

SCOPE

The following conditions only apply for merchants, legal entities under public law or special assets under public law.

I. Application

1. Orders are only binding once the supplier has confirmed the order. Any changes or additions must be in writing. All quotes are subject to change unless explicitly identified as binding.
2. In ongoing business relationships, these conditions also apply to future business even if no explicit reference is made to it, provided that the ordering party has received them previously for an order confirmed by the supplier.
3. The business conditions of the ordering party do not apply unless explicitly accepted by the supplier.
4. If individual conditions are invalid or become invalid, the validity of the other conditions is not affected.

II. Prices

1. In cases of uncertainty, prices are ex works and do not include freight, customs duty, import tax, or packaging. Statutory VAT must be added.
2. If fundamental cost factors change significantly following the submission of the quote or following confirmation of the order but before delivery, the supplier and ordering party shall agree on the modification of prices.
3. If the price is dependent on the weight of parts, the final price shall be determined on the weight of the approved type samples.
4. The supplier is not obliged to maintain previously agreed prices for new orders (= subsequent orders).

III. Obligation to deliver and accept

1. Delivery periods are calculated from the time of receipt of all documents required to complete the order and receipt of a deposit and material provisions where agreed. The period of delivery is considered to have been observed if the supplier informs the ordering party that the product is ready for shipment but shipment is delayed or impossible through no fault of the supplier.
2. If an agreed period of delivery is not observed through the fault of the supplier and this is not a result of gross negligence or intent, the ordering party is entitled - after a reasonable extension period and excluding further claims - to demand compensation for the delay or to terminate the contract. Compensation for delay is limited to a maximum of 5% of the value of the part of the delivery that was not performed in accordance with the contract. The contract cannot be terminated if the ordering party is in default of acceptance. The ordering party retains the right to submit proof of higher damages.
3. Suitable partial deliveries and reasonable deviations from the order quantities of up to +/- 10% are permitted.
4. In the case of call orders with no term agreement, batch size, and acceptance dates, the supplier can request a binding specification on these issues no later than three months following the confirmation of the order. If the ordering party does not comply within three weeks of the request, the supplier is entitled to impose a two-week extension and after that may terminate the contract and/or claim damages.
5. If the ordering party fails to meet their obligation to accept, the supplier - without prejudice to other rights - is not obliged to comply with the self-help sale stipulations and can sell the delivery items freely without notifying the ordering party.
6. In cases of force majeure, the supplier is entitled to delay delivery for the period of encumbrance plus a reasonable lead time or to withdraw totally or partially from the contract parts that have not yet been fulfilled. The force majeure clause also applies to strikes, lock-outs or unforeseeable, unavoidable circumstances such as system malfunctions that, despite the best efforts of the supplier, make it impossible to deliver on time. In such cases, the supplier must provide proof of the difficulty in question. This also applies if the difficulties stated above occur during a delay or at the site of a subcontractor. The ordering party can ask the supplier to state within two weeks whether they wish to withdraw or will deliver following a reasonable extension period. If the supplier does not respond, the ordering party is entitled to withdraw from the contract part that has not yet been fulfilled. The supplier must immediately inform the ordering party of cases of force majeure as specified in section 1. The supplier must attempt to minimize disruption to the ordering party by, for example, releasing the moulds for use for the duration of the difficulties.

IV. Packaging, shipment, transfer of perils and default of acceptance

1. Unless otherwise agreed, the supplier chooses the packaging, shipment type, and shipment route.
2. Risk is transferred to the ordering party when the parts leave the supplier's premises, even for freight-paid deliveries. If the ordering party is responsible for a delay in shipment, risk is already transferred when the supplier informs the ordering party on the readiness for shipment.
3. At the written request of the ordering party, the goods will be insured at their expense against the risks specified by the ordering party.

V. Retention of title

1. Deliveries remain the property of the supplier until all pending receivables due from the ordering party have been received even if the purchase prices for specially designated receivables has been paid. In the case of current accounts, the retention of title (goods subject to retention of title) acts as security for the settlement of the balance with the supplier. Where supplier liability is established through payment of the purchase price by means of a bill of exchange, the retention of title does not end until the bill is honoured by the purchaser as drawee.
2. Any machining or processing by the ordering party shall take place without acquisition of ownership in accordance with § 950 BGB (German Civil Code) on the behalf of the supplier; on the basis of the ratio between the net invoice value of the supplier's goods and the net invoice value of the goods to be processed/machined, the supplier shall become co-proprietor of any such goods, which, as goods subject to the retention of title, shall act as security for the supplier's receivables in accordance with section 1.
3. If the ordering party processes (combines/mixes) goods with third-party goods, the stipulations of sections 947 and 948 BGB apply and the supplier's co-ownership of the new goods - now goods subject to retention of title - applies henceforth in accordance with these provisions.
4. The ordering party is only entitled to resell goods subject to the retention of title during normal business dealings and provided that the ordering party agrees on retention of title with customers in accordance with sections 1 to 3. The ordering party is not entitled to dispose of such goods in other ways including by pledging them as collateral or transferring them by way of security.
5. In the case of resale, the ordering party hereby surrenders all receivables arising from resales and any other legitimate claims on their customers including all ancillary rights to the supplier until all receivables due to the supplier have been received. If requested to do so by the supplier, the ordering party must immediately provide the supplier with all information and materials required to assert the rights of the supplier with regard to the customers of the ordering party.

6. If goods subject to retention of title are resold after processing in accordance with section 2 and/or 3 together with other goods that do not belong to the supplier, the amount of the purchase price surrendered shall correspond to the value of the invoice for the supplier's goods subject to retention of title in accordance with section 5.
7. If the value of existing supplier securities exceeds the total receivables of the supplier by more than 10 %, the supplier is obliged to release securities of their choice if requested to do so by the ordering party.
8. Any third-party garnishment or seizure relating to goods subject to the retention of title must be reported to the supplier immediately. The costs of any required intervention shall be borne by the ordering party unless borne by the third parties in question.
9. If the supplier makes use of their retention of title by retaking possession of goods subject to retention of title in accordance with the conditions above, they are entitled to sell or auction them freely. The goods subject to retention of title will be taken back at the value of the generated proceeds but at no more than the agreed delivery prices. The right to make other claims for damages – in particular for lost profit – is retained.

VI. Liability for quality defects

1. The type samples, which the supplier shall submit to the ordering party for inspection on request, are the decisive goods for the quality and design of the products. The information on technical standards constitutes technical specifications and is not to be construed as a quality guarantee.
2. If the supplier provides consultation services to the ordering party over and above the scope of the contract, the supplier is only liable for the functionality and suitability of the delivery items if this is expressly confirmed in advance.
3. Any notices of defects must be immediately reported in writing. Hidden defects must be reported as soon as they are discovered. In both cases, all rights to claim for defects shall lapse twelve months following the transfer of risk unless agreed otherwise. Unless legislation in accordance with section 438 subsection 1, no. 2 BGB, section 479 subsection 1 BGB, and section 634a subsection 1, no. 2 BGB stipulates longer periods, this period is valid.
4. In the case of justified claims for defects – where the type samples that have been approved in writing by the ordering party are to determine the quality and design to be expected – the supplier is obliged to provide supplementary performance. If the supplier does not meet this obligation within a reasonable period of time, or if repeated attempts to rectify the problem fail, the ordering party is entitled to reduce the purchase price or withdraw from the contract. The right to make further claims, and, in particular, claims for the reimbursement of expenses or damages resulting from defects or follow-on damages only exist under the conditions outlined in part VII. Replaced parts are to be returned to the supplier under freight-collect conditions on request.
5. Arbitrary reworking and improper handling of the goods invalidate all rights to claim. The ordering party is only authorized to rectify issues and demand cost compensation to preclude disproportionately high damages or if the supplier fails to rectify the defects in question; in such cases, the prior agreement of the supplier is required.
6. Wear or abrasion relating to the contractually agreed use does not give rise to guarantee claims.
7. The right of recourse in accordance with section 478 and section 479 BGB only exists if the claim by the consumer is justified and only to the extent prescribed in law and not for ex-gratia payments agreed with the supplier; the prerequisite is the fulfilment of duties of the person entitled to recourse, and, in particular, the obligations relating to reporting defects.

VII. General liability limitations

In all cases in which the supplier is obliged to reimburse expenses or damages that differ from the present conditions due to contractual or statutory claim bases, the supplier is only liable in cases of premeditation, gross negligence, or injury to life, limb, or health on the part of the supplier, their employees, or any auxiliary persons employed for the purposes of the contract. This does not affect strict liability in accordance with product liability legislation. Liability for the negligent failure to fulfil contractual obligations is also not affected; however, liability is limited to foreseeable damages that are typical for this kind of contract except in cases described in sentence 1. A change in the onus of proof to the disadvantage of the ordering party is not associated with these regulations.

VIII. Payment conditions

1. All payments are to be made to the supplier in €(EUROS).
2. Unless agreed otherwise, the purchase price for deliveries and other services is to be paid with a 2% discount if paid within 14 days or with no discount within 30 days of the invoice date. A discount will only be granted if all previous due and undisputed invoices have been settled. In the case of payments with bills of exchange, no discount will be offered.
3. If the payment deadline is not met, interest will be charged in accordance with the statutory rate of interest of 8% above the base rate of the ECB unless the supplier can prove that damages of a larger amount are incurred. The ordering party retains the right to submit proof of lower damages.
4. The right to decline cheques or bills of exchange is reserved. Cheques and rediscountable bills of exchange are only accepted on account of performance; all associated costs are to be borne by the ordering party.
5. The ordering party may only offset or withhold receivables that are undisputed and legally binding.
6. The sustained non-compliance with payment terms and circumstances that give rise to serious doubts as to the credit rating of the ordering party shall require the immediate payment of all receivables to the supplier. In addition, in such cases the supplier is entitled to demand prepayment for pending deliveries and – if payment is not made within a reasonable period – to withdraw from the contract.

IX. Industrial property rights and defects of title

1. If the supplier is required to make deliveries in accordance with drawings, models, or samples provided by the ordering party or using parts provided by the ordering party, the ordering party vouches that the industrial property rights of others will not be infringed by doing so in the country of destination of the goods. The supplier will inform the ordering party of any rights they are aware of.
2. The ordering party indemnifies the supplier from claims of third parties and the reimbursement of any incurred damages. If a third party invokes their property rights to prevent the production or delivery of goods, the supplier is entitled to halt production - without checking the legal position - until the matter is clarified by the ordering party and the third party. If this delay means that it is no longer reasonable to expect the contract to be completed, the supplier is entitled to withdraw from the contract. All drawings and samples submitted to the supplier that are not used for an order are to be sent back on request. Otherwise, they may be destroyed three months following the delivery of the quote. This also applies to the ordering party. The party entitled to destroy such items must inform the other party of intention to destroy well in advance.
3. The supplier is entitled to copyrights and industrial property rights (in particular rights of use and patent utilization) for the models, moulds, equipment, blueprints, and drawings produced by the supplier or by third parties commissioned by the supplier.
4. In the case of other defects of title, no. VI applies.

X. Place of execution and jurisdiction

1. The place of execution is 87616 Marktobendorf, Germany
2. The place of jurisdiction is the headquarters of the company Winterhalder GmbH & Co. KG, 87616 Marktobendorf, Germany.
3. German law shall exclusively apply. The use of the United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods (BGB 1989 page 586) for Germany (BGB 1990 page 1477) is excluded.