

Terms and Conditions of Purchase VAG

§ 1 Scope of Application

1. These Conditions of Purchase shall apply to all orders of PURCHASER and its affiliated companies (hereinafter referred to as "PURCHASER") exclusively; PURCHASER does not accept any general terms and conditions of the Supplier conflicting with or deviating from these Conditions of Purchase unless PURCHASER has accepted such conditions individually in writing. They shall not be deemed accepted even if PURCHASER has not expressly objected to them again on receipt of the delivery, if the delivery has been accepted and/or the products have been paid for.
2. If the Supplier engages sub-suppliers, these must be approved beforehand by PURCHASER, and the approval may not be unreasonably withheld. The Supplier shall inform PURCHASER in advance if a sub-supplier is intended to perform essential parts of PURCHASER's order. The Supplier shall oblige his sub-suppliers to confirm their explicit consent with and adhere to these conditions or to conditions which, in minimum, comply with these conditions in all material respects. The Supplier shall indemnify PURCHASER for any damage caused by sub-suppliers.
3. These terms and conditions shall apply to work performance and services accordingly. Where products and services/works have been supplied, acceptance of the services and/or works shall only apply to work performance and acceptance of the service only to the respective services, but neither of such acceptances shall constitute an acceptance of the products. Any further rights to which PURCHASER is entitled in accordance with applicable legal provisions or other agreements shall remain unaffected.

§ 2 Order placement and technical documents

1. Orders must be made in writing. The Supplier is obliged to confirm or reject orders of PURCHASER within three (3) working days in writing. Any orders which are not expressly confirmed or rejected shall be considered accepted.
2. If drawings and electronic models are made available, in case of doubt the data on the drawing shall always prevail.

§ 3 Delivery dates, transfer of risk and framework agreements

1. The delivery or performance date specified in the purchase order is a fixed date. It represents the date the products are to be delivered to the destination. A different delivery date shall be binding only with written consent of PURCHASER.
2. PURCHASER is not obliged to accept partial deliveries and/or advance deliveries or advance performances, unless only insignificant parts of a total delivery are missing.
3. The Supplier is obliged to inform PURCHASER immediately in writing, stating the reasons and the anticipated delay, if circumstances arise or become apparent to him that indicate that the agreed delivery or performance date cannot be met.
4. In case of a delay in delivery PURCHASER shall be entitled, without prejudice to the right to claim further damages, to demand liquidated damages of 0.5% of the delayed portion of the delivery per complete week of delay, but not more than 5% of the total delivery value. PURCHASER undertakes to notify the SUPPLIER of his reservation of liquidated damages at the latest within thirty (30) working days counting from the receipt of the delayed delivery. Further claims and rights shall not thereby be excluded or limited.
5. Place of performance shall be the premises set forth as delivery address in PURCHASER's order. Unless otherwise agreed, DDP "PURCHASER's premises" in accordance with the ICC – INCOTERMS® 2010 shall apply. The Supplier shall comply with the specifications of PURCHASER for the dispatch of the products, in particular the transportation, packaging and delivery regulations in their currently applicable versions.

§ 4 Payment and payment conditions

1. The price specified in the order shall be binding. It includes all services and ancillary services, unless they are paid for separately, which are necessary for completion of the services to be provided, such as costs of tools, freight, customs, packaging material and its collection, transport to the place of use specified by PURCHASER as well as all expenses for performing the erection and assembly work on a turnkey basis. Any deviations such as particular difficulties or delivery/provision of services on Sundays and public holidays which entail a higher payment must be agreed separately before order acceptance.
2. Invoices must contain the order data (contract/order number).

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3. Payment shall be made by PURCHASER within 30 days following the end of the calendar month with 3% discount or 90 days net after a correct and valid invoice is received. The payment period starts on receipt of the invoice at the earliest, but not before receipt of the products or before assembly or erection.
4. The Supplier shall not be entitled to assign claims or transfer the rights to collect claims against PURCHASER without prior written consent of PURCHASER.
5. Off-setting is permitted only when Seller's claims against PURCHASER are undisputed or if they have been finally adjudicated by a competent court of law.
6. Payment does not constitute an acknowledgement that the corresponding delivery or services were provided in accordance with this Agreement.

§ 5 Material defects

1. Incoming products shall be inspected by PURCHASER for obvious defects, transport damage, integrity and identity of the products only. PURCHASER shall give notice of such defects within a reasonable period of time following inspection. PURCHASER reserves the right to carry out a more detailed incoming products inspection. Furthermore, PURCHASER shall give notice of defects as soon as they are detected under the conditions of the ordinary course of business. To this extent, the Supplier waives the objection of late inspection and notification of defects.
2. The Supplier is obliged to carry out quality inspections during production and to perform an outgoing products inspection, and accordingly has to check all deliveries comprehensively for their quality.
3. The Supplier shall assume warranty for defects for a period of 36 months after delivery of the products, unless a different warranty period is agreed by individual agreements or other mandatory statutory deadlines apply. If the delivery item is intended for installation in a building, or if it is incorporated in a building as an integral part, and provided it has caused the defectiveness of a building, a period of five (5) years shall apply. PURCHASER shall be entitled to the statutory claims for defects without restrictions. In any case, PURCHASER shall be entitled to demand removal of defects or delivery of a new item from the Supplier at the discretion of PURCHASER. The right to claim damages, in particular to demand compensation in place of performance, and the right to cancel an order, is expressly reserved.
4. In addition to any other warranties, Supplier warrants that all Items shall be new, manufactured and supplied in accordance with applicable law, be free of any defects in title, and free from any liens, claims or other encumbrances. The Items shall be of merchantable quality, free from defects in materials, workmanship and design, shall be suitable for the purpose intended, and shall conform to the requirements of the respective order, including but not limited to, the specifications, drawings, samples or other descriptions upon which the order is based. Inspection, test, acceptance or use of the Items shall not affect Supplier's obligations hereunder. Supplier's liability shall include, at PURCHASER's election and without expense to PURCHASER: repair, replacement, or refund of the price of all nonconforming Items. These remedies shall be in addition to all other remedies available to PURCHASER at law or in equity. Except for items manufactured to PURCHASER's specification and plans, Supplier shall indemnify, defend, and hold harmless PURCHASER, and its customers, from any suit, claim, liability, damage, injury, cost or expense (including attorney's fees) arising out of any actual or claimed infringement of patent, trademark, copyright or other intellectual property right relating to Items or use thereof. These warranties shall apply to PURCHASER, its successors, assigns, customers, and the users of the Items. Warranty limitations or exclusions, if any, are not accepted.
5. To avert an imminent risk of serious damage, PURCHASER may, at the expense of the Supplier and without any notice or setting a deadline for the Supplier remedy the defect itself, have the defect remedied or obtain replacement, if due to the special urgency it is unuseful to inform the Supplier of the defect and the imminent damage and to give the Supplier the opportunity to remedy the defect.
6. If PURCHASER remedies the defect itself the costs thereof shall be charged to the Supplier. In addition to a lump sum, the current hourly rates and, if applicable, necessary material will be charged without overhead surcharges.
7. If an epidemic failure occurs during the warranty period, the Supplier shall bear the costs of a replacement action that the PURCHASER may carry out in its due discretion. An epidemic failure shall be deemed to exist if the same defect occurs in at least 33% of one type of batch of delivered products, unless the Supplier is not responsible for the defect. This shall not apply to spare parts and wearing parts.

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§ 6 Liability, product liability, property rights

1. Supplier will indemnify, defend and hold harmless PURCHASER from any suit, claim, liability, damage, injury, cost or expense arising out of, or caused by, this order or Supplier's performance hereunder or any defects in the Items. Supplier's limitations or exclusions of liability shall not apply.
2. If a claim is asserted against PURCHASER by a third party due to a damage of the products, the Supplier is obliged to indemnify PURCHASER against these claims for compensation, insofar as PURCHASER bears legal liability for these damages in relation to third parties. Within the framework of his liability for damages in the sense of the previous sentence, the Supplier shall also be obliged to reimburse any expenses arising from or in connection with a product recall carried out by PURCHASER. The Supplier shall be advised of the content and scope of the recall measures to be carried out and he shall be given the opportunity to comment. Other statutory rights shall remain unaffected. The Supplier undertakes, at least for the duration of the limitation period for any claims from product liability as well as any warranty claims, to maintain a product liability insurance with an adequate coverage amount of at least EUR 5 million for each case of personal injury/property damage, and to provide evidence of such insurance to PURCHASER on request; any further claims for damages of PURCHASER shall remain unaffected.
3. The Supplier shall indemnify PURCHASER against any claims of third parties for infringement of property rights such as patents, copyrights or trademarks rights, unless the damage was caused through the fault of the Supplier or his assistants or vicarious agents. The Contracting Parties shall notify each other immediately if any claims are asserted against them due to the infringement of property rights.
4. Any tools, patterns, samples, models, drawings, specifications and material provided by PURCHASER, shall remain property of PURCHASER and shall not be made available to any third party nor used for any other purpose than those contractually agreed except with prior consent of PURCHASER.

§ 7 Industrial safety/environmental protection/Audits

1. All deliveries must comply with the laws, regulations and other provisions applicable to PURCHASER. The Supplier is obliged to execute the order in such a way that the regulations on environmental protection, accident prevention and industrial safety (including the regulations of the trade associations) as well as the recognised regulations in particular relating to safety and occupational medicine are observed.
2. The Supplier undertakes to provide PURCHASER free of charge with samples of the materials/means used by him for the purpose of inspection on request of PURCHASER. The Supplier shall bear the costs of such inspection if it turns out that the materials/means used by him do not comply with the contractual provisions. PURCHASER reserves the right to claim compensation for damages.
3. PURCHASER reserves the right to access all Supplier's test and manufacturing facilities together with a PURCHASER customer and, if deemed useful, a third party inspector, for audit and final inspection reasons ("Audit"). Such Audit will be announced by PURCHASER at least 24 hours in advance.

§ 8 Hazardous and declarable substances

If the products to be delivered are hazardous substances as defined by the applicable Chemicals Act or other legislation, the statutory safety data sheets in accordance with Directive 91/155/EEC must be added to the consignment on principle. Immediately after a revision of this data the Supplier shall send PURCHASER the revised version without any need for PURCHASER to request it.

§ 9 Confidentiality

1. The Parties undertake for an unlimited period of time to observe secrecy regarding any information classified as confidential or information that is recognisable as business or company secrets under other circumstances, and as far as not necessary for the achievement of the purpose of the supply relationship, neither to record the information nor to divulge it or utilise it in any other way. The confidentiality obligation shall not apply if the business or company secrets become public knowledge through no fault of the other party. The Parties shall ensure through appropriate contractual agreements with the employees and agents acting on their behalf that such persons refrain from any personal use, dissemination or unauthorised recording of such business and company secrets for an indefinite period of time.
2. The Supplier may only refer to his business connection with PURCHASER in his advertising if PURCHASER has previously agreed to such publication in writing.

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§ 10 Manufacturing equipment (models, samples, tools, etc.)

1. As far as PURCHASER paid for manufacturing equipment in whole or in part, the Supplier shall transfer the ownership thereof to PURCHASER. The transfer shall be replaced by a loan arrangement which is hereby agreed and which entitles the Supplier to possession the manufacturing equipment until revoked.
2. The costs of maintenance, repair, partial renewal and insurance of the manufacturing equipment shall be borne by the Supplier.
3. The manufacturing equipment may only be modified after prior written consent of PURCHASER: It must be kept separately and the ownership of PURCHASER must be clearly marked on the production equipment itself and in the Supplier's business records. It may not be used for other purposes of Supplier or be made accessible to third parties. The Supplier shall insure the manufacturing equipment at his own expense at the original price against fire, mains water, storm, hail, theft and vandalism.
4. Unless otherwise agreed and unless the Supplier still has current orders to complete, PURCHASER may reclaim the manufacturing equipment any time. The Supplier has no right of retention.

§ 11 Spare part supply

1. The Supplier undertakes to supply spare parts for a period of at least 10 years after the last shipment.
2. If individual components are discontinued by the Supplier or one of his sub-suppliers, PURCHASER must be informed of this without delay. PURCHASER shall then grant the right to a last order (last-time buying) with 3 months lead time.

§12 Integrity clause

1. PURCHASER and the Supplier agree to take all necessary measures to prevent corruption. The Supplier shall ensure in particular through organisational measures and instruction of his staff, that in the business relationship with PURCHASER neither he nor his employees and sub-suppliers
 - a. do commit any offences,
 - b. do demand or accept any personal gifts or other benefits that are intended to influence the decision of an employee or officer,
 - c. do offer PURCHASER employees any gifts or other benefits that are intended to influence the decision of such employees, and
 - d. do incite third parties to commit the above-mentioned acts or to assist them in doing so.
2. In the above-mentioned cases, PURCHASER shall be entitled to extraordinary termination of any contract and/or order without notice and to exclude the Supplier from the future award of contracts.
3. The Supplier undertakes to comply with the relevant legal provisions for dealing with employees, environmental protection and industrial safety, and to work towards reducing adverse effects of its activities on human health and the environment. Furthermore, the Supplier shall comply with the principles of the UN Global Compact Initiative. These mainly relate to the protection of international human rights, the right to collective bargaining, elimination of forced labour and child labour, elimination of discrimination in recruitment and employment, the responsibility for the environment and the prevention of corruption. Further information on the Global Compact Initiative of the UN is available at www.unglobalcompact.org.
4. The Supplier shall take appropriate measures to ensure that his sub-suppliers also comply with the provisions of this Section 12.
5. In the case of infringement of the provisions of this Section 12 PURCHASER shall be entitled, without prejudice to any existing rights to further claims for damages, to claim a contractual penalty of a lump sum of 5% of the contract value.

§13 Documentation and export control

1. The Supplier shall provide PURCHASER with all documents that are part of the delivery (where relevant, manuals, maintenance schedules, drawings, dimension and data sheet, spare parts lists, etc.) in electronic form at least in German and English.
2. The Supplier shall inform PURCHASER of any duty to obtain a permit for (re)exports of his products in accordance with the German, European and U.S. export and customs regulations as well as the export and customs regulations of the country of origin of his products in his business documents. For this the Supplier shall, at least in his quotations, order confirmations and invoices provide the following information together with the relevant items:

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- a. the export list number according to Appendix AL of the German foreign trade regulations or comparable list items of applicable export lists
 - b. for U.S. products the ECCN (Export Control Classification Number) according to the US Export Administration Regulations (EAR)
 - c. the trade origin of his products and parts of his products including technology and software
 - d. whether the products were transported through the USA, made and stored in the USA or manufactured using U.S. technology
 - e. the statistical commodity code (HS code) of his products as well as a contact person in his company for the clarification of any queries by us.
3. At the request of PURCHASER the Supplier shall inform PURCHASER about all further foreign trade data of the contractual products and their components and inform PURCHASER immediately (before delivery of products concerned by this) about all changes to the aforementioned data in writing.

§ 14 Conflict Minerals

If the product being sold hereunder contains "Conflict Minerals", as that term is defined by the Securities and Exchange Commission in 17 CFR PARTS 240 and 249b (the "Regulations"), or has been manufactured using such Conflict Minerals, the Supplier agrees to source the materials and components used in the products sold hereunder or used to fabricate the products only from: (i) smelters that have been certified as conflict free compliant by the Electronics Industry Citizenship Coalition and/or the Global e-Sustainability Initiative; or, (ii) conflict-free areas (i.e. countries that are not listed in the conflict zone as set forth in the Regulations, either now or as they may be amended). Alternatively, the sourcing has been expressly pre-approved by PURCHASER in writing.

§ 15 Supplier Code of Conduct

PURCHASER is committed to fostering ethical, safe and respectful business practices throughout its operations, including its supply chain. In that regard, we expect our suppliers to provide employees with safe working conditions, to treat employees fairly and with dignity, and to be respectful of the environment with regard to manufacturing processes.

§ 16 Place of performance, place of jurisdiction and applicable law, partial invalidity

1. Any changes or amendments to a contract between Supplier and PURCHASER shall only be valid if made in writing. This shall also apply to any deviation from these Terms and Conditions of Purchase and from this written form clause.
2. The Place of performance for all obligations and rights under this contractual relationship, unless specified otherwise in the order, shall be the business location of PURCHASER.
3. The place of jurisdiction for all litigation resulting from the contractual relationship as well as its creation and its effectiveness is determined by the business location of PURCHASER. However, PURCHASER shall also be entitled to sue the Supplier at the court of his place of business.
4. All legal relationships between the Parties shall be ruled exclusively by the law of the country in which the PURCHASER has its principle place of business.
5. Only Seller shall be entitled to cede, assign and transfer any or all of its rights and obligations in terms of this Contract to any of its affiliates. If individual provisions of this Contract or the delivery transaction should be or become invalid or impracticable in whole or in part, then the validity of the remaining provisions or the remaining parts of such provisions is unaffected thereby. The invalid or impracticable clause(s) shall be replaced by provisions the legal and commercial effects of which are as close as possible to what the consequences of the invalid and impracticable clause(s) had been had they been valid and practicable.