

§ 1 General

These conditions for purchasing exclusively apply to the orders by the ordering party, hereinafter referred to as OP. The confirmation or execution of the order is considered an acceptance of these conditions for purchasing. This also applies if the contractors/suppliers, hereinafter known as SP, indicate that they will only deliver under their conditions. Other conditions and deviations from these conditions for purchasing require the written consent of the ordering party to be effective. Our general conditions for purchasing also apply to all future business dealings with the SP.

§ 2 Order

An order is only deemed to have been placed if it is made out in writing and signed by the OP. Oral orders and orders by phone are only binding to the OP if they were confirmed by subsequent consentment of a written order. Orders may also be placed electronically, provided this has been agreed on in writing between the OP and SP beforehand. Other additional expenses (duties, insurance premium, toll fees, etc.) are at the expense of the SP and are to be incorporated in their offer. If the OP does not receive a written order confirmation through the SP within 5 days after order placement, OP is entitled to a written cancellation. Orders can also be confirmed electronically, provided this has been agreed on in writing between the OP and SP beforehand. Changes and supplements to the order, including their acceptance, have to be made out in writing. Oral side agreements, irrespective of whether during or after the closing of the contract, are only valid if they were confirmed in writing by the OP. On request by the OP, the SP has to provide an order fulfilment guarantee.

§ 3 Invoice

Invoices are to be supplied in duplicate. In no case are they to be enclosed with the goods. Principally, invoices will only be paid if delivery notes, acceptance protocols or similar are enclosed, correctly and legibly signed. Each invoice must contain the customer name, order number, cost centre/cost carrier and the place of delivery. All data related to the orders aforementioned and highlighted in colour, are to be displayed accordingly on the invoice. Invoices for work or assembly must include time sheets confirmed by the OP. The OP will only provide advance and partial payments after previous agreement. The OP reserves the right to return, unprocessed, any invoices not meeting the aforementioned requirements, particularly in terms of order details, or sales tax regulations. In this case the invoice is considered as not having been issued. The SP is responsible for all costs and consequences resulting from non-compliance with this obligation.

§ 4 Deliveries

The agreed delivery terms and dates are binding, excluding force majeure. The running of the term begins with the order date. The goods have to be received at the receiving location specified by the OP within the delivery period, or on the delivery date. The SP has to inform the OP immediately and request a decision on the continuation of the order in case delays are expected. The OP is not obliged to accept delivery before the expiration of the delivery date. If delivery and service dates are exceeded, OP is entitled to demand a contractual penalty to the value of 1% for each week or part thereof, however a maximum of 5% of the total order value, or to withdraw from the contract. The statutory entitlements due to arrears are not affected through the agreement of the contractual penalty or its assertion. The delivery takes place free of charge or free to the specified receiving address at the SP's expense and risk. The OP is only obliged to accept partial delivery if this has been contractually agreed beforehand. The risk of accidental loss or incidental deterioration is borne by the SP until acceptance. Should the SP not fulfil their contractual obligations in connection with the transport (e.g. unloading of the delivery object), then the SP will have to refund the incurred costs to the OP. A premature transfer of risks does not take place even if the OP contributes to the fulfilment of the acts that are incumbent upon the SP; the OP is only responsible for gross negligence and intent. When issuing the delivery papers the SP has to take into consideration that for every delivery from abroad, the SP has to enclose the manufacturer certificate with each delivery. (Manufacturer certificate according to EGVO 1207/2001). The packaging is included in the price. The SP has to select the packaging specified by the OP and make sure that the goods are protected from damages through the packaging. The SP is responsible for the disposal of the packaging. Returnable packaging is to be collected after an adequate and agreed time period, free of charge to the OP. The SP must take out adequate transport insurance.

§ 5 Payment conditions/payment terms

Unless agreed otherwise the net payment takes place within 60 days. For payments within 14 calendar days, the SP allows a 3% discount on the invoice amount. The term commences with the receipt of the contractual delivery and a perusable invoice. Instalments on partial deliveries must be agreed upon in writing in advance. A payment reminder has to be effected in writing. The OP only defaults after a payment reminder. The handover of the transfer order to the bank/credit institute or the day of the posting of the cheque is decisive for the punctuality of our payment.

§ 6 Performance of services

The SP takes on the obligation to ensure that the goods, including appearance and labelling, comply with the specifications by the OP, that the order is executed competently and appropriately according to the prevailing state of technology, taking into account the regulations and laws valid in Germany, as well as restrictions by authorities, administrative bodies and the respective applicable technical regulations and standards.

§ 7 Guarantee/warranty/reclamations

The SP guarantees that their delivery or service is free of defects. The warranty period is three years. This period begins with the discovery of a defect by the OP. The period will be suspended with a written notice of defects by the OP until rectification of deficiencies or until the final written refusal by the SP to rectify the defect. The OP will inspect the delivery and services immediately - as far as this is possible within the proper business process, however within two weeks after delivery at the latest - and will inform the SP promptly after discovery, in writing. Any inspection duties on behalf of the OP are restricted to the immediate inspection of the goods in terms of whether they conform to the ordered amount and the ordered type as well as whether there are externally recognisable transport damages or externally recognisable defects. As far as the OP is obliged to carry out an immediate notification of defects, hidden defects can be reprehended within 2 weeks, other defects within 1 week after discovery.

In any case the right to choose between defect remedies and new consignments rests with the OP, which is also expressly entitled to compensation, particularly instead of service. Upon delivery of faulty goods the SP receives the opportunity for repair or subsequent delivery. If the SP cannot carry this out or if the SP does not immediately comply after the request and setting of a deadline, the OP is entitled to rectify the defects at the cost and risk of the SP, or if the rectification is not possible, to buy from another SP at the cost of the SP. In urgent cases the OP is entitled to carry out the correction themselves or have it carried out by a third party after notifying the SP. The costs incurred hereby are to be paid by the SP. The OP is entitled to reject any goods which are not furnished with the following minimum particulars in a well legible way:

- the name of the orderer
- the cost centre/the cost unit
- the delivery location.

The OP however reserves the right to still accept the goods.

§ 8 Appointment of subcontractors/SP

The SP has to inform Scholpp in writing should the SP want to appoint subcontractors. Scholpp reserves the right to reject subcontractors/SP. These are considered auxiliary persons according to § 278 BGB.

§ 9 Liability

The SP will exempt the OP from claims which can be made against the OP because of a defect or fault of a product delivered by the SP, particularly claims raised against the OP by their customers as a result of lost profit, downtime, penalties or similar. If an item made by the OP using the SP supplies and sold to a customer contains a defect caused by a defective SP delivery, the OP can ask the SP to reimburse them for expenses, particularly transportation, commuting, labour and material costs incurred by the OP in their relationship with the customer as per § 439 Para. 2 of the German Civil Code. Additionally, the SP will indemnify the OP of all costs and expenses that the OP incurs in connection with provisions - necessary according to type and scale - for the prevention of a non-contractual liability according to domestic and foreign laws (e.g. according to the product liability law) (especially through warnings and product recalls); this however only applies in so far as these actions have been caused by a faulty delivery by the SP. The SP is incidentally liable according to the legal regulations and this is also unlimited.

§ 10 Property rights

It is the liability of the SP to ensure that no patents or other property rights of third parties are breached. The SP exempts the OP and their clients from all claims from the use of such property rights. With the delivery of a copyright protected creation the OP receives a non-exclusive right of use of all kinds. In this case, the OP is also entitled to obtain the necessary authorisation for delivery, operation, utilisation, resale, etc. of the delivery object from the owner of such property rights at the cost of the SP.

§ 11 Confidentiality

The SP commits to keeping all apparent technical and commercial details in connection with the order by the OP, which become known to him through the business relationship, a business secret. In particular, special structures of the assembly and auxiliary equipment are the intellectual properties of the OP and have to be kept secret by the SP. All items like e.g. offers, orders, drawings, lifting equipment, tools, that were made available to the SP by the OP, remain the property of the OP and may not be made accessible to third parties. Subcontractors and sub-SP are to be committed accordingly. For every case of a breach of the confidentiality obligation the SP commits to the payment of a contractual penalty in the amount of fifty thousand Euros. The proof of lesser damage remains with the SP.

§ 12 Improper advertising

Advertising for the SP can only then allude to the business relationship if the OP has expressly and in writing agreed to this. The company logo of the OP cannot be used for advertising without written consent.

§ 13 No-competition clause

For the duration of 2 years from the last order by the OP, the SP commits to not approaching customers of the OP to offer its services in a similar or in the same way in which it carried out them out as a subcontractor service for the OP and therefore as their partial service to the customer. For every breach of the aforementioned declaration of commitment the SP commits to the payment of a contractual penalty in the amount of fifty thousand Euros to the OP, without the need for their forfeit of liable behaviour by the OP.

§ 14 Assignment of claim

Claims by the SP against the OP may only be assigned to third parties with written consent by the OP.

§ 15 Offset/retention

An offsetting or retention of claims by the OP and claims connected with this is only allowed with payable counterclaims, which are not opposed by an objection or which are declared legal.

§ 16 Place of fulfilment, laws and jurisdiction

Place of fulfilment and jurisdiction in Germany are the headquarters of the OP of the ordering branch. German laws apply to all legal relationships between the SP and the OP. If the SP has its headquarters outside of Germany, German law shall apply, with inclusion of the CISG. The OP can withdraw from the contract if the SP has made an application for the commencement of insolvency proceedings or if the SP has non-temporarily suspended their payments or if insolvency proceedings were opened for the assets of the SP or the opening of proceedings was rejected due to a lack of mass.

§ 17 Severability clause

It will not affect the validity of the remaining provisions should one or more provisions of the general conditions for purchasing be or become void.