

# General terms and conditions of purchase of Werner Wirth GmbH



## 1. Scope of application

1.1 All orders, offers, deliveries and services shall be made exclusively on the basis of these General Terms and Conditions of Purchase. They shall apply to business transactions with entrepreneurs, legal entities under public law and special funds under public law („Suppliers“) and shall become an integral part of all contracts which we, WERNER WIRTH GmbH, conclude with Suppliers regarding the deliveries or services offered by them and future deliveries or services, even if they are not separately agreed again.

1.2 General terms and conditions of our suppliers or third parties shall not apply, even if we do not separately object to them in individual cases. This shall also apply if we refer to letters, e-mails or the like which contain or refer to the terms and conditions of business of the supplier or a third party; this shall not constitute an agreement to the validity of those terms and conditions of business, nor shall the acceptance of deliveries or services.

## 2. Conclusion of Contract, Order

2.1 Orders placed by us shall constitute an offer within the meaning of § 145 BGB. We shall be bound by our orders for two weeks unless we expressly communicate otherwise. The receipt of the declaration of acceptance by us shall be decisive for timely acceptance.

2.2 The contract shall be concluded upon receipt by us of the Supplier's order confirmation or upon acceptance by us of the contractual delivery or service. If the content of an order confirmation of the supplier deviates from the content of our order, or if the order confirmation of the supplier is received by us only after expiry of the two-week period, this shall be deemed to be a new offer of the supplier which requires our express acceptance. The supplier must expressly and separately point out the deviation in the order confirmation.

## 3. Modification of orders

3.1 We shall be entitled to change the time and place of delivery as well as the type of packaging at any time by giving notice in writing at least seven calendar days before the agreed delivery date. The same shall apply to changes in product specifications, insofar as these can be implemented within the framework of the Supplier's normal production process without significant additional expense, whereby the notification period shall be at least two weeks.

3.2 We shall reimburse our suppliers for any proven and reasonable additional costs incurred as a result of the change. If such changes result in delays in delivery which cannot be avoided in the normal production and business operations of the supplier with reasonable efforts, the originally agreed delivery date shall be postponed accordingly. The supplier shall notify us immediately and in good time before the delivery date of any additional costs or delays in delivery to be expected by him on the basis of a careful assessment, but at least within five working days of receipt in text form.

## 4. Prices, due date, invoices, payment

4.1 The agreed prices are net fixed prices („Price“). The statutory value added tax shall be reimbursed in addition if it is owed by the Supplier and if we have received an invoice that complies with the statutory provisions.

4.2 Unless expressly agreed otherwise in text form, the Price shall include delivery and transport „free domicile“ to the shipping address stated in the order, including packaging. If it has been agreed in text form that the Supplier shall transport the deliveries at our expense, the Supplier shall choose the most favorable option with regard to the duration of transport and transport costs. Additional costs arising from non-compliance with this provision shall be borne by the Supplier if we can prove to the Supplier a more favorable transport option.

4.3 Unless expressly agreed otherwise in text form, we shall pay the price net within 60 days from delivery of the goods and receipt of the invoice. The receipt of the transfer order by the bank shall be sufficient for the timeliness of our payments.

4.4 In all documents, such as order confirmations, delivery bills, invoices, etc., our order number, the article number, delivery quantity and delivery address shall be indicated; in addition, barcodes and/or QR codes shall be indicated as far as possible. The aforementioned payment targets pursuant to Section 4.3 shall be extended accordingly if missing or incorrect information causes delays in business transactions during processing.

4.5 In the event of default in payment, we shall owe interest on arrears in the amount of five percentage points above the respective applicable base interest rate pursuant to § 247 BGB (German Civil Code).

4.6 In the event of defective or incomplete delivery or performance, we shall be entitled to withhold payment in proportion to the value until proper performance. The time of the (partial) payment shall not affect our right to complain and the warranty.

4.7 Our rights of set-off and retention shall be governed by law. The Supplier may only set off claims which are undisputed, free of any decision or which have been finally determined by a court of law.

## 5. Performance of the contract by the supplier, default, contractual penalty in case of default.

5.1 The place of performance shall be the delivery address specifically designated by us in the order or acceptance of the Supplier's offer. The Supplier shall bear the risk and all costs until we have accepted the performance there.

5.2 The deliveries must correspond exactly with the type, scope, properties and quality requirements of the order. Even minor deviations shall require our express consent in text form for proper performance.

5.3 The agreed delivery time (also: „delivery date“) is binding. In the event of premature delivery, we shall not be obliged to accept performance. If delivery periods are agreed, they shall commence upon receipt of the order by the supplier. The acceptance of the service at the delivery address specified by us shall be decisive for compliance with the time limit.

5.4 Excess deliveries which have not been agreed upon may either be accepted by us upon corresponding invoicing or stored at the Supplier's expense until they are collected by the Supplier or returned to the Supplier at the Supplier's expense. In the case of storage, we shall be entitled either to charge storage costs in accordance with § 354 of the German Commercial Code (HGB) at the customary local rates or to demand the actual additional expenses for storage from the supplier.

5.5 If the supplier becomes aware of circumstances according to which the delivery is delayed or could be delayed, he must inform us immediately in text form.

5.6 The supplier shall not be entitled to make partial deliveries unless something to the contrary has been expressly agreed in text form in advance.

5.7 Without our express consent in text form, the Supplier shall not be entitled to render the performance through third parties (e.g. subcontractors).

5.8 The supplier shall be in default at the end of the day on which the delivery was agreed, without the need for a reminder from us.

5.9 In the event of default, the supplier shall be liable in accordance with the law, unless otherwise stipulated in these terms and conditions or expressly in text form. A reservation of self-delivery on the part of the supplier is excluded. In the event of delays or failures in performance, the Supplier may not invoke force majeure if the impediment to performance could have been foreseen and averted with due commercial care.

5.10 In the event of default on the part of the Supplier, we shall be entitled, after prior warning in text form to the Supplier, to demand a contractual penalty of 0.5% of the respective order value for each full week of the default in delivery, but not more than a total of 5% of the respective order value. Further legal claims and rights shall remain unaffected. The contractual penalty shall be set off against the damage caused by delay to be compensated by the supplier. The supplier shall have the right to prove to us that no damage or significantly lower damage has been incurred as a result of the delay.

## 6. Securing of ownership

6.1 We reserve ownership and copyrights as well as all other rights to orders placed by us, orders as well as drawings, illustrations, calculations, descriptions and other documents provided by us; this applies to all types of data carrier form, whether physical or digital, and in particular also to all contents in Gerber format and DFX files. Third parties or the supplier may neither make them accessible to third parties nor use or reproduce them themselves or through third parties without our express consent. The documents shall be returned to us in full at our request if they are no longer required by the supplier in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Digital or analog copies made by

the Supplier shall then be destroyed; the only exceptions to this are storage within the scope of statutory storage obligations and the storage of data for backup purposes within the scope of normal data backup.

6.2 The same shall apply accordingly to tools and models which we make available to the Supplier or which are manufactured for contractual purposes; they shall remain our property or shall become our property. The supplier shall identify them as our property, keep them in proper custody, adequately protect them against damage of any kind and use them only for contractual purposes. § Section 690 of the German Civil Code is excluded. The supplier shall notify us immediately of any damage. Upon request in text form or termination of the contract, the Supplier shall be obliged to return the tools and models to us in proper condition if they are no longer required by him for the performance of the contracts concluded with us.

6.3 Retentions of title by the supplier shall only apply insofar as they relate to our payment obligation for the respective products to which the supplier retains title. Extended or prolonged reservations of title are not permitted.

## 7. Warranty

7.1 In the event of material defects and defects of title in the delivery, our claims shall be governed by the law, unless otherwise agreed in our General Terms and Conditions. In addition, we shall be entitled to withdraw from the contract at any time by declaration in text form, stating the reason, if we are no longer able to use the ordered products in our business operations or are only able to use them at considerable expense due to circumstances for which the supplier is responsible and which have occurred after the conclusion of the contract (e.g. failure to comply with statutory requirements) or if the supplier's financial circumstances deteriorate after the conclusion of the contract to such an extent that delivery in accordance with the contract is not to be expected.

7.2 Deviations in the quality and quantity of the delivery shall be deemed to have been notified in good time if we notify the supplier of such deviations within four working days of acceptance of the delivery by us. Hidden material defects shall be deemed to have been notified in due time if the notification is made to the Supplier within four working days after discovery. Saturday does not count as a working day. The timely dispatch of the notice of defect shall be sufficient to comply with the time limit. The complaint shall be made in text form. At our request, the Supplier shall be obliged to inspect the notified defects of the products at their location at its own expense.

7.3 We do not waive warranty claims by acceptance or approval of samples or specimens submitted.

7.4 In the event of defective performance, the Supplier shall, at our discretion, remedy the defect or make a replacement delivery within a reasonable period of time set by us. In the event of urgency or imminent danger, we shall be entitled to carry out the subsequent performance ourselves or have it carried out by third parties at the expense of the supplier after the unsuccessful expiry of a short, reasonable deadline or, if the setting of a deadline is excluded due to the urgency, taking into account the interests of both parties.

- 7.5 The Supplier shall bear all expenses necessary for the purpose of and in connection with the rectification of defects or replacement delivery. In particular, the Supplier shall also be obliged to collect the non-conforming delivery at its own expense. This shall also apply if the delivery is already at the premises of one of our customers.
- 7.6 If a partial performance or partial delivery is defective and the supplier fails to remedy the defect within a reasonable period of time, we shall be entitled to withdraw from the entire contract if our interest in the contract would remain violated even in the event of a partial withdrawal due to the defective part.
- 7.7 Warranty claims shall become statute-barred after 36 months. The period shall commence upon complete performance at the delivery address specified by us. The limitation period for warranty claims shall be suspended from the time of notification of the defect in text form until the supplier rejects our claims or declares the defect eliminated or otherwise refuses to continue negotiations on our claims. In the event of rectification of defects or replacement performance, the warranty period shall be extended accordingly by the duration thereof, but shall end no later than 42 months after the first delivery or performance. In case of a successful replacement delivery as well as in case of a successful remedy of defects of essential parts of the performance, the limitation period shall start anew upon delivery, unless the parties expressly agree that this is a measure for reasons of goodwill. In order to maintain our warranty claims, it shall be sufficient for us to have notified the supplier of the defect in text form within the warranty period.
- 8. Liability**
- 8.1 The Supplier shall be liable for its own intent or negligence for our resulting damages in accordance with the law. The same shall apply accordingly for intent or negligence on the part of his vicarious agents. If claims for compensation are asserted against us on account of damage to our contractual partners or third parties for which the supplier is responsible or the representation is attributable to him, the supplier shall be obliged to pay us compensation or to indemnify us against all claims on first demand. Sentences 1 and 2 shall apply accordingly in the case of strict liability.
- 8.2 The supplier shall be liable for the prevention of damage, e.g. recall actions, insofar as these measures were caused by defects in the delivery for which the supplier is responsible. § Section 254 of the German Civil Code shall apply accordingly. We shall inform the supplier in advance of the type and scope of the measures, insofar as this is feasible and reasonable, and give him the opportunity to comment.
- 8.3 The supplier shall be responsible for all claims asserted by third parties for personal injury or property damage attributable to a defective product supplied by him and shall be obliged to indemnify us against any liability resulting therefrom. If we are obliged to carry out a recall action against third parties due to a defect in a product supplied by the Supplier, the Supplier shall bear all costs associated with the recall action.
- 8.4 The Supplier undertakes to maintain adequate product liability insurance at its own expense. The supplier shall send us a copy of the liability policy at any time upon request.
- 9. Force majeure**
- 9.1 In the event of force majeure, such as pandemics, war or threat of war, natural disasters, extraordinary transport or operational disruptions, global supply chain disruptions, industrial action, shortages of raw materials, foreign exchange hindrances or similar unforeseen obstacles to delivery, we shall be released from our obligation to accept delivery for the duration of the obstacle if and to the extent that the obstacle has a significant influence on the acceptance of the delivery or service and cannot be averted by us despite reasonable care. If the events of force majeure are temporary, we may demand performance at a later date. If an event of force majeure lasts longer than four months, we shall be entitled to withdraw from the contract in whole or in part without this giving rise to any claims on the part of the supplier.
- 10. Industrial property rights**
- 10.1 The supplier shall be liable for infringements of industrial property rights for which he is responsible, e.g. trademark rights (property rights), which result from the use of the supplies or services in accordance with the contract, irrespective of the country in which he manufactures the products or has them manufactured. The Supplier shall indemnify us against all claims asserted against us by third parties in Germany and abroad on account of infringements of industrial property rights and shall reimburse us for all necessary expenses incurred in connection with such claims. This shall not apply if the Supplier proves that it is neither responsible for the infringement of property rights nor should have been aware of the infringement at the time of delivery if it had exercised due commercial care.
- 10.2 The Supplier shall notify us at its own expense of the use of published and unpublished own and licensed industrial property rights and applications for industrial property rights to the objects of performance.
- 10.3 The contracting parties shall immediately inform each other in text form of any infringement risks that become known and of any alleged or reported cases of infringement. They shall agree among themselves on how to deal with this and shall take measures by mutual consent to avert any claims for damages, insofar as this is feasible.
- 10.4 Our further legal claims due to defects of title of the products delivered to us shall remain unaffected.
- 11. Secrecy**
- 11.1 The supplier is obliged to keep the terms of the order as well as all information, documents, drawings, samples, materials and the like made available to him by us secret for a period of five years after the date of delivery and to use them only for the execution of the order. This does not include publicly accessible information. The supplier shall return the aforementioned documents to us immediately upon request or delete digital contents.
- 11.2 Without our express prior consent in text form, the supplier may not refer to the business relationship online, in advertising materials, brochures, etc. and may not exhibit delivery items manufactured for us.

- 11.3 The obligation to maintain secrecy shall continue to apply after the execution or termination of this contract. It shall expire if and to the extent that the knowledge contained in the aforementioned documents and information has become generally known or was demonstrably already known to the Supplier at the time of the communication within the meaning of sentence 1.
- 11.4 The Supplier shall be obliged to oblige its vicarious agents and assistants accordingly in accordance with this provision.

**12. Final provisions, prohibition of assignment, applicable law**

- 12.1 The Supplier shall not be entitled to assign its claims arising from the contractual relationship to third parties. This shall not apply insofar as monetary claims are concerned.
- 12.2 If any provision of these General Terms and Conditions of Purchase is or becomes invalid in whole or in part, this shall not affect the validity of all other provisions.
- 12.3 The relations between us and the Supplier shall be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods (CISG), Incoterms as well as other, also future, inter-state or international agreements shall not apply, even after their adoption into German law.
- 12.4 Place of performance as well as place of jurisdiction for all disputes arising from or in connection with the delivery or service shall be, at our option, Hamburg or the registered office of the supplier, for lawsuits of the supplier exclusively Hamburg. Statutory provisions on exclusive jurisdiction shall remain unaffected.
- 12.5 These General Terms and Conditions constitute an English translation of the German General Terms and Conditions. In case of doubt, the content of the German version shall always apply.