



## Purchasing Conditions 365 E

### 1. Scope of application; German law

- 1.1. Our Purchasing Conditions apply exclusively. They shall also apply for all future business dealings, even if they are not explicitly agreed upon again. We shall not recognise any purchasing conditions that are contradictory to ours or that deviate from our Purchasing Conditions unless we have expressly approved the same in writing.
- 1.2. Our Purchasing Conditions shall also apply if we accept the supplier's delivery without reservation despite knowledge of supplier purchasing conditions differing from our own.
- 1.3. The law of the Federal Republic of Germany is agreed to apply.
- 1.4. These general purchasing conditions only apply vis-à-vis entrepreneurs, legal entities under public law or a special fund under public law within the meaning of §310, Section 1 of the German Civil Code ("BGB").

### 2. Order

- 2.1. Irrespective of the supplier's quotation, our purchase order is authoritative for all purchasing transactions. The supplier shall accept this order within 2 weeks. A delayed acceptance shall be deemed as new offer.
- 2.2. The supplier's order confirmation must indicate the price, the discount rate, the earliest binding delivery date, plus all identification numbers and references included in our purchase order. Any deviations from the order require our written confirmation; they are otherwise not binding for us and are deemed to constitute a new offer.
- 2.3. Ancillary oral agreements reached in association with conclusion of the contract are not binding for us unless we have expressly confirmed them in writing.
- 2.4. Orders are placed under the express condition that the supplier neither promises nor grants our employees or workers or any third parties benefits in connection with our placing an order.

### 3. Delivery period

- 3.1. The delivery date specified in the order is binding. The supplier must inform us in writing immediately if circumstances arise which cause the supplier to believe that the agreed delivery date cannot be met.
- 3.2. In the event that we are informed of a new delivery date, our rights to rescind from contract and to claim compensation will be determined by statutory regulations.
- 3.3. We are entitled to assert statutory claims in the event of delayed delivery. In particular, we are entitled to claim damages in lieu of performance if a reasonable period of grace has expired without fulfilment.
- 3.4. If a contractual penalty has been agreed in the event of delayed delivery and if this penalty is incurred, we can, contrary to Section 341 para. III of the German Civil Code (BGB), claim the same until full payment of the invoice.
- 3.5. Premature and / or partial deliveries and services are subject to our consent.

### 4. Prices, terms of payment

- 4.1. The prices quoted in the purchase order are binding. If not specified otherwise in writing, the price includes "franco domicile" delivery and packaging. Return of the packing material requires a special agreement.
- 4.2. Unless expressly agreed to the contrary, prices are inclusive of freight, customs duties, taxes and all other charges.
- 4.3. Invoices are to be issued immediately upon delivery. They must include our order number as indicated in our order. In addition the invoice will only be considered correct if it contains the data required under Section 14 para. 4 of the German Value-Added Tax Act (UStG). If the invoice does not include the obligatory data under Section 14 para. 4 of the German Value-Added Tax Act (UStG), the payment based on this invoice will not become due. Consolidated

invoices must be itemised. The supplier is responsible for any consequences which arise in connection with non-fulfilment of this obligation.

- 4.4. Unless otherwise agreed, payment less 2% discount will be made by us within 30 calendar days from the date of invoicing or delivery, whichever is later.
- 4.5. We are entitled at any time to exercise our rights to offset or retain payment in compliance with statutory rulings.

### 5. Dispatch

- 5.1. The shipping advice is to be sent to us by post on the day of shipment and shall include order number, account allocation, plus an exact itemisation of the consignment by quantity, part number, and weight, etc. Should the shipping documents not include these specifications, the consignment will be stored on our premises at the expense and risk of the supplier until such time as documents containing this information are received. Packing slips and invoices do not count as shipping notes.
- 5.2. Unless otherwise agreed in writing, postal consignments must be pre-paid. The additional costs incurred by any unpaid postal consignments will be subtracted from the supplier's bill.
- 5.3. In the case of a price agreed on a specific freight basis or agreed to apply ex works, the supplier shall select the most favourable freight alternative, unless express agreement has been made to the contrary. If this is not done, the additional costs will be debited to the supplier.

### 6. Risks

- 6.1. The risk of shipment, loss or deterioration rests with the supplier until the acceptance of the delivery by us.
- 6.2. We will only accept costs for shipment insurance if we have expressly requested the supplier to take this out on our behalf.

### 7. Duty of inspection, notification and rejection

- 7.1. The supplier waives its right to object to delayed notice of defects (Section 377 of the German Commercial Code (HGB)) if the supplier receives our notice of defects within a period of 5 working days. This period commences with the acceptance of consignment if the defects are visible at the time of acceptance. If the defects are not visible at the time of acceptance, the period will commence with the discovery of the defect.
- 7.2. There is no obligation of inspection as far as an acceptance is agreed on. Moreover, it depends on to what extent an inspection is required according to proper business routine taking into account the particular circumstances.

### 8. Liability for defects

- 8.1. The goods must conform with quality agreed on, the statutory provisions, the relevant administrative regulations, the state of the art, the DIN standards and the relevant accident prevention regulations.
- 8.2. If not subsequently specified otherwise, the statutory provisions shall apply for our rights in case of material and legal defects of the goods (including wrong and short delivery, improper assembly, defective assembly or operating manuals, as well as defective instruction manuals) and in case of other neglects of duty by the supplier.
- 8.3. In deviation from section 442 para. 1 sentence 2 of the German Civil Code (BGB) we are entitled to unrestricted defect rights even if the defect remained undiscovered due to gross negligence at the time the contract was entered into.



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- 8.4. The costs spent by the supplier for inspection and remedy (including potential costs for installation or extracting) shall be borne by the supplier even if it transpires that there was no defect. Our liability for rightless compensation claims remains unaffected provided that we recognized or due to gross negligence failed to recognize that there was no defect.
- 8.5. If the supplier fails to comply with its obligation to render supplementary performance, according to our discretion by remedying the defect (subsequent performance) or delivery of a defect-free item (replacement), within an adequate period of time set by us, we shall be entitled to remedy the defect by ourselves and demand compensation or an advancement from the supplier for the necessary expenses. If supplementary performance by the supplier has failed or is unreasonable for us (e.g. because of particular urgency, reliability of operation or imminent occurrence of disproportionate damages) there shall be no need to set a deadline. In case of such circumstances, we will immediately inform the supplier, if possible in advance.
- 8.6. Apart from that, we shall be entitled to a reduction of the purchase price or rescind from contract according to the statutory provisions in case of case of quality and legal deficiencies of the goods. Additionally we are entitled to damages and reimbursement of expenses according to the statutory provisions.
- 8.7. The acceptance or approval of provided drawings does not constitute the waiver of our rights to claim damages for any defects. The supplier is obligated to notify us immediately in writing if items provided by us are impounded.
- 9. Product liability**
- 9.1. In as far as the supplier is responsible for a product defect, it is obliged to hold us harmless relating to any third-party damages claims upon first request, provided that the cause of the defect is to be found in its own domain and organisation and that it would be liable itself in external transactions.
- 9.2. In this connection, the supplier is also obliged to reimburse all costs incurred by or in association with any recall programmes we see fit to carry out. As far as possible and reasonable, we will inform the supplier of the object and scope of the recall programme and give it the opportunity of submitting its comments.
- 9.3. The supplier undertakes to take out product liability insurance with reasonable coverage of personal injury and property damage (at least € 1.5 million per personal injury and € 1.0 million per property loss). In the event that we are entitled to claim additional damages, they will not be prejudiced.
- 10. Industrial property rights**
- 10.1. The supplier warrants that the goods supplied by same do not infringe the protection rights of third parties, especially patent, design patent, utility-model patent or trademark rights.
- 10.2. Should a claim be made against us by third parties in this connection, the supplier is obligated to exempt us in respect of these claims upon first written request. The aforementioned entitlement does not exist if and as far as the supplier can prove that he is not responsible for the infringement of an industrial property right or that the infringement could not have been foreseen even under application of due commercial diligence at the time of delivery. Without the consent of the supplier, we are neither entitled to recognise the asserted claims as valid nor to conclude a settlement with the third party.
- 10.3. The supplier's obligation to hold harmless relates to all costs and expenses which we necessarily incur as a result of or in association with third party claims.
- 11. Documentation proprietary rights**
- 11.1. Property rights and copyrights to illustrations, drawings, calculations and other documentation remain our property. Without our express consent, they may not be made accessible to third parties. The copyright remains with us.
- 11.2. Documentation and drawings we provide relating to the manufacture of goods we have ordered may not be used by the supplier for any other purpose. They are to be returned to us unbidden once the order has been completed. The supplier is not entitled to retain the documentation and drawings. Their contents are not to be disclosed to third parties.
- 12. Proprietary rights to parts, models and tools**
- 12.1. In as far as we provide parts, models or tools to the supplier, these remain our property. The supplier processes or modifies these items on our behalf. We count as the manufacturer and owner if the items provided by us are processed or reworked by the supplier to a new movable item. If the items provided by us are connected or combined inseparably with other items, we are entitled to pro-rata co-ownership of the new product, i.e. to the extent of the value our items had at the time of connection or combination. Should this connection or combination be such that the new product constitutes more the supplier's property than ours, it is taken as agreed that the supplier grants us pro-rata co-ownership; the supplier undertakes to safeguard the co-ownership for us.
- 12.2. The supplier is not entitled to use the parts, models or tools for any purpose other than that of manufacturing the goods ordered by ourselves. The supplier is also obliged at his own expense to insure tools belonging to us against fire or water damage and theft at replacement value. The obligation also extends to carrying out at his own expense and in good time any maintenance, inspection or repairs that become necessary. The supplier is obliged to inform us of any faults or breakdowns. Should the supplier culpably fail to do so, he makes himself liable for damages in accordance with the provisions of the law.
- 13. Final provisions**
- 13.1. Should any one clause of these Purchasing Conditions be or become invalid, this does not affect the validity of the remaining clauses.
- 13.2. The contract, any amendment or addition to the same and any other agreements must be recorded in writing in order to be effective. The assignment of any claims against us by the supplier to third parties is not permitted without our written consent.
- 13.3. The sole legal venue for all disputes arising directly or indirectly from the contractual relationship is Augsburg. However, we also have the right to select the supplier's legal venue.