

StrikoWestofen GmbH Purchasing Terms and Conditions I.

I. General Information, Field of Application

1. These general purchasing terms and conditions apply to all business relationships with our business partners and vendors (referred to as “vendor” below). The general purchasing terms and conditions apply only if the vendor is a businessperson (Section 14 of the German Civil Code (BGB)), a legal person under public law or a special fund under public law.
2. The general purchasing terms and conditions apply in particular to contracts for the sale and/or delivery of movable goods (also referred to as “goods” below), without consideration of whether the vendor produces the goods itself or buys them from suppliers (Section 433, 651 of the German Civil Code (BGB)). The general purchasing terms and conditions in their respective version apply as a master agreement, also for future orders with the same vendor for the sale and/or delivery of movable goods, without us having to refer to them again in each case. In case our general purchasing terms and conditions are amended, we shall notify the vendor promptly.
3. These general purchasing terms and conditions apply exclusively. Deviating, conflicting or supplementary general business terms and conditions of the vendor only become part of the contract if and to the extent that we have explicitly consented to their application in writing. This approval requirement applies in any case, for example even if we accept the deliveries of the vendor without reservation and with knowledge of the vendor’s general business terms and conditions.
4. Individual agreements with the vendor on a case-by-case basis (including subsidiary agreements/addendums and amendments) take precedence over these general purchasing terms and conditions in all cases. A written contract and/or our written confirmation is authoritative for the content of such agreements.
5. Material statements and notices to be issued to us by the vendor after the contract is concluded (e.g. deadlines, reminders, statement of withdrawal) must be in written form in order to be effective.
6. References to the application of legal regulations are for clarification only. Therefore, the applicable legal regulations shall apply even without such clarification to the extent they are not explicitly amended or excluded by these general purchasing terms and conditions.

II. Order Placement and Order Confirmation

1. Our orders are considered binding no sooner than when they are issued in writing or confirmed. The vendor is obligated to notify us of obvious errors (e.g. clerical and calculation errors) and incompleteness of the order, including the order documents, for the purpose of correction and/or completion. Otherwise the contract is deemed not to have been concluded.
2. The vendor is obliged to confirm our order in writing within 7 days (order confirmation) or to execute the order without reservation, in particular by shipping the goods (acceptance). Delayed acceptance is deemed to constitute a new offer and requires acceptance by us.
3. The order confirmation must include our purchase order number and the order number of the vendor as well as binding prices and delivery dates. Missing rebates and abatements have to be added.

III. Delivery

1. The delivery dates specified by us are binding unless anything to the contrary is expressly ordered. Delivery dates are arrival dates at the respective point of delivery.
2. The vendor is obligated to notify us promptly in writing of possible delivery delays and the reasons for the same.
3. Should the vendor fail to perform, if performance is not within the agreed delivery term or in case of default, our rights and especially the right of withdrawal and right to compensation, are determined according to the applicable legal regulations. The provisions of Section 4 remain unaffected.
4. In case of default by the vendor, we – in addition to further legal claims – may demand compensation for damages caused to us by delay at the flat rate of 1% of the net price per full calendar week, but no more than 5% in total of the net price of the goods that were delivered late. We reserve the right to present proof of higher damage incurred by us. The burden of proof that we incurred no damage or significantly lower damage rests with the vendor.
5. Accepting a late delivery does not constitute a waiver of possible claims for damages.
6. Partial deliveries and/or deliveries before the agreed delivery date require our written consent.

IV. Shipment, Packaging and Passing of Risk

1. Delivery within Germany is “free to the door” at the address specified on the order (delivery address). If no delivery address is specified and nothing to the contrary is agreed upon, delivery shall be to our place of business in Gummersbach. The respective delivery address is also the place of fulfilment (obligation to deliver).
2. The risk of accidental perishing and accidental impairment of delivery objects passes to us at the place of fulfilment. Insofar as an acceptance procedure is agreed upon, it shall be decisive for the passing of risk. That being said, the applicable legal regulations for work and services apply correspondingly to an acceptance procedure. Default of acceptance on our part is deemed equivalent to the transfer of goods or acceptance.
3. Fees for transport insurance shall not be covered by us. We are a customer exempted from forwarding insurance.
4. Deliveries require packaging that corresponds to the type of goods being delivered. Damages resulting from inadequate packaging shall be borne by the vendor.
5. Packaging has to be taken back upon request.

V. Nondisclosure, Design Protection and Third-Party Proprietary Rights

1. The vendor obligates itself to treat all documentation such as templates, samples, models, drawings, data etc. provided to the vendor as strictly confidential and not to make said documentation accessible to any third parties. Such documentation is to be used exclusively for performance pursuant to the contract and must be returned to us after contractual performance is complete.
2. The vendor is liable for claims arising from the contractual use of the delivery objects due to the culpable breach of proprietary rights and patent applications insofar as these have been published by the German or European Patent and Trademark Office.

VI. Liability for Defects

1. For the purpose of our rights in case of material defects or deficiencies in title to the goods (including incorrect and short deliveries as well as improper assembly and faulty assembly or operating instructions or instructions for use) and in case of other breaches of duty by the vendor, the applicable legal regulations shall apply unless anything to the contrary is established below.
2. Deliveries and performance must comply with the respective applicable legal regulations as well as the applicable safety and accident prevention regulations. According to the applicable legal regulations, the vendor is liable in particular for ensuring that the goods have the agreed characteristics upon the passing of risk to us. In any case, the product descriptions – especially in the form of designation or reference in our order – that are the object of the respective contract or form part of the respective contract are deemed to constitute an agreement about the characteristics. Here it makes no difference whether the product description comes from us, from the vendor or from the manufacturer.
3. For the commercial obligation of examination and notification of defects, the applicable legal regulations (Section 377, 381 of the German Commercial Code (HGB)) shall apply subject to the following: our obligation of examination is limited to defects that are readily apparent in our goods receiving inspection with external examination including the delivery documents (e.g. transport damage, incorrect or short delivery). There is no obligation of examination insofar as an acceptance procedure is agreed. This being said, it depends to what extent an examination is feasible under consideration of the circumstances on a case-by-case basis in the ordinary course of business. Our obligation for the notification of defects in case of defects that are discovered later remains unaffected. In all cases, our complaint (notification of defects) is deemed to be prompt and timely if it is received by the vendor within 5 working days.
4. Should the vendor fail to meet its obligation of supplementary performance – at our discretion by eliminating the defect (rework) or delivering goods free of defects (replacement delivery) – within an adequate term imposed by us, we have the right to eliminate the defect ourselves and to demand compensation from the vendor to cover the incurred expenditures and/or to demand corresponding advance payment. If supplementary performance by the vendor has failed or is not reasonable for us (e.g. due to special urgency, impairment of operating safety or the pending occurrence of disproportionate damage), no deadline has to be imposed; we shall inform the vendor promptly of such circumstances, where possible in advance.
5. This being said, we have the right to an abatement of the purchase price or withdrawal from the contract in case of a material defect or defective title according to the applicable legal regulations. We also have a right to compensation and the reimbursement of expenditures according to the applicable legal regulations.

VII. Prices, Invoices and Delivery Notes

1. All prices are binding, fixed prices and include all incidental costs.
2. All invoices have to include our purchase order number and must be sent out in duplicate immediately after delivery.
3. Early deliveries may be refused or stored externally at the vendor's expense.
4. A delivery note has to be affixed to the delivery, visible and on the outside of the package in a sealed envelope. A copy has to be presented with the bill of lading to our goods receiving department for review upon delivery.

VIII. Payment Terms

1. Our payments are made within 30 calendar days from receipt of the goods and performance as well as the receipt of an invoice in proper form, unless other payment terms are individually agreed. When we submit payment within 14 calendar days, the vendor shall grant us a discount of 3% on the net invoice amount.
2. Incomplete or defective performance, without prejudice to our further claims, entitles us to withhold payments that are due until performance that is free of defects is received in full. That being said, we are entitled to all statutory rights of retention and set-off. The vendor is entitled to the right of retention and set-off only based on legally established or undisputed counter claims.

IX. Product Liability and Indemnity

The seller indemnifies us from third-party claims to the extent the vendor is responsible for the occurrence of a product defect, the cause lies within the vendor's domain and organisational area and the vendor is liable in external relations. The vendor also bears the costs of a possible recall.

X. Place of Fulfilment, Jurisdiction and Applicable Law

1. The place of fulfilment for all deliveries and performance is identical to the delivery address specified on the order.
2. If the delivery address specified by us differs from the company's registered office, this is the place of fulfilment.
3. Insofar as the vendor is a businessperson (pursuant to the German Commercial Code (HGB)), a legal person under public law or a special fund under public law, the jurisdiction is our place of business in Gummersbach. Contractual relationships with the vendor are subject exclusively to the laws of the Federal Republic of Germany; application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

XI. Export Control and Customs

The vendor is obligated to actively inform us of possible approval obligations related to specific goods for the (re)export of the vendor's goods according to German, European and US export and customs regulations as well as the export and customs regulations in the country of origin for the vendor's goods. For goods that require export approval, the vendor shall issue a written declaration for the respective goods within 10 working days after the order is placed.