

General Terms and Conditions of Purchasing and Ordering

§ 1 Range of validity

These Standard Terms and Conditions for the Purchase of Import Goods shall exclusively apply, save as varied by express agreement accepted in writing by both parties.

These Conditions shall also apply if we accept delivery of Goods under the existence of the supplier's contradictory Standard terms not being subject of the contract.

Any terms and conditions provided by the contractual partner ("the supplier") have no validity even if we do not disagree explicitly.

These conditions shall govern any future individual contract of purchase, supply and services supply contracts between us and supplier to the exclusion of any other terms and conditions. These provisions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

§ 2 Contract agreement

1. Our orders can only be accepted exclusively in written form (without the telecommunicative transmission of the acceptance being excluded) and only without a variation or limitation in content for ordering within an acceptance period of 8 days after order date.

2. Verbal agreements and telephone agreements are only binding for us if they are confirmed in written form by us afterwards.

§ 3 Subject matter of contract

1. The only valid subject matter of contract shall be those in our order.

2. Drawings and other documents provided by us remain our exclusive property and must not be used for other purposes or made accessible for a third party whether in original form or in duplication. After execution of contractual works, all the aforementioned documents and drawings shall be returned to us immediately, free of charges and without further demand.

§ 4 Prices

1. Contract prices are fixed prices. Any kind of price increase shall not be accepted. All additional services which are, or may be, necessary for the performing of the contractual works are included in the contract prices and shall not be paid separately or additionally.

2. The contract prices always include all packing costs. The return of packing material shall only take place if requested by the supplier and at his expense. The prices always include the delivery costs to the named place of delivery (inclusive of shipping costs, costs for transport insurance or other insurances for goods and services according to DDP (Incoterms 2000) unless otherwise agreed.

§ 5 Place of performance and shipping/transport

The determined place for the delivery of the goods is the place of performance (obligation to be performed at creditor's place of business).

The risk shall be transferred at the place of performance with delivery to us. Shipping and transport shall be effected at supplier's risk and expense unless EXW is contractually agreed. The same shall apply for services "free site".

§ 6 Delivery and service terms, contract penalty

1. Delivery and service terms stated in the order shall be binding contract terms and shall be strictly met. If the supplier is not provided with certain goods punctually and is therefore not able to deliver in time, he shall be responsible for any delay. If call-off deliveries are agreed, the first call-off delivery shall take place within one week after the call off order at the latest.

In case of approximate terms comprising a period of weeks or months, the last day of the week or the last day of the months shall be the last day for performance in time and the end of the term.

If after the due date of performance, according to law, a deadline is required for further rights or demands, fulfilment or post-fulfilment, the time limit shall be one week. This shall not be applicable when the supplier is able to prove that for this special case a longer time limit is appropriate.

2. Without prejudice to our rights in the case of service delays, the supplier shall immediately give notice in writing to us if he cannot, or is probably not able to meet the delivery or service terms. In this case, the supplier has to state a new and definite date of delivery which he shall guarantee. Herefrom the supplier cannot claim an extension of the deadline. If the modified date is accepted by us, the supplier remains liable to pay compensation for the delay and the damage that emerges out of the delay.

3. Partial services, performances or deliveries shall only be valid with our prior allowance. Additional charges for a partial service shall be born by the supplier.

4. In all cases of delay in delivery of goods or services by the supplier, we shall be authorised to demand a contract penalty at the amount of 0.15% of the net order total without VAT/sales tax, per working day up to a maximum of 5% of the net order value without VAT/sales tax. In case of delay in delivery of goods or services in call-off orders, the contract penalty is calculated according to the value of the call-off order with which the supplier is in default.

§ 7 Transfer

1. The transfer of goods and services only takes place at the place of performance (place of delivery). The unloading has to take place immediately and properly by the supplier's personnel. If this commitment is not kept, we shall be authorised to organise the unloading completely or partly at the cost of the supplier.

2. If goods are picked up by us, the loading shall take place on the pick-up location also immediately and properly by the contract partner's personnel. If this commitment is not kept, the charges for resulting delays shall be borne by the supplier. Any claims for damages in excess thereof shall remain unaffected.

§ 8 Defects and warranty

1. The supplier is obliged to deliver the goods free from any material defects and legal defects to the place of delivery. The goods are free from material defects if they correspond to the warranties (cf. point 2) and the quality agreements and if they are suitable for the use intended under the contract.

When the quality and/or fitness for purpose are not defined in the contract, the goods have to be appropriate for common usage and quality, what is usual for such goods and what we expect from the goods due to public statements concerning the goods (cf. § 433, I, 3 BGB).

2. The supplier warrants the quality of the attributes of the goods stated as “guaranteed“ or “warranted“ in the order. In addition, the attributes which are guaranteed as to quality by the supplier, must be proven by an inspection certificate of a governmentally accepted material research laboratory, a certified inspectorate or similar institute for the relevant product (especially fire resistance certification F, G or T), even if the supplier did not manufacture the products by himself but sells them as a trader. Finally, the descriptions of the products which are included in the contract are also subject to a guarantee of quality where they have fire protection attributes (building material class A, B1 or 2) or certain material characteristics (minimum elasticity limit and tensile strength as well as the minimum coating thickness of the safety measures). The attributes have to be guaranteed during the total time of the agreed period. If an agreement is missing, they have to be completely guaranteed for the whole period of warranty. In addition, the guarantee of durability can be agreed in the contract.

Other descriptions for the contractual products do not represent warranties in the legal sense.

3. In case of bad or faulty delivery, defect in materials or default, or faulty service, our requirements and claims shall comply priorly with the following terms. For the rest, the legal regulations of the HGB (Handelsgesetzbuch of Germany) and the BGB (Bürgerliches Gesetzbuch of Germany) concerning the purchase contract shall be applicable. Any restriction of warranty to requirements and claims which the supplier has against his own suppliers, is excluded in all cases. Independent of negligence, the supplier is responsible for the supply and the services he is provided with by third parties as for his own supplies, performance and services.

For all supplies and services with the place of delivery defined as „Production Arnstorf“, we comply with our duty of inspection, notification and rejection according to § 377 HGB. The inspection and notice period is 5 working-days from the transfer of risk. If deliveries and services are transported to site, our duty of notification shall be limited to discrepancies in type and quality, transport and packing damages. In this case, the inspection and notice period shall be equally 5 working days.

4. If material defects occur, the supplier is obliged to arrange a supplementary performance to rectify the defect; as cure, we shall, at our choice, be authorized to demand that the defect is remedied or a thing free of defect is supplied (replacement). The replacement cannot be rejected by the supplier by reference to disproportional charges.

After any first attempt of rectification ending in failure, the rectification of the defect shall be considered as failed in all.

5. If the supplier fails to rectify the defect within the period stipulated, we shall have the right to withdraw from the contract and to demand damages in lieu of performance, even if there is only a minor deviation of the agreed characteristic or minor damage of utility.

The same shall apply if the supplier refuses to rectify the defect, or if a notice period is legally dispensable.

6. If we have to take back defect goods, likewise if we have to take back the products which we have produced using the suppliers' defective products because of their faultiness or if our customer reduces the payment for such goods, we shall not to set the supplier an otherwise necessary time limit for our rights with reference to the deficiencies (cf. § 437 BGB) because of the deficiencies claimed on us by the customer. We also can demand a refund of necessary expenses, particularly transport-, handling-, work- and material costs, which we have to bear proportional to our customer, if the defect claimed by the customer already existed at the date of the passing of risk from the supplier to us.

7. Regarding our rights for defects, a limitation period of 5 years and 1 month shall be valid, if the delivered goods are regarded as "construction" in the legal sense or if they were used for a building or were otherwise built in a construction and caused damages to the construction. For the rest, a limitation period of 3 years shall be valid. Longer legal limitation periods shall remain unaffected.

8. As far as the supplier is responsible for a defect of the product, he shall indemnify and hold us harmless on first demand from claims for damages of any third party insofar as he is liable for the defect of the product. On this basis, the supplier shall be also liable for repaying possible expenses which occur from a product recall organised by us. Regarding the content and volume of the product recalls, which have to be performed, we will inform the supplier if possible and reasonable and give him an opportunity to make a statement.

A supplier, who is manufacturer or who is regarded as a virtual manufacturer or an importer as the manufacturer according to § 4 ProdhaftG, shall be obliged to keep a product liability insurance with an insured sum of a minimum € 500,000 for each personal injury and € 250,000 for each material damage; a limitation of contractual and legal claims of the purchaser is unassociated with the aforementioned.

§ 9 No reservation of title

By any means, ownership of the goods passes to us with their delivery to us or to the third party designated by us, the title shall not be retained by the seller.

§ 10 Right of retention, charging and assignment

1. In the case of a defect in deliveries and services, we have the right of retention until we receive a complete and correct delivery.

2. We are authorised to accumulate counter claims even when denied and not legally determined.

3. Without our written agreement, a transfer of any claims against us to a third party is excluded.

§ 11 Terms of Payment, cash discount

1. Payments have to be made according to the agreed conditions. But we shall always be authorised to effect payments via cheque. The supplier shall bear the risk of transition of the invoice amount.
2. For administration, invoices shall be submitted approvable, always in duplicate and listing VAT/sales tax separately.
3. If not agreed upon otherwise, payment for the delivery shall be made within fourteen days after delivery and receipt of invoice with a 3% discount or within thirty days net. For keeping these terms, it is completely sufficient if we send a cheque or if we authorise a transfer order on the last day of the mentioned term.

§ 12 Place of jurisdiction, applicable law

The contract shall be governed by and construed in accordance with German law and each party agrees to submit to this law. The United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be inapplicable.

For all contracts we make with full qualified traders, legal entities or separate assets of public law, the exclusive court of jurisdiction for all issues, no matter for what reason, shall be Munich, Germany. Also for law suits concerning drafts, cheques and certificates and for all contracts only German Law shall be applicable.

§ 13 Miscellaneous

Should any provisions of these conditions be or become invalid or ineffective, the other stipulations shall remain unaffected. Lindner and the supplier undertake to replace such invalid or ineffective provision by a valid and effective stipulation which comes as close as possible to the economic purpose of the ineffective or invalid provision.