorities, employers' liability insurance associations and trade associations. If the subject of the contract does not meet these requirements, the Supplier must notify us of this in each single case prior to start of delivery to us by stating the reasons. In such a case, we are entitled, even after receipt, to reject the goods within a period of 10 working days from notification by the Supplier, and to assert the legal warranty claims.
2. If the Supplier has doubts regarding performance of the order as requested by us, the Supplier must immediately communicate this to us in writing.
3. Acceptance of the goods is under the reservation of inspection, including but not limited to determining that the goods are free of defects and that the shipment is complete. Inspection shall be made based on the delivery note and is limited to the detection of obvious defects. Insofar as soon as this is feasible in the ordinary course of business, we will inspect all deliveries and will immediately notify the supplier of discovered defects in writing. However, it is expressly agreed that we are not obligated to examine the deliveries and / or to notify any defects; §§ 377 ff UGB are not applicable and are expressly excluded. However, this exclusion does not cause the loss any of our legal rights and claims (including but not limited to claims arising from warranty, compensation for damages or a claim on the grounds of an error). The forgoing stipulations also apply correspondingly to defects which become apparent later. Even with these, the Supplier hereby waives the objection of the delayed notification of defects. For consignments comprising numerous identical goods we shall only need to inspect 3 % of the delivered goods for defects. If the goods would become unmarketable due to the inspection, a sample of 0.5 % of the supplied units shall suffice. If single samples of a consignment are defective, we at our own choice can request the isolation of the defective units by the Supplier or enforce claims for damages of the entire delivery. If as a result of goods defects a goods receiving inspection is required that is over and above the usual procedures in scope then the Supplier shall carry the costs of such inspection.
4. In the case of defects in the delivered goods or services performed, the supplier is obligated to fulfil his warranty – at our discretion - either by improvement, exchange or price reduction. If the defect is not minor, we are alternatively entitled to withdraw from the contract. We are entitled at any time to remedy the defects by ourself or to have them remedied by a third party. The supplier shall bear the costs arising therefrom. Until evidence to the contrary provided by the Supplier, it is assumed that the defect already existed upon delivery, even if the defect shall come into effect later than 6 months after delivery. The Supplier shall fully indemnify and hold us harmless for any and all disadvantages arising directly or indirectly as a result of a defective delivery or performance due to violation of official safety regulations, due to violation of the agreed delivery times, deadlines and time limits, sub-delivery or due to other reasons attributable to the supplier. The Supplier is obligated to completely compensate us for all damages and disadvantages occurring in this context. This includes, without limitation, any personal or others expenses (including material and personnel expenses) in connection with the detection or repair of defects, as well as any frustrated material and personnel expenses and other costs resulting from defects. Sub-suppliers and subcontractors shall in any case be deemed to be vicarious agents, so that the Supplier shall be responsible and liable for their fault as well as for his own.
5. In case of defects in title to the goods the Supplier shall hold us harmless from all claims by third parties.
6. The limitation period for claims is suspended while the goods are being inspected for defects or are at the Supplier's or at his agent's for rectification of defects.
7. For parts of the delivery which are being maintained or are being repaired within the limitation period, the limitation period shall recommence from the time the Supplier has fully satisfied our claims to subsequent fulfillment of obligations.
8. If claims are lodged by third parties against us for defects in the goods procured from the Supplier, we shall be entitled to recourse from the Supplier; the same conditions as set out in the preceding sub-clauses shall apply accordingly. The Supplier is obligated to reimburse us for the expenses incurred in connection with the defects, in particular but not limited to the costs for shipping, carriage, labor and materials.
9. Receipt of goods as well as the handling, payment, and repeat ordering of goods not yet identified as defective and not yet contested shall not represent approval of the delivery and shall not represent a waiver of any warranty claims by us.

IX. Liability, specifically Product Liability

1. The Supplier's liability is in accordance with statutory regulations, unless otherwise agreed in these Purchasing Terms and Conditions.
2. If claims are lodged against us owing to product liability laws, the Supplier shall exempt and hold us harmless from such claims if and insofar as the damage is caused by a defect in the goods which are delivered by the Supplier and which are the subject of the contract. The Supplier shall, in such cases, exempt us accordingly from all costs, including expenses for required recall measures and the costs for prosecution actions. In all other matters, the legal provisions shall apply.
3. At the commencement of the contract and anytime after that upon request, the Supplier shall present to us proof of product liability and recall insurance with a coverage of at least € 2,500,000.00 per liability case; the Supplier shall also, after complete fulfillment of the obligations from the contract, maintain the insurance coverage for a period of ten years after the processed goods are placed on the market by us. The Supplier already at this point shall cede all claims arising from the product liability insurance and all ancillary rights to us. We already at this point accepts such cession. If cession should not be permitted in accordance with the insurance agreement then the Supplier shall herewith irrevocably instruct the insurance company to effect any payments only to us. Any further claims by us remain unaffected hereby.
4. Unless otherwise agreed, the Supplier shall mark his goods for delivery in a durable manner so that they can be permanently identified as his products.

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X. Cancellation of the contract

In the case of breach of contract, we are entitled to cancel the contract in full or in part after giving a reasonable period of grace (which is in general 14 days). The request to comply with the contract shall also be deemed as the setting of a reasonable period of grace. Breaches of contract include but are not limited to delays in interim or final deadlines, unauthorized subcontracts or deficiencies which endanger the fulfilment of our duties towards our contract partners. In such cases, we are entitled to carry out the defective or inadequately rendered deliveries and services ourselves (self-help) or by third parties (substitute performance) at the Supplier's expense. The costs incurred can either be invoiced directly to the Supplier or can be deducted from the next due payments to the Supplier.

XI. Protective Rights

1. The Supplier warrants and assures that neither the goods delivered by him nor their onward supply, further processing or utilisation by us do not in any way infringe any utility models, patents, licenses or other protective rights of third parties.
2. The Supplier exempts us and our customers and holds them harmless from third party claims resulting from the infringement of any protective and patent rights and shall bear all expenses that us incurs in this connection.
3. In case of conflicting protective rights of third parties, the Supplier shall, at its own cost, obtain agreement or approval, also effective for us, from the proprietor to further supply, further process or utilise the delivered goods.

XII. Provision of Parts, Tools

1. All parts provided by us to the Supplier shall remain the property of us. Processing or reworking by the Supplier will be undertaken on behalf of us. If the parts to which title is reserved are processed with other items that are not the property of us, we shall acquire co-ownership of the resulting new article in the ratio of the value of the parts with reserved title to the other processed items at the time of processing. The same applies if the items are so closely associated or intermingled that we lose ownership therein. The Supplier shall store the new items on behalf of us at no charge.
2. The Supplier shall check all parts provided for defects. If a part provided by us is culpably damaged or destroyed while in the Supplier's sphere of responsibility, the Supplier's liability shall also extend to the repair or replacement of the provided part.
3. All tools paid for or provided by us shall remain the property of us. The Supplier shall employ these tools solely for the manufacture of the goods ordered by us.

XIII. Secrecy

1. The contracting parties agree to hold in strictest secrecy all information proceeding from the cooperation pursuant to this contract unless such information is common knowledge, legally obtained from third parties or independently acquired by third parties through their own labor, and to use it solely for the purpose of this contract. protected information includes in particular but is not limited to technical data, purchase quantities, prices and information regarding products and product development, regarding current and future research and development plans and all corporate data of the other contractual party.
2. In addition the Supplier shall keep in strictest secrecy all illustrations, drawings, calculations and any other documentation received by the Supplier and shall not disclose such to third parties without the prior written consent of us if the information therein contained is not common knowledge.
3. Sub-contractors shall be bound by the Supplier to maintain the same secrecy as stipulated above.
4. At the request of us at any time, but at the latest when the contract ends, all information originating from us (where applicable, including copies or recordings) and items provided on loan shall be immediately returned to us in full unless these are still required by the Supplier for the purpose of meeting its contractual obligations. We reserves all rights to such confidential information, including copyrights, industrial property rights, patents, utility models etc.
5. Products manufactured according to designs, documents, models etc. provided by us or similar or according to specifications marked as being confidential may be used by the Supplier solely for the purposes stipulated in the contract; in particular, such products may not be offered or delivered to third parties.

XIV. Final Provisions

1. The Supplier may not transmit the order or essential parts of the order to third parties without the prior written consent of us.
2. As soon as the Supplier suspends payments, or if a provisional insolvency administrator is appointed, or if insolvency proceedings are instituted, we are entitled to withdraw wholly or partially from the contract.
3. The place of performance is the delivery address stipulated in our order.
4. The only law that shall apply to the contractual relationships shall be German law, under exclusion of the law of conflicts and the UN Convention on Contracts of the International Sale of Goods (CISG, UN agreement on purchasing rights).
5. If any individual parts of these Purchasing Terms and Conditions should become legally null and void, this shall not affect the validity of the remaining provisions.
6. Place of jurisdiction shall be the place of our registered office in Germany. We reserve the right to institute legal proceedings in any other permissible place of jurisdiction.