



flow, stop and go®

General Terms and Conditions of Purchase

Scope of Application

1. These Terms and Conditions apply to all present and future offers made by us, as the Customer, and contracts concluded with us.
2. These Terms and Conditions of Purchase apply exclusively. Any deviating, conflicting or supplementary conditions of business (terms and conditions of sale) of the Supplier shall become an integral part of the Agreement only if and to the extent that we have expressly consented in writing to the application thereof. If we refer to a letter, which contains or refers to terms and conditions of business of the Supplier, this does not imply any consent to said terms and conditions of business applying.
3. These Terms and Conditions of Purchase apply only in relation to entrepreneurs („Unternehmer“) (Paragraph 14 German Civil Code (BGB)), public-sector legal entities or special bodies or funds under public law.

Conclusion of Contract

1. Orders placed are revocable up until receipt of the acknowledgement of the order or - in the absence of any acknowledgement of the order - up until delivery.

Prices and Payment Terms

1. The agreed prices are stated exclusive of value added tax (Umsatzsteuer) and include the cost of packaging, insurance and carriage.
2. Invoices must be submitted in duplicate immediately following delivery and must state the order number. Payment shall be dependent on the number of pieces, weights and other units ascertained by our incoming-goods department.
3. We shall pay invoices within 14 days after receipt of the invoice and delivery with a 3 % cash discount, or within 30 days net. The period allowed for payment shall not begin before the agreed delivery date and payment shall not be deemed to be any acknowledgement of proper delivery.

Initial Samples, Changes

1. The basis for the release of any serial delivery shall be the initial sample test documented in an initial sample test report. Initial samples must be produced under the conditions for mass production. They must be supplied in the agreed quantities, especially marked, together with the initial sample test report with the test results for all agreed quality features. In addition to this, we are entitled to demand proof of the process and machine capability.
2. If approved, we shall release serial delivery in writing. Any deviations in the workmanship and properties of the product from the initial sample shall be deemed to be a defect in the product.
3. In the following cases the Supplier must automatically submit initial samples without being asked:
 - Any product change
 - Any change in the processed material
 - Any change in sub-suppliers
 - Any change in design
 - Any new/changed mould and/or tools (refurbishment, new productions)
 - Any change in the manufacturing process
 - Any change in the production site
 - After an interruption in supply of twelve months or more
 - Following any halt of delivery
4. The product, the processed material, sub-suppliers, the design, the manufacturing process or the location of the production may only be changed with our prior consent. We must give consent if the initial sample is free from defects and there is no risk that the measure will have a negative effect on the quality of the products.

Dispatch, Passing of Risk

1. Dispatch shall be at the Supplier's risk and cost. If the freight charges are to be borne by us because of a special arrangement, the Supplier must choose the mode of dispatch that is most favourable for us. If he does not do this he shall be liable for the associated additional cost and other disadvantages.

2. The place of delivery is 79379 Müllheim, Germany. The risk shall not pass to us until the goods are handed over at the place of delivery. If we are unable to accept delivery as a consequence of stoppages due to internal or third-party industrial disputes or as a consequence of force majeure, the risk shall not pass until the grounds for hindrance have been removed and the goods are available to us at the place of delivery. We are obliged to notify the Supplier without undue delay if any grounds for hindrance of this nature have occurred or it is expected that they will occur.
3. The Supplier undertakes to package the goods in accordance with our instructions.

Delivery Dates

1. The delivery date shall be as agreed in the individual case. Delivery dates are always binding. The relevant date for determining whether the delivery date has been complied with is the date the goods are received at the place of delivery. In the absence of any special arrangement the goods ordered must be handed over to us within two weeks of the order date unless delivery is not possible within said period under usual conditions even in the case of careful management.
2. If the Supplier cannot comply with the agreed delivery date, he must inform us without undue delay. We are under no obligation to accept delivery before the agreed delivery date. We reserve the right to send back goods, which have been delivered early, or to store them until the delivery date at the Supplier's cost and risk.
3. If delivery is late we shall be entitled to demand 0.3% of the agreed price of the goods delivered late for every complete working day of delay, however a maximum of 5 %. The Supplier retains the right to prove that no damage was caused or only significantly less damage than the lump-sum. This shall be without prejudice to any further statutory rights.

Part Deliveries and Excess Deliveries

1. We are under no obligation to accept any part or excess deliveries, which have not been agreed.

Warranty Claims

1. The Supplier must take responsibility that the goods delivered by him fulfil the agreed quality criteria, have been manufactured in accordance with the current state of the art and comply with the relevant provisions, standards and regulations. The Supplier must comply with the quality and testing requirements stated in our order. He must prove compliance therewith up until the entire consignment has been handed over at the place of delivery.
2. If the goods are defective, our warranty claims shall be in accordance with the statutory provisions unless otherwise agreed.
3. Any warranty claims shall be time-barred within three years calculated as of handover of the goods or - if acceptance has been agreed or stipulated - acceptance of performance. Any longer statutory limitation periods shall remain unaffected.

Product Liability

1. If the Supplier is responsible for damage to a product he must indemnify us against claims by third parties to the extent that the cause lay within his sphere of control and organization and he is himself liable in relation to third parties. Under his obligation to indemnify, the Supplier must reimburse any expenses pursuant to Paragraphs 683, 670 German Civil Code (BGB) that arise out of or in connection with any recourse taken by third parties including for recall campaigns carried out by us.

We shall, to the extent possible and reasonable, notify the Supplier of the content and extent of recall measures and give him an opportunity to comment. This shall be without prejudice to any further statutory rights.

Other Duties of the Supplier

1. All of the obligations under the contract must be fulfilled by the Supplier himself. A subcontractor may be engaged only with our prior written consent.

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2. The Supplier undertakes to treat all commercial or technical details, which are not in the public domain and of which he becomes aware due to the business relationship, as confidential. He must impose a corresponding obligation on his sub-suppliers.
3. Title to tools and jigs and fixtures produced to execute the contract for us and for which the Supplier charges us separately shall pass to us. The Supplier must mark them as our property, keep them safe, safeguard them against any kind of damage and use them only for the purposes of the contract. Unless otherwise agreed, the cost of maintaining and repairing said items shall be shared by the contact partners 50:50.

If, however, said costs are due to defects in the tools or jigs and fixtures or due to improper use by the Supplier, his employees or other vicarious agents, they shall be borne the Supplier alone. The Supplier shall notify us without undue delay of all damage to said items which is not just negligible. Following request, he shall be obliged to hand over said items to us in an orderly condition if he no longer needs them to fulfil the contracts concluded with us.

Liability

1. We shall be liable in accordance with the statutory provisions for any breach by us, for which we are responsible, of material contractual obligations, i.e. for contractual obligations, the performance of which characterize the contract and which are necessary for the proper implementation of the contract. However, unless our conduct has been either grossly negligent or intentional, we shall be liable only for the foreseeable damage, which typically occurs.
2. We shall be liable for any other breaches of duty only if damage has been caused intentionally or grossly negligently by our statutory representatives or by a senior vicarious agent. We shall be liable for damage arising out of any injury to life, body or health in accordance with the statutory provisions. In all other respects claims against us for damages arising out of breaches of duty are excluded.

Reservation of Title

1. The Supplier is permitted to make the transfer of title to the goods supplied dependent on payment of the goods. However, we are entitled to dispose of the goods, particularly to sell them, in the ordinary course of business. The Supplier shall in that case be permitted to have all accounts receivable that accrue to us as a result of the resale, assigned to him in the amount of the final invoice sum (including value added tax) and, more particularly, irrespective of whether the goods are sold on without or after having been processed. The Supplier may disclose an assignment in advance to our clients only if his account receivable is not disputed and payment has not been made despite a warning notice and the setting of at least a four week grace period.

The Customer's Documents

1. Documents enclosed with the orders (samples, models, drawings, plans, calculations etc.) shall remain our property. They must be kept for later orders or returned upon request by us following execution of the contract. Such documents may not be passed on to third parties nor may they be used for other purposes without our written consent.

Right of Retention

1. The Supplier shall be authorized to exercise a right of retention only insofar as his counterclaim is based on the same contractual relationship or on an undisputed claim or a claim which has become final and absolute.

Final Provisions

1. The governing law shall be the law of the Federal Republic of Germany to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods („CISG“).
2. If the Supplier is a merchant („Kaufmann“) or public-sector legal entity, the place of jurisdiction for legal disputes arising out of all supply contracts shall be Müllheim/Baden, Germany. We shall, however, be entitled to also assert our claims at the Supplier's place of general jurisdiction.

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