

Terms and Conditions of Purchase

General Terms and Conditions of Purchase:

I. General

1. All orders which we place shall be subject solely to the following terms and conditions. Terms and conditions of the supplier, contractors or service providers (hereinafter referred to collectively as "Supplier") shall not apply even if we have not expressly stated this and if we accept the goods or services without objection even though we are aware of such terms and conditions. Departures from and additions to these terms and conditions are only valid with our express written confirmation and shall apply only to the business for which they were agreed.
2. In the context of ongoing business relationships the following terms and conditions apply to all future contracts, even if this is not expressly stated in the future.

II. Offer, order, conclusion of contract, drawings and other documents

1. Offers submitted by the Supplier shall be consistent with our enquiry; the Supplier shall alert us expressly to any differences between our enquiry and its offer.
2. The scope of the goods or services to be supplied shall be based solely on our order. The Supplier must accept our order within 5 working days of receipt. Orders are only valid if they have been placed in written form. Transmission by fax or email satisfies the written form requirement. Orders placed orally or by telephone are not valid until placed in writing.
3. Orders must be confirmed quoting our order data. Any correspondence shall be conducted with the purchase department which has placed our order. Employees from other departments are not authorised to change orders or contracts. Any agreement with such employees is valid only with the express written confirmation of the purchase department which has placed the order unless that employee is recorded as having authority to that effect in the commercial register.
4. Execution of the order shall be regarded as implicit acknowledgement of our terms and conditions.
5. We only make payment for estimates if this has been expressly agreed.
6. We shall retain title, copyright and other industrial property rights in illustrations, drawings, calculations and other documents. They shall be used solely for executing our order. After the order has been executed they shall be returned to us unbidden without undue delay.
7. Hazardous substances: Labelling, packaging and transport shall comply with the applicable provisions of the German Chemicals Act (*Chemikaliengesetz*), the German Transportation of Hazardous Goods Act (*Gesetz über die Beförderung gefährlicher Güter*) and other regulations, directives and notices.

III. Export controls, certificate of origin

1. For goods not having preferential origin status pursuant to the applicable version of Council Regulation (EC) No 1207/2001 confirmations, delivery notes and invoices must state the country of origin.
2. If during provision of services by the Contractor goods are supplied or used which contain a substance named in the currently applicable version of Annex XIV of Regulation (EC) No 1907/2006 (REACH) or a substance in the currently applicable list of candidates of the European Chemicals Agency (ECHA) recommended for inclusion in Annex XIV of Regulation (EC) No 1907/2006 (REACH) (cf. http://echa.europa.eu/chem_data/authorisation_process/candidate_list_table_en.asp) in a

concentration of more than 0.1 percent by mass then the Contractor shall inform us in writing without undue delay using the form we provided for this purpose upon request and in particular shall provide us with the name of the substance concerned and the level of concentration and shall provide us with the necessary information available to him to ensure safe use of the goods.

This shall also apply if the substance supplied or used with the goods is not included in Annex XIV of Regulation (EC) No 1907/2006 (REACH) or in the list of candidates of the European Chemicals Agency (ECHA) until after the provision of services.

3. The Supplier shall submit a written declaration on the origin of the goods including software, (certificate of origin) for customs purposes. Likewise, the Supplier shall declare the origin of its goods in a customs declaration (*zollamtliche Bestätigung*) and comply with any applicable export regulations. At our request the Supplier shall provide us without undue delay and free of charge with whatever documents and declarations, for example health certificates, are necessary for the export of goods within Europe and/or elsewhere. The Supplier shall inform us without undue delay if a shipment is subject in whole or in part to export restrictions under German or any other law.
4. Acceptance of orders and all delivery notes must state the following:
Statistical goods number (HS-Code), export list no. according to Annexes I and IV to the applicable version of EU Dual-Use Regulation No. 428/2009, or Part I of the export list (Annex AL to the German Foreign Trade Ordinance (*Außenwirtschaftsverordnung*)/ ECCN (Export Control Classification Number) under US export law.
5. At our request the Supplier shall provide us in writing with all other foreign trade data on the goods and their components and notify us in writing of any changes to the data listed in III.3 without undue delay.
6. If the Supplier fails to provide the data in nos. III.2 to III.4 or provides data in this regard which is incorrect, we are entitled to withdraw from the contract and to assert any resultant losses in accordance with statutory law.

IV. Prices

1. All prices are fixed prices which apply to the entire period of execution covered by this contract.
2. The price stated in the order is binding. It does not include value-added tax. If the Supplier is contracted to supply goods and in the absence of any separate agreement, the prices shall be deemed to include delivery to our works including duty (DDP Incoterms 2010) including packaging.
If we request express delivery we will only accept the extra cost for express delivery as compared to normal freight.
3. The Supplier shall ensure at its own cost that there is full insurance cover for the transport risk.

V. Delivery time, transfer of risk

1. The delivery periods and dates respectively performance periods and dates (delivery time) set out in our order are binding. Where the Supplier is contracted to supply goods, the date of delivery shall be the day on which the goods are received by us or delivered to the stipulated destination address. Where the Supplier is contracted to provide services and acceptance is to take place in accordance with what was agreed between the parties to the contract or is provided for by law, the date of delivery shall be the day of the final acceptance. The Supplier shall inform us in writing without undue delay if it becomes aware of circumstances which will prevent compliance with the agreed delivery time even if the Supplier is not responsible for such circumstance.

2. If no delivery time has been agreed the goods or services shall be provided immediately unless the circumstances indicate otherwise.
3. In the event of default we may demand a contractual penalty of 0.5% of the value of the goods or services to be rendered per full week of the default, but no more than a total of 5% of the value of the goods and services to be rendered. We may assert a contractual penalty in addition to performance. If we do not reserve the right to assert a contractual penalty at the time of acceptance we may still assert it at any time until payment. We reserve the right to assert claims for any additional loss. The contractual penalty shall be offset against any claims for damages.
4. If the Supplier is contracted to provide goods risk is transferred when the shipment arrives at our works or at the stipulated destination. If acceptance takes place risk shall not pass until the shipment has undergone acceptance at our works or the stipulated destination.

VI. Invoicing and terms of payment

1. The invoice shall be sent separately by regular mail. It shall include our reference number, our order number, our matter number (*Sachnummer*) (if applicable, this can be found in our order) and the date of the order. All invoices must comply with the provisions of the German VAT Act (*Umsatzsteuergesetz*). We may return any invoices which do not comply with the above conditions to the Supplier to be reissued in compliance with the above. We will calculate the agreed period for payment once the invoice has been corrected or a reasonable period after we have correlated it to our order.
2. Unless agreed otherwise, payment shall be by a method of our choice or by cheque/bill of exchange either 14 days from delivery/acceptance/provision of service and receipt of an invoice less 3% discount or within 30 days following delivery/acceptance/provision of service and receipt of a proper invoice with no deduction. We will bear the costs of charges and expenses incurred by the cheque/bill of exchange procedure.
3. We are entitled to a discount even if we set off or withhold part of the amount due for legitimate reasons.
4. All our payments are subject to correction or return if it transpires that they were miscalculated or if we should have other objections. Payment is also contingent on proper receipt of the goods / proper provision of the service. Payments do not constitute acknowledgement that goods or services rendered comply with the terms of the contract.

VII. Shipment, packaging and acceptance

1. Each shipment shall have one delivery note attached stating our order number, order position and matter number (if applicable this can be found in our order). In the case of unpackaged shipments the order numbers and order positions shall be indicated on the delivery documents. In the case of drawing parts, the drawing shall be attached to the goods and the delivery documents for inspection purposes.
2. Our delivery address, our order number and our matter number (if applicable this can be found in our order) must be indicated in bills of lading, parcel addresses and all other delivery documents.
3. We may return the goods at the Supplier's cost if the shipment does not include the Supplier's delivery note and if this prevents us from correlating the goods to an order within a reasonable period and at reasonable expense.
4. The goods must be properly packaged. The packaging must comply with all technical, statutory and official requirements.

5. The Supplier shall take back packaging material, including transport packaging at the place of delivery within usual working hours at its own cost. In all other respects the obligation to take back packaging material shall be as provided for by statute.
6. If the parties have agreed that the goods may be shipped in instalments, the Supplier shall list the goods still to be supplied on the delivery note.
7. In the event of natural disasters, unrest, government measures, transport disruptions, industrial action and other disruptions to our operations or those of our suppliers which interrupt or restrict our production or prevent us from shipping goods or services ordered from us, we shall be released from our obligations to accept delivery/service for the duration and scope of such disruption in as far as we are unable to avert it or unable to do so by reasonable means.

VIII. Liability for defects/product liability/reporting defects

1. The Supplier shall guarantee compliance with the performance data and the correct functioning of its products for a period of 24 months with effect from commissioning of the entire system at the plant of our final customer irrespective of how long the product has been in operation. However the warranty period ends 36 months after delivery to us unless a longer period is agreed or stipulated by law.
2. The Supplier guarantees that the goods and services supplied comply fully with all safety and accident prevention provisions prescribed under German law, by the German supervisory authorities, German employer's liability insurance organisation (*Berufsgenossenschaft*), the German trade associations (*Fachverbände*), the Association for Electrical, Electronic & Information Technologies (VDE) and other safety and accident prevention provisions.
3. The Supplier shall remedy all defects reported during the warranty period immediately on request at no cost to us without undue delay, at the latest within a reasonable period, to be set by us, by repair or replacement at our discretion. If subsequent remedy fails, if the Supplier refuses such remedy or does not carry it out in the period which we have stipulated, we may demand compensation for delay in performance or compensation in lieu of performance – at our choice – or withdraw from the agreement in whole or in part or reduce the price. Withdrawal does not presuppose that the Supplier is at fault. If the Supplier does not meet its obligation to remedy the defect within the period which we have stipulated we may remedy the defects instead of and at the cost of the Supplier. All costs incurred hereby shall be borne by the Supplier.
4. The Supplier shall indemnify us from any third-party claims asserted against us under the German Product Liability Act (*Produkthaftungsgesetz*) in as far as the claims are attributable to defects in the Supplier's products.
5. The Supplier shall take out and maintain appropriate business and product liability insurance (including cover for installation, de-installation and transport costs (extended product cover)) and provide us with confirmation of such cover.
6. The Supplier shall assume the costs for any recall that may be necessary for products containing goods of the Supplier if and in as far as the recall has been caused by defects in the goods supplied.

IX. Inspection and reporting duty, quality assurance, safety provisions

1. We will only inspect the shipment for identity, quantity and obvious defects. Defects shall be deemed to have been reported in a timely manner if the Supplier receives the report no more than 7 working days after receipt of the goods or, in the case of hidden defects, after discovery.

2. The Supplier shall guarantee ongoing quality assurance of the goods ordered by carrying out inspections and controls during the production process as stipulated by us or other suitable inspections and controls. Records shall be kept of such inspections.
3. The quality assurance guidelines provided by us and the quality assurance agreements between us and the Supplier form an integral part of the contract.
4. We are entitled to verify the manner by which the inspections and controls are carried out on site, if applicable also at sub-contractors.
5. The Supplier shall notify us unbidden and without undue delay of any changes in the composition of the material processed or the design of the goods ordered. Such changes require our written consent.
6. A declaration of conformity / manufacturer's declaration and operating instructions for the proper use of the goods shall form an integral part of the documentation to be supplied.
7. As far as concerns the supply of goods which fall within the scope of an EU single market directive on first-time placing on the market such as the EU Machinery Directive, Pressure Equipment Directive, EMC Directive, Low Voltage Directive, the Supplier shall comply with any health and safety requirements and processes stipulated therein. To the extent provided for therein, the Supplier shall provide an EU declaration of conformity for these products and apply the CE label. For partly completed machinery within the meaning of the EU Machinery Directive the Supplier shall provide us with a declaration of incorporation pursuant to the EU Machinery Directive in the form required by us (extended declaration of incorporation) and instructions pursuant to the applicable provisions of the EU Machinery Directive. On request, the Supplier shall provide us with the risk assessment which it has compiled or make it available for inspection.

X. Rights of retention

If the goods or services provided are defective we may withhold a reasonable portion of our payment.

XI. Industrial property rights

1. The Supplier warrants that the goods and services which it supplies do not infringe any absolute third-party rights including but not limited to patent rights and copyright or other industrial property rights.
2. If claims are asserted against us by a third party owing to such legal infringement, the Supplier shall indemnify us against such claims unless the Supplier did neither act negligently nor with intent. Any expenses which we incur in connection with such third-party claims shall be refunded subject to the same criteria.

XII. Reservation of title, ownership rights, production resources, confidentiality

1. The Supplier may supply the goods subject to simple reservation of title until payment has been made. We do not consent to reservation of title with broader scope including but not limited to "extended" or "prolonged" reservations of title or company group reservations.
2. We retain title in production resources including but not limited to tooling which we have made available to the Supplier. The Supplier may only use these production resources for manufacturing the goods which we have ordered. The Supplier shall look after, maintain and repair production resources which are our property and insure them on a new-for-old basis against the risk of fire, water damage and theft at its own cost.
3. The parties to the contract hereby agree that title in any production resources which the Supplier manufactures on our behalf or has had manufactured shall pass to us in as far as we pay the Supplier the costs thereof as agreed. In as far as we only assume a portion of the costs of the production resources the Supplier hereby grants us a pro-rata co-ownership

share proportionate to that portion. The parties to the contract hereby agree that the Supplier shall hold the production resources in which we have (co-)title in safekeeping on our behalf.

4. Documents or production resources which we make available to the Supplier to provide the service shall remain our property and may not be used, copied or made available to third parties for other purposes. After the goods or services have been provided or on request they shall be returned to us immediately in full, including all copies. The same applies to drawings and documents which the Supplier prepares according to our data. The parties hereby agree that title in these documents shall pass to us and that the Supplier shall hold them in safekeeping on our behalf free of charge.
5. If we make an initial payment or provide materials for processing, title in the goods ordered shall pass to us when manufacturing commences. The parties to the contract agree that in place of handover the goods shall remain in the Supplier's possession for processing until the agreed delivery date and that the Supplier shall hold those in safekeeping for us free of charge.
6. The Supplier shall treat confidentially any commercial and technical information which is not generally known and which has come to its knowledge by virtue of its business relationship with us and not divulge it to any third party. The Supplier shall impose the same confidentiality on its employees.
7. In as far as the Supplier makes goods, production resources or documents available to third parties such as sub-suppliers with our consent it shall also impose the above obligations on such parties.
8. The Supplier may only refer to its business relationship with us in its advertising with our written consent.
9. The Supplier shall be liable for any damage arising from a breach of any of the above obligations unless it did neither act negligently nor with intent.

XIII. Personal execution, subcontractors

The Supplier shall execute the order itself. It may not pass the order to third parties or subcontractors without our prior written consent. In any event it shall be liable for their fault to the same extent as for its own.

XIV. Software

1. If the Supplier is contracted to supply goods which include standard software including software documentation we shall be granted a simple transferable and non-exclusive right to use the software worldwide for an indefinite period with the agreed performance characteristics and to the extent necessary to use the software as provided for in the contract or to the extent provided for by statute (§§ 69a ff. German Copyright Act - *Urhebergesetz*). We are also authorised to grant sub-licences to third parties. We are also permitted to use the software free of charge for test purposes before acceptance.
2. If the software has been custom-produced for us we shall, on acceptance, acquire all industrial property rights in the software concerned including without limitation the full exclusive right to use the software in the object and source code, this right encompassing all known modes of use including without limitation reproduction, modification, processing and dissemination in online and offline media for an indefinite period and without geographic limitation. The Supplier must also provide the user and software documentation. We are also permitted to use the software free of charge for test purposes before acceptance.
3. The Supplier shall inspect the software prior to shipment or installation on one of our systems or on a system of our final customers for viruses, trojans and other sources of damage to the computer using up-to-date, standard virus protection programs.

XV. Deployment of personnel in our works or at the final customer

1. If the Supplier provides services at our premises, works, companies or construction sites it shall inform the company or assembly management of the commencement date and the extent of the work in good time and discuss the scheduling of the services to be carried out. Our company/assembly management is authorised to issue directives in this connection.
2. Responsibility for executing the work commissioned lies entirely with the Supplier, who shall coordinate the work.
3. The Supplier shall ensure that the work/services to be provided are rendered to a professional standard by suitable personnel. Any replacement of personnel may not lead to a worsening in the quality of the work. We will not bear any costs associated with the replacement of personnel.
4. The work directives required for the individual assignments shall be issued by the responsible persons in our company and assembly management. At the beginning of the work the Supplier's responsible group leader – the supervisor at the Supplier – must be named. The work must be executed by the Supplier in its own responsibility. Responsibility for personnel, the right to issue directives of a technical and disciplinary nature, and the organisation of personnel deployment lie solely with the Supplier. This does not affect our right to issue the Supplier with project-related instructions associated with the result of the assignment at any time. The Supplier shall ensure that the employees who it deploys abide by the rules and conditions of work set out in our own building conditions and those applicable to building sites of our final customers, for maintaining order, safety and safety of company property. The Supplier shall ensure that all necessary working equipment, tooling and any protective equipment which may be necessary is available at the beginning of the work.
5. After each individual assignment has been completed an acceptance test shall take place. Any work or services performed by the Supplier shall be accepted subject to reserve of concealed defects.
6. The hours worked must be certified by us daily or, at the latest, on the following working day.
7. The Supplier confirms that it has accident insurance cover as prescribed by law and shall provide us with proof thereof on request. The Supplier shall abide by all applicable accident prevention regulations, the regulations prescribed by the applicable employers' liability insurance organisation (*Berufsgenossenschaft*) or labour inspectorate (*Gewerbeaufsichtamt*) at its own cost. Responsibility for compliance with all accident prevention regulations, safety and protection regulations prescribed by supervisory bodies, employers' liability insurance organisations and other trade associations lies solely with the Supplier. This applies in particular to workplace guidelines and any health and safety requirements or regulations of our final customers.

XVI. Entrepreneurial responsibility and compliance

The Supplier confirms that the manufacture and distribution of its goods and the provision of services comply with statutory requirements including environmental protection legislation and employment regulations and is aware of our zero-tolerance policy on child and forced labour. By accepting our order the Supplier also confirms its own zero-tolerance towards bribery and corruption.

XVII. Final provisions

1. The Supplier may only assign claims with our prior written consent. This has no effect on § 354 a German Commercial Code (*Handelsgesetzbuch*).

2. The law of the Federal Republic of Germany excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall apply.
3. If the Supplier is a businessman (*Kaufmann*) within the meaning of § 38 (1) German Code of Civil Procedure (*Zivilprozessordnung*) or is not subject to domestic jurisdiction the sole place of jurisdiction for any disputes arising from or connected with supplies and/or services governed by these terms and conditions of purchase shall be either Nürtingen Local Court (*Amtsgericht Nürtingen*) or the Stuttgart Regional Court (*Landgericht Stuttgart*) depending on the value of the dispute. However, we also have the right to sue at the domicile of the Supplier. The jurisdiction clause shall also apply to cheque and bill of exchange proceedings.
4. If any provision of these General Terms and Conditions of Purchase should be or become invalid this shall not affect the validity of the other provisions. If any part of a clause is invalid this shall not affect the validity of the rest of the clause if it can be separated in terms of its content, is comprehensible in itself and if the remaining clause is meaningful in the overall context of the contract. The parties to the contract shall negotiate in good faith to replace the invalid clause with provisions which reflect as closely as possible the economic purpose of the invalid clause. The same shall apply in the event of a lacuna.
5. Place of performance for both parties shall be Neuffen.

The commissioning of work and the purchase of services (*Werk- und Dienstleistungen*) shall be subject to the following provisions as well as to our General Terms and Conditions of Purchase. The provisions set out below do not apply to contracts for the supply of movable things to be produced or manufactured (*Werklieferungsverträge*) pursuant to § 651 German Civil Code (*Bürgerliches Gesetzbuch*).

I. Acceptance

If the Supplier performs a contract to produce a work the following shall apply:

If the work has been performed in compliance with the contract we will issue acceptance. The acceptance declaration must be in writing (acceptance report). The acceptance report shall be written by the Supplier and countersigned by us.

II. In place of **VII.1** and **VII.2** of the General Terms and Conditions of Purchase the following shall apply:

1. The work/services must be rendered properly and comply with all technical, statutory and official requirements.
2. After the work/services have been completed the Supplier shall leave the place at which they were rendered properly secured and cleaned.

III. In place of **VIII. Liability for defects/product liability/reporting defects** of the General Terms and Conditions of Purchase the following shall apply:

1. The Supplier shall warrant compliance with the agreed attributes, state of the art and statute, and that the work/services are suitable for the designated purpose as set out in our order or as otherwise agreed.
2. The Supplier warrant that the work and services rendered comply fully with all safety and accident prevention provisions prescribed under German law, by the German supervisory authorities, German employers' liability insurance organisation (*Berufsgenossenschaft*), the German trade associations (*Fachverbände*), the Association for Electrical, Electronic & Information Technologies (VDE) and other safety and accident prevention provisions.

3. If the Supplier performs a contract to produce a work the following shall apply:
The Supplier shall remedy any defects which arise during the warranty period immediately on request at no cost to us without undue delay, at the latest within a reasonable period, to be set by us by repairing the work or reproducing the work at our discretion. If subsequent remedy fails, if the Supplier wrongly refuses such remedy or does not carry it out in the period which we have stipulated, we may demand compensation for delay in performance or compensation in lieu of performance – at our choice – or withdraw from the agreement in whole or in part or reduce the price. Withdrawal does not presuppose that the Supplier is at fault. If the Supplier does not meet its obligation to remedy the defect within the period which we have stipulated we may remedy the defects instead of and at the cost of the Supplier. All costs incurred hereby shall be borne by the Supplier.
4. The Supplier shall take out and maintain appropriate business and product liability insurance (including cover for installation, de-installation and transport costs (extended product cover)) and provide us with confirmation of such cover.

IV. In place of the provisions in **IX. Inspection and reporting duty, quality assurance, safety provisions** of the General Terms and Conditions of Purchase the following shall apply:

The Supplier shall notify us unbidden and without undue delay of any changes in the composition of the material processed or the design of the work/services ordered. Such changes require our written consent.

V. In place of **XI.1.** of the General Terms and Conditions of Purchase the following shall apply:

1. The Supplier warrants that the services which it provides do not infringe any absolute third-party rights including but not limited to intellectual property and that title is transferred free of third-party rights.

VI. In place of **XII. 2. and XII.3** of the General Terms and Conditions of Purchase the following shall apply:

2. We retain title in production resources including but not limited to tooling which we have made available to the Supplier. The Supplier shall use these production resources solely for the work and services which we have commissioned. The Supplier shall look after and maintain the production resources which are our property.

VII. In place of **XII.5.** of the General Terms and Conditions of Purchase the following shall apply:

5. If we have provided material for processing and if the Supplier processes such material the parties agree that such processing shall be carried out in our name as manufacturer and we shall acquire title directly or – if the processing involves materials owned by more than one entity or if the value of the processed item is greater than the value of the material which we have supplied – co-title (*Bruchteilseigentum*) in the newly created item pro rata based on the ratio of the value of the material supplied to the value of the newly created item.

Input	
Original Document ID	C:\181011_bielomatik_Einkaufsbedingungen_EN.docx
Modify Document ID	C:\221111_bielomatik_Einkaufsbedingungen_EN_clean_221111.docx
Comparison on	22.11.2011 20:56:53