

Westland Gummiwerke GmbH & Co. KG / Konrad Wiese GmbH / Westland Walzentechnik GmbH

General Terms and Conditions of Purchase and Order

1. Scope of application, Form

- 1.1. These General Terms and Conditions of Purchase and Order apply exclusively; we do not recognize any deviating terms and conditions of the supplier or contractor (contractual partner) unless we declare our agreement to them. Our General Terms and Conditions of Purchase and Orders shall also apply if we accept the services of the contractual partner without reservation in the knowledge of conflicting or deviating conditions of the contractual partner. These General Terms and Conditions of Purchase and Order shall also apply to all future contractual relationships with the contractual partner.
- 1.2. These General Terms and Conditions of Purchase and Order shall only apply to companies, legal entities under public law and special funds under public law.
- 1.3. Individual agreements made with the contractual partner in each respective case (including collateral agreements, supplements and amendments) shall take precedence over these General Terms and Conditions of Purchase and Order under any circumstances. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.
- 1.4. Legally relevant declarations and notifications of the contractual partner with regard to the contract (e.g. setting of a deadline, reminder, withdrawal) must be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Legal formal requirements remain unaffected.
- 1.5. References to the validity of statutory provisions shall only have a clarifying meaning. Even without such clarification, the statutory provisions shall therefore still apply, unless they are directly amended or expressly excluded in these General Terms and Conditions of Purchase and Order.

2. Orders

- 2.1. We will place our orders in writing. The parties will confirm verbal agreements, the conclusion of contracts and orders as well as changes, additions or cancellations of contracts or orders in detail in writing. In case he recognizes any errors (e.g. typing and calculation errors) and incompleteness of the order and the order documents, the contractual partner shall notify us for the purpose of correction or completion before acceptance; otherwise the contract shall be deemed not to have been concluded.
- 2.2. The contractual partner shall be obliged to confirm our order in writing within a period of two weeks or, in particular, to execute it without reservation by providing the service (acceptance).

3. Prices, Shipping, Packaging, Payments

- 3.1. The agreed prices are fixed prices, unless otherwise expressly agreed. They include all costs for packaging and transport to the specified destination and exclude subsequent claims of any kind.
- 3.2. In the case of pricing "ex works", the contractual partner must ensure the most affordable and suitable transport, unless we ourselves or a transport company collect the goods. The contractual partner shall bear any additional costs not agreed upon. We are prohibited customers.
- 3.3. The contractual partner must observe relevant national and international packaging, labelling and transport regulations. A detailed delivery note with information on the order must be enclosed with the delivery. Any disposal costs incurred for the packaging of delivered products shall be borne by the contractual partner.
- 3.4. Unless otherwise agreed, we shall pay within 14 days, calculated from complete performance and receipt of the invoice, with 3% discount or within 30 days after complete performance and receipt of the invoice. Invoices shall be submitted to us separately and in proper form in duplicate with all associated documents and data after delivery. Invoices that are not properly submitted shall only be deemed to have been received by us from the time of their correctness.
- 3.5. We are entitled to rights of set-off and retention to the extent permitted by law.
- 3.6. The contractual partner shall only be entitled to set-off or retention rights on the basis of counterclaims that have been legally established or are undisputed.
- 3.7. We do not owe any interest on maturity according to Sec. 353 German Commercial Code (HGB).

4. Delivery time, Delay in Delivery

- 4.1. The time of performance starts on the day of order. The agreed performance dates and deadlines are binding. The receipt of the goods at the place of receipt or use specified by us shall be decisive for compliance with the performance date or performance period for deliveries. For machines, capital goods and services, the completeness of the services provided is decisive. The contractual partner shall be obliged to request in due time any documents to be enclosed with the execution of the order.
- 4.2. The contractual partner is not entitled to make partial deliveries. We shall be entitled but not obliged to accept partial performances of the contractual partner.
- 4.3. If the contractual partner is unable to meet the agreed performance deadline or the agreed performance period, he must notify us immediately in writing, stating the reasons and the expected duration of the delay. Compliance with this notification obligation shall not release the contractual partner from his obligations to fulfil his performance obligations in due time.
- 4.4. If the service is delayed beyond the agreed service date due to a circumstance for which the contractual partner is responsible, the contractual partner shall be obliged to compensate us for damages. If the contractual partner fails to meet the agreed delivery date, we shall be entitled, after a reasonable grace period set by us has expired without result, to withdraw from the contract and, if the contractual partner is responsible for the delay, to demand damages instead of performance or reimbursement of futile expenses. The statutory provisions regarding the dispensability of setting a deadline or reminder remain unaffected.
- 4.5. In the event of a delay in performance, the claim for performance under the supply contract shall not expire until the claim for damages in lieu of performance has been expressly asserted in writing with a declaration of waiver of performance, the claim for damages in lieu of performance has been asserted in court, the claim for damages has been paid or the contracting party has declared that it acknowledges and fulfils its claim for damages.
- 4.6. In the event of a delay in delivery, we are entitled to demand from the contractual partner a lump sum for damages amounting to 0.15% of the net order value resulting from the order confirmation per working day, but not more than a total of 5% of this order value. In addition, we reserve the right to claim additional damages caused by the delay which go beyond the contractual penalty. Any exceeding of the contractually agreed delivery date shall be considered a delay. The contractual partner has the right to prove that no damage or significantly less damage than the damage claimed by us has been caused by the delay.
- 4.7. We reserve the right to assert further rights and claims to which we are entitled according to contract or law due to delay in performance and default in performance.

5. Transfer of Risk, Warranty, Product Liability

- 5.1. The contractual partner guarantees that the delivered goods have the contractually agreed or otherwise presupposed quality and that the guarantees assumed are fulfilled.
- 5.2. We will examine deliveries of goods upon receipt and give notice of visible defects immediately, at the latest within five working days after receipt of the delivery of goods. We will give notice of hidden defects in the goods immediately, at the latest within five working days of their discovery.
- 5.3. We shall be entitled to the statutory warranty rights (subsequent performance, withdrawal from the contract, reduction in price, compensation for damages) in full. In any case of a defect, we are entitled to demand, at our discretion, rectification of the defect or replacement delivery (supplementary performance) from the contractual partner. We are entitled to return any goods complained about to the contractual partner at his expense. After the unsuccessful expiry of a reasonable period of time set by us for subsequent performance, we shall be entitled to remedy the defect ourselves, to have it remedied by third parties or to procure replacement of the defective performance and to demand reimbursement of the expenses and costs incurred thereby from the contractual partner, unless the other party is entitled to refuse subsequent performance. We shall also be entitled to this right to remedy defects without setting a period of grace if, in cases of particular urgency, the occurrence of a higher damage in relation to the defect is imminent and if it is no longer possible to inform the contractual partner of the defect and the imminent damage and to set him a period, albeit a short one, to remedy the defect himself and if we notify the contractual partner that we will remedy the defect ourselves.
- 5.4. The warranty period shall be two years, unless the statute of limitations for warranty claims and rights comes into force later. For parts newly delivered or services newly rendered by the contractual partner by way of subsequent performance due to a defect, the warranty period shall start anew upon subsequent delivery, unless the contractual partner disputes the defect and expressly performs only as a gesture of goodwill. In the event of a subsequent improvement of the delivery and service, this shall apply accordingly, whereby the warranty period shall then only begin to run anew with regard to the same defect or the consequences of a defective subsequent improvement.
- 5.5. We will forward claims against us arising from product liability regulations to the contractual partner, insofar as they were caused by the contractual partner's delivered products. In this context, the contractual partner shall also be obliged to reimburse us for any expenses pursuant to Sec. 683, 670 German Civil Code (BGB) arising from or in connection with a recall action carried out by us as a precautionary measure.
- 5.6. The contractual partner shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/property damage.

6. Supplier Regress

- 6.1. We shall be entitled to the statutory rights of recourse in a supply chain in accordance with Sec. 445a, 445b, 478 German Civil Code (BGB) without restriction. Claims for defects remain unaffected. We are entitled to demand the specific type of subsequent performance (replacement delivery or rectification) from the contractual partner, which we owe to our customer in the individual case. Our right of choice according to Sec. 439 para. 1 German Civil Code (BGB) is not restricted by this.
- 6.2. Before we acknowledge or fulfil a claim for defects or a claim for reimbursement of expenses (Sec. 445a para. 1, 439 para. 2 and 3 German Civil Code (BGB) of our customer, we will inform the contractual partner about this and about the underlying facts and request him to comment. If no meaningful statement is made within a reasonable period of time and no agreement is reached on a solution, the claim for defects actually granted by us shall be deemed to be owed to our customer. In this case, the contractual partner shall be responsible for providing proof to the contrary.
- 6.3. We shall also be entitled to claims from supplier recourse if the defective goods have been further processed by us or a third party.

7. Retention of title

- 7.1. We recognize a simple retention of title by the contractual partner, provided that we are entitled to process, combine, mix and resell the processed or unprocessed goods in the ordinary course of business. We do not recognize the regulation of an extended or expanded retention of title.

8. Secrecy, Property Rights

- 8.1. The contractual partner must treat the conclusion of the contract, the order and all related commercial and technical details as confidential and may only refer to the business relationship with us in advertising material after express consent has been granted. The contractual partner undertakes to treat as a trade secret all technical or commercial details which are not generally obvious and which become known to him through the business relationship, and to pass them on only to the extent that they are indispensable for the execution of the respective order or contract. This obligation to secrecy shall apply beyond the duration of the respective contract. Subcontractors and employees of the contractual partner shall be obligated accordingly. We shall treat the personal data of the contractual partner in accordance with the relevant statutory provisions.
- 8.2. Documents, drawings, data, software, materials and objects, such as samples, models and tools, which we provide to the contractual partner for the execution of the order shall remain our property. They must be secured against unauthorized inspection or use and must be handed over to us at our request immediately, at the latest, however, with the remaining delivery; any copies made by the contractual partner must be destroyed immediately.
- 8.3. Documents, drawings, data, software, materials or items, such as samples, models and tools, which are our property in accordance with the above paragraph or which the contractual partner prepares on the basis of our information, documents or calculations, may only be used otherwise, copied, expanded or made accessible to third parties with our prior consent.
- 8.4. If and to the extent that the delivery and use of the delivery item or the service violates industrial property rights or other rights of third parties within the Federal Republic of Germany or, if the contractual partner has been informed of this, in the country of destination, the contractual partner shall be obliged to reimburse us for all costs, expenses and damages arising from this and to indemnify us from claims of third parties, provided that the contractual partner is responsible for the violation of rights. We shall be entitled to demand that the contractual partner obtains at his own expense from the respective owner of the infringed property and other rights the necessary approval for delivery, commissioning, use, resale or other use and exploitation of the delivery item or service provided for in the order, unless the contractual partner cannot reasonably be expected to obtain such approval due to the amount of the costs. The acceptance or approval of drawings and samples submitted by the contractual partner shall not affect his responsibility.
- 8.5. The contractual partner is not entitled to make us and the business relationship existing with us publicly known as a reference or to name us in any other way to third parties without our prior express consent.

9. Contractual Penalty

- 9.1. For each case of culpable infringement of the obligations arising from the provisions on secrecy in Section 8.1 and on the prohibition of use, exploitation and distribution in Section 8.3 of these General Terms and Conditions of Purchase and Order, we shall be entitled to demand a contractual penalty from the contracting party in the amount of 1% of the net order sum resulting from the order confirmation, but not more than 5% of this order sum in total. In addition, we reserve the right to claim additional damages in excess of the contractual penalty.

10. Place of Performance, Place of Jurisdiction, Applicable Law

- 10.1. Unless otherwise agreed, the place of performance for the delivery and service obligation is the dispatch address or dispatch point specified by us; for all other obligations of both parties, the registered office of our company.
- 10.2. Place of jurisdiction is the registered office of our company. However, we are also entitled to sue the contractual partner at his general place of jurisdiction.
- 10.3. The order or contract is subject to the law of the Federal Republic of Germany; the validity of the United Nations Convention on Contracts for the International Sale of Goods (UN Sales Convention) is excluded.

11. Environmental Protection

- 11.1. The contractual partner assures to comply with all environmental laws and regulations in the procurement and/or manufacture of the delivery items.