

Standard Purchase and Contract Terms and Conditions (Last revised in November 2010)

These Standard Purchase and Contract Terms and Conditions form an integral part of any and all agreements entered into with our suppliers and contractors (hereinafter referred to as the “Supplier”) including all ongoing or future business relations. Any deviating agreements, in particular contradictory terms and conditions of business of our Suppliers as well as side agreements, shall be subject to our express written consent in order to become an integral part of a contract.

1. **Quotations and Conclusion of the Contract**
 - 1.1 The Supplier must submit its binding quotations free of charge. In its quotation, the Supplier must adhere to the quantities, packaging units, quality, design, etc. specified in our inquiry and expressly inform us in writing of all instances where the Supplier deviated from our inquiry. The preceding sentence shall apply accordingly to the Supplier’s acknowledgements of order.
 - 1.2 Our orders and any other declarations made by us are binding on us only if we have given or made them in writing to the Supplier.
2. **Pricing**

Prices quoted by the Supplier and/or agreed upon with us are fixed prices before VAT, with delivery free of charge to the destination specified by us, including packaging, freight, insurance and customs handling.
3. **Delivery Date/Period**
 - 3.1 The delivery dates and delivery period specified in our order are binding upon the Supplier.
 - 3.2 In the event a date or period is at risk of being exceeded, the Supplier must notify us without delay in writing of the reason and probable duration thereof.
 - 3.3 In the event that the Supplier fails to make a delivery at the agreed-upon date or within the agreed-upon period, we shall be entitled to rescind the contract after a reminder has been sent to no avail and a reasonable period of time has elapsed, and/or claim, at our option, either compensation for damages, or – without substantiating any damage – payment in the amount of ten (10) percent of the agreed-upon price from the Supplier. The Supplier shall, in particular, have the right to submit proof that we have suffered no or only little damage.
4. **Passing of Risk, Packaging, Shipping and Acceptance**
 - 4.1 The Supplier must ship the delivery items to the point of destination specified by us, at which point the risk of accidental loss, destruction or deterioration of such items shall pass to us.
 - 4.2 The Supplier must provide proper, industry-standard packaging that is able to protect the delivery items against damage and impairment.
 - 4.3 On the day of dispatch of each shipment, the Supplier must send us a dispatch note specifying our order number, the declaration of goods and volume/quantity; furthermore, each delivery must be accompanied by a delivery slip including the same information. Otherwise, we are entitled to refuse acceptance of the shipment at the Supplier’s expense.
 - 4.4 We reserve the right to refuse acceptance of partial, excess or short deliveries that have not been agreed upon.
 - 4.5 The number of units, measurements, and weights determined by us upon receiving inspection of the delivery items shall be binding on the Supplier for invoices that are based on the number of units, measurements, and weights.
 - 4.6 The Supplier must insure the delivery items at replacement value for the period until they are transferred to us (cf. 4.1 above) against accidental loss or destruction (in particular by fire or theft) and accidental deterioration at the Supplier’s expense.
 - 4.7 We may refuse delivery items for as long as an event of force majeure or any other circumstances beyond our control (including labor disputes) are present that render our acceptance of the delivery item impossible or unreasonable. In such event, the Supplier must store and insure the delivery item at its expense until we can accept it.
5. **Invoices and Payment**
 - 5.1 After contractual delivery of the goods, the Supplier must submit a separate invoice for each shipment, in duplicate, specifying our order number. The Supplier must separately state on its invoices the value-added tax in the statutory amount.
 - 5.2 The Supplier’s payment claim against us becomes due at the payment dates agreed upon and after receipt of a verifiable invoice from the Supplier. An agreed-upon payment period shall expire at the earliest upon the delivery of the delivery items to the point of destination specified by us. In the event the Supplier delivers early, the agreed-upon payment period shall expire at the earliest at the contractually agreed delivery date.
 - 5.3 If the delivery items and/or invoices are incomplete and/or the required written accompanying documents (such as analysis data, certificates of origin/test certificates, weight lists, insurance policies, bills of lading, etc.) are missing, Supplier’s payment claims against us shall be deferred interest-free until all items have been delivered and/or the required accompanying documents have been completed. Such deferment starts as soon as we notify the Supplier of the above-mentioned incompleteness or missing accompanying papers. The deferment shall end upon receipt of the complete delivery.
6. **Assignment, Set-off, Retention**
 - 6.1 Without our written approval, the Supplier is not entitled to assign claims and rights directed against us to third parties in whole or in part.
- 6.2 The Supplier has a right of set-off only to the extent that the Supplier’s counterclaims against us are uncontested or have been established *res iudicata* or are ripe for judgment (i.e. have been proven).
- 6.3 The Supplier is not entitled to retain delivery items or services due to claims the Supplier may have against us based on previous transactions or different transactions under an ongoing business relationship.
7. **Defects**
 - 7.1 The Supplier warrants that the delivery item has the quality agreed-upon with us, that it is in conformity with state-of-the-art science and technology, and that the delivery item is not connected to any condition that would invalidate or reduce its value or fitness for use as customary for this type of item or as provided in the contract concluded with us. The Supplier warrants in addition that the use of the delivery item does not infringe upon third party rights, including, but not limited to, patents or any other industrial property rights.
 - 7.2 In the case of a defective delivery item, we are entitled – without limitation – to the statutory warranty claims subject to the provision that the period for claims provided in Sec. 377 German Commercial Code [*HGB*] is at least eight (8) working days. In the case of hidden defects, in particular those appearing during processing or commissioning of the delivery item, the period for claims commences only with their detection.
8. **Liability, Indemnity and Insurance**
 - 8.1 Claims for damages and compensation of expenses (hereinafter jointly referred to as “Damages”) by the Supplier against us shall be excluded, regardless of the legal basis thereof, unless they are based on the provisions of the Product Liability Act, a deliberate or grossly negligent violation of contractual or legal obligations on our part, damage caused to the health and bodily harm of the Supplier or its employees due to a breach of duty for which we are responsible, the assumption of a warranty for a specific quality or our violation of essential contractual obligations. In the event of a violation of essential contractual obligations on our part, the Supplier’s claim for Damages against us shall be limited to foreseeable damage that is typical of this type of contract, unless it is based on willful misconduct or gross negligence or we are liable for damage caused to health or bodily harm or due to the assumption of a warranty for a specific quality. A breach of duty by our legal representative or person employed in performing our obligation is deemed a breach of duty by us. The above stipulations shall not effect a shift of the burden of proof to the disadvantage of the Supplier.
 - 8.2 In the development and production of the delivery item, the Supplier must observe state-of-the-art of science and technology and comply with all mandatory legal provisions, it must carry out a detailed functional and quality check prior to delivery and adequately document all measures taken to fulfill these obligations, and the Supplier must keep this documentation for a period of eleven (11) years and allow us to inspect such documentation at any time upon request. The Supplier is obligated to notify us in advance in the event of defective products or changes in product definitions. The Supplier must also grant access to us/our customer and the competent authorities.
 - 8.3 Should we be held liable for damages by third parties due to a defect in any item delivered to us by the Supplier, the Supplier must indemnify us against liability and, in particular, reimburse us for any expenses and damages incurred by us that arise from or in connection with a recall carried out by us if and to the extent the damage was caused by the raw materials, components delivered or services performed by the Supplier (or they have contributed to the causation of the damage). As far as possible and reasonable, we will inform the Supplier in advance about the subject matter and extent of the recall measures to be taken by us, and provide the Supplier with the opportunity to comment on the situation. The liability of the Supplier under the law shall remain unaffected thereby.
 - 8.4 The Supplier must maintain product liability insurance at its own expense for a combined single limit of at least EUR 2.5 million per personal injury/damage to property.
9. **Provision of Material and Retention of Title**
 - 9.1 If we provide items to the Supplier, we retain title to these items. Processing or remodeling of items provided by us shall always be done by the Supplier on our behalf.
 - 9.2 The Supplier is liable for the loss of and damage to items provided by us and must notify us without delay of any legal or actual impairment of items provided to it.
 - 9.3 If the items provided by us are inseparably blended/mixed with items not belonging to us, we shall acquire ownership in the new item on a pro-rata basis of the value of the item provided by us in proportion to the value of the other items at the time of blending/mixing. If the blending/mixing by the Supplier results in the other items being considered as the main item, the Supplier must transfer co-ownership in the new item to us on a pro-rata basis. The Supplier shall safely store the new item free of charge to us.

10. Protection of Data Privacy

Within the scope of the business relationship with the Supplier, we shall be entitled to electronically store all necessary data of the Supplier and of the individual contracts with the Supplier, and to process and use such data for operational purposes in accordance with the law.

11. Place of Performance, Jurisdiction, Applicable Law and Severability

11.1 The point of destination specified by us shall be the place of performance regarding all deliveries to be made by the Supplier.

11.2 Bremen (the courts of the City of Bremen) shall be the exclusive place of jurisdiction with regard to all disputes directly or indirectly arising from the contractual relationship with the Supplier, including documentary deeds, bills of exchange and checks. At our option, we shall also have the right to sue the Supplier in the courts of the Supplier's jurisdiction.

11.3 The laws of the Federal Republic of Germany, exclusive of the United Nations Convention on Contracts for the International Sale of Goods, shall apply. Should any of the provisions of any of the contracts entered into with the Supplier be or become ineffective, the effectiveness of the remaining provisions shall not be affected thereby.