

Winkelmann GmbH & Co. KG

General Terms and Conditions of Purchase

Version: 07/2023



1. GENERAL REMARKS – SCOPE

- 1.1 Orders for goods and purchases are exclusively based on these Purchase Terms. These Purchase Terms are included into purchase contracts concluded with us, regardless of whether the Supplier produces themselves or purchases the goods from sub-suppliers (sec. 433, 650 BGB [Bürgerliches Gesetzbuch – German Civil Code]). Order confirmation, goods supply and/or performance always represent acceptance of these Purchase Terms. Should the Supplier expressly and individually object to these Purchase Terms, we may revoke an order based on written notification of the Supplier. Such revocation establishes no rights for the Supplier.
- 1.2 Our Purchase Terms apply exclusively; Any deviating, contrary or supplementary general terms and conditions of the Supplier do not apply, even if we do not reject them in each individual case. Such terms become part of the contract only if and to the extent we expressly accept them in writing or if they are admissible under these Purchase Terms. In these cases, our Purchase Terms apply as a supplement. The approval requirement applies in each case, particularly if we supply the goods subject to no conditions despite being aware of the Supplier's deviating, contrary or supplementing general terms and conditions, if we place orders with them, accept their supplies or refer to correspondence including or referring to such terms.
- 1.3 Our Purchase Terms only apply to entrepreneurs (sec. 14 BGB) if the contract relates to the business operations, bodies corporate organised under German public law and German public-law special funds (sec. 310(1) BGB).
- 1.4 The Purchase Terms apply in the form of a framework as amended also to all future purchase contracts with the Supplier and, in particular, to subsequent orders – including those made by telephone –, without us being required to refer to them again; we will immediately notify the Supplier of any Purchase Terms amendments.
- 1.5 Individual arrangements with the Supplier (including ancillary agreements, supplements and amendments) prevail over these Purchase Terms, whereby they require, subject to proof to the contrary, a written contract and/or our written confirmation.
- 1.6 Legal declarations and information which the Supplier must make/provide to us (e.g. the setting of time limits, warnings, declarations of withdrawal) must be made in written or text form to be effective. This does not affect statutory form requirements and other evidence, particularly in the case of doubts relating to the authorisation of the individual making such a declaration.
- 1.7 Except for our managing directors and holders of power of attorney [Prokurist], agreements between the Supplier and our representatives are binding only after we confirmed them in writing, whereby these representatives are authorised to accept cash/cheque payments only against the submission of collection authorisations.
- 1.8 We are entitled to electronically store and process data of the contracting party that refer to the business relationship with said party in the manner defined by the German Federal Data Protection Act [Bundesdatenschutzgesetz] and the European General Data Protection Regulation [Datenschutz-Grundverordnung]. In doing this, we are obliged to only use the data communicated to us by the contracting party for our own purposes and not to pass them on to outside third parties.
- 1.9 Remarks on applicability of legal provisions only serve clarification; Legal provisions apply even without such clarifications, unless they are amended or expressly excluded under these Terms.

2. CONTRACT CONCLUSION

- 2.1 Our queries are binding for the Supplier's offer and the Supplier must expressly indicate any deviations.
- 2.2 Orders and order changes are deemed binding not earlier than upon written submission or confirmation. Verbal agreements are binding only after they were confirmed in writing. For correction and/or completion, the Supplier must inform us about obvious errors (e.g. spelling or calculation mistakes) and incompleteness of the order, including the order documents, prior to acceptance; otherwise, a contract is deemed not concluded.
- 2.3 The Supplier must accept our orders and order changes within one (1) week from receiving the order/request for changes by delivering an order confirmation or, particularly, by supplying the goods subject to no conditions (acceptance). Delayed acceptance is deemed a new offer and requires acceptance by us.
- 2.4 Order confirmations must clearly state the prices, quantities, binding delivery dates, order numbers, order dates and our order and/or consignment number.
- 2.5 The Supplier provides their offers and samples free of charge and they represent no liability for us.
- 2.6 Remuneration or compensation for visits, offer preparation etc. will not be paid, unless a written agreement expressly provides otherwise.
- 2.7 To the extent acceptable for the Supplier, we may request subsequent changes to the goods and/or supply periods, whereby the Parties must particularly reach a reasonable agreement on additional or reduced costs and supply deadlines.
- 2.8 The Supplier must provide us, timely and without the need for solicitation, with free-of-charge documents required for using the supply items in compliance with their purpose.
- 2.9 The Supplier must timely request valid work standards and guidelines and take them as a basis of their supplies/services. Any standards and guidelines we indicated are to be applied in their version as amended.
- 2.10 If we bear tools or model manufacturing costs, they are manufactured for us so that we obtain original property. Should acquisition of original property fail, the Supplier assigns property to us in terms of sec. 929 and 930 BGB. In this case, they store the tools/models for us on a non-paid basis, maintain them and purchase adequate insurance. The Supplier must immediately return the tools/models upon our request.

3. Supply Periods and Delays

- 3.1 Supply periods which we indicate in the order are binding and must be deemed fixed deadlines. These supply periods start once we delivered an order. Compliance with deadlines or supply periods depends on the time of the point of reception/use indicated by us for receiving the goods.
- 3.2 By indicating the reasons and the expected term of the delay, the Supplier must immediately inform us if situations occur or if they foresee circumstances based on which they – for whatever reason – cannot comply with contractual deadlines/supply periods.
- 3.3 If the Supplier does not perform or does not perform within the agreed delivery time or if he is in default, our rights - in particular to rescission and damages - will be determined in accordance with the statutory provisions. The provisions in para. 3.4 remain unaffected.
- 3.4 In the case of supply delays, we request a contractual penalty of 1% of the net price per calendar week or a part thereof, but not more than 5% of the net price payable for delayed goods. We reserve the right to assert other claims, including but not limited to those relating to additional damages. To this extent, we may request contractual penalties in addition to performance and as the minimum amount of damages payable by the Supplier in terms of the law. Invoice settlement subject to no conditions includes no waiver of contractual penalties or claims for damages due to supply delays. If we accept delayed supplies, we assert the claim for contractual penalties no later than at the time of final payment.
- 3.5 If we subsequently agree with the Supplier on a different binding delivery date instead of the delivery date subject to a contractual penalty or if the performance or delivery period is otherwise extended or postponed in accordance with the contract, section 3.4 also apply if this new date or period is culpably exceeded. In this case, claims for contractual penalty that have already arisen remain valid.
- 3.6 Force majeure events, labour disputes or other unavoidable and non-foreseeable events exempt the Supplier from their performance duties only for the period of disruptions and to the relevant effects. To a reasonable extent, the Supplier must immediately provide reformed information and adjust their duties to the changed situation in good faith. We are totally or partially exempt from our duty to accept ordered supplies/services and entitled to withdraw from the contract if we – considering economic aspects – can no longer use the supplies/services due to the delay caused by the above circumstances. We may withdraw from the contract in the above cases if supply is delayed by more than two (2) months. The Supplier has no claims based on us withdrawing from the contract.
- 3.7 Should supplies arrive earlier than agreed upon, we reserve the right to return the goods at the Supplier's expense. If we do not return the goods in these cases, we store them at the Supplier's expense and risk up to the contractual deadline.
- 3.8 Call-off delivery deadlines are binding based on the same principles. Supplies will also be made on a "carriage-free" basis to the place of reception we indicate and at the Supplier's risk. Supplies may also be called off through remote data queries.

4. Performance, Supply, Transfer of Risks, Default of Acceptance

- 4.1 Without having obtained our prior written approval, the Supplier may not have third parties (e.g. sub-contractors or sub-suppliers) totally or partially perform the services they must provide. The Supplier bears the procurement risks for their services, unless otherwise agreed upon in individual cases (e.g. the purchase of stocked goods).
- 4.2 The goods must be protected against damage by suitable packaging and proper transport.
- 4.3 Unless otherwise agreed, the goods will be supplied on an "carriage-paid" basis to the place indicated in the order. If no destination is provided and if nothing was agreed upon, the goods must be supplied to our business premises in 44149 Dortmund, Germany. The place of delivery is also the place of performance (obligation to perform at the customer's location). The place of performance concerning the Supplier's duty to take back in terms of sec. 15 VerpackG [Verpackungsgesetz – German Packaging Act] is the place of hand-over.
- 4.4 Partial deliveries are admissible only if expressly agreed upon. With contractual partial deliveries, the remaining quantities must be recorded. We are not obliged to accept excessive/short deliveries compared to the contracts which is why acceptance of the goods represents no acceptance of the deviating supply quantities. Excessive supplies contrary to contract entitle us to accept excess quantities against invoicing, to store them until the Supplier picks them up at their expense or to return them to the Supplier at their expense.
- 4.5 Supplies must enclose one delivery note copy. Delivery notes must always contain exact information on the date (issuance and delivery), the contents of the supplies (article no., number, type and quantity) and our order code (order date and number). In the case where hazardous goods are supplied, the delivery notes must include a safety data sheet in terms of the EC Regulations no. (EC) 1907/2006 and (EC) 1272/2008, the relevant adjustment guidelines, an information sheet in terms of the Hazardous Goods Regulation and concrete handling/storage instructions. If there is no delivery note or if this is incomplete in terms of the above, we are not liable for delays in the processing and payment resulting from this. Separately from the delivery notes, the Supplier must timely provide us with the relevant shipping advice containing the same information for each individual delivery.
- 4.6 Devices, machines and systems - including parts thereof - shall be supplied free of charge with a technical description and instructions for use in German. In the case of software products, the delivery obligation is only fulfilled when the complete system-related (user) documentation has been handed over. Programmes specially created for us are to be delivered including the source format.
- 4.7 Letters, shipping advices, way bills, invoices etc. must always show the information under para. 4.5, including the place of unloading. Supplies which we are unable to accept due to non-compliance with the supply instructions will be stored at the expense and risk of the Supplier. We may determine the contents and condition of these supplies. The Supplier is liable for any costs and the consequences of not complying with these supply requirements, but they are also liable for ensuring that sub-contractors and sub-suppliers they commission based on our approval will comply with these supply requirements.
- 4.8 The risk of accidental loss/deterioration of the goods is transferred to us upon hand-over at the place of performance in accordance with the above para. 4.1 to 4.7. To the extent agreed upon, the transfer of risk depends on acceptance. Apart from that, acceptance is subject to statutory provisions of the law on contracts for works and labour and this also applies to hand-over and/or acceptance if we are in default of acceptance.
- 4.9 The statutory provisions apply to the beginning of default of acceptance on our part. The Supplier must expressly offer their services also in cases where a determined or determinable period was agreed upon for actions or cooperation on our part (e.g. the procurement of material). Should we be in default of acceptance, the Supplier may request compensation for their additional expenses in terms of the law (sec. 304 BGB). With contracts relating to non-fungible goods to be manufactured by the Supplier (individual production), the Supplier has additional rights only if we undertook to participate and if we are responsible for not cooperating.

5. Prices and Payment Terms

- 5.1 Prices indicated in the orders are binding; this applies also to framework orders for the entire contract term. If no prices were provided, the Supplier's valid list prices apply, less customary discounts.
- 5.2 The prices include statutory VAT, unless indicated separately.

- 5.3 Contractual prices are fixed prices. Unless otherwise agreed in individual cases, prices include all (ancillary) services of the Supplier and ancillary costs (e.g. ordinary packaging; transport costs, including ordinary transport and liability insurance). The Supplier must take back, at their expense, any packaging material if we so request. Packaging material invoiced in terms of the contract must be credited to the full amount at the time of return if this can be reused, whereby a simple credit note copy must be submitted which indicates the invoice based on which the amount was charged.
- 5.4 Any additional services must be invoiced only if we expressly commissioned the Supplier in writing to provide them.
- 5.5 The Supplier's claims become payable once the supply items fully arrived at their destination and/or the services were fully provided, whereby the goods must be accepted if the law or the contract provide for this and whereby an invoice meeting the requirements under para. 5.10 must be submitted.
- 5.6 Should we accept early supplies, payment due dates depend on the contract deadlines. The goods receipt date is considered the invoice receipt date if we receive invoiced goods at times later than indicated on the invoice.
- 5.7 Unless otherwise agreed, we make payments, at our discretion, either within 14 days from invoice receipt by deducting a 3% discount or within 60 days from invoice receipt subject to no deductions; however, the term does not start prior to complete performance by the Supplier. With wire transfers, payments are effected on time if our bank receives transfer orders prior to the end of the payment term; we are not liable for delays caused by the banks involved in the payment process.
- 5.8 We need not pay maturity interest. Us being in default depends on valid legal provisions, whereby the Supplier's written warning is required in each case.
- 5.9 Advances can be requested only based on individual agreements.
- 5.10 We must be provided with two invoice copies at the time of goods delivery, but they must be sent separately. The purchase order number/date and the order/consignment number must be indicated on each invoice. Each invoice must meet the relevant legal requirements, that is, in particular, indicate the name and the exact address of the supplying/performing company, the tax (identification) number, an invoice serial number, the invoice issue date, the time of performance, the quantity/type of the supply items or the type of the services to be provided. Faulty invoices are deemed not issued. Possible excess/reduced deliveries must be separately indicated in the invoice; this also applies to the VAT amount.
- 5.11 To the extent supplies/services might be exempt from VAT, the Supplier must produce necessary evidence and/or contribute to production. For supplies to EU countries, the Supplier must indicate their VAT ID number, show that they are entrepreneurs and assist with the production of accounting-based export certificates.
- 5.12 Without having obtained our prior written approval, the Supplier may not assign their claims against us or have third parties collect them. Approval may not be unreasonably withheld.
- 5.13 We have a right to offsetting, retention of title and defence of lack of contract performance to the legal extent. We may particularly withhold outstanding payments – a share of this, if need be – until ordinary fulfillment, for so long as we still have claims against the Supplier from incomplete or defective deliveries. On the other hand, advances represent no acceptance of the goods as being compliant to the contract.
- 5.14 The Supplier has a right to offsetting or retention of title only in relation to counterclaims which are legally determined or undisputed.
- 6. Provisions and Retention of Title**
- 6.1 We reserve ownership and copyrights in worksheets, execution instructions, product descriptions and other documents we provide to the Supplier. These documents must only be used for the contractual services to be rendered by the Supplier and must be returned, without solicitations and free of charge, once the order was processed.
- 6.2 Para. 6.1 accordingly applies to substances, materials and other items, particularly samples, tools and moulds which we provide to the Supplier for production. Unless processed, the Supplier must store these items at their expense and reasonably protect them against destruction and loss. In the event of an insurance claim, the Supplier hereby assigns to us all claims for compensation arising from this insurance; we hereby accept the assignment. The Supplier has to use tools provided by us exclusively for the manufacture of the goods ordered by us. The Supplier is obliged to carry out any necessary maintenance and inspection work on tools provided by us as well as all maintenance and repair work at his own expense and timely. He must notify us immediately of any malfunctions; if he culpably fails to do so, claims for damages shall remain unaffected.
- 6.3 Items we provide remain our property; The Supplier must store them separately, attach a label showing that they are our property and purchase reasonable insurance. They may be used only in the context of our order. The Supplier processes, mixes or combines (processing) any items we provide on our behalf. In the case of processing, mixing or combination with other items which do not belong to us, we acquire co-ownership in the new item in the ratio of the value of items we provided to that of the other items which were processed at the time of processing, mixing or combination. If the Supplier's items must be considered the principle item, it is agreed that the Supplier transfers to us *pro rata* co-ownership. The Supplier stores both our exclusive property and co-property on our behalf on a non-paid basis. If we process supplied items further, we are considered the manufacturer and acquire, no later than upon processing, ownership of the product in terms of applicable law.
- 6.4 In the absence of express, deviating written agreements with the Supplier, the goods must be transferred to us subject to no conditions and without considering purchase price payment. We expressly do not accept the Supplier's retention of title. Supplies to us may not be subject to any conditions and third-party rights (e.g. liens). If we, in exceptional cases and in the form required under sent. 1, accept an offer for assignment of the Supplier subject to purchase price payment, the Supplier's right to retention of title lapses upon purchase price payment for the supplies at the latest. In the ordinary course of business, we continue to be entitled to resell the goods subject to previous assignment of the claims resulting from this prior to purchase price payment (as an alternative: application of a simple right to retention of title extended to reselling). This means that any other form of retention of title, in particular extended retention of title – in this case particularly retention of title in supplied goods until full payment of all claims under the business relationship as a whole –, transferred retention of title and retention of title extended for processing, is excluded.
- 6.5 Insofar as the security interests to which we are entitled pursuant to para 6.3 exceed the purchase price of all goods subject to retention of title not yet paid for by more than 10%, we are obliged to release security interests of our own choice in this respect at the supplier's request.
- 7. Quality Requirements; REACH Regulation; Quality Checks**
- 7.1 All goods delivered and services rendered by the Supplier meet the scientific and technical state of the art and valid laws (including, without limitation, EU Directives, laws, regulations and instructions), particularly relevant safety and environmental protection regulations, including the Hazardous Goods Regulation and safety recommendations of the competent German specialist committees or associations (e.g. VDE, VDI, DIN etc.). To the extent individual cases require deviations from this, the Supplier must obtain a written approval first. Certificates, test reports and evidence must be submitted free of charge. The Supplier must indicate in the specifications any restricted and hazardous substances in terms of valid laws and guidelines. Non-compliance with substance restrictions and the supply of prohibited substances must be immediately communicated to us.
- 7.2 With regard to the supplies, the Supplier guarantees that the goods they supply expressly, unconditionally and continuously comply with all the provisions under Regulation (EC) no. 1907/2006 on registration, evaluation, admission and restriction of chemical substances (REACH Regulation). All substances included in the Supplier's goods were registered previously and/or following transition periods to the extent this is required under the REACH Regulation, unless the substances are excluded from registration. In terms of the REACH Regulation, the Supplier provides us with safety data sheets and/or any and all information required under the REACH Regulation. Should the Supplier violate any REACH Regulation instructions, we may, at any time, immediately cancel the relevant order and refuse to accept the relevant supplies without this resulting in any costs for us.
- 7.3 Additionally, supplied goods must correspond to the documents on which the order is based – in particular those mentioned and/or referred to therein –, such as, particularly, worksheets, execution instructions, product descriptions and samples, and they must show the properties and specifications indicated in the order. In this case, it makes no difference whether we ourselves, the seller or the manufacturer provided the documents on which the order is based.
- 7.4 Prior to delivering the product, the Supplier must perform comprehensive quality checks which are adequate considering the type and the extent. They must sufficiently document all measures taken to fulfil the above duty and, particularly, keep records of the ways in which they checked the supply items and which results these quality checks had. The Supplier undertakes to retain this documentation for ten (10) years. Following prior notification, we may inspect these documents during standard business hours and have copies made thereof at our expense. The Supplier may prevent us from inspecting business secrets.
- 8. Warranty**
- 8.1 Unless otherwise provided in the following, legal provisions unconditionally apply to our rights with regard to material and legal defects of the goods (including wrong and short deliveries and of other violations of duties by the Supplier.
- 8.2 Based on the law, the Supplier is particularly liable for the goods having the contractual quality levels at the time of risk transfer. Those quality levels are deemed agreed upon which the goods have if the Supplier unconditionally meets the requirements to be fulfilled in terms of para. 7.1 to 7.4 of these Terms. The Supplier's warranty extends to parts produced and services rendered by sub-contractors and sub-suppliers.
- 8.3 In deviation from sec. 442(1) sent. 2 *BGB*, we have unrestricted claims for defects also if we failed to detect such defect upon contract conclusion due to gross negligence.
- 8.4 The law applies to commercial inspection and defect notification duties (sec. 377 and 381 *HGB* [*Handelsgesetzbuch* – German Commercial Code], based on the following: The Supplier accepts that inspection of raw materials and supplies prior to processing by us is possible only to a limited extent based on samples and that raw materials and supplies usability can be checked only when used for production purposes. For this reason, our inspection duty is limited to defects which are apparent during incoming goods inspections by visually checking the exterior, including the shipping documents, and during our sample-based quality checks. To the extent acceptance is agreed upon, there is no inspection duty. Apart from that, it depends on the extent that inspection is advisable considering the individual circumstances in the course of ordinary business. This does not affect our defect notification duty for defects determined at later times. In these cases, we must be considered to have immediately and timely notified the Supplier of any defects if the latter receive this information within a period of five (5) working days from goods receipt at the place of delivery according to the purchase order and from submission of ordinary documents required for goods inspection (particularly shipping certificates and delivery notes) or, in the event of hidden defects, from detection.
- 8.5 Para. 8.4 does not apply if we have concluded a separate quality assurance agreement with the Supplier. With regard to the defect inspection and defect notification obligations to be fulfilled by us, the special provisions of the quality assurance agreement existing between the Supplier and us apply.
- 8.6 If they supplied defective goods, the Supplier must, upon our request, remove any defective goods and subsequently perform – at our discretion by rectifying the defect (subsequent improvement) or by supplying items free from defects (replacement delivery). The Supplier must bear all expenses required for subsequent performance. Subsequent performance includes disassembly and re-installation of defective goods to the extent the goods had been installed into or attached to other items due to their type and purpose; our statutory claim for compensation of related expenses is not affected by this. If the Supplier fails to fulfil their duty to subsequent performance pursuant to our option right within a reasonable period or if this is unsuccessful, we may immediately exercise our rights to price reduction, withdrawal, damage compensation instead of performance or compensation for expenses. Subsequent performance is deemed to have failed if subsequent performance of replacement deliveries does not lead to a delivery free from defects. Apart from that, we may withhold *pro rata* payments until ordinary fulfillment.
- 8.7 The Supplier must bear any costs which they incur for inspection and subsequent performance (including possible disassembly and installation costs) also if it turns out that no defect existed. Our liability for damages relating to unjustified requests for defect rectification is not affected by this; to this extent, we are liable only if we noticed or grossly negligently failed to notice that no defect existed.
- 8.8 Our claim for fulfillment exists until claims for damages instead of performance are asserted in writing or in court. If we withdraw from the contract due to defects, the Supplier must also compensate us for contractual costs.
- 8.9 If the Supplier is in default of subsequent performance pursuant to our option right, we may ourselves or have third parties rectify the defects or procure replacement items at the Supplier's expense and request from the Supplier compensation for expenses and/or advance payments for this purpose. This applies also if subsequent performance by the Supplier is unacceptable for us (e.g. due to special urgency, threats to operational safety or imminent disproportionate damage). In this case, there is no need for deadlines; if possible, we will previously inform the Supplier about these circumstances.
- 8.10 Apart from that, in the event of a material defect or defect of title, we are entitled to reduce the purchase price or to withdraw from the contract in accordance with the statutory provisions. In addition, claims for damages and reimbursement of expenses exist in accordance with the statutory provisions.
- 9. Suppliers' Recourse**
- 9.1 In addition to claims for defects, we are unconditionally entitled to our legal rights to recourse in relation to supply chains (suppliers' recourse in terms of sec. 445a, 445b and 478 *BGB*). In particular, we may request the exact type of subsequent performance (subsequent improvement or replacement deliveries) from the Supplier which we owe to our customers in individual cases; however, this does not limit our statutory option right (sec. 439(1) *BGB*).

- 9.2 Prior to accepting or satisfying a claim for defects (including compensation for expenses in terms of sec. 445a(1); 439(2) and (3) BGB) asserted by our customers, we will inform the Supplier and request short written comments of the matter. If they do not submit their comments within a reasonable period and if they find no mutual solution, we must be deemed to owe to our customers the claims for defects which we accepted; in this case, the Supplier must provide counter-evidence.
- 9.3 We are entitled to the rights to recourse in terms of sec. 445a, 445b and 478 BGB against the Supplier also in the case where they only supplied certain parts for the item which we newly manufactured. To this extent, our claims in terms of suppliers' recourse apply also if the goods, prior to us or any of our customers selling them to consumers, were processed, e.g. by installing them into or combining them with other products.
- 10. Product Liability, Exemption and Liability Insurance Protection**
- 10.1 If the Supplier is liable for any product damage, they must hold us harmless against third-party claims for damages upon our first demand to the extent the reason falls into their scope of responsibility and/or organisation and they are themselves liable with regard to the external relationship.
- 10.2 In the context of their liability for damages in terms of para. 10.1, the Supplier must also compensate for any expenses in terms of sec. 683, 670, 830, 840 and 426 BGB resulting from or in relation to third-party claims, including any call-backs on our part. To the extent possible, we will inform the Supplier about the contents and the extent of required call-backs and grant them an opportunity to comment on this; this does not affect other legal claims.
- 10.3 Should claims be asserted against us based on liability regardless of negligence or fault based on foreign law which cannot be waived with regard to third parties, the Supplier is liable towards us to the extent they would be directly liable towards such third parties. Damage compensation between us and the Supplier is subject to the principles of sec. 254 BGB (co-liability); this applies also to claims being directly asserted against the Supplier.
- 10.4 We may compromise injured third parties; the Supplier's duty to pay compensation is not affected for so long as such compromises were required for commercial reasons.
- 10.5 The Supplier undertakes to purchase product liability insurance providing for coverage of € 10 million per case of personal injury/material damage – as a lump sum –; if a party is entitled to further compensation claims, they are not affected by this.
- 10.6 The Supplier must purchase liability insurance for damage which they themselves, their staff or representatives cause to the supply/service items. Upon request, evidence of the coverage per case of damage must be produced.
- 10.7 The Supplier must purchase and keep sufficient insurance at their own expense for auxiliary means and materials we provide.
- 11. Protection Rights**
- 11.1 The Supplier is liable for acceptance of supplies/services and their contractual use by us not violating third-party rights, particularly no patent, licensing and trademark rights. The Supplier is aware that we potentially distribute the products on a global scale.
- 11.2 Should third parties assert claims against us or our customers due to violation of these rights, the Supplier must hold both us and our customers harmless against all of these claims upon first written demand. This indemnification duty relates to all expenses which we or our customers necessarily incur due or in relation to third-party claims. The Supplier must assist us with any (extra-)judicial proceedings instituted by third parties due to their rights being violated and they must bear the proceedings costs. The Supplier's duties in terms of sent. 1 through 3 above do not apply if and to the extent the supply items were manufactured based on our instructions and the Supplier was not (obliged to be) aware that they violate third-party rights.
- 11.3 We are possibly entitled, at our discretion, to either obtain from the owner of the injured rights required permits, including, without limitation, those relating to re-selling, for the contractual use of the supply items at the Supplier's expense or to withdraw from the contract.
- 11.4 The Parties undertake to immediately inform each other about the risks of violations and asserted violations and to grant each other an opportunity to mutually defend themselves against these claims.
- 11.5 Upon our request, the Supplier must inform us about them using published or unpublished, internal or licensed industrial property rights (applications) with regard to the supply items.
- 12. Non-Disclosure**
- 12.1 The Supplier is obliged – beyond the contract term – to treat confidentially and not to totally or partially disclose to third parties any information on the business relationship which they receive; Without our approval, the Supplier will use this information not even for their own transactions. This non-disclosure duty does not apply to information which is clearly known to the public, which the Supplier had already known prior to being disclosed to them or which third parties disclosed to them without violating a non-disclosure duty applicable to these third parties.
- 12.2 In particular, the Supplier must not disclose to third parties any documents (see para. 6.1) which they receive from us, not even after the contract term. This non-disclosure duty lapses only if and to the extent that information included in the documents provided is known to the public. Should the Supplier become aware of internal inventions worthy of protection, we are entitled to all rights from inventions, particularly the right to apply for protection rights. The Supplier will at no time disclose their knowledge of such inventions or object to inventions as being prejudicial to novelty at the time of application or at any other time.
- 12.3 Only if we expressly agreed to this in writing may the Supplier refer to this business relationship in their advertising and information material.
- 13. Limitation**
- 13.1 The Parties' mutual claims become time-barred in terms of the legal provisions, unless otherwise provided in the following.
- 13.2 In deviation from sec. 438(1) no. 3 BGB, the general period of limitations for warranty claims is three (3) years from risk transfer. If acceptance was agreed upon limitation begins upon acceptance. This three-year period of limitations accordingly applies to claims from legal defects, whereby the statutory period of limitations for third-party in-rem requests for return (sec. 438(1) no. 1 BGB) is not affected by this; claims from legal defects additionally do not become time-barred for so long as third parties still have the possibility of asserting these claims against us – particularly in the absence of limitation.
- 13.3 The period of limitations under commercial law, including the above extensions, apply – to the legal extent – to any and all contractual claims for defects. To the extent we are entitled to extra-contractual claims for damages due to defects, they are subject to regular statutory limitation (sec. 195, 199 BGB), unless application of periods of limitation under commercial law leads to longer periods of limitation in individual cases.
- 14. Final Provisions**
- 14.1 These Purchase Terms and all legal relationships between us and the Contract Partner are subject to German law. International uniform law – particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG) or other conventions on the right of purchasing goods – and other, that is, future, inter-government or international conventions, also after their transposition into German law, do not apply.
- 14.2 The place of performance for the Supplier's supply duties depends on para. 4 of these Purchase Terms. For all the other duties of the Contract Parties, the place of fulfilment is our registered office in 44149 Dortmund, Germany.
- 14.3 If the Supplier is an entrepreneur in terms of the German Commercial Code, a body corporate organised under German public law or a German public-law special fund, the exclusive, that is, also international, venue for the disputes resulting from and in relation to the relevant contract – including cheque and draft disputes – is our registered office in 44149 Dortmund, Germany (sec. 38(1) ZPO). Provided that the Supplier meets the requirements under sec. 38(2)ZPO and has no venue in Germany, our registered office in 44149 Dortmund, Germany, is considered the venue. However, we also have the right to file an action against the Contract Partner before other courts in the cases under sent. 1 and 2.
- 14.4 If individual provisions of the Purchase Terms are or become ineffective in whole or in part, this does not affect validity of the remaining provisions. In these cases, invalid provisions and/or invalid parts thereof must be replaced by legal provisions which in economic terms and to the legal extent come closest to the purposes of the invalid provisions. This accordingly applies to non-executable provisions and contractual gaps included in these Purchase Terms.