

Standard Terms and Conditions of Purchase Berkenhoff GmbH

I General Matters

1. All contractual relations between us and the Supplier shall be governed exclusively by the terms and conditions below. The same shall apply to all future transactions with the Supplier.
2. We do not accept Supplier's terms where they conflict with our own standard terms unless we have expressly consented thereto. Our standard terms and conditions of purchase shall apply even where we unconditionally accept a delivery from the Supplier in the knowledge that the Supplier has delivered on conflicting terms or terms different to our standard terms and conditions of purchase.
3. Any alteration or supplement to this agreement or any other agreement made between ourselves and the Supplier for the purposes of the performance of this contract must be in writing.

II Offers and Orders

1. Any offer shall correspond exactly to our enquiry and shall be made f.o.c. Derogations are to be identifiable.
2. The Supplier is obliged to accept our order within 10 days from receipt. Acceptance shall be confirmed in writing with reference to the order number. The same shall apply to call-off orders based on framework agreements.
3. In the event that the Supplier does not accept the order within the time limit as aforesaid we are entitled to revoke our offer.
4. We retain the right to alter the construction, design or quantity of products pending delivery.

III Payment

1. Unless otherwise agreed, the purchase price for the Goods shall be DDP delivery address (Incoterms 2000) including packing, excluding VAT. The price shown in the order is binding. Price changes based on subsequent price increases are excluded unless expressly agreed otherwise.
2. The Supplier shall inform us immediately in writing of any price increase resulting from a change in the order in accordance with article II. 4 or additional delivery quantities. The price increase shall be deemed agreed when confirmed by us in writing.
3. Unless otherwise agreed payment shall be remitted within 14 days of delivery/performance and receipt of invoice less 3% discount or alternatively net within 60 days.
4. We are entitled to set-off counterclaims or retain a lien in accordance with the statutory provisions.
5. The Supplier shall only be entitled to set-off a counterclaim where its claim has been finally decided by a court, is undisputed or has been accepted by us. Furthermore the Supplier shall only be entitled to enforce a lien where its counterclaim is based on the same contract.
6. Any assignment by the Supplier of its claims against us to third parties requires our express prior consent.
7. All invoices are to be submitted to us threefold for each order with reference to our order number. The second and third copies are to be identified accordingly. The Supplier shall be liable for any costs incurred as a result of the non-compliance of this obligation.
8. Down payments or payments on account are only permissible against a bank guarantee.

IV Delivery

1. The date of delivery shown in the order is binding.
2. The Supplier undertakes to inform us in writing without delay when circumstances occur or the Supplier can foresee that the delivery date agreed will not be complied with.
3. In the event of late delivery statutory remedies are available to us.
4. The goods are to be packaged in such a way as to avoid damage during transportation. Packaging material is to be used in sufficient quantities to fulfill the purpose as aforesaid. The Supplier shall only use packaging which is environmentally friendly and separable for recycling purposes. We are entitled to require the Supplier to take back the packaging at its cost.
5. Part deliveries shall only be accepted where expressly agreed. They are to be identified as such as is the remaining delivery quantity.
6. In the event of early delivery we are entitled to send the goods back at the cost of the Supplier or to store the goods at our premises at the cost and risk of the Supplier until the delivery date.

V Transfer of Risk and Documentation

1. Unless otherwise agreed the terms of delivery are DDU or DDP delivery address (Incoterms 2000). In all other circumstances the cheapest method of transportation shall be deemed agreed. The risk of accidental loss, destruction or deterioration remains with the Supplier during transportation, irrespective of title to the Goods passing to the Purchaser.
2. The Supplier is obliged to show our order number on all shipping and delivery documents. The Supplier is responsible for any delays in processing caused by non-compliance with the aforesaid.
3. Deliveries shall be made in accordance with our instructions.

VI Liability of the Supplier for Defects

1. Acceptance of the Goods or performance shall be subject to an examination as to their conformity insofar as and as soon as such an examination is convenient in the ordinary course of business. The examination shall include whether the Goods delivered are correct, complete and whether there are any external defects. In addition the Supplier waives the defence of late notification within the meaning of § 377 of the German Commercial Code (HGB).
2. The statutory warranty provisions in relation to material defects or defects in title shall apply without limitation except where agreed otherwise below.
3. In urgent cases, for example but without limitation, in order to avert imminent danger or avoid considerable damage, we are entitled to remedy or replace the defective parts ourselves or through a third party at Supplier's cost.
4. The Supplier shall bear all costs incurred by us as a result of the defective Goods delivered including without limitation, transportation, labour and material costs together with any extra examination costs additional to those normally incurred.
5. Where, as a result of the defective Goods supplied by the Supplier, products manufactured or sold by ourselves are returned or our sales price is reduced or we are the subject of any claim of whatever nature we retain a right of recourse against the Supplier. Such right of recourse shall not be subject to the setting of any time limit which might otherwise apply.
6. Where we exercise our right of recourse aforesaid we are entitled to demand compensation from the Supplier for any cost incurred by us vis-à-vis our customer as a result of the defective goods supplied by the Supplier.

7. Where within a period of six months from the date of the passing of risk a material defect is discovered, it shall be assumed that the defect was in existence when risk passed unless such an assumption is not compatible with the product or the defect.
8. Any claim based on a material defect or a defect in title shall be subject to a limitation period of 2 years. Such limitation period shall commence at the end of the year in which the claim arises.
9. Where we exercise a right of recourse against the Supplier such claim shall be time-barred 2 months after the settlement of any claim brought by our customer at the earliest and not later than 5 years after delivery by the Supplier.
10. Where the Supplier remedies a defect or supplies a replacement the limitation period shall re-commence upon delivery of the replacement or our acceptance that the defect has been remedied.

VII Liability

1. Insofar as the Supplier is responsible for damage to or caused by the product it shall be obliged to indemnify us upon our initial request against claims for damages brought by third parties, where the cause is found to be in its sphere of control and organisation and where the Supplier itself is liable vis-à-vis third parties.
2. To this extent the Supplier is also obliged to reimburse other expenditure in accordance with §§ 683, 670 BGB which is incurred as a result of or in connection with our re-call measures. We shall as far as possible and feasible inform the Supplier of the content and extent of any re-call measures and give it the opportunity to comment.
3. The Supplier shall be liable to us for damages irrespective of whether the Supplier is not or not sufficiently insured.
4. We are not liable for the Supplier's property including means of transport which through no fault of our own disappear from or are damaged or destroyed at our business premises. The same shall apply to the property of third parties used by the Supplier for the performance of its contractual obligations. The Supplier undertakes to indemnify us at our first request in writing against claims brought by third parties.

VIII Industrial Property Rights

1. The Supplier shall be liable for all third party claims based on breach of industrial property rights and registrations thereof published either in the native country of the Supplier or worldwide which arise from the contractual use of the goods delivered.
2. The Supplier shall indemnify us and our purchasers at our initial request from all claims based on the use of such industrial property rights.
3. We are entitled to purchase at Supplier's cost the licences required from those entitled.

IX Drawings, Models, Tools and Confidentiality

1. All drawings, models, tools and other documentation made available to the Supplier by us for the manufacture of the products ordered shall not be utilized for other purposes, copied or made available to third parties. They shall remain our property and shall be returned to us upon completion of the order.
2. The Supplier undertakes to use the tools made available by us exclusively for the manufacture of the products we have ordered. The Supplier undertakes to insure our tools at its cost to their value when new against fire, theft and water damage. It undertakes further to carry out any maintenance and inspection works at its own cost in good time. The Supplier shall inform us of any disruption of operation without delay. In the event that the Supplier culpably fails to do so it shall be liable to pay damages.
3. All commercial and technical information (including characteristics, which can be ascertained from objects surrendered and from other knowledge and experience) shall be treated as confidential for as long as and until they are in the public domain and shall only be accessed by such employees of the Supplier who need to know thereof and who are obliged by their contracts of employment or service not to disclose the same. We shall retain title to the commercial and technical information aforesaid at all times. The same shall not be reproduced or used for a commercial purpose without our previous written consent. All information and/or objects received by the Supplier from us (including copies or drawings) shall at our request be returned immediately and in full or destroyed.
4. We retain all rights to the information in sub-paragraph 3 above (including copyright and the right to register industrial property rights such as patents, utility models, semi-conductor protection etc).

X Supplier's obligation to manufacture the products

The Supplier undertakes to manufacture the products itself. Any manufacture of the products by a third party in part or in whole requires our approval.

XI Repudiation

1. In the event that the Supplier becomes insolvent or suspends payment we are entitled to repudiate such part of the contract which has not been performed. Our right of repudiation aforesaid shall extend also to cases of force majeure and other events beyond our control which render performance of no further commercial interest to us.
2. The same shall apply where a court has finally ruled that the Supplier is in breach of an industrial property right within the meaning of article VIII of these terms of purchase.

XII Place of Performance and Jurisdiction

1. All disputes shall be resolved before the courts with jurisdiction for our place of business (Heuchelheim, Germany). We reserve the right to sue the Supplier at its place of business.
2. Place of Performance is our place of business.
3. All contracts shall be governed by and construed exclusively in accordance with the law of the Federal Republic of Germany excluding its private international law rules but including the United Nations Convention on the International Sales of Goods.
4. The language of the contract is English. The English text shall be definitive in relation to the application and interpretation of any agreement between ourselves and the Supplier.

XIII Partial Invalidity

In the event that any provision of this agreement shall be found to be invalid, the validity of the remaining conditions shall remain unaffected.