

## **Winkhaus General Terms and Conditions of Purchasing and Orders**

(valid from 01/03/2019)

### **1. Placing of orders**

Our contracts and orders are carried out exclusively based on our General Terms and Conditions of Purchasing and Orders.

These conditions also apply to all future business relations, even if they have not be explicitly agreed upon again. Any supplier's general terms of business which differ from our Conditions of Purchasing and Orders only apply if we explicitly agree to them in writing. This is also the case if such terms are communicated to us through a commercial letter of confirmation. Our Conditions of Purchasing and Orders thus apply without any reservation if we accept a delivery from the Supplier even if we are aware of conflicting conditions or conditions differing from ours. If the Supplier fulfils an order completely or in part, this is considered a tacit agreement on their part to our conditions in their entirety.

Only written orders are legally binding. All agreements that we reach with the Supplier related to the order in question are laid out in writing in the contracts concerned, these conditions and our offers.

If the Supplier does not accept the offer to conclude a contract (order) within 14 days, we are entitled to revoke the offer before the Supplier's declaration of acceptance is received.

Our written consent is required if the Supplier transfers or subcontracts the ordered services and supplies fully to third parties.

### **2. Prices**

The agreed prices are binding maximum prices. These prices include delivery to our plant or free to the place of unloading at the Supplier's expense if no other agreement has been reached in writing. If no prices are stated in the order, they must be submitted to us for approval before the order is accepted. Packaging costs are included in the price.

### **3. Delivery period**

The agreed delivery dates are binding. Early deliveries are only permitted if the Supplier has our prior written consent. Deliveries without installation or assembly are considered delivered on schedule if they are received at the shipping address that we indicated at the agreed time. Deliveries with installation or assembly are considered delivered on schedule if they are provided ready for inspection and acceptance at the agreed time. If the agreed deadline is not met, we are entitled to withdraw from the contract after issuing a reminder and once an appropriate grace period has expired. 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 shipping instructions are carried out exactly as specified. Each delivery must 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. The Supplier bears any costs incurred as a result of a refusal to accept. We reserve additional rights arising from lack of timely performance.

When delivering goods, ensure that your vehicle or the vehicle that you contract arrives at the designated plant or the place of unloading that we stipulated by 2 pm at the latest – by 11 am on Fridays – otherwise it cannot be guaranteed that the delivery will be unloaded on the same day.

It is not possible to deliver goods on Friday afternoons, Saturdays or Sundays.

#### **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 that we have specified. This also applies if a delivery is agreed ex works on an individual basis or if we should undertake shipping at our own expense.

#### **6. Invoicing**

The order number and the point of reception must be visible on each invoice and on all shipping documents. If this information is missing, we cannot guarantee that we will be able to comply with the agreed payment conditions. Our entitlement to a cash discount deduction is maintained. 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. Payments**

Invoices/goods received are payable with a cash discount of 3% 21 days after the invoice is received or 60 days net after the invoice is received unless a differing agreement has been reached in writing.

Our right to notify of defects and the Supplier's warranties remain unaffected by any payments made.

#### **8. Counterclaims**

Offsetting counterclaims against our receivables or exercising the right to retain goods is only permitted if the counterclaim is undisputed or has been recognised in a court of law and is due for payment.

The assignment of our receivables to third parties requires our explicit approval.

## **9. Defects**

The supplied objects must be manufactured using the most suitable, flawless materials. They must feature the agreed characteristics and, where applicable, those customary in the trade and comply with trade standards. If required, each delivery should be provided with technical operating instructions and a CE marking or an EC Declaration of Conformity. All deliveries must comply with the applicable German Product Safety Act (ProdSG) and, where required, with the applicable German Machinery Regulation (currently 9th Regulation of the Product Safety Act [9. ProdSV]). The values with regard to dimensions, quantities, weight and quality established during an incoming goods inspection are binding.

## **10. Liability for defects/liability/insurance coverage/release**

The supplier offers a warranty for their supplies and services in accordance with statutory provisions. They must supply deliveries free of material defects and defects of title. At our discretion, we are entitled to demand the supplier replaces or repairs faulty goods free of charge for us or grants credit against the invoiced amount if time limits expire and no repair or replacement is provided.

If the Supplier does not comply with their obligation to provide a prompt replacement or does not immediately carry out the required repair work, we are entitled to carry out the required repair work ourselves or assign it to a third party at the Supplier's expense after a reasonable period of time.

The Supplier's liability for defects also applies to parts produced by subcontractors. The Supplier expressly guarantees that, if applicable, they comply with all obligations under the most recent REACH Directive (currently: 1907/2006/EC) and the most recent RoHS Directive (currently: 2017/2102/EU) with regard to the materials that they supply. After goods are received at our plant, they are examined with regard to identity, quantity, any easily detectable defects and any transport damage. 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 of its goods, but for at least 10 years after the last delivery of the object of the contract.

If the Supplier ceases to supply the replacement parts once this 10-year period expires or ceases to supply the delivery item during this time period, they must notify us of this change and give us the opportunity to place a last order.

If third parties should claim compensation due to product damage for which the Supplier is responsible, the Supplier must indemnify us, on first demand, from any claims from third parties, including the necessary costs to defend ourselves against such claims, if the cause lies within the Supplier's area of control and responsibility.

If we are forced to carry out a recall campaign due to a damage event, the Supplier is obliged to reimburse all expenses incurred due to or in connection with the recall campaign that we organise. We shall keep the Supplier informed about the content and

extent of the recall campaign if this is possible and reasonable within the time frame. We shall also give them the opportunity to make a statement. Further legal claims to which we are entitled remain unaffected by this.

The Supplier undertakes to acquire and maintain a product liability insurance policy with a reasonable flat-rate coverage for the goods of at least 10 million euros for personal injury and damage to property. The amount of coverage is fixed on an individual basis and depending on the product concerned. The Supplier is also obliged to insure the material that we provide to fulfil the contract against loss and damage to an adequate extent. Further legal claims to which we are entitled remain unaffected by this.

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

If a third party makes a claim against us, because the Supplier's delivery violates the third party's protected rights, the Supplier undertakes to indemnify us from such claims on first demand. This includes all the necessary expenses which we have incurred in relation to the third party filing claims and defence against such claims unless the Supplier did not act negligently. We are not entitled to recognise the third party's claims and/or come to agreements with the third party regarding these claims without the Supplier's written consent. The limitation period for this right to exemption is 36 months, calculated from the date when risk was transferred.

#### **11. Limitation period**

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 their professional association's regulations and accident prevention regulations when any work is performed. They are the sole party responsible and liable for all accidental damage which they or their representatives or agents cause. They will release us from all claims for compensation which are made against us in connection with their contracted delivery or service.

The Contractor and their agents or assistants themselves must ensure that any property of theirs brought into our facilities is stored carefully and securely. We are only liable for loss or damage in the case of gross negligence or deliberate act on our part.

#### **13. Retention of title**

The following items that we provide remain our property: material, models, moulds, tools, documentation, data, drawings, drafts, layouts, plans, descriptions, specifications, measurement readings, calculations, experiences, methods, samples, knowledge and processes, including secret expertise and as yet unpublished applications for industrial property rights incumbent on us.

When objects are received, they should be immediately labelled as our property and be stored separately from any identical or similar material. They must not be used for purposes other than those of the contract. The Contractor is liable for their loss or their service 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.

New items produced by machining our objects become our property. In the event of doubt, we acquire proportional co-ownership of the new item with the proviso that the item is taken into custody on our behalf. The Contractor must inform us immediately of an impending or implemented court-ordered seizure or other (compulsory) enforcement measures and any other infringement of our rights.

When the goods are shipped, the supplier waives any rights to us regarding ownership 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 relevant courts for our company headquarters are the sole place of jurisdiction for all disputes. However, we reserve the right to bring an action to court in the place where the Supplier's company headquarters or their residence is located. German law is applicable to the exclusion of all others. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.

#### **16. Severability clause**

Should a provision in these General Terms and Conditions of Purchasing and Orders be or become entirely or partially void, ineffective or voidable, the remaining content of these conditions shall remain unaffected thereby.