

General Terms and Conditions of Purchase of Wenker GmbH & Co. KG

I. General

1. Exclusivity

These General Terms and Conditions of Purchase (GTCP) shall apply exclusively between us and the supplier and seller of machined and processed products, machines, equipment and used parts including accessories (hereinafter referred to as "Supplier"). Any general terms and conditions of the Supplier conflicting with or deviating from our Terms and Conditions of Purchase

will not be accepted by us unless we have confirmed the validity of the deviating General Terms and Conditions of the Supplier expressly accepted in writing in advance.

2. Framework agreement

Our Terms and Conditions of Purchase shall generally also apply to subsequent transactions with the supplier after execution of a transaction, even if they are no longer expressly referred to in subsequent orders.

II. Order, conclusion of contract

1. Written form

An order shall only be deemed to have been placed when it has been drawn up and signed by us in writing or in text form. Orders placed verbally or by telephone shall only be accepted by us if binding if we have confirmed them by subsequently sending a written order.

2. Changes, scope of services

Deviations in quantity or quality compared to the text and content of our order as well as subsequent amendments to the contract shall only be deemed to have been agreed if we have confirmed them in writing or in text form.

3. Confirmation letter

Our orders are to be confirmed by the supplier without delay. If we do not receive the supplier's confirmation within 8 days, we reserve the right to cancel the order free of charge. With the confirmation, the supplier acknowledges that he has informed himself about the type of execution and scope of performance by inspecting the available documents. The supplier shall check the order without delay for completeness, contradictions, obvious errors, feasibility and suitability for the agreed purpose. The supplier shall inform us immediately of any detected errors, defects, and risks as well as possibilities for improvement. The same shall apply if the supplier is informed during the contract performance, errors, defects, risks or improvements become apparent.

4. Pre-contractual costs

Cost estimates, offers, planning and other pre-contractual services of the supplier are free of charge for us, unless their remuneration has been expressly agreed.
agreed in writing

III. Scope of delivery and services

1. Ranking

The contractual services and deliveries of the Supplier shall be determined by the following contractual components in the following order of priority: (a) Our purchase order together with the documents and attachments referred to therein in the order of priority stated, (b) if available:

technical and organizational descriptions (e.g. specifications, performance specifications, technical planning documents, quality assurance regulations), (c) these GPC.

2. Scope of services

All services required for a flawless delivery or for a flawless production and assembly process shall also be part of the scope of services of the supplier if they are not expressly listed in the contract.

3. Prerequisite for performance modification

A claim for remuneration by the supplier for changed or additional services, irrespective of the legal grounds, is excluded if the supplier has fulfilled his additional remuneration claim is not announced prior to execution and this has been confirmed by us. This may be waived in individual cases due to extreme urgency.

4. Remuneration for changed performance

In the event of modified services, any claim to remuneration shall consider any additional or reduced services. In all other respects, any supplementary claim to remuneration shall be determined based on the price of the contractual service.

5. Material supply of the customer

If, in the case of installations, assemblies and maintenance, the material required for the performance of the supplier's service is supplied or provided by us, the performance of the suppliers also unload the trucks and transport them from the intermediate storage of the plant components to the assembly site.

6. Documentation

In the case of installation, assembly and maintenance, the scope of services shall also include the documentation customary in the industry, which shall be handed over to us without request and without delay.

7. Safety, environmental regulations

Deliveries and services of the Supplier must comply with the statutory provisions, in particular the safety and environmental protection provisions the environmental laws and regulations currently in force by law, including the Ordinance on Hazardous Substances, the ElektroG and comply with the safety recommendations of the relevant German technical bodies or associations, e.g. VDE, VDI, DIN, etc.

8. Certificates, proofs, protection devices

If the scope of services includes research, design, development, drafts, planning, programming or similar services, the supplier shall hand over all results, in particular design and production drawings as well as documentation, user manuals etc..

Furthermore, relevant certificates, test certificates and verifications shall be supplied free of charge and without request. In the case of deliveries and the provision of services, the supplier shall be solely responsible for compliance with the accident prevention regulations.

responsible. Protective devices required thereafter as well as any instructions of the manufacturer shall be supplied free of charge and without request. Copyright and

industrial property rights or other protected performance results, the supplier shall grant us the right to use them for the purpose for which they are required. If it is an individual performance for us, we shall receive the exclusive, irrevocable right of use, unlimited in time, space and content, transferable and compensated with the remuneration. This includes in particular the right to reproduce, process, distribute as well as license to third parties.

IV. Delivery dates, delay, contractual penalty

1. Dates

The agreed delivery dates are binding delivery receipt/service performance dates. The delivery deadlines run from the date of the order. Receipt shall be confirmed by a person authorized by us. The supplier is obliged to inform us immediately in writing of inform us if circumstances occur or become apparent according to which the delivery time cannot be met.

2. Delay

If the date on which the delivery must be made at the latest can be determined based on the contract

the supplier shall be deemed to be in default upon expiry of this day without the need for a reminder or notice of default on our part.

3. Consequences of delay

In the event of a delay in delivery, we shall be entitled to the statutory claims without limitation, including the right to withdraw from the contract and the claim for damages instead of performance after the fruitless expiry of a reasonable grace period. In particular, after fruitless expiry of a reasonable grace period, we shall have the right to claim a contractual penalty of 1 percent of the net order value per week or part thereof, but not more than 5 percent of the net order value and/or

delivery and/or to withdraw from the contract even if the supplier is not responsible for or at fault for the delay. Any contractual penalty paid shall be offset against any claim for damages. The supplier shall be entitled to prove that we have incurred no damage at all or only significantly less damage than the lump sum.

4. Acceptance of delayed performance

The acceptance of delayed deliveries or services does not imply that we waive any claims for compensation.

5. Acceptance requirement

Insofar as the delivery/service of the supplier also includes assembly and installation, an acceptance is required and agreed. Putting the delivery into use does not constitute acceptance in the legal sense. Acceptance shall require a written acceptance signed by us. acceptance protocol. § Section 640 (1) sentence 3 BGB remains unaffected.

V. Shipping

1. Incoterms, shipping notice, shipping costs

The dispatch of goods shall be notified at the latest upon departure of the deliveries. In Shipping notices, bills of lading and package addresses must indicate the shipping address and the order/ or commission number. The delivery of our order takes place in principle according to Incoterms® 2020 DDP - Delivered Duty Paid. Shipments for which, in exceptional cases, we are required to bear all or part of the freight costs shall be transported at the most favorable freight rates or in accordance with the customer's shipping instructions. Cartage on Place of reception are not paid.

2. Economy, efficiency

The transport has to be carried out according to the current state of the art and under aspects of freedom from damage, cost efficiency as well as environmental protection. We reserve the right to dispose of packaging that does not comply with the current standard or our instructions at the supplier's expense or to return it freight collect. The protection of the goods during transport and any subsequent storage must always be guaranteed. The Environmentally friendly packaging must be ensured by the supplier. Exceptionally invoiced, usable packaging can be returned to us carriage forward. Return credit note. If reusable packaging is used, the supplier shall provide it on loan. The return shipment shall be at the expense and risk of the supplier.

3. Packaging agreement

If, by way of exception, something else has been agreed in writing or in text form, the packaging shall be charged at the verifiable cost price.

VI. Prices, invoicing, terms of payment

1. Prices

Unless otherwise agreed in writing, the prices for deliveries and services are net plus statutory value added tax.

The prices stated in the order shall be binding unless the supplier reduces his prices and shall apply free to the place of receipt specified by us, including all ancillary costs and charges until delivery/installation in operational condition at the place of receipt/installation specified by us.

2. Documentation, instructions, records

The documentation, instructions and documents for operation, operation and service/maintenance, etc. required for commissioning and use shall be included in the agreed price.

3. Expenditure overview

Insofar as remuneration on a time and material basis has been agreed, a detailed overview of expenses signed by us must be enclosed with the corresponding invoice for billing purposes.

4. Invoice form

Invoices are only to be processed if they indicate the order or commission number shown in our purchase order - in accordance with the specifications in our purchase order. Collective invoices are not accepted; one invoice must be issued per delivery.

5. Payment, discount

Unless otherwise agreed in writing, payments due shall be made by us within 14 days less 3% discount or after 30 days net, calculated from receipt of invoice, made.

6. Maturity interest

Interest on arrears is excluded. The interest on arrears shall be five percentage points above the respective prime rate.

7. Partial payments

Payments to the supplier do not in principle imply any acknowledgement or acceptance with regard to the contractual conformity of the delivered goods.

8. Rights of retention

The supplier shall not be entitled to any rights of retention insofar as they are based on counterclaims from other legal transactions with us.

9. Offsetting

The supplier may only set off such claims which are undisputed by us or which have been legally established.

10. Price change for long-term contracts

If, in the case of long-term contracts or framework supply contracts (contracts with a term of more than 12 months and unlimited contracts), there is a significant change in wage, material or energy costs, each contracting party shall be entitled to demand negotiations on an appropriate adjustment of the price, taking these factors into account. If the negotiations do not lead to an amicable adjustment of the contract, both parties shall be entitled to terminate the contract.

VII. Warranty, notice of defects

1. Legal requirements

The statutory provisions shall apply to our claims arising from material defects and defects of title as well as for other breaches of the supplier's obligations, unless otherwise stipulated below.

2. Quality, guidelines

The supplier guarantees that all services - as far as applicable to the specific delivery item -, in particular with regard to material selection, processing and mode of operation, comply with the latest state of the art, the relevant legal provisions and the comply with the regulations and guidelines of authorities and professional associations. If deviations from the regulations are necessary in individual cases, the supplier must obtain our written consent for this. The supplier's liability for defects shall not be affected by these consent shall not be restricted. If the supplier has reservations about the type of execution requested by us, he must inform us of this in writing without delay.

3. Right

The Supplier warrants that the goods, samples and/or other services supplied by him are free from third party rights of any kind and that third party property rights, in particular patents, utility models, design patents, trademarks and copyrights, are not infringed. The Supplier shall indemnify us and our customers against all costs and claims for damages of third parties in case of infringement of third-party property rights, private rights or public law regulations.

4. Commercial law

§ Section 377 HGB shall apply with the following special features:

- The goods shall only be deemed to have been delivered when, in the ordinary course of business, we have had the opportunity to examine them for the first time. In case of doubt, this is the time when the goods arrive at our premises at the usual business opening time. The Handover to the carrier is not sufficient. The complaint shall be deemed to have been made in good time if it is received by the supplier within a period of fourteen working days, calculated from the date of receipt of the goods or the first opportunity to inspect them or, in the case of hidden defects, from the date of discovery.
- The approval effect does not occur if the supplier does not comply with the was not aware of quality deviations as a result of its own negligence or negligence attributable to it, but in the event of proper conduct had to assume that we would not accept the deviations.
- Defects that cannot be detected in the course of a mere visual and identity inspection shall be deemed to be hidden defects.

5. Payments

Payments made by us shall not be deemed a waiver of any claims for compensation.

6. Supplementary performance

Subsequent performance on the part of the supplier shall be effected at our discretion by remedying the defect (rectification) or delivery of a defect-free item (replacement delivery) within a reasonable period set by us. If the supplier's subsequent performance fails or is unreasonable for us, in urgent cases, where operational safety is at risk or for the purpose of avoiding or minimizing damage, we may remedy the defect ourselves or have it remedied at the supplier's expense.

7. Limitation

Our warranty and damage compensation rights shall become time-barred three years after the passing of risk. Insofar as the supplier delivers new items or re-delivers individual parts of an item within the scope of liability for defects, the limitation period for the new item or the entire reworked item, insofar as the same defect continues in the reworked item, shall start anew from the handover of this new item or the individual part. The recommencement of the limitation period shall not occur insofar as the defect was insignificant or the Supplier has expressly indicated prior to the subsequent delivery that it is not obligated to make the subsequent delivery and has delivered the replacement only as a gesture of goodwill or for the amicable settlement of a dispute.

VIII. Compliance, quality assurance, environmental protection, energy efficiency, Code of Conduct

1. Legal and regulatory compliance

The supplier is obliged to provide the deliveries and services in such a way that the legal and official regulations applicable at the place of use specified by us are complied with, Regulations, directives, ordinances and other legal standards, in particular regarding quality, environmental protection, occupational health and safety, transport safety and product safety are complied with, including the Ordinance on Hazardous Substances, the ElektroG and the comply with the safety recommendations of the relevant German technical bodies or associations, e.g. VDE, VDI, DIN, etc.

The supplier guarantees that all services - insofar as applicable to the specific delivery item - comply with the latest state of the art, in particular with regard to energy efficiency comply, as energy efficiency (ISO 50001) is an award criterion.

2. Management system

To the extent required in the purchase order or specification, the supplier shall establish, apply and further develop a suitable management system customary in the industry. As far as agreed, the supplier undertakes to apply the principles of the quality assurance, energy and environmental management system in accordance with ISO 9001, ISO 14001 and ISO 50001 in the performance of its deliveries and services. If required by us, the supplier shall conclude a separate quality assurance agreement with us.

3. Certification

With regard to a certified management system operated by the supplier (e.g. ISO 9001, VDA 6.4, ISO 14001, ISO 50001), the supplier shall provide us with the relevant certificates without being requested to do so when submitting the offer and when making the deliveries. Any update of the certificates shall also be transmitted to us without request.

4. Evidence and accident prevention regulations

Further relevant certificates, test certificates and proofs shall be supplied free of charge and without request. In the case of deliveries and the provision of services, the supplier shall be solely responsible for compliance with the accident prevention regulations. Any protective devices required in accordance therewith as well as any instructions of the manufacturer shall be supplied free of charge and without request.

5. Documentation of the quality inspection, audits

The supplier shall document its quality tests and make them available to us immediately and free of charge upon request.

We may - with reasonable notice - conduct audits at the supplier's premises with regard to the object of delivery or service, whereby representatives of our customer who are bound to secrecy or external auditors may be involved. Within the scope of the audit, we shall be entitled in particular to inspect the manufacturing process, the production facilities and the quality assurance measures as well as their documentation and to provide corresponding information in full. However, the supplier is not obligated to disclose trade or business secrets in this context, unless we commit ourselves in writing to strict confidentiality.

6. Code of Conduct

By accepting the order, the supplier accepts the "Code of Conduct for Suppliers" of Wenker GmbH & Co KG. This can be viewed at www.wenker.de. The supplier is responsible for ensuring that the obligations of the "Code of Conducts for Suppliers" of Wenker GmbH & Co. KG are accepted and complied with by in turn its suppliers.

IX. Product liability

If claims are asserted against us on account of the supplier's delivery due to product liability, the supplier shall indemnify us comprehensively against such claims if and to the extent that the damage was caused by a defect of the supplier. In the event of a liability based on fault, this shall only apply if the supplier is at fault. The supplier must prove that he is not at fault if the cause of damage results from originates from his area of responsibility.

X. Retention of title, provision

1. Transfer of ownership

The transfer of unrestricted ownership of the goods delivered by the supplier shall take place upon handover to us or acceptance by us. The same applies to the goods delivered by the documents supplied by the supplier. The supplier warrants that all deliveries are free from third party rights and, in particular, that the delivery and use of the goods does not infringe any patents or other industrial property rights in the country of the agreed delivery. place of delivery, in the European Union, and the non-EU countries and - as far as notified to the supplier - in the intended countries of use are violated.

2. Infringements of property rights

Insofar as liability exists directly towards a third party by operation of law, the Supplier shall indemnify us against claims by third parties arising from any infringements of property rights and shall bear all necessary costs incurred in this connection.

3. Retention of title

If a reservation of title by the supplier is accepted by us individually in a particular case, it shall expire at the latest upon payment of the purchase price. A prolonged or extended Retention of title by the supplier is excluded.

4. Processing

The processing, conversion or installation of production components and means of production which we provide to the supplier shall be carried out for us. If this leads to inseparable mixing with the supplier's or a third party's goods, we shall become co-owners of the newly created goods in the ratio of the value of our goods to the other processed goods. objects at the time of processing. If processing, reconstruction or installation is carried out in such a way that our item is considered to be an essential component of the supplier's main item we shall acquire co-ownership of the main item in the ratio of the value of our item to the other processed items at the time of processing. In both cases, the supplier shall keep the co-ownership for us.

XI. Secrecy and data protection

1. Documents, knowledge

Each contracting party shall use all documents (including samples, models, tools and data) and knowledge which it obtains from the business relationship only for the jointly purposes pursued and carefully keep them secret from third parties if the other contracting party designates them as confidential or has an obvious interest in keeping them secret. This shall also apply to price lists prepared by us. This obligation shall commence as of the first receipt of the documents or knowledge and shall continue even after the end of the Business relationship continued.

2. Rights of use to our drawings, specifications, etc.

We reserve the property rights and comprehensive rights of use to drawings, specifications, documents, models, etc. provided by us. Copies may only be made to the extent that this is necessary for the manufacture of the products or services ordered by us. is indispensable for the performance of the agreed services. The supplier undertakes to return the documents received at any time upon our request and to destroy any copies made or to delete digital copies irretrievably. The supplier shall have no right of retention in this respect.

3. Advertising

The supplier may only advertise the joint business relationship with our prior written consent.

4. Violations

In the event of breaches of the confidentiality obligation and restrictions on use, we shall be entitled to demand injunctive relief, remedial action and damages. Any criminal measures remain reserved.

XII. Subcontractor

1. Consent requirement

Insofar as the Contractor for its part wishes to commission third parties with the performance of the service, this shall require the prior written consent of the Client. This shall apply accordingly to the change or the involvement of further subcontractors.

2. Legal requirements

The supplier shall ensure that it and its subcontractors comply with the statutory requirements relating to the German Act on the Clandestine Employment of Workers (SchwarzArbG), the German Act on the Posting of Workers (AentG), the German Minimum Wage Act (MiLoG) as well as to the German Personnel Leasing Act (AÜG). The contractor shall indemnify us internally against all possible claims which may be asserted against us.

due to a violation of the AEntG, the MiLoG as well as other legal regulations, which may impose liability, by the supplier or one of its subcontractors.

made. In particular, the supplier undertakes to assist us in the defense against alleged.

10claims against the Customer in this respect and, for example, to provide him with the information required for this purpose.

3. Confirmations

Upon our first request, the supplier shall be obliged to submit a written confirmation of its subcontractor regarding compliance with the regulations on minimum conditions at the workplace or on the minimum wage. The same applies to other obligations towards authorities and social security funds, insofar as our company may be liable as the client.

4. Control rights

We are entitled to check compliance with the aforementioned legal requirements or to have them checked, insofar as these can lead to liability on the part of our company as the client. The supplier undertakes to allow his subcontractor to be inspected by us or by a third party commissioned by us or to submit the relevant documents to us for inspection at our first request.

5. Violations

If the Contractor violates the obligation to pay the minimum wage or if the Contractor fails to comply with the obligation to provide evidence within a reasonable period of time set by the Client, the Client shall be entitled to terminate the contract without notice

In the event of a breach by a subcontractor of the Contractor of the obligation to pay the minimum wage or to provide evidence, the Client shall be entitled to terminate the contract with the contractor without notice, unless the contractor itself causes the termination of the contractual relationship with the subcontractor without notice.

In the event of justified termination without notice, the Customer shall be entitled to have the part of the performance not yet rendered performed by a third party at the Contractor's expense.

6. Warranty

The obligations, warranties, guarantees and liability of the supplier shall not be affected or limited by subcontracting or by our consent thereto.

XIII. Written form

1. Contract amendments

Amendments and supplements to the contract must be made in writing; the same applies to the waiver of the written form requirement.

2. Form

Insofar as the written form is required in these terms and conditions, this shall also be complied with by fax or electronic form within the meaning of Section 126a of the German Civil Code (BGB).

XIV. Place of performance, place of jurisdiction, applicable law

1. Jurisdiction

In business transactions with merchants within the meaning of the German Commercial Code (HGB) as well as with legal entities under public law and with special funds under public law, the place of performance and jurisdiction for all disputes arising from and in connection with the contract shall be the headquarters of our company. However, we expressly reserve the right, in the event of legal disputes, to take recourse to the domestic or foreign court having general jurisdiction over the customer.

2. Applicable law

Regarding all rights and obligations arising from the contract concluded with us, the law of the Federal Republic of Germany shall apply. The UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

XV. Severability clauses

1. Ineffective clauses

Should individual provisions of these terms and conditions be or become invalid, this circumstance shall not affect the validity of the remaining provisions.

2. Agreement

In place of the invalid provision, the contracting parties shall agree on a provision that comes closest to the economically intended result and the ideas of the contracting parties in a legally permissible manner.

(status of 08/23)