

# General Conditions of Purchase

Status: January 2020



## Applicability

1. These Conditions of Purchase apply towards companies, corporate bodies under public law and legal entities under public law (known in the following as Partners).
2. These Conditions of Purchase apply exclusively for every (supply) framework agreement (known in the following as the Agreement) and all individual agreements and/or orders in the context of an agreement (known in the following as Individual Agreements) with the Partner. Terms of Business of the Partner's which are not expressly recognised by us are not valid.
3. These Conditions of Purchase also apply for all future orders and contractual relationships between the Partner and us.

## General provisions

1. The parties to the Agreement shall confirm oral agreements in detail in writing without delay.
2. Should individual parts of these Conditions of Purchase be or become ineffective, this shall not affect the effectiveness of the remaining provisions.

## I. Offers

Offers are binding and to be submitted free of charge.

## II. Orders and conclusion of an agreement

1. Order and other declarations are only binding if they are issued or confirmed by us in writing.
2. Should the Partner not accept our order within 5 working days from receipt we are entitled to withdraw the order.
3. Delivery schedules are binding if the Partner does not contradict them within 5 working days from receipt at the latest.
4. We can demand changes to the subject of delivery within the bounds of reasonableness for the Partner. The effects, specifically with regard to additional and reduced costs and delivery dates, must be dealt with appropriately and mutually.

## III. Long-term and call contracts, prices

1. Prices are fixed prices insofar as we have not expressly confirmed a sliding-price clause or a price reserve. An order may only be executed at a higher price than that stated by us with our written agreement.
2. Open-ended contracts and contracts spanning several years can be terminated at 6 months' notice.
3. Should a significant change in labour, material or energy costs occur with long-term contracts (contracts with a duration of more than 24 months and open-ended contracts), either contract partner is entitled to request negotiations over an appropriate price adjustment taking into account these factors.

## IV. Delivery and transfer of risk

1. Insofar as nothing contrary has been agreed, prices are ex works Schiltach in EUR including packaging and freight costs.  
The risk transfers to us when the Partner has brought the goods into our store.  
We shall pay only the cheapest possible freight costs if anything different is agreed. The supplier shall bear all costs incurred up to handover to the carrier (including loading and carriage).  
We reserve the right to accept over- and excess deliveries. Underdeliveries shall only be accepted with our prior written agreement.

## V. Invoicing and payment

1. Invoices are not to be enclosed with the delivery but submitted separately for each order showing the VAT and stating our order number and the order date.
2. Payment shall be made by the method of our choice – refinancing bills (cheques / bills) are also permissible – within two weeks with 3 % discount or within 30 days net.
3. Payment deadlines principally run as from the date we receive the invoice but not before the goods have been received or services have been provided.
4. In case of prematurely accepted deliveries, the due date is oriented towards the agreed delivery date.
5. We reject COD payment arrangements as a matter of principle.
6. Our payments are always made subject to correction should there be subsequent cause for complaint. In case of an error for which the Supplier is liable under warranty, we are entitled to refuse payment until the defect has been properly rectified.

## VI. Assignment and offsetting

1. The Supplier is not entitled to assign their claims against us or have them collected by third parties without our prior written permission, which may not be unreasonably refused. Our agreement shall be regarded as having been given should there be an extended retention of title. Should the Supplier assign their financial claim against us to a third party without our agreement contrary to Clause 1, the assignment is equally effective. However, we can pay the supplier or the third party at our discretion with a discharging effect.
2. The Supplier is only entitled to offset with claims we have accepted or which are legally determined or to assert a right of retention due to such claims.
3. Should we be obliged to make payment in advance due to an individual contract, we can refuse payment and determine a reasonable deadline for the Partner within which they are to deliver step by step against payment or provide security if after conclusion of the contract it is discernable that our delivery claims are endangered by a lack of capacity on the part of the Partner. The Partner's lack of capacity is suspected if the Partner's creditworthiness is assessed as "High risk" (assessment level 7) or worse by Euler Hermes Forderungsmanagement Deutschland GmbH. In case of refusal by the Partner or the unsuccessful expiry of a deadline, we are entitled to withdraw from the individual contract and demand compensation.

## VII. Delivery item

1. In the absence of any other agreement, our order alone shall define the content, type and scope of the delivery or service. We are entitled to demand changes to the type of performance at any time just as much as the correction of obvious spelling or arithmetic errors and other errors.
2. The drawings, descriptions, etc. which form part of the order are binding for the supplier.  
They must, however, check them for possible errors and point out to us faults that have been discovered or are suspected without delay in writing. The Supplier shall remain solely responsible for documents, especially drawings, plans and calculations which they have produced themselves, even if these have been approved by us.
3. Insofar as no further requirements are defined in the order, the delivery items are of normal commercial quality and, insofar as DIN, VDE, VDI or equivalent standards exist, to be delivered in compliance with such standards. The delivery items are to be manufactured and equipped in such

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a manner that they comply with the safety regulations in force on the day of delivery, particularly accident prevention regulations and also ergonomic findings and statutory regulations.

4. Due to our energy management system, our suppliers and their products are also selected according to energy-based aspects. We expect to be informed should there already be more energy-efficient follow-up products for the products we have ordered.

5. Comprehensive documentation to CE standards is to be enclosed with the delivery item (as a major component). A certificate of origin is required if the country of origin of the delivery item is not Germany.

6. Deliveries by the Partner shall comply with the currently valid statutory regulations of the European Union and the Federal Republic of Germany, for example the REACH Directive (EC Directive No. 1907/2006), the Electrical and Electronic Equipment Act (ElektroG) and the Directive on the Restriction of Hazardous Substances in Electrical and Electronic Equipment (ElektroStoffV) as national implementations of Directives 2002/95/EC (RoHS I) and 2011/65/EU (RoHS II) and Directive 2002/96/EC (WEEE) and the End-of-Life Vehicle Ordinance (AltfahrzeugV) as the national implementation of EU Directive 2000/53/EC. The Partner shall inform us without delay of relevant changes to goods, their deliverability, possible use or quality due to legal regulations, in particular by the REACH Directive and co-ordinate suitable measures with us in individual cases. The same shall apply as soon as and insofar as the Partner recognises that such changes will take place.

## VIII. Supply and manufacturing equipment

1. Items provided by us are to be worked on and processed appropriately on our behalf and remain our property at every stage of working and processing. If processed together with other items not belonging to us, we are entitled to joint ownership of the freshly produced items at the ratio of the value of the items we have provided to the total of all items used in production including expenses incurred by the Supplier for their processing. Insofar, the Supplier shall also store the items for us free of charge. The same applies if our property should cease to exist due to commingling or mixing. We are to be informed immediately of any legal or actual impairment of items provided.

2. The Supplier shall be liable for the loss of or damage to items provided by us unless they are not responsible. In case of accidental destruction of or accidental damage to items provided by us they shall have no claim to replacement of their costs for the working or processing of these items.

3. Manufacturing equipment such as models, samples, tools, jigs, moulds, appliances, drawings and the like which we have provided the Supplier with or which the Supplier has produced or had produced by third parties to our specifications may not be sold, pledged or passed on in some other manner to third parties nor used or copied for third parties in any manner without our written permission. The same applies to items produced with the assistance of these manufacturing aids; they may only be delivered to us unless we declare our agreement to a different use in writing. Manufacturing equipment is to be returned to us in an orderly condition without delay once the order is completed.

4. Tools, moulds, templates, films, plates, drawings, engravings, models, samples, etc. provided or ordered by us remain our property or become our property on purchase or manufacture; a handover shall be substituted by the fact that the Supplier keeps the items on our behalf. The items are to

labelled as our property, to be cared for and repaired comprehensively as well as adequately insured. Section 690 of the German Civil Code shall not apply here. As the owners, we are also entitled to hand over the items to third parties for manufacture. This applies specifically if production problems occur for the Supplier. Should we request that the Supplier hand over the items, they are to hand them over immediately without right of retention. Regardless of this we are prepared to leave the items in the possession of the Supplier for as long as deliveries take place in accordance with the contract and specifically on time and at competitive prices.

5. Should the Supplier culpably infringe the regulations in paragraphs 3 and 4, we are entitled within the bounds of statutory regulations to withdraw partly or wholly from the contract notwithstanding further rights and demand compensation instead of performance or the reimbursement of costs incurred in vain.

## IX. Withdrawal

1. If, due to circumstances beyond our control, - specifically force majeure - the fulfilment of our contractual obligations becomes impossible or is significantly impeded, we can partly or wholly cancel the contract or demand its fulfilment at a later date without the Supplier being entitled to any claims against us arising from this if an end to disruption is still not foreseeable in the short term after six weeks.

## X. Delivery date

1. Agreed delivery dates or delivery deadlines are binding. Delivery deadlines begin with the conclusion of the respective contract or with receipt of the call for call-offs from framework agreements.

2. The day on which the delivery item is ordered and the shipping documents reach the agreed point of reception or on which the service is provided counts as the date of delivery.

3. Partial deliveries are only permissible following special written agreement.

4. If it becomes foreseeable that the delivery date or deadline will be missed, the Supplier must inform us immediately of the reason and the foreseeable duration in writing.

5. Missing the delivery date or deadline triggers the consequences of default in accordance with the statutory regulations.

## XI. Packaging, shipping, acceptance

1. Insofar as it is necessary or customary to package delivery items, the Supplier shall ensure adequate packaging at their expense. Packaging materials may not contain substances which are hazardous to health and must be recyclable.

2. We shall only pay for packaging material in addition to the agreed price for delivery if reimbursement thereof was expressly agreed. We reserve the right to return used, valuable packaging material to the Supplier's address with a return debit for the full rental costs or value of the packaging.

3. Shipping must be to the agreed receiving point. Deliveries for which we are to pay freight costs partly or in full are to be sent via the cheapest shipping method and freight type for us.

4. In case of deliveries with assembly or installation, the risk transfers to us on acceptance and with other deliveries on arrival of the delivery item at the agreed receiving point. Up to this point, delivery and shipping are at the risk of the Supplier unless we are in default of acceptance.

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5. We shall assume the costs for transport or breakage insurance only on prior written agreement.

6. Despatch notices are to be handed in immediately on the departure of every single delivery. A delivery note is to be included with every delivery. Our order numbers must be stated in the shipping documents.

7. Should there be no orderly shipping documents available on arrival of the delivery item or if our order numbers are not stated correctly in the shipping documents, all additional costs thus caused shall be borne by the Supplier; in such cases we are also entitled to refuse acceptance of the delivery at the Supplier's expense.

8. We can also refuse to accept the delivery item if force majeure or some other circumstances beyond our control including industrial disputes make it impossible or unreasonable for us to accept delivery, or if we are not responsible for the delay in acceptance for other reasons. In such a case the Supplier shall store the delivery item at their expense and risk.

9. We are not in default of acceptance in the cases described in paragraphs 7 and 8.

10. Deliveries which we do not accept or goods which are defective shall be returned at the Supplier's risk. The return costs shall be charged to the Supplier.

## XII. Activities on company premises

1. Persons who are deployed within our premises in the fulfilment of the Partner's obligations are subject to the prescriptions of our company regulations and our orders with regard to the applicable accident prevention, work safety, environmental and other regulations. Hazardous substances may only be used on our premises after consultation with our specialist staff and must be appropriately labelled.

## XIII. Incoming goods inspection and warranty

1. The Supplier shall subject all goods to a qualified pre-delivery inspection before delivery in order to ensure the delivery item is free of defects and of the contractually defined quality. We shall check the identity and quantity of goods on receipt by means of the shipping documents and also for visible transport damage or other obvious defects. We shall immediately inform the Supplier of any deviations we discover in the process. We shall inform the Suppliers of defects which cannot be ascertained by this receiving inspection, including latent defects, as soon as we discover them in the normal course of business, specifically when processing the goods. Insofar the Supplier shall waive the objection that defects were not reported promptly.

2. The Supplier's warranty obligations are defined by the statutory regulations insofar as nothing contrary is defined below.

3. In urgent cases, we are entitled to rectify the fault ourselves or have repairs carried out by a third party or acquire a replacement from elsewhere at the Supplier's expense after having informed the Supplier insofar as it is not possible for the Supplier to provide supplementary performance in time, in order to avert imminent risks.

4. Insofar as nothing contrary has been agreed, the warranty period is two years. It shall be extended by the time during which the goods cannot be used due to defects. A new two-year warranty period begins for supplementary performance.

5. Our payments do not indicate implicit acceptance of the goods.

6. The Supplier shall bear the costs of any overall incoming goods checks over and above the normal checks which may be necessary due to a defective delivery.

## XIV. Manufacturing checks, technical approval

1. We reserve the right to check or have checked the quality of the material used, dimensions and quantity precision and other quality of the manufactured parts and also compliance with other regulations in relation to the order in the Supplier's works and in the works of upstream suppliers during production and before delivery.

2. We are to be informed of readiness for acceptance in writing two weeks beforehand should we have contractually reserved the right to technical approval of the finished delivery item by us or by a third party commissioned by us in the Supplier's works. The acceptance costs incurred on-site shall be borne by the Supplier.

3. Manufacturing checks and / or technical approval do not free the Supplier from their fulfilment and/or warranty obligations.

## XV. Confidentiality

1. Each party to this agreement shall only use all documents (including samples, models and data) and knowledge which they receive from this business relationship for mutually pursued purposes and keep them confidential from third parties with the same care as corresponding documents and knowledge of their own if the other business partner describes them as confidential or has an obvious interest in them remaining confidential.

This obligation begins as from initial receipt of documents or knowledge and ends three years after the end of the business relationship.

2. This obligation does not apply to documents and knowledge which are generally known or were already known to the contractual partner at the time of receipt without them being obliged to observe confidentiality, or which are subsequently passed on by a third party entitled to distribute them or which are developed by the receiving contractual partner without processing documents or knowledge from the other contractual partner which are to be kept confidential.

## XVI. Product liability

1. Insofar as the Partner is responsible for damage to a product, they are obliged to exempt us from the compensation claims of third parties to the same extent as the cause lies in their domain and organisational area and they are themselves liable towards third parties.

As part of this liability the Partner is also obliged to refund any costs which occur due to or in connection with any recall action initiated by us or one of our customers in accordance with Sections 683 and 670 of the German Civil Code and also Sections 830, 840 and 426 of the German Civil Code.

As far as is possible and reasonable, we shall inform the Partner of the content and extent of recall measures to be carried out and give them the opportunity to respond.

2. The supplier undertakes to take out product liability insurance immediately at our request with a cover amount to be co-ordinated with us but a minimum of €3 million per case of personal injury or material damage. Any additional rights to which we may be entitled remain unaffected.

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## **XVII. Proprietary rights**

1. The Supplier shall be liable within the bounds of statutory regulations for ensuring that patents or other proprietary rights of third parties are not infringed through the delivery and use of ordered goods.
2. Insofar the Supplier shall fully indemnify us from any third-party claim on first demand.
3. This also applies to deliveries to the Supplier from third parties which the Supplier passes on to us.

## **XVIII. General regulations**

1. The law of the Federal Republic of Germany applies to all legal relations arising from or in connection with our orders. The contract language is German.
2. The place of fulfilment is Schiltach. Insofar as the Supplier is a merchant, the place of jurisdiction for actions on bills of exchange or cheques is also Schiltach. We are also entitled to take action against the Supplier at the Supplier's general place of jurisdiction.
3. We store the Supplier's data in our IT systems in accordance with statutory regulations.
4. The parties to the agreement undertake to replace ineffective provisions with legal effective provisions without delay. The same applies if an unintentional loophole is discovered during execution of the agreement.

## **XIX. Emergency plans**

The Supplier must compile and make available a comprehensive emergency plan in order to ensure the supply of products to Grieshaber. In general, this plan must take into account natural disasters, power failures, industrial disputes etc. The plan should also refer specifically to the plant and equipment which is deployed to manufacture products for Grieshaber and also list details of alternative solutions which are to be used for an uninterrupted supply of products to Grieshaber.

## **XX. Data protection**

Should contracts be concluded and fulfilled due to an offer or order, we may process personal data collected due to contact being made for these further purposes. The legal basis for this is Article 6 Paragraph 1 p. 1 lit. b of the GDPR.