

General Terms and Conditions of Purchase

I. General

1. Solely the following terms and conditions of purchase apply to our orders, including if we do not expressly reject terms and conditions of business of a general merchant or supplier that may be contrary to our terms and conditions of purchase, and apply to future business transactions with the Seller or Supplier.
2. Subsidiary agreements shall only be valid if confirmed in writing. The contract shall continue to have binding force in the event that individual aspects of its conditions are invalid.
3. Offers, visits, consulting and drawing up plans are free of charge for us.
4. Our secrecy in respect of any type of the Seller's/Supplier's declarations is not deemed approval.
5. All orders placed by us are subject to written confirmation by the Seller/Supplier. If we do not receive written acceptance within 10 days following receipt of the order, we shall be entitled to cancel the order within 10 additional workdays.
6. We may request amendments to the scope of delivery after the contract has been entered into insofar as such action is acceptable for the Seller or Supplier. In the case of such contractual amendments, appropriate consideration is to be given to the effects for both parties, in particular in view of additional/lower costs and the delivery dates.

II. Delivery / performance dates

1. The agreed delivery and performance dates are binding in the absence of cases of force majeure. By way of a failure to adhere to these the Seller or Supplier shall be deemed to have defaulted in accordance with Section 284, sub-section 2. In such a case we shall be entitled to set an additional period of reasonable length. If the goods are not delivered within this additional period, we shall be entitled, at our discretion,
 - a) to request subsequent delivery or subsequent performance or assert a claim for damages regarding delayed delivery or performance, or
 - b) instead of performance assert a claim for damages regarding non-performance, or
 - c) withdraw from the contract.
 - d) In the event of b) or c) we shall be entitled, irrespective of the option of asserting a claim for greater damage, to demand 10% of the purchase price as compensation for damages. In this respect furnishing proof of damage is not required.
 - e) We shall also be entitled to exercise the above-mentioned rights stated in a) to d) if the goods are damaged or are rendered useless during transport as a result of faulty packaging, and as a result we do not take possession of the goods in good time.
2. Further-reaching rights resulting from Section 376 HGB ¹ shall not be affected in the case of a fixed trading purchase.
3. The Supplier is to inform us in writing without delay of identifiable delivery or performance delays by way of stating the likely delay.
4. Partial deliveries may only be made following our express approval.

¹ German code of commercial law

III. Packaging, shipping, insurance

The agreed prices apply freight-free at our plant or at a place of destination determined by us insofar as nothing to the contrary is expressly agreed upon in writing. The cost of packaging and shipping up until arrival of the consignment at our premises shall be borne by the Supplier insofar as nothing to the contrary is agreed upon in writing.

1. Packaging: insofar as the assumption of packaging costs by us and a packaging cost-free delivery is not agreed upon, the Supplier is to select the packaging that is most cost-effective for us. We reserve the right to reduce the invoice amount by packaging costs that have been calculated at an excessively high rate. In the case of non-adherence to possible packaging requirements, e.g. the failure to use pallets or non-reusable packaging, we shall be entitled to reduce the invoice by the resulting additional costs.
2. Shipping: insofar as the assumption of freight costs by us has been agreed upon, the Supplier is to select the most favourable shipping for us. In the case of failure to adhere to this requirement we reserve the right to reduce the invoice amount by possible additional freight charges. We are to be provided with advice of shipment immediately in the case of shipping. In the event of lacking shipping documents, the consignment shall be stored up until receipt of the documents on the account and at the risk of the Supplier. It is absolutely necessary that all shipping documents state our order number. In the case of direct deliveries from the manufacturer to the customer we are to be furnished with proof of advance freight charges and the like by way of freight duplicates.
3. Insurance: we shall only assume the cost of insurance for the goods by the Supplier if this has been previously authorised by us in writing.

IV. Prices, invoice, payments

1. The prices stated in our orders are fixed prices plus the current valid VAT, valid up until the ultimate delivery.
2. Invoices are to be forwarded in duplicate by way of stating all our order details. They may not be included with the goods.
3. We shall effect payment for the ordered delivery / performance within 14 days less a 3% trade discount or without reductions within 60 days. If the goods arrive after the invoice, the payment period shall commence on the day on which the goods are received. All payments shall be effected by way of tacit reservation of all rights, in particular in the case of hidden defects that may apply and which are only identified upon processing or commissioning the goods.
4. Discount charges shall be borne by us in the case of payment by bill of exchange.
5. Payment may also be effected by way of setting of claims to which we are entitled against the Supplier or companies affiliated with the Supplier.

V. Warranty

1. In the case of a mutual trading transaction, the inspection periods and periods for providing notification of defects in accordance with Sections 377 and 378 HGB are one month. The period shall commence from the day that follows delivery. In the case of hidden defects, this period shall be calculated from the day following the discovery of such defects.

2. In the absence of written agreements to the contrary, the period of limitations for the warranty is 24 months from acceptance or assumption of the full deliveries / performance by the end customer.
3. During the period of limitations we may, at our discretion, assert the statutory warranty claims or request subsequent improvement regarding defects, which include the lack of warranted characteristics.
4. In urgent cases or if the Supplier does not honour its warranty obligations without delay, we shall be entitled, at the Supplier's cost, to replace or improve faulty parts and eliminate sustained damage.
5. In the case of replacement deliveries or rectification of defects, the respective, original, valid warranty period for replaced or repaired parts shall start afresh. Our claims for subsequent improvement or statutory warranty shall fall under the statute of limitations within 2 years starting from receipt of the written notification of defects.
6. By way of accepting or approving drawings, documents and technical descriptions submitted by the Supplier, we do not waive our warranty claims.

VI. Liability

1. The Supplier undertakes to provide compensation for damage that occurs directly or indirectly as a result of faulty delivery following the violation of official safety requirements or for any other legal reasons attributable to the Supplier.
2. If third-parties assert claims against us as a result of such damage, the Supplier shall, insofar, in dealings with us assume responsibility as if it were directly liable. The principles of Section 254 BGB² shall apply accordingly to settling cases of damage between us and the Supplier. The Supplier shall also be required to provide compensation for damage and expenses in accordance with Sections 683 and 679 BGB, that occur for example as a result of a call-back campaign instituted by us or series damage. We shall inform the Supplier of the content and scope of the call-back measures that are to be instituted.
3. The Supplier shall render us exempt from third-party claims that may apply as part of product damage.
4. On request the Supplier shall furnish us with proof of its third-party liability insurance policy.

VII. Conformity declaration

1. The products delivered by the Supplier must comply with the valid Directives of the European Union. The Supplier shall be liable in accordance with the statutory provisions for violations as a result of lacking or faulty conformity declarations.
2. This does not affect a possible conventional penalty in the event of delayed delivery. In the event of objections involving individual bought-in delivery parts, in particular in the case of claims for damages by customers lodged against us, these shall be passed on the Supplier irrespective of other rights in the event of an unjustified statement of conformity regarding the bought-in parts.

² German Civil Code

VII. Models, samples, tools, drawings, print layouts, software and data carriers

1. Ownership of models, samples, tools, drawings, printed layouts, software and data carriers that are created in conjunction with our order shall pass to us without consideration given to whether or not the costs are separate or are included in the purchase price of the goods. They shall remain surrendered to the Supplier on a loan basis for processing our orders. They are free of charge for us, and are to be stored appropriately and insured adequately against any kind of damage or loss. Knowledge of these may neither be stated to third-parties nor may they be forwarded to third-parties. We may request that they be surrendered at any time. A right of retention is excluded, irrespective for whichever legal reason, in respect of our claim to have documents surrendered.
2. If models, samples, tools, drawings, printed layouts, software and data carriers and other documents are the Supplier's property as a result of a separate, contractual, agreement, we shall be entitled, in the case of payment of the cost price for such parts – where applicable by way of consideration given to the applicable wear-and-tear/amortisation – to acquire and further dispose of these.
3. In the event of fire, tools and models are to be stored for the sake of replacement in a building other than the appertaining plans.

IX. Reservation of title

All deliveries to us must be free of extended reservation of title. If the confirmation of order or the invoice nevertheless includes such reservations, a valid contract of purchase shall only be brought about if the Supplier has rectified the existing third-party rights to the ordered items. Unconditional acceptance of our order by the Supplier shall be deemed as the Supplier's assurance that the goods to be supplied are free of third-party rights, and in particular that no reservation of title applies. Materials or other documents and information that we provide for the Supplier's orders shall, in any case, remain our property and are to be labelled as such.

X. Patent violation, industrial proprietary right

1. The Supplier guarantees that we shall not violate existing third-party industrial proprietary rights by way of using the goods delivered by the Supplier.
2. The Supplier expressly undertakes to render us exempt in the event of the violation of a third-party industrial proprietary right, and to provide us with compensation for any damage sustained as a result.
3. We also reserve the right in such cases to request that
 - a) the contract be rescinded against repayment in full of effected payments, or
 - b) the parts that are prohibited from use regarding the industrial proprietary right to which the third-party is entitled be replaced by other parts, or
 - c) the owner of the industrial proprietary right be compensated by way of payment, by the Supplier, of the licensing fee requested by such an owner.

XI. Secrecy

1. The Supplier undertakes to consider our orders and the resulting work as business secrets, and to treat them in confidence.
2. The Supplier may only refer to its business association with us if we expressly agree with such action in writing. This provision also applies following the end of the contractual relationship. However, it

shall be deemed rescinded if the knowledge contained in the documents, calculations and other papers and information have been placed in the public domain.

XII. Bankruptcy

We may withdraw from the contract by way of providing written notification if an application is filed or published in respect of bankruptcy or composition proceedings regarding the Supplier's assets, or if the Supplier discontinues payments or its company is goes into receivership voluntarily or by way of a ruling without us being liable for any kind of damage whatsoever. We shall be entitled to exercise the stated right if the contract has been honoured in full or in part by one of the contracting parties as long as Supplier's warranty obligation applies or the Supplier's company passes to third-parties.

XIII. Safety regulations, quality

1. The Supplier undertakes to comply with all guidelines issued by the legislator, the supervisory authorities, the trade associations and VDE³ in respect of implementation, accident prevention and environmental protection.
2. The Supplier further undertakes to adhere to the acknowledged engineering standards, safety requirements and the agreed technical data in respect of its deliveries / performance.

XIV. Assignment

The assignment of claims against us is excluded. This does not affect Section 354a HGB.

XV. Place of performance, applicable law and place of jurisdiction

1. Either the place of receipt specified by us or our registered office is, at our discretion, deemed the place of performance. The Supplier shall bear the risk up to the place of performance or up to the place of receipt specified by us and the acceptance agreed upon there.
2. Insofar as the Supplier is a general merchant, our registered office is deemed the place of jurisdiction. However, we are also entitled to bring an action against the Supplier at the court with jurisdiction for its place of residence.
3. Solely the law of the Federal Republic of Germany is applicable to the contractual relations by way of exclusion of uniform sales laws. The German version of the text is authoritative.
4. The Supplier agrees, and states that it has been informed, that all data and personal data that apply to the Supplier within the meaning of the German Federal Data Protection Act shall be stored and further processed as part of our electronic data processing.

XVI. Final provision

If individual provisions of these conditions are invalid, this shall not affect the validity of the other provisions.

KW-KRANWERKE AG, MANNHEIM

Status: Nov. 2004.

³ German Association for Electrical, Electronic & Information Technologies