



General Conditions of Purchase (01/12)



Valid as of: 01.01.2012

1. Scope

1. For all orders, the purchaser's conditions of purchase shall be solely applicable. Contradictory or variant conditions of trade on the part of the supplier shall be acknowledged by the purchaser solely where the latter has expressly given its consent in writing. The unconditional acceptance of or payment for goods or services by the purchaser shall not constitute consent.
2. In on-going business relations, these conditions shall also apply to future transactions, provided no other arrangements are expressly agreed.

2. Orders, acceptance

1. Orders are only issued to suppliers which are authorised by the purchaser. The conditions of authorisation shall be regularly reviewed.
2. Orders and delivery requests and any amendments or supplements thereto shall be made in writing. They shall only be binding where they bear the signature of two authorised employees of the purchaser.
3. Oral agreements of any kind shall require written confirmation by the purchaser in order to be valid.
4. Written form shall also include remote data transmission (EDI) and fax. The electronic transfer of data shall be regulated in a separate EDI agreement in which the parties shall lay down the binding legal terms and conditions of data handling.
5. In correspondence relating to orders issued, the purchaser's order and material number shall always be indicated.
6. Where the purchaser's order confirmation differs from the order, the supplier shall expressly point this out. If this is not done, the purchaser's silence may not be deemed to constitute consent.
7. The quality assurance agreements with the supplier and the delivery and packaging terms of the plant of the purchaser to which delivery is to be made shall form an integral part of these terms and conditions.

3. Delivery

1. Agreed dates and deadlines shall be binding. Arrival at the purchaser's plant shall be deemed to constitute delivery for the purposes of determining compliance with the delivery deadlines and time limits for delivery. Save as otherwise agreed, transport shall be carried out in accordance with INCOTERM Clause 2010 "CIP/CIF".
2. Where the supplier has to assume that delivery or performance will not or only partly take place by the agreed deadline, it must immediately inform the purchaser thereof, indicating the reasons and the likely delay.
3. In the event of default on the part of the supplier, the purchaser shall be entitled to withdraw from the contract or claim compensation for non-performance without being required to extend the deadline or give notice of its intention to refuse performance. The purchaser shall be entitled to claim a contractual penalty of 1% of the total net order value for each week of default or part thereof, up to a maximum of 5%.
4. The unconditional acceptance of the delayed delivery or performance by the purchaser shall not be deemed to constitute a waiver on its part of any compensation claims it might have as a result of delayed delivery or performance; this shall apply up to the time of full payment of the remuneration owing for the delivery or performance in question.
5. Part deliveries shall be strictly ruled out unless the purchaser has expressly consented to them or can reasonably be assumed to have done so.
6. Subject to other proof, the values ascertained by the purchaser in the process of incoming goods inspection shall apply with regard to the number of items, weights and measures.
7. With regard to any software that forms part of the product delivery, including any relevant documentation, the purchaser shall have the right of use to the extent permitted by law.
8. As regards the manufacture and packaging of products covered by contract, only jointly determined places of production shall be authorised.
9. Where the supplier is unable to make the required capacities available at the authorised place of production, the purchaser shall immediately be informed thereof. In this case, the supplier is requested to outsource production in order to guarantee that the purchaser receives continuous supplies.

Production at an unauthorised place or by a third party shall require the prior written consent of the purchaser. In the event of outsourcing, the supplier shall transfer all of the obligations assumed by himself to the third party in question.

4. Dispatch

1. For each individual consignment, the supplier shall be required to send a detailed dispatch note separately from the goods and invoice on the date of dispatch. A delivery note and packing list shall be attached to the consignment. In the event of transport by ship, the shipping documents and invoices shall indicate the name of the shipping company and the ship. The supplier shall choose the transport option which is most favourable and best suited to the purchaser.
2. The order reference and details of the place of unloading shall be indicated in full in all dispatch notes, delivery notes, packing slips, bills of lading, invoices and on external packaging.
3. The supplier shall in principle be required to package, identify and dispatch any dangerous goods in accordance with the provisions applicable at national/international level.
4. The pallet layout indicated by the purchaser in the specification shall be strictly complied with.

5. The supplier shall be liable for any damage and shall bear any costs arising as a result of failure to comply with these terms. It shall also be responsible for ensuring that its sub-contractors comply with these dispatch terms.
6. When goods are delivered, a delivery note shall be presented which clearly indicates the purchaser's order and material number and the nature and volume of the consignment. In addition, for packaging materials which come into contact with foodstuffs, the delivery note shall bear the glass and fork symbol.
7. The transport packaging required to dispatch the goods shall either be recovered by the supplier at its own cost or disposed of by the purchaser at the supplier's cost.
8. Any consignments which cannot be accepted as a result of their failure to comply with these terms shall be stored at the supplier's cost and risk and be returned subject to a charge.

5. Prices, payment terms

1. Save as otherwise agreed, the prices indicated in the order shall be deemed to constitute fixed prices; the costs of dispatch and packaging shall be borne by the supplier.
2. Save as otherwise agreed in writing, prices are in principle quoted exclusive of applicable VAT. In invoices, VAT shall always be shown separately.
3. Save as otherwise provided, invoices shall be paid within 45 days at the net amount or within 15 days minus a discount of 3%. The payment period shall begin at the time of complete performance in accordance with the contract and on presentation of a due and proper and auditable invoice.
4. Payments by the purchaser shall not be deemed to constitute acknowledgement of either performance in accordance with the contract, the supply of goods or provision of services free from defects or due and proper invoicing.
5. Electronic transfer of invoices by EDI (message type INVOIC) without paper invoicing shall be permitted solely on the basis of a separate written agreement.

In the event of electronic invoicing, the supplier shall be required to guarantee the authenticity of origin, the integrity of the contents and the legibility of the invoice. In addition, the applicable legal rules concerning record keeping, the principles of correct computerised bookkeeping and the principles of data access and the auditability of digital documents shall also be complied where electronic invoicing is used.
6. All invoices shall indicate the time of delivery and the purchaser's order and material number.

6. Assignment, set-off and right of retention

1. Claims of the supplier arising out of the contract may not, without written consent, be assigned in full or in part to third parties.
2. Set-off and retention rights may be asserted in the context of statutory requirements only where these have been legally established, are undisputed or are acknowledged by the purchaser.

7. Warranty and liability

1. The supplier shall ensure the perfect quality and the unrestricted suitability of the goods/services supplied.
2. By dispatching the goods, the supplier guarantees that the goods or items being supplied correspond to the state of the art and comply with the relevant legal requirements, provisions and/or guidelines of authorities and professional and trade associations.

Generally and internationally recognised standards (e.g. DIN, ISO, VDI, VDE, CE) shall be complied with without express agreement. Operating materials and work equipment shall consequently bear the CE mark (or be subject to the transfer of an EC declaration of conformity) and GS test certificates. Where deviations from these requirements are necessary in individual cases, the purchaser's written approval shall be obtained.
3. In specifications for raw materials and finished products, the allergens contained shall be listed in accordance with Directive 2000/13/EC and any subsequent amendments. When manufacturing products contain allergens, cross-contamination shall be avoided.
4. The traceability (Regulation (EC) No 1935/2004) of raw materials, primary packaging and packaging materials coming into contact with foodstuffs shall be guaranteed by the supplier.
5. In the case of packaging materials bearing a barcode, the printers shall ensure and demonstrate a barcode quality of at least B(3) in accordance with CEN/ANSI/DIN EN 1635; the requirements of DIN EN 797 shall also be met.
6. When the order is accepted, the supplier shall guarantee that the products to be supplied shall neither consist of nor contain genetically modified organisms (within the meaning of Section 3 of the German Genetic Engineering Act). When manufacturing, producing and/or rearing products, no installations or processes involving genetic engineering or substances obtained from genetically modified organisms may be used. This shall also apply to ingredients or, in the case of compound ingredients, to the input and output products of the ingredients, and to the auxiliary materials used in the manufacture of products and ingredients.
7. Where the supplier provides certificates, test reports, certificates of origin or the like, the information they contain shall be deemed to constitute guaranteed properties. Where, on the basis of these documents, the customs authorities require imported goods to be classified differently to what was envisaged, any additional costs arising as a result shall be borne by the supplier.
8. The supplier shall guarantee that the products ordered may be imported under the German Foreign Trade Act [Außenwirtschaftsgesetz].

8. Defects in quality and title

1. Save as otherwise provided below, defects in quality and title shall be subject to statutory provisions.
2. Acceptance shall be subject to an examination for the purpose of establishing freedom from defects, in particular that the goods/services supplied are correct and complete, to the extent and as soon as this is possible in the normal course of business. For the maintenance of all claims, it shall be sufficient if defects are notified within four weeks of delivery or, in the case of concealed defects, within two weeks of their being detected.
3. Where defects are present, the purchaser may choose to require that they be removed or that a replacement delivery be made. Consignments subject to complaint may, at the purchaser's discretion, be sent back to the supplier at the latter's cost or, where a request that the consignment be recovered is not complied with within the deadline set, be stored at the supplier's cost and risk and in its name.
4. In the event of defects in title, the supplier shall release the purchaser from any third-party claims that might exist, unless it is not responsible for the defect in title.
5. The warranty period shall commence on acceptance of the goods/services due. Where acceptance is not provided for, the warranty period shall commence when the risk is transferred.
6. Save as otherwise agreed in writing, the warranty period shall be for 24 months.
7. Where the supplier meets its obligation to remedy performance by making a replacement delivery, the warranty period shall recommence in respect of replaced goods after their delivery and shall be for 24 months.
8. Where the purchaser incurs costs as a result of the defective supply of goods/services covered by contract, in particular transport, travel, labour or material costs or the costs of an inspection which exceeds the usual scope, these costs shall be borne by the supplier.

9. Product liability

1. The supplier shall be obliged to release the purchaser from any claims arising from product liability under German and foreign law insofar as the loss is caused by a defect in the goods/services covered by contract and supplied by the supplier. The supplier shall bear all costs and expenses, including appropriate legal costs.
2. Before launching a recall resulting in part or in full from a defect in the product supplied by the supplier, the purchaser shall inform the supplier thereof and give it the opportunity to participate, unless informing the supplier and its participation is not possible because of the particular urgency of the matter. Where the recall is the result of a defect in goods/services covered by contract and supplied by the supplier, the supplier shall bear the costs of the recall.
3. The supplier shall confirm that it has taken out product liability insurance for damage to property and personal injury with cover of at least € 2 million and for financial losses in the same amount and shall undertake to maintain it at at least that level for the duration of the contract. The supplier shall, at the purchaser's request, present a certificate of cover.

10. Force majeure

1. The contractual parties shall be released from their mutual performance obligations for the duration of any disruption caused by force majeure or industrial action. Force majeure shall not release the supplier from the obligation to immediately inform the purchaser of the circumstances and make every reasonable effort to carry out delivery as quickly as possible after they have ended.
2. Where an interruption to supplies lasts for more than three months, the purchaser shall be entitled to withdraw from the contract without compensating the supplier.

11. Safety regulations

1. Before commencing works, the supplier shall enquire about any operational, procedural and commonly known accident-prevention regulations applicable at the purchaser's plant and laid down by the relevant professional association and comply with them.
2. The purchaser's guidelines for works carried out by third-party firms to plant, machinery and buildings and other facilities shall form an integral part of the contractual relationship with the supplier and shall be supplied to the latter on request.
3. The supplier shall assume the obligation to notify to the purchaser the names of the employees entrusted with carrying out works and to ensure that they abide by the work regulations applicable at the purchaser's plant in the course of their work.

12. Items supplied by the purchaser

Materials, parts, containers and special packaging supplied by the purchaser shall remain its property. They shall be used solely for their intended purpose. Materials shall be processed and parts assembled on the purchaser's behalf. It is hereby agreed that the purchaser shall co-own the products manufactured using such materials and parts in the proportion of the value of the items supplied to the value of the overall product.

13. Secrecy/data protection

1. All business or technical information to which the purchaser provides access, in particular market data, product developments and characteristics and customer relations, shall, unless it is demonstrably public knowledge, be kept secret from third parties and may be divulged within the supplier's own business solely to persons who require the information for the purpose of fulfilling the order and who shall also be bound by secrecy.

2. All information coming from the purchaser (including, where appropriate, any copies or recordings made) shall, on its request, be returned to it immediately and in full or be destroyed.
3. Products produced using documents drawn up by the supplier, such as drawings, models and the like, or on the basis of confidential information provided by it or using its tools or tools modelled thereon, may neither be used by the supplier itself nor offered or supplied to third parties.
4. Transferred items, such as drawings, samples or other originals such as models, tools, slides, artwork, etc., shall remain the property of the purchaser and may not be made available to third parties without its consent; they shall be returned to the purchaser on an unsolicited basis after the order has been completed.
5. The purchaser shall retain all rights to such information, products and transferred items (including copyright and the right to apply for commercial property rights, such as patents, utility models, trademarks, etc.).
6. When accessing personal data, the rules of the German Federal Data Protection Act [Bundesdatenschutzgesetz] shall be complied with.

14. Employment standards and code of conduct

1. The supplier shall guarantee that, within its company and regarding the manufacture of the items to be sold, the applicable national laws and regulations, the minimum branch standards and the relevant ILO and UN conventions are complied with as regards the following matters: freedom of assembly and the right to collective bargaining, the prohibition of discrimination, wages, working time, safety at work, the prohibition of child labour, the prohibition of forced labour and environmental and safety matters.
2. In order to meet certain social and environmental standards, the BCSI Code of Conduct in its current version shall be applied and complied with by the supplier in full and without any amendment or suspension of individual provisions thereof.
3. The basis for all business relations shall be ethical conduct and compliance with the relevant national and international laws and standards. Corruption, bribery or breach of trust in any form shall be prohibited. Both management and employees shall conduct themselves in such a way as to ensure that no personal dependencies or obligations arise. The business partners shall undertake to ensure that this is the case by means of appropriate monitoring systems covering the entire company.
4. Environmental protection and efficient energy use are essential components of the purchasers' company ethos. Economical use of natural resources, the use of environmentally sustainable and energy-saving processes and the extensive avoidance of waste shall also be binding for the supplier when working in the plants of the purchaser.
When purchasing products, services and facilities which have or might have an impact on essential energy use, the purchase shall be assessed partly on the basis of energy performance (energy use, energy efficiency).
The supplier's suppliers shall also be informed by the supplier of the need to meet these requirements. The purchaser shall reserve the right to verify compliance.

15. Export control and customs

1. The supplier shall be obliged to indicate in its business documents any licencing requirements in the event of the export or re-export of its goods in accordance with German, European and US export and customs regulations and the export and customs regulations of the country of origin. To that end, the supplier shall provide the following information in its offers, order confirmations and invoices for the respective items:
 - the export list number in accordance with Annex AL of the German Foreign Trade Ordinance [Außenwirtschaftsverordnung] or comparable list numbers of the relevant export lists,
 - for US goods, the ECCN (Export Control Classification Number) in accordance with the US Export Administration Regulations (EAR),
 - the origin of its goods and their components, including technology and software,
 - the statistical commodity number (HS code) of its goods, and
 - the name of a contact person within its company who can deal with any questions.
2. At the purchaser's request, the supplier shall be obliged to provide all other foreign-trade data relating to its goods and their components in writing and to immediately inform the supplier in writing of any amendments thereto.

16. General terms

The place of performance shall be the place at which the supplier's performance is to be realised. The place of jurisdiction shall be Hamburg, provided the supplier is a registered trader. The same shall apply to a supplier which does not have a registered office or usual place of residence in the Federal Republic of Germany.

Only the law of the Federal Republic of Germany shall be applicable, with the exception of conflict-of-law rules. The provisions of UN commercial law shall not be applicable.

Where a provision of these terms and conditions and any further agreements concluded is or becomes invalid, this shall not affect the validity of the remaining provisions. The contractual parties shall be obliged to replace the invalid provision with another provision which most closely approximates the economic effect of the invalid provision. The same shall apply in the event of a loophole.



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