

Conditions of Purchasing

I. Decisive general purchase conditions

Supply Contracts and/or Purchase Orders between the company IWN GmbH & Co. KG (Purchaser) and their suppliers shall be exclusively and without exception, subject to the following General Purchase Conditions of the company IWN. All agreements, changes and deals have validity only if they are laid down in writing. Already now, any possible reference of the supplier to his own Terms and Conditions (AGBs) is contradicted expressly. Our purchase conditions are valid also then if we accept deliveries of products and services from the supplier, or pay for the same, in the knowledge that the conditions of the supplier are non-conforming, or differing from, our purchase conditions. Our purchase conditions are valid also for all future deliveries and services of the supplier up to the validity of our new purchase conditions.

II. Orders

1. Supply contracts (orders and acceptance) and delivery call-offs, as well as their changes and supplements, must be made in writing. Orders and call-offs can occur also through digital data communication transmissions.
2. If the supplier does not accept (acknowledge) the order within three weeks from its receipt, then the purchaser is so entitled to withdraw his order. Delivery call-offs become at the latest obligatory, if the supplier does not contradict the order within two weeks from receipt.
3. The purchaser can demand from the supplier changes -- within reason -- to the part which is to be delivered with regard to its design and specification. In such a case, the consequences, in particular with regard to greater or lesser costs as well as regarding delivery dates, are to be adequately considered and mutually agreed upon.
4. With orders which are governed by framework call-off contracts, the manufacturing processes and materials shall be agreed and approved by the purchaser. Should the supplier subsequently make changes to the agreed processes or materials, then he does so at his own risk.
5. In the event that the business situation of the purchaser worsens considerably, then the purchaser is entitled to cancel completely, or partially, the orders he has placed, including call-off supply contracts. In such a case the supplier is obliged to stop the manufacturing of already-ordered products immediately. If there exists a progressive price scale for the overall contract, so then the supplier is entitled to calculate his price on the basis for the really supplied amount and correspondingly to demand possible additional prices.
6. Cost estimates or offers of any kind are binding and without rights of reimbursement or compensation.

III. Payments

1. In the case of too-early deliveries, the “due by” date of payment nevertheless is calculated according to the agreed delivery date.
2. In the case of faulty delivery (defects or deficiencies) the purchaser is entitled to withhold a proportional part of the payment back until the problem has been sorted.
3. Without the previous written approval of the purchaser (which may not be withheld unjustly), the supplier is not entitled to transfer his rights (e.g. demands for payment) regarding the purchaser, to a third party. In the case of extended reserved ownership, the necessary approval is regarded as being given.
4. Price changes need the approval of the purchaser.
5. The payments of the purchaser shall be made, so far as not arranged differently, 14 days after receipt of goods minus 3 % cash discount, or alternatively within 30 days as net payment.
6. If no special arrangement has been made, then the prices are “DDP according to Incoterms 2000” including suitable packaging. Sales tax (VAT) is not contained in that. The supplier bears the risks until the goods have been supplied to us or our representative at the place which was agreed for the delivery.

IV. Notice of defects or deficiencies

The purchaser has to inform the supplier of any shortcomings of the delivery in writing immediately upon discovery, in accordance with standard business procedures. Accordingly, the supplier renounces his objection a delayed complaint report or notice of defects.

V. Secrecy

1. All commercial or technical information made accessible through us (including features that are to be understood from objects for instance handed over, documentation or software and other knowledge or experiences) are, for so long and as far as they are not evidently publicly known, to be kept a secret from any third party and only provided to such persons within the supplier’s company which must be included in their use out of necessity for the purpose of the deliveries to us and which are also obliged to keep secret our information which remains our exclusive property. Without our previous written consent such information may not be used -- except for deliveries to us -- and also not duplicated or used in any commercial manner. Upon our demand, all information provided by us is (and where appropriate including any and all copies and recordings) to be immediately and completely returned to us or destroyed. We reserve for ourselves all rights to such information (including copyrights and the right for the registration of industrial or intellectual property rights, as patents, patterns, samples, etc.). As far such information was made accessible to any third party, this reservation of our right of ownership is valid also regarding this third party.

2. Products, that are made according to documents produced by us, such as drawings, models, forms or dies and products resulting from our confidential information or specifications, or with our tools or reproduced tools, may not be used by the supplier himself, nor offered or supplied to any third party. This is correspondingly valid also for our printing jobs.
3. Subcontractors are to be suitably obliged to respect and protect our rights.
4. Contract partners may only make public their cooperation with us if they have our previous written approval.

VI. Delivery conditions

Agreed delivery dates and deadlines are binding and obligatory. The decisive criteria for the due compliance with the delivery date, is the accepted receipt of the product, including all necessary documents, by the purchaser. If delivery has not been specified to be made at the purchaser's location, then the supplier has to provide the product in time with appropriate consideration for the usual time taken for its dispatch and transport. If necessary, the supplier obliged, where appropriate, to prove the timely dispatch of the goods. The purchaser reserves the right, to refuse (return) goods which have been delivered too early. The supplier bears any costs thus arising.

VII. Delay in delivery

1. The supplier is obliged to compensate for any damage caused by delay to the purchaser.
2. The amount of the due compensation is proportional to the length of the delay in delivery. For every begun week of delay, the compensation is 1 % of the purchase order value provided that nothing other was arranged.
3. The purchaser reserves the right to claim higher compensation if appropriate.
4. The unconditional acceptance of the late delivery of goods or performance of services does not signify any renunciation of possible claims being made by us because of the late delivery or performance.

VIII. Force majeure

Force majeure, labour struggles, riots, official measures and other unforeseeable, inevitable and serious occurrences shall free the contracting parties from the achievement or performance of their obligations for the duration of the trouble or disturbance and to the extent of its effect. This is valid also if these events happen at a time at which the affected contracting party is already in arrears. The contracting parties are obliged to exchange the necessary and appropriate information immediately, and to adapt their commitments within a reasonable framework to keep any damage to a minimum. The supplier has to prove the effects of the force majeure on the order if required.

IX. Quality and documentation

1. The supplier must observe and comply with the acknowledged rules of technology, the safety regulations, the accident prevention and industrial health and safety rules, the industrial medical rules and the agreed technical data and the consumer protection rules, with regard to his delivered good or services. The seal “CE Conformity Declaration” is to be added to every part in the case of delivery, provided that this is required according to valid law (at this time: EC guidelines). The China Compulsory Certification (CCC certification) is to be presented from every supplier for every article newly incorporated into the assortment, once in total during the first delivery, provided that this is required according to international law (at this time: China National Regulatory Commission for Certification and Accreditation - CNCA -). All necessary documentation regarding health and safety rules are to be supplied. Changes in the scope or details of the delivery, especially with respect to documentation, need the previous written approval of the purchaser.
2. When the manner and scope of a quality control examination, and also the means and methods of testing, have not been discussed and firmly agreed between the supplier and the purchaser, then the purchaser must be ready, at the request of the supplier, and within his (the supplier’s) framework of knowledge, experience and possibilities, to discuss the examinations with the supplier in order to determine for each case the necessary inspection methodology.
3. The purchaser has the right to carry out examinations and/or testing in the factory of the supplier. In this case, the purchaser and the supplier each bear their own respective costs. The supplier assures a product final clearance which shall correspond to a product acceptance inspection with the purchaser. As a result of this arrangement, the purchaser is released from the responsibility of the acceptance inspection, except for random testing. This is not valid with regard to easily recognizable damages incurred during transit and other openly recognizable shortcomings, in particular deviations from the identity and/or amount of the supplied goods. The purchaser will inform the supplier immediately in such a case and shall charge the supplier a lump sum (currently 150 euros) to cover the cost of processing the complaint. Despite these conditions, the purchaser shall carry out acceptance inspections on a random sample basis. If testing has to be repeated, or further testing is necessary, perhaps even testing of complete deliveries, then the supplier shall have to bear the (shown to have been incurred) total extra costs which are caused thereby. The supplier bears the costs of material and staff for material certificates for the ingoing materials. The guarantee of the supplier is not affected by these examinations or tests. The supplier is obliged, at the request of the purchaser, to provide without delay material and testing certificates for every delivery.
4. The supplier is obliged to make and maintain documentary records detailing when, in which manner and by whom, the delivered goods were examined and tested in accordance with those features which are required to be documented. The examination documents are to be kept secure for ten years and to be presented to the purchaser if required. Where appropriate, the supplier has to ensure that his suppliers or other partners are also bound to the same conditions.
5. In as far as customers request or require insight into the production processes, and/or inspection of production documentation, of the purchaser, for the purpose of controlling certain contractual conditions, -- then the supplier declares himself prepared to grant them the same rights in his company and to give every reasonable support in this case, at the request of the purchaser.

X. Warranty

1. The acceptance of the goods is subject to examination for faultlessness, in particular for correctness, completeness and suitability.
2. The statutory provisions concerning shortcomings of material and legal regulations shall apply, unless something different is stipulated below.
3. The purchaser is entitled fundamentally to the right to choose the kind of the subsequent performance. The supplier is entitled to the right to reject the kind of the subsequent performance selected by the purchaser under the provisions of the § 439 para 2 BGB (German Civil Code).
4. If the supplier fails to begin with the elimination of the lack or defect immediately according to our request, then we are so entitled to the right to carry out these at the expense of the supplier himself, or to order them to be carried out from a third party in urgent cases, in particular to avert acute dangers or for the avoidance of greater damages. Damage compensation and material deficiency entitlements become invalid after 24 months from installation, at the latest after 30 months from delivery to the purchaser, unless the goods have been used according to their usual manner for a building structure and caused its (the building) defectiveness.
5. In the case of legal shortcomings, the supplier exempts us from possibly existing claims of any third party. With regard to legal shortcomings, a limitation of 10 years is valid.
6. For parts of the delivery repaired within the limitation period of our warranty claims, the limitation period begins to run again starting upon completion of the subsequent performance which the supplier completely fulfilled.
7. In the event that costs arise for us due to the defective or deficient delivery of the goods, in particular with regard to transportation, travel, labour or material costs or costs for an acceptance control exceeding the usual extent, then the supplier has to bear these costs.
8. If we take back any products manufactured by us and/or sold by us due to the defectiveness of the subject of the contract delivered by the supplier, or if our customer reduces the purchase price for this reason or we are held liable in any other way as a result thereof, then we shall reserve the right of recourse against the supplier, without any need to fix a time limit as otherwise required to enforce our rights.
9. We are entitled to demand that the supplier shall reimburse all expenditures that we had to bear in relation to our customer, because our customer has a claim on us for reimbursement of the expenses involved for the purpose of the subsequent performance, in particular the costs of transportation, travel, labour, material and import and export customs duties.
10. Notwithstanding the provisions of clause 4 above, the limitation period in the cases of clauses 8 and 9 above shall end, at the earliest, 2 months after the time in which we fulfilled the claims filed by our customer against us; it shall end, at the latest, 5 years after the acceptance from the supplier.

11. If a material defect becomes apparent within 6 months of the date at which the risk passed, it shall be presumed that the goods were already defective when they were accepted by the purchaser, unless this supposition is incompatible with the nature of the goods or of the defect.

12. If samples had been provided by the supplier, then the properties of such samples shall be regarded as being assured and valid for the quality of subsequent deliveries. The supplied goods must therefore be sample-consistent. In the case that the delivered part is to be made in particular, e.g. by means of drawings, (a model or prototype) then this has priority before the supply of components as samples.

13. The supplier shall maintain a state-of-the-art quality assurance system, suitable for the type and scope of his work, and shall demonstrate this to the purchaser on request. He agrees to take responsibility for ensuring that those standards of quality specified in the purchase documents are fulfilled with regard to the produced parts, their manufacturing processes and their complete documentation process.

14. If claims are made against the purchaser due to non-negotiable foreign liability to third parties, regardless of blame the supplier is only liable to the purchaser to the extent of his liability to the purchaser in accordance with the legal regulations or the terms of these conditions of purchase

XI. Product liability and recall

1. The supplier is obliged to take out a product and product liability insurance with a sufficient amount of monetary cover and which also covers measures to remedy defects in parts, accessories or fixtures in motor or rail vehicles or watercraft if these products, when delivered by the supplier or third parties acting on his orders, were manifestly intended for use or installation in motor or rail vehicles or watercraft. If the purchaser is entitled to on going claims for compensation, then these remain unchanged.

2. For the case, that claims are made against us because of violation of official safety precautions or because of domestic or foreign product liability regulations or laws because of the defectiveness of our product that was caused by a commodity of the supplier, we shall be entitled to demand from the supplier at our choice either compensation for this damage or indemnity to the extent that the damage was caused by the products supplied by the supplier. Provided that the cause of damage lies in the area of responsibility of the supplier, then the supplier bears the burden of proof in this respect. The supplier takes over in above cases all costs and expenditures, including the costs of a possible corrective or recall action which the purchaser can carry out after proper examination and consideration. This is valid also if the purchaser is obliged to implement such a recall action officially, or a third party carries out the recall action for the purchaser. Furthermore, the legal regulations are valid.

XII. Carrying out of works

Persons who perform work within our premises in fulfilment of conditions of an agreement, must abide by the provisions of the respective premises rules, in particular regarding health and safety, and the regulations for entering and exiting the facilities must be observed. The liability for accidents that may happen to these persons in the factory is rejected as far as this was not shown to be caused by deliberate or coarsely negligent violation of duty or responsibility on the part of our legal representatives or fulfilment assistants.

XIII. Provided materials

Materials which have been provided by the purchaser, such as parts, receptacles and special packaging remain our property. These may be used only as specified. The processing of materials and the assembling of parts occurs on our behalf. It is understood and agreed that we are in co-ownership in the proportion of the value of the materials provided by us to the value of the total product manufactured with our materials and parts that are held, safeguarded or used in this respect by the supplier for us.

XIV. Industrial property rights

1. The supplier is liable for claims which result from the violation of industrial or intellectual property rights, and the registration of industrial property rights, arising following the use of parts delivered to the purchaser according to contract.
2. The supplier exempts the purchaser and customers from all claims from the use of such industrial property rights.
3. The contracting parties oblige themselves to immediately inform each other with regard to violations becoming known and agree to cooperate with each other to resist any alleged claims.
4. The supplier shall inform the purchaser on demand regarding the use of published and unpublished licensed industrial property rights and registration of such rights, as far as this information is relevant to the delivered parts.
5. In the software that is part of the scope of the delivery including associated documentation, we shall have, besides rights of use in the scope permitted by law (article 69a ff German Copyright Act) rights of use with the contracted features and in the scope necessary for the use of the product in accordance with the contract. Accordingly, copies may be made, and we may prepare a backup copy without any external explicit agreement..

XV. Use of manufacturing resources and confidential information

Any and all models, matrices, stencils, patterns, samples, tools and other manufacturing resources, as well as confidential information that are provided for the supplier by the purchaser, or for which

the purchaser has paid the supplier in full, may only be used for deliveries to third parties, with previous written approval of the purchaser.

XVI. General anti-discrimination law

The supplier declares that all his employees who have contact with, or may have contact with, employees of the purchaser within the framework of the fulfilment of existing, or future, contractual obligations to the purchaser, are familiar with, and must comply with, the regulations of the German anti-discrimination law (Allgemeinen Gleichbehandlungsgesetzes).

The supplier declares further that his employees know in particular that placing at a disadvantage, molestation or sexual molestation of employees of the purchaser because of that person's race or ethnic origin, gender religion or beliefs or philosophy of life, age, handicap or sexual identity is forbidden by law.

Should an employee of the supplier nevertheless offend an employee of the purchaser in contravention to this law and this results in a claim for **compensation** made against the purchaser, so the supplier commits himself to exempting the purchaser from all claims for compensation and shall internally indemnify the purchaser from all consequences including fines and the costs of the legal process.

XVII. General regulations

1. Should a contracting party stop payments or an insolvency procedure is imposed upon his business or assets or property, or a judicial or extrajudicial composition proceedings are applied for, we reserve the right to cancel the still unfulfilled portion of the contract.
2. If any of the provisions of the present contract should be found to be, or become, completely or partially invalid or ineffective, or should the contract present any gap requiring filling, the validity of the remaining provisions shall remain unaffected. The contracting parties are mutually obliged to replace the ineffective definition through one which comes as close as possible to the required effect.
3. The terms of business, and the complete legal relations between the contraction parties, shall be exclusively governed and construed according to the law of the Federal Republic of Germany with the exception of the Conflict of Laws provisions and the United Nations Convention on Contract for the International Sale of Goods (CISG).
4. Place of jurisdiction is the registered location of the purchaser. Something different can be arranged for deliveries.
5. The court responsible for the head office of the purchaser shall be the venue in the case of any and all legal quarrels or disputes which result directly or indirectly from contractual relationships which underlie these purchase conditions. We reserve the right, however, to choose to go to court at the location of the supplier, or at the location of his subsidiary, or at the location of the place of performance.