

Winkhaus Conditions of Purchase and Contract

(Valid as of 01/02/2013)

1. Placing of orders

Our contracts and orders are carried out exclusively based on our conditions of purchase and contract.

They also apply to all future business relations, even if they are not expressly agreed upon. Any general terms and conditions of the supplier which deviate from our conditions of purchase and contract only apply if we explicitly declare our agreement in writing. This also applies if such terms are communicated to us through a commercial letter of confirmation. Our conditions of purchase and contract also apply if we accept the supplier's delivery without reservation, despite awareness of conditions contradictory to or deviating from our conditions. If the supplier fulfils an order completely or in part, this is considered a tacit agreement on its part to our conditions in their entirety.

Only written orders are legally binding. All agreements reached between us and the supplier in connection with the respective order are recorded in writing in the respective contracts, these conditions and our offers/orders.

If the supplier does not accept the offer for the conclusion of a contract (order) within 14 days, we are entitled to cancel the quotation before the receipt of the supplier's declaration of acceptance.

The complete transfer or subcontracting of the ordered services and deliveries to third parties requires our written approval.

2. Prices

The agreed prices are binding maximum prices. The prices include delivery carriage paid to our plant or unloading area if no other written agreement has been reached. If no prices are specified in the order, they must be submitted to us for approval before the acceptance of the order. Packaging costs are included in the price.

3. Delivery time

The agreed delivery dates are binding. Advance deliveries of goods are only permitted with our prior written approval. The receipt of the delivery at the shipping address specified by us is definitive for the punctuality of deliveries without assembly or installation. The provision of the delivery in a condition ready for acceptance is definitive for the punctuality of deliveries with assembly or installation.

**Aug. Winkhaus
GmbH & Co. KG**

August-Winkhaus-Str. 31
D-48291 Telgte
T +49 2504 921-0
F +49 2504 921-314
info@winkhaus.de

If the agreed delivery deadlines are not met, we shall be entitled to withdraw from the contract after the issuance of a reminder and subsequent lapse of a reasonable grace period. We may also claim damages, unless the supplier is not responsible for non-compliance with the deadline.

4. Shipping

The supplier bears sole responsibility for ensuring that the shipping instructions are carried out exactly as specified. A notice of dispatch with specification of the forwarding company must be sent to us for each delivery. Each delivery must also be accompanied by a delivery note which specifies the reference, number and date of our order.

We are entitled to refuse to accept shipments if proper shipment documents, including documented evidence of import tax payment, are not submitted to us on the day of delivery, or if our order references are not specified or not complete on the shipment documents, without being in default of acceptance as a result. Costs incurred as a result of the refusal to accept shall be borne by the supplier. We reserve additional rights arising from debt default.

When goods are delivered, it must be ensured that your vehicle (or the vehicle you contracted) arrives at the appropriate plant or the unloading areas specified by us no later than 2 pm - by 11 am on Fridays - otherwise there is no guarantee that it can be unloaded on the same day.

The delivery of goods on Friday afternoons, Saturdays and Sundays is not possible.

5. Risk assumption

The supplier bears the risk for the shipment until the goods arrive in proper form at our plant or at the place of unloading we have specified. This also applies if delivery ex works is agreed upon on an individual basis or if we should undertake shipping at our own expense.

6. Invoicing

The order number and the receiving centre must be visible on each invoice and on all shipping documents. If this information is missing, we cannot guarantee we will be able to comply with the agreed payment conditions. We reserve the right to a cash discount deduction. This does not constitute a default in payment on our part. We will pay for the goods delivered as agreed in the contract according to the quantities we record after goods are received.

7. Payment

Invoices/goods received between the 1st and 15th day of the month are payable on the 30th/31st day of the month and invoices/goods received between the 16th and 31st day of the month on are payable on the 15th day of the following month with a

cash discount of 3%, or 60 days net after the invoice is received, at our own discretion.

Our right to notify of defects and the supplier's warranty obligations remain unaffected by any payments made.

8. Counterclaims

Offsetting counterclaims against our claims or exercising the right to retaining goods is only allowed if the counterclaim is undisputed or has been recognised and is due for payment.

The assignment of claims towards us to third parties requires our express approval.

9. Defects

The supplied items must be manufactured using the best-suited, fault-free materials. They must have the agreed characteristics and, if applicable, those customary in the trade and comply with trade standards. If applicable, each delivery should be provided with technical operating instructions and a CE marking or EC declaration of conformity. All deliveries must be in compliance with the respective valid German Product Safety Act (ProdSG) and, if applicable, with the Machine Ordinance (9th ProdSV). The values with regard to dimensions, quantities, weight and quality recorded during an incoming goods inspection are binding.

10. Liability for defects / liability / insurance coverage / exemption

The supplier assumes a warranty for its deliveries and services in accordance with statutory provisions. It must supply deliveries free of material defects and defects of title. We are entitled to demand that the supplier replaces or repairs faulty goods free of charge with carriage paid, or grants credit against the invoiced amount after the lapse of an unsuccessful grace period.

If and to the extent that the supplier does not comply with its obligation to provide an immediate replacement or does not immediately carry out the required repair work, we shall be entitled to carry out the required repair work ourselves or assign it to a third party at the supplier's expense after the lapse of a reasonable grace period.

The supplier's liability for defects also extends to parts produced by subcontractors.

The supplier expressly guarantees that (insofar as applicable) it shall fulfil all obligations under EC Directive 1907/2006 (REACH Regulation) with regard to the materials it supplies. After goods are received at our plant, they are inspected for easily detectable defects, identity, quantity and transport damages. There is no obligation to carry out further inspection.

The supplier is obliged to supply spare parts under reasonable conditions for the period of ordinary technical use, however for at least 10 years after the last delivery of the delivery item.

If the supplier discontinues the supply of spare parts after the lapse of the 10-year period or discontinues the supply of the item during said period, it must inform us of this and give us the opportunity to place a final order.

If third parties assert damage claims against us on the basis of product damage for which the supplier is responsible, the supplier must, on the initial request, indemnify us from all claims of third parties, including the necessary costs for the defence against said claims, if the cause lies within supplier's domain or organisational area.

If we must issue a recall in the event of damage in the sense of Number 10, Paragraph 7, the supplier shall be obliged to compensate us for all expenditures arising from or in connection with the recall issued by us. We shall, insofar as it is possible for us and reasonable in terms of time, inform the supplier of the contents and the scope of the recall and give the supplier the opportunity to comment. Further claims to which we are legally entitled remain unaffected by this.

The supplier is obliged to arrange for and maintain a product liability insurance policy with an appropriate coverage sum for the goods of at least €10 million per case of personal injury / property damage (the fixing of the coverage sum depends on the respective product and shall be determined on an individual basis). In addition, the supplier is obliged to sufficiently insure material provided by us for the implementation of the order against loss and damage. Further claims to which we are legally entitled remain unaffected by this.

Complaints or claims for damages regarding the material provided by us and the weight of the shipment on the bill of lading on which the calculation of freight is based must be made immediately when material is accepted from the forwarding company or haulage contractor.

If a claim is made against us by a third party because the delivery from the supplier has violated the legal property rights of the third party, the supplier is obliged to indemnify us against said claims on the initial request, including the necessary costs for the defence against said claims arising from the assertion of claims by the third party, unless the supplier has not acted culpably. We are entitled to recognise the claims of the third party and/or conclude agreements related to said claims with the third party without the written approval of the supplier. The period of limitation for these claims for exemption is 36 months, calculated from the transfer of risk.

11. Limitation of claims

The warranty period is 24 months, starting from the transfer of risk.

12. Service orders

The following also applies for installation services, repairs or other services:

The contractor must comply with its professional association's regulations and accident prevention regulations when all work is carried out. The contractor is the sole party responsible and liable for all accidental damage caused by the contractor or its representatives or vicarious agents. The contractor shall indemnify us from all claims for damages which are asserted against us in connection with the contractor's contractually owed delivery or service.

The contractor and its representatives or vicarious agents must ensure that any property of theirs brought into our facilities is carefully and securely stored. We are only liable for loss or damage in the case of gross negligence or intent on our part.

13. Reservation of proprietary rights

Material, models, moulds, tools, data documentation, drawings, drafts, sketches, plans, descriptions, specifications, measurements, calculations, records, processes, samples, findings and procedures, including secret knowledge as well as additional, unpublished applications for commercial property rights, which are paid for or provided for the implementation of the order remain or become our property.

Said items must be labelled as our property immediately after acceptance and must be stored separately from any identical or similar items. They must not be used for purposes other than the fulfilment of the contract. The contractor is liable for the loss of said items or any damage or misuse until they are returned in a due manner. After the order is completed, these items must be returned without the contractor being specifically requested to do so.

The new item arising from the handling of our items becomes our property. In case of doubt, we shall acquire co-ownership of the new item on a *pro rata* basis with the stipulation that the item is kept safe for us. The contractor must inform us immediately of an impending or implemented seizure or other (compulsory) measures of enforcement as well as any other infringement of our rights.

When the goods are shipped, the supplier waives any claims towards us regarding retention of title which may be stated in their conditions of supply.

14. Place of performance

The place of performance for all rights and obligations arising from the supply or service is agreed as the designated plant where the goods or service are received.

15. Place of jurisdiction and applicable law

The exclusive jurisdiction for all legal disputes is the courts responsible for the location of our registered office. However, we reserve the right to take legal action in the place where the supplier's company is based or where their residence is

located. German law shall apply exclusively. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

16. Severability clause

If a provision of these conditions of purchase and contract is or becomes entirely or partially void, invalid or voidable, the remaining content of these conditions of purchase and contract shall remain unaffected by this.