

Terms and Conditions of Purchase

As of: May 2018

1. Scope

(1) These Terms and Conditions of Purchase apply to all contracts and purchase orders, even if in the future we do not expressly reference these. Any of the Supplier's general terms and conditions which deviate from these Terms and Conditions of Purchase are only valid, if we expressly confirm their validity to the Supplier, even if such terms and conditions are appended to an order confirmation by the Supplier. Deviations, additions and/or side-agreements to our Terms and Conditions of Purchase and/or any contractual agreements are only binding if set out in written form. By accepting the order, the Supplier agrees to our Terms and Conditions of Purchase, while at the same time excluding his own terms and conditions of sales and delivery.

(2) We are not bound by obvious errors such as printing, typing, spelling or similar errors.

2. Purchase Order, Order Documents

(1) Legally binding purchase orders shall only be deemed validly concluded if they have been issued in writing or signed by our authorized agents or representatives. For exceptional cases, individual arrangements are required.

(2) Samples, drawings, models and other documents which we provide to the Supplier remain our property. After performance of the contract, they must be returned to us by the Supplier, without being asked, at his own costs. The Supplier is liable for any loss or misuse. He is obliged to use any documents or objects provided by us exclusively for our purchase orders and treat their form and content strictly confidential. He may not pass them on to any third party without our express written consent.

(3) Should the Supplier create designs, plans or other documents which are fully paid by us or are related to the order, these become our property without further compensation, unless otherwise agreed. In addition to this, the Supplier grants us a comprehensive and exclusive right of usage for any such matter.

(4) We are no longer bound to the purchase order, if we do not receive an order confirmation by the Supplier within 10 days of sending it.

3. Prices

(1) Any deviation from the prices listed in our order must be communicated to us immediately. Should we not receive any such communication, the price specified by us is deemed to be agreed upon.

(2) If and insofar the Supplier generally lowers his prices for the goods or services ordered by us, these price reductions also apply to all goods which remain to be delivered or services which remain to be performed based upon a previously concluded contract.

(3) Unless expressly agreed otherwise, the agreed price includes packaging and shipping costs to our business address in Cologne or to any other shipping destination specified by us, as well as assembly costs and all public charges. The Supplier is obligated to pick up and to dispose of transport and other packaging at his own cost upon our request.

(4) The statutory value added tax is included in the agreed price, unless itemized separately.

4. Delivery Dates

(1) Agreed delivery dates are binding. Should the Supplier not adhere to these dates, he will be in default, in the case of fixed transactions without dunning or further deadlines. The delivery dates specified by us refer to the delivery to the specified shipping destination.

(2) As soon as the Supplier must assume that delivery on the date specified by us will not be possible, he is obligated to inform us of this matter, providing the reasons as well as the expected delay in delivery. For transactions other than fixed transactions, we may grant a grace period and, in the case of non-compliance with this extended deadline, either demand damages or withdraw from the contract.

(3) We are entitled to demand changes to the delivery time and the place of delivery after consultation with the Supplier. The consequences of such changes must be determined by mutual agreement, providing appropriate consideration for the Supplier's interests. If no agreements were made regarding time and place of delivery, we have the right to determine these. In exercising this right, we will give adequate consideration to the Suppliers' interests.

5. Retention of Title

The Supplier guarantees that the goods delivered and/or services performed are free of any third-party rights, be it property rights or other. Any agreement made by the Supplier with third parties regarding the retention of title or an extended retention of title will not be recognized by us.

6. Force Majeure and Withdrawal

(1) War, civil war, as well as export or trade restrictions due to a change in political relationships, which make it impossible or economically unreasonable for us to complete the contract, are regarded as force majeure and, for the duration of their existence, free us from our obligation to receive or accept goods. The contract parties undertake to adjust their obligations to the changed contractual conditions in good faith within the bounds of economic possibility and as far as is economically reasonable. If the force majeure conditions persist for more than an insignificant duration, i.e. during at least 4 weeks without interruptions, we are entitled to withdraw from the contract, provided that the circumstances entail a substantial reduction of our demand. In particular, this is the case, if our demand is reduced by more than 30 %. We are furthermore entitled to reduce agreed monthly partial quantities or to extend the delivery period instead of exercising our right of withdrawal. [Comment. O&P: claims for damages brought forward against you by the Suppliers are]

(2) Force majeure conditions also include strikes, lockouts, interruptions of operation, operational restrictions and similar events which make it impossible or economically unreasonable for us to complete the contract.

7. Risk of Loss

(1) Transport or shipping shall take place at the expense and risk of the Supplier. Risk shall pass to us upon delivery of the shipment to the agreed place of performance. Until the time of shipment, the goods are to be held for us free of charge and at the risk of the Supplier.

(2) The Supplier shall also bear the risk for materials which have been delivered to him by us for treatment, processing or repair. Should we make parts or materials available to the Supplier, we reserve the right of ownership for these. In the event the provided materials are processed or altered, this processing or alteration is done for us, and we are considered the manufacturer within the meaning of § 950 subsection 1 BGB. The same applies if our reserved goods are inseparably mixed with other items not belonging to us. The Supplier holds goods, of which we are the sole owners, on our behalf.

8. Shipping and Order Processing

The Supplier shall send us a dispatch notification immediately upon dispatch of each individual shipment. All deliveries shall include a delivery note. The invoice shall be sent to us in duplicate separately after delivery, i.e. it is not to be enclosed in the shipment.

9. Warranty

(1) In accordance with the applicable statutory rules, the Supplier fully and unconditionally warrants the goods delivered. The Supplier's warranty regarding the goods delivered or the services performed, as well as his liability for any consequential damage is determined exclusively in accordance with the provisions of the law. Any limitation or exclusion of liability regarding this matter is invalid. In particular, the Supplier warrants

- the proper functioning of the delivered items
- the adherence to the specified data and characteristics
- proper workshop design and material quality
- the adherence to applicable accident prevention regulations and workplace guidelines
- the adherence to generally accepted standards of good practice and the state of the art
- that the delivered goods are free from third-party rights (including property rights).

(2) We can request that the deliveries or services be accompanied by audit reports or an adequate number of free samples for comparative measurements.

(3) In the event of material defects, we have the right to either supplementary performance or a reduction in price. Should the material defect not be insignificant, we are furthermore entitled to withdraw from the contract with the Supplier. Furthermore, we are entitled to compensation in accordance with statutory provisions; this does not apply if the Supplier is not responsible for the defect.

(4) If we demand compensation, our claim for performance only expires upon actual payment of such compensation. The Supplier bears all warranty costs.

(5) The payment of the purchase price by us shall not constitute a waiver of our right to give notice of defects and to object to any incorrect delivery.

(6) To the extent of his contribution to causation and fault and in as far as the claims are based upon defects of the delivered goods, the Supplier is obligated to hold us harmless regarding all claims for damages and warranty brought forward by our customers; this also applies to consequential damages and expenses.

(7) The warranty period extends for 2 years after delivery.

10. Property Rights

The Supplier guarantees that no third-party rights are violated in connection with his delivery/performance. If third parties should bring forward claims against us based upon an infringement of their rights resulting from the goods delivered or services performed by the Supplier, the Supplier is obligated to hold us harmless from these claims upon our first written request and to indemnify us of all expenses arising from or in relation to our defence against any such claims.

11. Notice Period

We are required to inspect goods delivered or services performed within 14 days of receipt. Notices regarding obvious defects will be sent within a period of 7 days. Claims for hidden defects can be asserted until the end of the warranty period.

12. Payment

(1) A cash discount of 3 % will be applied to invoices paid within 30 days of delivery. Otherwise, invoices are paid net 60 days after receipt of the invoice. We can choose to pay in cash, by crossed check or by bill of exchange.

(2) We are entitled to offset our Suppliers' purchase price receivables with due counterclaims. We are furthermore entitled to claim a right of retention. This also applies to receivables of other group companies against the Supplier.

(3) The Supplier is not allowed to assign his claims against us without our express consent.

13. Ineffectiveness of Individual Provisions

Should individual provisions of these Terms and Conditions of Purchase be ineffective, this does not affect the validity of the other provisions.

14. Applicable Law and Court of Jurisdiction

(1) Orders and deliveries are governed exclusively by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods from 11 April 1980 shall not apply. Unless otherwise agreed, the place of performance for all obligations arising from the contractual relationship is Cologne.

(2) It is agreed that for all disputes arising from or in connection with contracts with Suppliers located in Germany or in other member states of the European Union, the exclusive place of jurisdiction is Cologne. This applies in particular to disputes regarding criminal or other non-contractual claims.

Metalloxyd GmbH, Köln