

# General Terms and Conditions of Purchase of Leuze electronic Deutschland GmbH + Co. KG

## I. General

1. All our orders shall be made subject to the following conditions. Conditions of the supplier shall not apply to deliveries made by us even if we have not expressly stated this and/or we accept the delivery without objection. Deviations and additions made by the supplier are only valid with our express confirmation in text form; such changes shall apply only to the transaction for which they were made.
2. Unless otherwise agreed upon, the general terms and conditions of purchase shall apply in the most recent version at the time of our order or at least in the latest version that was communicated in text form, without us having to refer to them in every isolated case.
3. Agreements made with the supplier mad in individual cases (including side agreements, additions and adjustments) shall in any case prevail over these general terms and conditions of purchase. Subject to proof to the contrary, a written contract or our written confirmation is decisive for the content of such agreements.
4. Legally relevant declarations and notifications of the buyer referring to the contract (e.g. setting of a deadline, notice of defects or withdrawal declaration or the demand of price reduction) must be in text form (e.g. letter, e-mail, telefax). Legal formalities and further verifications, especially if there are doubts considering the legitimation of the declaring party, shall remain unaffected.
5. References to the applicability of statutory provisions are for the purposes of clarification only. Therefore, statutory provisions shall also apply without such clarification, unless modified directly or expressly excluded in these general terms and conditions of purchase.

## II. Offer, Order, Conclusion of Agreement

1. When submitting an offer the supplier shall keep to our inquiry; express reference shall be made to any departure from the inquiry.
2. Our order alone is definitive for the scope of delivery. We may freely withdraw our orders at any time prior to their acceptance by the supplier. When, as an exception, an order is specifically identified as binding, the supplier may accept this order only within one (1) week. The supplier's offers submitted to us shall always be binding. Orders shall only be valid if they have been submitted in text form. Orders given verbally or on the telephone shall not be valid until the confirmation in text form has been received. Before accepting any purchase order, the supplier must point out obvious mistakes (e.g. misspellings and calculation errors) and any incompleteness in the purchase order including the order documents for the purposes of correction or completion.
3. As a matter of principle our order shall be confirmed in text form quoting our order data. Correspondence shall be held with our purchase department placing the order. Employees from other departments have no authority to change orders or amend agreements. Therefore any arrangements made with such employees shall require the confirmation in text form by the purchase department making the order for them to be valid, unless the authority of the employee is recorded in the commercial register.
4. The confirmation or – as far as it is made in advance – execution of the order shall be regarded as acknowledgement of our conditions.

## III. Reference-, Labelling-, Protection Requirements

1. For deliverables which do not obtain originating status in accordance with the prevailing statutory requirements, confirmations, delivery notes and invoices must stipulate the country of origin and a reference must be made to any negative qualities.
2. In case of shipment of goods subject to Annex 1 of the EG Dual-Use Regulation (Regulation (EC) No 428/2009) from other countries of the EU the supplier shall explicitly note on each document related to the shipment that the goods are subject to control in case of exporting outside of the Community.
3. The supplier undertakes to ensure the compliance with all safety and accident prevention provisions prescribed by the German legislator, by the German regulatory authorities, the German employer's associations, the German trade associations, the Association of German Electricians VDE and other such provisions with respect to delivery.
4. The delivery must contain any and all declarations of conformity or manufacturer's declarations required by law. Especially in accordance with:
  - Machinery Directive 2006/42/EG,
  - EMC Directive 2014/30/EU,
  - The LVD Directive 2014/35/EU,as well as the respective implementation acts of German law.
5. The declaration of conformity or manufacturer's declaration and instructions relating to the due operation of the merchandise shall form an integral part of the documentation to be supplied.
6. The supplier undertakes to ensure that the labelling, packaging and transport shall satisfy the provisions of the Chemicals Act, the Transportation of Hazardous Merchandise Act and regulations, directives and notices in this respect.

## IV. Prices, Passing of Risk, Default of Acceptance

1. Unless otherwise agreed upon, all prices are fixed prices in Euro net for the entire contractual period.

2. We do not agree to price-adjustment or price-increase clauses and may only agree to a price valid on the day of delivery (daily price clauses) if the price for the item delivered is usually dependent on a listing (e.g. listed metals).
3. Unless otherwise agreed, all prices include delivery to our facilities (DDP, according to Incoterms 2010) including any and all costs for packaging. If we request express delivery the extra cost for express delivery as against a normal freight can be charged to us.
4. The risk passes, even if shipment is agreed, to us as soon as the merchandise is handed over to us at the agreed place of delivery. If an acceptance (*Abnahme*) is made due to contractual provisions before shipment, the risk shall pass to us not yet with the acceptance but as soon as the merchandise is handed over to us at the agreed place of delivery.
5. In as far as in exceptional cases the price is agreed ex works or ex warehouse or similar, we shall only assume the costs for the cheapest type of dispatch and the cheapest route for dispatch; all costs incurred by the carrier until handover, including loading and freight charge shall also be borne by the supplier in this case.
6. In the event of natural disasters, riots, government measures, transport disruptions, lock-outs and other operational disruptions at our plant or our customers which bring about an interruption or restriction to our production or prevent us from accepting the merchandise ordered as agreed we shall be released from our obligations to accept as far as we cannot avoid the disruptions or their avoidance is not possible using reasonable means.

## V. Invoice and Payment Terms

1. The invoice shall be sent by mail or in electronic form. If sent by mail a clearly marked duplicate shall be attached. It must list the reference number, the order number, the part number, and the order date; all invoices must meet the requirements of the German Value Added Tax Act (*Umsatzsteuergesetz*). We may return any invoices that do not meet the conditions to the supplier for correction purposes. If, due to the missing information, our processing of the invoice in its normal course of business is delayed, the terms of payment listed in section V.2. shall be extended by the period it was delayed.
2. Payment shall be made within 30 calendar days from the date from the arrival of the complete shipment/rendered performance and receipt of a proper invoice. If payment is made within 14 calendar days, the supplier shall grant a 3 % discount on the invoiced net amount. What is relevant for the timeliness of the payment in case of bank transfer is the receipt of the remittance order by our bank before expiry of the payment period. We are not responsible for delays by banks involved in the payment transaction. Discount is also possible if we set off or undertake justified retention.
3. Our payments shall be made subject to correction or return if subsequently it transpires that the calculation is inaccurate or objections should be raised and also subject to due receipt of the deliverable. Payments do not constitute acknowledgement that merchandise and services rendered comply with the terms of the contract.
4. We do not owe any interest on due dates. In case of default, statutory provisions shall apply.

## VI. Delivery Period

1. Dates or periods of delivery stated in our orders are binding. As date of delivery shall be considered the day when we completely receive the deliverable at our facilities or the shipping address stated in the order, as far as acceptance (*Abnahme*) is necessary due to contractual provisions, the day of final acceptance (*Endabnahme*). The supplier shall be obliged to inform us in text form as soon as any circumstances become known revealing that the agreed shipment term cannot be kept, even if the supplier is not responsible for it.
2. In case no shipment term is stated, immediate shipment shall be owed unless otherwise agreed.
3. In the event that the supplier does not provide the services or does not provide the services within the agreed delivery period or if he defaults on delivery, our rights, particularly our rights to withdraw from the contract and to claim damages, shall be governed by the statutory provisions. The provisions in section/clause VI.4. shall remain unaffected.
4. Should the supplier be late, we may demand lump sum compensation of our default damage in the amount of 1 % of the net purchase price of the respective deliverable for each completed calendar week of delay in delivery, said penalty shall, however, be limited to 5 % of the net purchase price of the respective deliverable. We reserve the right to proof that higher damage have occurred. The supplier shall be entitled to proof that there is no damage at all or only significantly less damages have occurred.
5. We shall be entitled to assert an eventual lump sum compensation of our default damage in addition to fulfilment and to deduct these from the supplier's payable claims. The assertion of additional damage is not excluded. The lump sum compensation of our default damages shall, in this case, be offset against the overall damage caused by the delay.

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- We do not agree to any form of limitation of or release from liability for the supplier in case of delayed delivery.

## VII. Dispatch and packaging

- Each delivery shall have two delivery certificates attached stating our order number, order position and matter number. In the case of open dispatches the order number and order position shall be noted on the dispatch papers. In the case of drawings the drawing number with the revision status shall be stated on the deliverables and the delivery papers for control purposes.
- Our address, our order number and our matter number must be given in freight letters, parcel addresses and all other delivery documents. In the case of part deliveries agreed the residual amount shall be listed in each case by the supplier.
- If no delivery note is attached to the delivery by the supplier we shall be entitled to return the deliverables at the cost of the supplier.
- The merchandise delivered must be packed duly and properly. The packaging must meet all technical, statutory and official regulations. Any goods subject to labelling requirements must be labelled clearly visible with professional labelling.
- Transport packaging shall be returned free of charge at our request at any time even if we have demanded handover of the delivery in transport packaging.
- If we have to pay for packaging separately in exceptional cases, we shall be entitled to return packaging which is in good condition in return for a remuneration of two-thirds of the invoice value of the packaging freight prepaid to the supplier. The supplier shall be free to prove, that the current value of the packaging was any lower.

## VIII. Liability for defects

- The statutory provisions shall apply to our rights in the event of defects of quality or defects in title of the deliverables (including wrong and short delivery, as well as improper assembly, incorrect assembly and operating instructions) and in case of other breaches of duty by the supplier, unless otherwise stipulated below.
- In accordance with the statutory provisions, the supplier is particularly liable for ensuring that the deliverables have the agreed quality at the time the risk passes to us.
- In particular, those product descriptions which are subject of the respective contract, for example by designation or reference in our order, or which have been included in the contract in the same way as these general terms and conditions of purchase, shall be deemed to constitute an agreement on the quality.
- The supplier shall remedy all defects reported during the warranty period without undue delay, but at the latest within an adequate period of time set by us, either, at our discretion, through rectification or a replacement. The costs for supplementary performance shall be borne by the supplier.
- If the defect is not remedied within the period of time set by us, we shall be entitled, at our discretion and in accordance with statutory provisions, to claim damages for the delay, and damages instead of performance, as well as partially or completely withdraw from the agreement.
- The withdrawal does not presuppose a fault (*Verschulden*) by the supplier.
- Irrespective of our statutory rights and the provisions in this Clause VIII, the following shall apply: if the supplier does not fulfil its obligation to render supplementary performance within the reasonable period of time set by us, we shall be entitled to remedy the defect ourselves and demand reimbursement for the incurred expenses or an appropriate advance payment from the supplier. If the supplementary performance by the supplier has failed or is not reasonable for us (e.g. due to particular urgency, an endangerment to the operational safety or imminent occurrence of disproportionate damage) no deadline needs to be set. We shall inform the supplier of such circumstances immediately, if possible in advance.
- Supplementary performance shall also include removal of a defective deliverable and the reinstallation, if the deliverable has been installed in another object or attached to another object in accordance with its type and intended use. Our statutory claim for reimbursement of the corresponding expenses remains unaffected.
- The supplier shall bear all expenses required for the purpose of inspection and supplementary performance, even if it turns out, that there was no defect. Our liability for damages in case of unjustified notices of defect shall remain unaffected; however, we shall only be liable in this respect if we have recognized or failed to recognize due to gross negligence that no defect existed.

## IX. Notice of defect

- The statutory provisions (Para. 377, 381 HGB (German commercial code)) shall apply to the commercial obligation of inspection and notification of defects, subject to the following provisions: Our obligation to inspect is limited to defects which become apparent by external inspection including the delivery documents (e.g. transport damage, wrong or short delivery), during our quality control by sampling procedure for identifiable defects and for verification of identity and

quantity in accordance with the order. Apart from that, it depends on the extent to which an inspection is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later shall remain unaffected. Notwithstanding our obligation to inspect, our notice shall be deemed to have been made immediately and in time, if it is received by the supplier within a period of seven (7) working days from the date of acceptance of the supplied good or in the case of hidden defects from the date they were detected.

- If the contract requires acceptance (*Abnahme*), we shall not have a duty to inspect the merchandise.
- If we uncover damage or defect later, we shall report it promptly after the discovery. We do not have any other obligations vis-a-vis the supplier to check and report other than those cited above. The supplier waives the plea of a late notice of defect in this regard.
- In deviation from Sec. 442 par. 1 clause 2 of the German Civil Code (*BGB*), we shall be entitled to claims for defects even if we remained unaware of the defect at the conclusion of the agreement due to gross negligence.

## X. Supplier Recourse

- Our statutory claims to recourse within a supply chain (supplier recourse in accordance with Secs. 445a, 445b, 478 German Civil Code, *BGB*) are granted to us in addition to the claims for defects, without restriction. In particular, we are entitled to demand exactly the type of supplementary performance (rectification or replacement) from the seller/supplier, which we owe to our customer in an individual case. Our legal option (Sec. 439 para. 1 *BGB*) shall not be restricted by this.
- Before we accept or fulfill a defect claim asserted by our customer (including reimbursement of expenses according to Sec. 445a para. 1, 439 para. 2 and 3 *BGB*), we will inform the supplier and ask for a written statement, briefly explaining the facts of the case. If a substantiated statement is not made within a reasonable period and no amicable solution is reached, the claim for the defects actually granted by us shall be deemed to be owed to our customer. The seller shall be obliged in this case for counterevidence.
- We shall also be entitled to the rights of recourse according to Secs. 445a, 445b, 478 *BGB* against the supplier in corresponding application, even if the supplier has only supplied parts for the newly manufactured item. Claims by us arising from supplier recourse shall also apply if the goods have been further processed by us or one of our customers, e.g. by installation into another product or in combination with another product, prior to their sale to a consumer.

## XI. Product / Producers Liability Act

- The supplier shall indemnify us from all third party claims that are asserted against us on the basis of the German Product Liability Act (*Produkthaftungsgesetz*), provided the claims are based on defects ("Fehler" according to the German Product Liability Act) in the supplier's deliverables.
- Within the scope of its indemnity obligations, the supplier must reimburse expenses according to Secs. 683, 670 *BGB* which result from or in connection with a third-party claim, including recalls carried out by us. We will inform the supplier – as far as possible and reasonable - about the content and scope of recall measures and give it the opportunity to comment. Further legal claims remain unaffected.
- The supplier undertakes to take out and maintain appropriate business and product liability insurance (including expanded product coverage) and to submit to us proof of insurance.
- The supplier shall bear the costs for a potentially required recall, if and to the extent the recall is necessary due to flaws or defects of the supplier's deliverables.

## XII. Retention Rights, Offset, Plea of Non-Performance of Contract

- Offsetting rights and rights of retention as well as the plea of non-performance of the contract shall be entitled to us to the legal extent. In particular, we are entitled to withhold due payments as long as we are still entitled to claims from incomplete or defective services against the supplier.
- The supplier shall only have an offset right and right of retention on the basis of legally established or undisputed counterclaims.

## XIII. Property Rights, Defects in Title

- The supplier shall warrant that the deliverable is free from third-party industrial property rights at the time of passage of risk and that, to the supplier's knowledge no other rights exist which restrict or exclude use.
- If claims are filed against us by a third party owing to such legal infringement, the supplier shall be obliged to indemnify us against such claims on first request in text form. All expenses incurred by us from or in connection with the claim by the third party shall be reimbursed.
- If a deliverable delivered by the supplier or its contractual use infringes a property right of a third party and if the use is thereby impaired or prohibited, the supplier shall, at its discretion, either modify the respective contractual services in such a way that they fall outside the scope of protection, but nevertheless comply with the contractual

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provisions, or obtain the to use them without restriction and without additional costs for us in accordance with the contract.

4. However, the prerequisite for the above liability is that we notify the supplier immediately in writing of any claims by third parties due to an infringement of property rights, do not acknowledge the alleged infringement and conduct any dispute, including any out-of-court settlements, only in agreement with the supplier.
5. If we discontinue the use of the contractual products for reasons of mitigation or other important reasons, we shall be obliged to inform the third party that the discontinuation of use does not constitute an acknowledgement of the infringement of property rights.
6. As far as one contracting party is responsible for an infringement of property rights, claims against the other contracting party according to the preceding paragraph are excluded. The same shall apply if the infringement of property rights is caused by an unpredictable application or by the fact that the deliverable is modified by us.
7. Clause VIII. shall apply accordingly in all other respects.

## XIV. Retention of Title, Property Rights, Production Means, Confidentiality

1. The supplier is entitled to supply the deliverables with simple retention of title until payment has been made. We do not agree to any further provisions on retention of title, in particular to any so-called extended or prolonged retentions of title or company group retentions.
2. We retain title in any production means we provide. The supplier is under obligation to use the production means solely for the manufacture of deliverables ordered by us. The supplier is obliged to insure production means belonging to us on a new for old basis against the risk of fire, water damage and theft at its own cost and to maintain and repair these production means.
3. The Contractual Parties hereby agree that ownership of all production means which the supplier manufactures on our behalf or has manufactured transfers to us in as far as we remunerate the supplier for costs as agreed. In as far as we only assume a fraction of the cost of the production, the supplier hereby grants us a co-ownership share proportionate to this fraction in the production means. We hereby agree that the supplier shall store the production means in safekeeping on our behalf.
4. We reserve ownership rights and copyright to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents which were given to the supplier to manufacture the deliverable. Such documents may not be used, copied or given to third parties for other purposes. They shall be returned to us unsolicited after completion of the order.
5. After delivery has been made or after request at any other time the documents mentioned in Sec. 4. shall be returned immediately in full, including all copies made by the supplier. This shall also apply to drawings and documents which the supplier prepares in accordance with our instructions.
6. The contractual parties hereby agree that ownership of these copies, drawings and documents shall be transferred to us and that the supplier shall hold these copies, drawings and documents in safekeeping on our behalf until handover.
7. If a down-payment is made by us or materials are provided by us for processing, the ownership of the deliverables ordered shall be transferred to us when manufacturing commences. Handover shall be replaced by the agreement that the deliverables shall remain in the possession of the supplier until the agreed delivery date for the purpose of processing and that the supplier shall hold such in safekeeping for us.
8. The supplier undertakes to treat confidentially and not give access to any third parties all commercial and technical information and information that is not in the public domain of which it has gained knowledge during the business relationship.
9. In as far as the supplier gives third parties, e.g. upstream suppliers, access to deliverables, production means or documents without consent the above obligations shall also be imposed on such parties.
10. The supplier may refer to its business relationship in its advertising only with our prior consent in text form.
11. The supplier is liable for all damages arising from the breach of any of the above obligations.

## XV. Personal Execution, Subcontractors

The supplier is obliged to execute the order in person. It is not entitled to pass on the order to third parties or involve subcontractors without our prior permission in text form.

## XVI. Security in the Supply Chain

1. The supplier takes measures to secure the supply chain, so that deliverables which are manufactured, stored, carried on our account, delivered to us or taken over by us, are
  - manufactured, stored, processed and loaded at safe workplaces and transshipment locations,
  - kept safe from unauthorized access during manufacturing, storage, processing, loading and transport

and that the personnel involved in manufacturing, storage, processing, loading, transport and takeover are reliable.

3. The supplier will inform its business partners to take measures to secure the supply chain to the same extent.

## XVII. Limitation

1. The mutual claims by the Contractual Parties shall become statute-barred in accordance with legal provisions, insofar as nothing to the contrary is specified below.
2. Notwithstanding Sec. 438 para 1 no. 3 BGB, the general limitation period for claims based on defects shall be three years from the passage of risk. If acceptance has been agreed, the period of limitation begins upon acceptance. The three-year limitation period shall also apply accordingly to claims arising from defects in title, whereby the statutory limitation period for surrender claims in rem by third parties (Sec. 438 para. 1 no. 1 BGB) shall remain unaffected. Claims arising from defects of title shall not become statute-barred under any circumstances as long as the third party can still assert the right against us – in particular in the absence of a statute limitation.
3. The limitation periods of the sales law including the above extension apply – to the extent permitted by law – to all contractual claims for defects. Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (Secs. 195, 199 BGB) shall apply here, unless the application of the limitation periods of sales law in individual cases leads to a longer limitation period.

## XVIII. Choice of Law / Jurisdiction / Final Provisions

1. All agreements made under these terms and conditions shall exclusively be subject to German law under exclusion of private international law and the United Nations Convention on Contracts for the International Sale of Goods.
2. If the supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be Stuttgart. The same applies if the supplier is an entrepreneur within the meaning of Sec. 14 BGB. In all cases, however, we shall also be entitled to bring a claim at the place of performance of the delivery obligation in accordance with these Terms and Conditions of Purchase or a prior individual agreement or at the supplier's general place of jurisdiction. Priority legal regulations in particular regarding exclusive jurisdictions, shall remain unaffected.
3. If individual provisions of this terms and conditions are invalid, the validity of the remaining contractual provisions shall remain unaffected. If any provision of these terms and conditions is partly invalid, the validity of the remaining part of the provision shall remain unaffected as far as it can be separated in terms of its content, is comprehensible in itself and if it constitutes a remaining meaningful provision in the overall context of the contract. The Contractual Parties undertake to replace the ineffective provisions immediately by way of supplementary agreements with an agreement that comes as close as possible to the economic purpose of the ineffective provisions.

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