

General Terms and Conditions of Purchase

§ 1 General, scope of application

1. These General Terms and Conditions of Purchase apply to all business relations between AWS Schäfer Technologie GmbH (hereinafter referred to as "AWS") and its Suppliers (hereinafter referred to as "Supplier"). The General Terms and Conditions of Purchase shall only apply if the Supplier is an entrepreneur, a legal entity under public law or a special fund under public law.
2. The General Terms and Conditions of Purchase apply in particular to contracts for the purchase and/or delivery of movable goods (hereinafter also referred to as "Goods"), irrespective of whether the Supplier manufactures the Goods itself or purchases them from Suppliers (§§ 433, 651 BGB). The General Terms and Conditions of Purchase shall also apply in their respective version as a framework agreement for future contracts for the purchase and/or delivery of movable goods with the same Supplier, without AWS having to refer to them again in each individual case.
3. The General Terms and Conditions of Purchase of AWS shall apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Supplier shall not become part of the supply and business relationship and thus not part of any contract with AWS. The General Terms and Conditions of Purchase shall also apply if AWS accepts the goods without reservation in the knowledge of deviating, conflicting or supplementary general terms and conditions of the Supplier. Silence on conflicting general terms and conditions shall not be deemed as acceptance.
4. Individual agreements made with the Supplier in individual cases (including collateral agreements, supplements and amendments) shall in any case take precedence over these General Terms and Conditions of Purchase. The content of such agreements shall be governed by a written contract or written confirmation by AWS.
5. Legally relevant declarations and notifications to be made by the Supplier to AWS after conclusion of the contract (e.g. setting of deadlines, reminders, withdrawal) must always be made in writing to be effective.
6. References to the validity of legal regulations only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore apply, unless they are directly amended or expressly excluded in these General Terms and Conditions of Purchase.

§ 2 Conclusion of contract

1. The contract shall be concluded by AWS placing an order and acceptance by the Supplier. A purchase contract shall only be concluded upon acceptance of the order by the Supplier. Changes or additions to the order by the Supplier shall be considered as rejection of the order, unless the changed acceptance is confirmed by AWS.
2. Order and acceptance must be declared in writing. Transmission by fax or e-mail shall also be sufficient for the written form. Any oral or telephone agreements require written confirmation by AWS to be valid.
3. Orders from AWS must be accepted within a period of 14 calendar days from receipt by the Supplier. After this period AWS is entitled to cancel the order. All services provided by the Supplier in connection with the conclusion of the contract shall be free of charge for AWS.
4. AWS may also demand changes to the subject matter of the contract after conclusion of the contract, provided that the changes are within the scope of what is reasonable for the Supplier. In doing so, the effects on both parties concluding the contract, in particular with regard to additional and reduced costs and delivery dates, shall be appropriately taken into account.
5. All catalogues, technical documentation (e.g. drawings, plans, calculations, references to DIN standards), other product descriptions or documents - also in electronic form - provided by AWS to the Supplier shall remain the property of AWS. These documents may not be made available to third parties without the prior written consent of AWS. Upon completion of all deliveries related to the documents, they shall be returned to AWS.

§ 3 Delivery period and delay in delivery

1. The delivery date shall be specified by AWS when the order is placed or agreed individually. The stated or agreed delivery dates are binding and shall be observed by the Supplier. The decisive factor for compliance with the delivery date shall be the receipt of the goods at the location specified by AWS in the order.
2. The Supplier is obliged to inform AWS immediately about any imminent non-compliance with a delivery date, its causes and the expected duration of the delay. Claims due to delayed delivery shall remain unaffected.
3. If delivery dates are not achieved, the Supplier shall be in default of delivery without any special notice of default being required. If a delay in delivery occurs, the Supplier shall be obliged to notify AWS in writing about the default of delivery that has occurred. In addition, in case of non-compliance with a delivery date, the statutory provisions shall apply. In particular, AWS shall be entitled to withdraw from the contract and to claim damages instead of performance after unsuccessful expiration of a grace period for delivery. Unconditional acceptance and/or payment of the delayed delivery does not imply a waiver of compensation claims to which AWS is entitled due to the delayed delivery.
4. In case of early delivery, AWS is entitled to return the goods to the Supplier. The Supplier shall bear the costs of the return shipment. If AWS refrains from returning the goods, AWS shall store the goods until the delivery date at the Supplier's expense and risk.

5. Force majeure, operational disruptions through no fault of AWS, civil unrest, official measures and other unavoidable events shall release AWS from the obligation to take delivery in good time for the duration of their existence. During such events as well as within two weeks after their end, AWS shall be entitled - without prejudice to any other rights - to withdraw from the contract in whole or in part, provided that such events are not of insignificant duration and AWS' demand has decreased considerably due to the need to procure from elsewhere. In such cases AWS shall not be obliged to reimburse the Supplier for any costs incurred. The above provisions shall also apply in case of industrial disputes.

§ 4 Delivery, packaging, transfer of risk

1. Deliveries shall be notified to AWS by means of a dispatch notice in due time before delivery, but at the latest at the beginning of the delivery ex works electronically and by e-mail. The notice of dispatch must contain at least information about the type, quantity and weight of the goods. Dispatch notes, bills of lading, invoices and all other correspondence must contain the order number of AWS. All deliveries shall be accompanied by a delivery note in duplicate, which must contain all data necessary for processing the delivery.
2. Packaging materials shall only be used to the extent necessary and shall be taken back by the Supplier free of charge in accordance with the Packaging Regulations. The place of performance for the obligation to take back the goods is the place where the goods are handed over.
3. Delivery shall be made to AWS's works, unless another place of performance has been agreed between AWS and the Supplier ("place of delivery"). The delivery must cover the entire scope of the order. Partial deliveries are generally not permitted, unless AWS has expressly agreed to partial deliveries or these are reasonable for AWS.
4. The risk of accidental loss and accidental deterioration of the goods shall pass to the customer upon proper delivery of the goods to the place of delivery or upon delivery of the goods to the persons commissioned by AWS. Prior to handover, the Supplier shall bear the sole risk of accidental loss and accidental deterioration of the goods. Employees of AWS shall act as vicarious agents of the Supplier upon delivery of the goods.

§ 5 Prices, invoices, terms of payment

1. Unless otherwise agreed, the Supplier's prices shall be carriage free to the respective place of delivery of AWS, including all transport, ancillary and packaging costs. Value added tax is not included in this.
2. Due invoices are to be issued in EUROS. All invoices must be sent to AWS in duplicate after delivery, quoting the invoice number and other allocation characteristics and enclosing all associated documents and data. Invoices shall be sent to the address indicated in the order. The invoices may not be enclosed with the delivery of the goods.
3. Invoices shall be paid, at AWS' discretion, either within 14 days with a 3% discount or within the period specified in the contract, or, if the contract does not provide for a discount, within 30 days net from the due date of the payment claim and receipt of the invoice. If the invoice is received before the goods, the payment periods shall begin with the receipt of the last part of the delivery. Without an explicit reminder AWS shall not be in default.
4. The submission of a Supplier's declaration is mandatory for export orders. The Supplier's declaration must contain the goods or article description, the statistical goods number and the country of origin. Alternatively, a long-term vendor declaration can be submitted. If these declarations containing the necessary information are not submitted, the purchase order is considered not to have been delivered in full and the corresponding invoice cannot be released for payment. In addition, the conditions in §9.2 must be observed.

§ 6 Assignment, set-off, rights of retention

1. The transfer of the entire or partial execution of the order to third parties and the assignment of claims arising from the contractual relationship require the prior written consent of AWS. This consent requirement shall not apply to the assignment of monetary claims arising from this contract. If the assignment of claims arising from this contract is effective without consent, AWS can provide the exempting effect to the Supplier as the previous creditor.
2. AWS reserves the unrestricted legal rights for off-setting and retention. A Supplier may only offset or assert rights of retention against claims of AWS with undisputed or legally binding claims.

§ 7 Retention of title

1. Any material handed over by AWS to the Supplier for processing within the scope of the business relationship shall remain the property of AWS. The Supplier shall be authorised to process the materials subject to retention of title in the ordinary course of business. In this case the following provisions shall apply in addition.
2. The reservation of title shall extend to the full value of the products resulting from the processing, mixing or combination of the materials, whereby AWS shall be deemed to be the manufacturer. If the right of ownership of third parties remains in effect after processing, mixing or combining with goods of third parties, AWS shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined materials or goods. Otherwise the same shall apply to the resulting product as to the material handed over under reservation of title.
3. The materials may not be combined with other movable property that is to be regarded as the main property without the express written consent of AWS. The Supplier shall be liable to AWS for loss or damage to AWS property.

§ 8 Duty to give notice of defects and warranty claims

1. Acceptance of the goods by AWS is subject to an inspection for freedom from defects, as far and as soon as this is feasible in the ordinary course of business. In case of obvious defects of the delivered goods, AWS shall satisfy the obligation to give notice of defects by reporting the defects within 14 days after receipt of the goods. In case of hidden defects of the delivered goods, AWS shall satisfy the obligation to give notice of defects by reporting the defects until 14 days after discovery of the defects. In this respect, the Supplier waives the objection of delayed notification of defects.
2. The Supplier shall be liable for the delivered goods without limitation in accordance with the statutory provisions on material defects and defects of title. In all other respects the Supplier shall be liable in accordance with the following provisions.
3. AWS shall be entitled to rectify the delivered goods at the Supplier's expense, if AWS has a special interest in the quick use of the goods due to the circumstances of the individual case, especially to avert imminent damages, and if rectification by the Supplier is not possible due to time constraints. AWS shall inform the Supplier in writing, by fax or e-mail prior to the beginning of any rectification.
4. If AWS incurs costs as a result of the defective delivery of the subject matter of the contract, in particular transport, travel, labour, installation, removal and material costs or costs for an incoming goods inspection exceeding the usual scope, the Supplier shall bear these costs. In particular, the return of rejected goods to the Supplier shall be at the Supplier's expense and risk.
5. The Supplier warrants that the Goods are free from third party rights and that no third party rights are infringed by the delivery or use of the goods. The Supplier shall enable AWS to use the goods, including any repairs, modifications or additions to the delivered goods, in Germany and abroad. In the event of violation of third party rights, AWS shall be entitled to indemnification from third party claims against the Supplier, regardless of the Supplier's fault. Furthermore, AWS shall be entitled to a claim against the Supplier for compensation of damages incurred, if the Supplier is at fault.
6. The warranty period is - except in cases of fraudulent intent - 36 months from the transfer of risk. The validity of longer statutory periods remains unaffected. If the Supplier fulfils its obligation of subsequent performance by means of a replacement delivery, the limitation period for the goods delivered as replacement shall start anew after their delivery, unless the Supplier has expressly and appropriately reserved the right during subsequent performance to make the replacement delivery only as a gesture of goodwill, to avoid disputes or in the interest of the continuation of the supply relationship.

§ 9 Duty to provide information, in particular on export restrictions

1. Without prejudice to any other information obligations set out in this Agreement, each Party shall assist the other Party in providing such information and documentation (hereinafter referred to as "Information") as is necessary to comply with applicable export control legislation or as may be requested by the authorities in this context, in particular in connection with licensing procedures.
2. The supplier undertakes to inform AWS if the delivered goods or essential components thereof have been specifically designed or modified for military purposes or are subject to export restrictions, whether in accordance with current German regulations (in particular the requirements of Annex 1, Part I, Annex AL to the Foreign Trade and Payments Ordinance, AWV) or current European regulations (in particular Annex I of the Dual-Use Regulation). The definition of essential components corresponds to the currently valid General Notes to Annex I of the Dual-Use Regulation.
3. The obligation to provide information is not excluded by any previously concluded confidentiality obligations. If necessary, an exemption from a previously concluded obligation of confidentiality may be requested if applicable export control regulations require that technical details be communicated to the authorities involved.

§ 10 Supply of goods not subject to export restrictions

The Supplier undertakes to use preferentially such goods and essential components thereof which are not subject to any export restrictions within the meaning of § 9 (2).

§ 11 Other liability

1. Unless otherwise provided for in these General Terms and Conditions of Purchase, the Supplier shall be liable for any breach of contractual and non-contractual obligations in accordance with the relevant statutory provisions.
2. If a claim is made against AWS due to material defects based on product liability or due to violation of safety regulations, the Supplier shall indemnify AWS from any liability upon first request and shall bear all costs and expenses incurred by AWS, as far as the delivery of the goods by Supplier was defective or causal for the damage. In cases of fault-based liability, however, this shall only apply if the Supplier is at fault. If the cause of the damage lies within the Supplier's area of responsibility, the Supplier shall bear the burden of proof for the absence of fault.
3. Any claims for damages against AWS can only be made in case of intent or gross negligence. In case of culpable violation of essential contractual obligations, AWS shall only be liable for typical and reasonably foreseeable damages. The above limitation of liability shall not apply in cases where AWS is liable for personal injury or damage to property under the Product Liability Act and in cases of injury to life, body or health.

§ 12 Termination of the contract and confidentiality

1. AWS shall be entitled to withdraw from or terminate the contract with immediate effect, beyond the legal rights of withdrawal, if the Supplier has stopped supplying its customers, if a significant deterioration of the Supplier's financial situation occurs or threatens to occur and this endangers the fulfilment of a delivery obligation to AWS, if the Supplier becomes insolvent or over-indebted or if the Supplier stops payments. AWS shall also be entitled to rescind or terminate the contract if the Supplier applies for the opening of insolvency proceedings or comparable proceedings for the settlement of debts.
2. If AWS makes use of the aforementioned rights of withdrawal or termination, the Supplier shall compensate AWS for any damages resulting therefrom, unless the Supplier is not responsible for the creation of the rights of withdrawal or termination. This shall not be accompanied by a limitation of any other legal claims.
3. AWS also has the right to withdraw from or terminate the contract if the goods to be supplied are to be incorporated into a complete product to be manufactured by AWS which is intended for shipment to an EU Member State or for export to a third country, if the competent authority:
 - a. refuses the transfer / export licence, or
 - b. not within 3 (in words: three) months after the date of delivery of the entire goods, issues the required export/import) licence on the scheduled date.
4. AWS may also withdraw from the contract vis-à-vis the Supplier if the customer of the entire goods, into which the goods to be delivered are to be installed, carries out actions that promote, lead to the expectation of or may result in a violation of the applicable export control regulations of the Federal Republic of Germany or the European Union, in particular if there are reasonable grounds to believe that the customer does not intend to use the goods for a purpose notified by him but for an illegal purpose.
5. The Supplier shall be obliged to treat as confidential all business or technical information not in the public domain that becomes known to him through the business relationship with AWS. He shall likewise impose a corresponding obligation on his Suppliers and subcontractors. The obligation to maintain confidentiality shall continue to apply after termination of the business relationship.

§ 13 Place of performance, choice of law and jurisdiction

1. The place of performance for deliveries is the place to which the goods are to be delivered in accordance with the order. Place of performance for payments by AWS is the place of business of AWS.
2. These General Terms and Conditions of Purchase and all legal relations between AWS and the Supplier shall be governed by the law of the Federal Republic of Germany, excluding the UN Convention on Contracts for the International Sale of Goods (CISG).
3. The law applicable hereunder shall be understood to be the legal norms excluding those of private international law, unless the law of the Federal Republic of Germany provides otherwise.
4. Exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the courts having jurisdiction over the registered office of AWS. However, AWS shall also be entitled to bring an action at the general place of jurisdiction of the Supplier.
5. Should one or more of the listed conditions of purchase be invalid due to legal regulations, the remaining conditions remain unaffected. AWS and the Supplier shall both be obliged to fill in any gaps resulting from the invalidity by a provision that corresponds to the economic purpose of the omitted provision.