

General Terms of Purchasing **Werner Schmid GmbH, Fulda**

Area of application

1. Our terms of purchasing apply exclusively. Terms of the supplier that stand contrary to our terms or deviate from them shall not be recognised. The terms of purchasing also apply where we accept the performance without reservation where we are aware of terms of the supplier that stand contrary to our terms or deviate from them. Our silence shall always signify rejection of the terms of the supplier.
2. Our terms of purchasing apply exclusively towards businesspeople.
3. They also apply for all future transactions with the supplier, even where they are not expressly referred to again.

General provisions

4. The contracting parties must immediately confirm verbal agreements in detail and in writing.

Insofar as written form is intended or required in these Terms and Conditions of Purchase, text form (§ 126 b of the German Civil Code - BGB) suffices in safeguarding the written form requirement.
5. If individual parts of these Terms and Conditions of Purchase are or become invalid, the validity of the remaining provisions is not affected thereby.
6. We are entitled to terminate the agreement without notice for good cause. In particular, good cause is indicated if, after the agreement has been made, it is determined that our claims for delivery defined in the agreement are at risk due to the lack of the supplier's performance and the supplier does not credibly assure its performance within a reasonable period of time despite being requested to do so. Statutory cancellation rights and rights of withdrawal as well as the rights in accordance with sec. 29 remain unaffected.

Offer

7. The supplier can accept our order within 14 days, unless other commitment periods are agreed in individual cases. Following the ending of this period we are no longer bound to our order.
8. We can demand changes to the delivery item and/or the delivery dates, unless this would be unreasonable for the supplier. In the process, the consequences, particularly regarding the additional and lower costs as well as the delivery dates, must be settled amicably and appropriately.

Prices and terms of payment

9. The price stated in the order is the maximum price. Price reductions in the time between order and delivery shall be to our advantage.
10. The agreed price is plus the statutory rate of value-added tax. Similarly, delivery “free domicile” and packaging are included. The invoicing of surcharges for increased costs of material, energy costs and similar requires our prior written agreement.
11. Invoices are to be issued to us in duplicate. Payment is made within 14 days with 3% cash discount or 30 days net. In the case of acceptance of early delivery, the due date shall be that for the agreed delivery date.
12. Rights to offsetting and retention shall be available to us to the statutory extent. Payments are made subject to orderly delivery as well as correctness of prices and calculations. Where a warranty defect is determined we shall be entitled to retain payment to the value of this until fulfilment of the warranty obligation.

Delivery time and delayed delivery

13. The delivery time stated in the order is binding. All agreed delivery dates are fixed dates. Delivery to us is definitive for the meeting of the delivery date or the delivery period. Risk is only transferred to us at this time point.
14. Production-related excess or short deliveries are only permitted where this is agreed.
15. The supplier is obliged to inform us in writing of any foreseeable exceeding of delivery periods, to inform us of the reasons for these and to state the estimated time of delivery where possible. Our rights from delayed performance remain unaffected by this duty to inform.
16. In the case of delayed delivery, we are entitled to charge a contractual penalty to the amount of 0.2% of the net delivery value per completed working day, however a maximum 5%. We are entitled to enforce the contractual penalty until payment of the goods concerned.
17. We reserve the right to enforce further statutory or contractual claims (in particular compensation for breach of duty). The duty of the supplier to compensate extends to all fixed compensation and contractual penalties that we owe our customers as a result of the delayed delivery, to the extent that we have informed the supplier of the fixed compensation or contractual penalty agreed with the customer.

Proof of origin, supporting documents pertaining to value-added tax and export restrictions

18. The supplier will immediately provide proof of origin needed according to legal requirements or requested by us furnished with all information required and properly signed. The supplier will inform us in writing immediately and unsolicited if the information in the proof of origin for the goods delivered is no longer accurate.

The same applies for supporting documents pertaining to value-added tax for deliveries abroad and intra-Community deliveries.

19. The supplier will immediately inform us if a delivery is completely or partially subject to export restrictions according to German or any other law.

Working on our premises

20. Individuals who work on our premises to fulfil the supplier's obligations are subject to our company's work regulations and our orders regarding the accident prevention, occupational safety, environmental and other regulations applicable on our premises. Hazardous materials can only be used within our company after coordinating with our specialised personnel and must be properly labelled.

Shipping

21. Shipping is undertaken fundamentally at the risk of the supplier. In the process, the risk is passed to us when the supplier has brought the goods into our warehouse.
22. The cost of transport including packaging, insurance and all ancillary costs shall be borne by the supplier. The supplier is liable for all consequences of incorrect completion of the shipping documents. A delivery note is to be included with all deliveries.

Inspection for defects and claims for defects

23. The supplier must adhere to the respectively effective legal requirements of the European Union (EU) and the Federal Republic of Germany when delivering its goods. For instance, this applies to – so far as relevant – the REACH Regulation (Regulation EC no. 1907/2006), the German Electrical and Electronic Equipment Act (ElektroG), the German Ordinance on Hazardous Substances in Electrical and Electronic Equipment (ElektroStoffV) and the German End-of-Life Vehicle Ordinance (AltfahrzeugV) as the German implementation of the EU Directives 2011/65/EU (RoHS 2), 2012/19/EU (WEEE Directive) as well as the EU Directive 2000/53/EC.

The supplier must immediately inform us of relevant changes to the goods, its supply availability, applicability or quality caused by legal requirements, particularly by the REACH Regulation and in individual cases, coordinate measures to be taken with us. The same applies as soon as and to the extent to which the supplier recognises that such changes are imminent.

24. We shall inspect the goods without delay on receipt for evident and visible deviations in quantity and identity as well as transport damage. In case of complaint, the supplier shall bear the cost of inspection and replacement delivery. For all types of defects, the complaint period is 10 working days from identification of defect, whereby the sending of the notification within the period is sufficient. In this respect the supplier waives the objection of delayed notification of defects.

25. The supplier commits himself to a final inspection of goods and shall conclude a quality assurance agreement with us on request.

26. We are entitled to all statutory defect rights, including claims for compensation.

In particular, we are entitled, in the event of defects, to choose between rectification of defects or delivery of an item free from defects; the costs associated with this shall be borne in full by the supplier. Claims for defects are to be fulfilled where the delivered goods are respectively located, including where they have been brought to another place following delivery.

In urgent cases - following consultation with the supplier - we shall be entitled, at the expense of the supplier, to rectify the defects ourselves or have this undertaken by third parties or to otherwise procure replacement. The same applies where the supplier falls into default with the fulfilment of his warranty obligations.

27. The period for the lapsing of claims for defects is 36 months from delivery. Lapsing is also hindered where we notify the supplier of a defect. In this case the hindrance ends with the complete rectification of the defect or when the supplier refuses supplementary performance and lapsing occurs at the earliest three months after the end of the hindrance.

28. For replacement deliveries the warranty period begins anew, unless the supplier has recognisably only effected a new delivery for reasons of goodwill or to avoid a legal dispute.

29. If we are entitled to compensation or withdrawal due to material or legal defects, we may demand a fixed compensation to the amount of 10 % of the net order value, unless the supplier himself is not responsible for the defect. The assertion of a right of compensation for further loss is not excluded. The supplier has the right to prove that no loss occurred as a result of the material or legal defect or that the loss is significantly lower than the fixed compensation.

Retention of title

30. Material, goods, parts, models, drawings, samples, matrices, patterns, tools, manufacturing specifications, other manufacturing materials and confidential information provided by us to the supplier remain our property. They may only be used for other purposes, reproduced or made accessible to third parties with our prior written authorisation, they are to be stored with the diligence of a prudent businessman and returned unprompted following completion of the order.

31. The supplier reserves the title to the delivered goods until full payment has been made (standard retention of title). Other types of retention of title, particularly an extended retention of title, only apply with our explicit approval.

32. The retention of title also extends to the products created through the processing, mixing or combining of our goods, to the full value of the products, whereby these procedures occur on our behalf, so that we are regarded as manufacturer. If, following the processing, mixing or combining with goods of third parties those parties have ownership rights, we shall acquire joint ownership to the ratio of the objective value of these goods.

Liability of the supplier

33. The supplier is liable to us for all loss that he or his agents cause intentionally or negligently, to the full amount according to the statutory terms.
34. In the event of our being pursued under product liability or due to other liability circumstances as a result of defects in the item provided by the supplier, the supplier shall exempt us from the subsequent liability on first being requested to do so, to the extent that he is responsible for the defect.
35. This claim to exemption also extends to expenses pursuant to §§ 683, 670 BGB as well as §§ 830, 840, 426 BGB that occur from or in association with a recall action conducted by us or our customers. Where possible and reasonable, we shall notify the supplier of the content and scope of the recall measures that are to be carried out and give him opportunity to make a statement in response. Other statutory claims remain unaffected.
36. If we are otherwise pursued due to a defect in the item provided by the supplier, we shall have a full claim of recourse against the supplier from § 478 BGB.
37. To secure this claim, the supplier shall take out third-party liability insurance and product liability insurance cover to an appropriate amount, maintain this and provide evidence of it to us on request.

Exclusion of liability in favour of Werner Schmid GmbH

38. Werner Schmid GmbH and its employees, legal representatives and agents are not liable for loss of the supplier. This exclusion of liability does not apply where a key contractual duty has been breached. The exclusion of liability also does not apply for loss arising from damage to life, limb or health as well as for the intentional or grossly negligent breach of duty, together with other loss resulting from intentional or grossly negligent breach of duty.

Property rights

39. The supplier assures that rights of third parties do not stand contrary to the use of the purchased goods for their intended purpose, in particular that no commercial property rights of third parties such as copyright, patent rights and other commercial property rights are infringed.
40. In the event of our being pursued by third parties due to alleged or actual infringement of their rights, the supplier shall be obliged to exempt us from these claims and all performance and costs associated with them at first request.
41. This duty to exempt does not apply where the supplier has manufactured the items supplied according to drawings, models or other, similar descriptions or details provided by us and did not know or need not know regarding the products developed by him that commercial property rights have been infringed.
42. The supplier is obliged to inform us without delay of any risks of infringement of which he becomes aware and to provide us with opportunity to counter these claims together.

Place of performance, place of jurisdiction and applicable law

43. Place of performance, place of jurisdiction and applicable law is our registered office. However, claims for defects are to be fulfilled at the place where the respective goods supplied are located.
 44. Place of jurisdiction for all actions is - where permissible - our registered office. However, we are also entitled to take action against the supplier in courts with jurisdiction for his place of business.
 45. The non-uniform law of the Federal Republic of Germany (BGB, HGB) applies for all claims and rights arising from this contract. The application of the terms of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.
-