

WSM Wirtschaftsverband Stahl- und Metallverarbeitung e.V., Hagen/Düsseldorf
Clauses for
GENERAL TERMS AND CONDITIONS OF PURCHASE
of the WSM-Industry
for Production Material und Operation Assets
(Stand: Januar 2009)

Scope

1. These General Terms and Conditions of Purchase apply to entrepreneurs, legal entities subject to public law and special assets subject to public law.
2. Our orders shall only be placed on the basis of the terms and conditions mentioned hereinafter. Any of our partner's terms and conditions not being explicitly accepted by us shall not apply.
3. These General Terms and Conditions of Purchase shall also apply to any future orders and contractual relationships between the partner and our company.

General

4. The parties to the contract shall immediately confirm verbal agreements in detail in writing.
5. In the event that individual parts of these General Terms and Conditions of Purchase should be void or become invalid, this shall not affect the validity of any other provision.
6. We are entitled to cancel this contract without notice should the opening of the insolvency proceedings on our partner's assets be applied for.

Orders

7. In case our partner does not accept our order within ... weeks since receipt we shall be entitled to cancellation.
8. Delivery schedules shall become binding at the latest if the partner fails to cancel within ... days since receipt.
9. We shall be entitled to demand modifications of the goods supplied if it can be reasonably expected from the partner. In this context, any consequences particularly with regard to additional or reduced costs as well as to delivery dates shall have to be settled amicably and appropriately.

Long Term – and On Demand Contracts, Adjustment of Prices

10. Unlimited contracts as well as contracts with a term of more than ... years may be cancelled with a notice period of ... months.

11. In the event that any essential modification of labour costs, cost of materials or energy occurs with regard to long term contracts (contracts with a term of more than ... months and unlimited contracts), each party to the contract shall be entitled to demand negotiations on an appropriate adjustment of prices in consideration of these factors.

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para 11 is dropped

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11. *In the event that the prices of ... should evidently change by more than ... % related to the index ... at the time of the conclusion of the contract (published in ...) during the term of this contract, each party to the contract shall be entitled to demand an appropriate adjustment of prices.*

Confidentiality

12. Each party to the contract is obliged to use any document (including samples, models and data) and knowledge gained from of this business relationship only for the common purposes as well as to keep them secret from any third party with the same due diligence and care that would be paid to its respective own similar documents and knowledge if the other party to the contract declares these to be strictly confidential or has any apparent interest in keeping these secret.

This obligation becomes effective as from the very first receipt of those documents or knowledge and shall expire 36 months after termination of the business relationship.

13. This obligation does not apply to documents or knowledge being generally known or being already known to the partner when receiving these without being sworn to secrecy. The same applies to documents or knowledge being transferred afterwards by a third party entitled to transmission or being developed by the receiving party to the contract without using the other partner's documents or knowledge to be kept secret.

Designs und Descriptions

14. Any designs and descriptions handed over by us to the partner shall remain our inalienable material and intellectual property which has to be returned to us without request after execution of the order.

The partner shall confer the property on designs and descriptions made according to our instructions as soon as they are fully paid.

Samples and Workshop Facilities

15. Manufacturing costs for samples and workshop facilities (tools, forms, stencils, etc.) shall be invoiced separately from the goods to be delivered unless provided for otherwise. This also applies to workshop facilities to be replaced due to wear and tear.

16. Maintenance costs and costs for proper storage as well as the risk of damage to or destruction of the workshop facilities shall be borne by the partner.
17. The partner is obliged to keep the workshop facilities free of charge for three years after the last delivery to our company. Thereafter he shall request us in writing to give instructions on the further use of the workshop facilities within 6 weeks. The obligation to keep the workshop facilities shall expire if the partner does not receive any statement within these 6 weeks or no further order is placed.
18. Customer-related workshop facilities may only be used for the supply of third parties with our previous written consent.

The objects mentioned above may not be scrapped nor used for any other purpose than agreed upon by contract nor may third parties be allowed access without our written consent but have to be kept by the partner with due diligence and care.

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(instead of para 15 - 18)

15. *Any workshop facilities (tools, forms, stencils, parts, raw materials, etc.) and documents (also including samples and data) handed over to the partner shall remain our property.*
16. *The partner is obliged to mark the workshop facilities with a note to this effect and to insure them at his own expense and at original value as new against fire, water and theft. The partner shall have to prove the existence of such insurance on demand.*
17. *We shall immediately be informed by our partner on any damage to the workshop facilities.*
18. *Maintenance and repair work on the workshop facilities shall be carried out by the partner at his own expense.*
19. *The costs for a necessary renewal of the workshop facilities due to wear and tear shall be borne by us.*
20. *Any processing, conversion or installation of workshop facilities handed over to the partner shall be made for us.*

In the event that this should lead to an inseparable mixing of our goods with those of our partner or any third party we shall become joint owner of the goods coming into existence in proportion to the value of our good to the value of the new good. Should the processing, conversion or installation be made in the way that our goods shall have to be regarded as essential components of one of our partner's principal good we shall acquire joint ownership of the principal good in proportion to the value of our goods to the new good. In both cases the partner is obliged to hold the share of our joint ownership for us.

Prices

21. Unless provided otherwise, all prices are free place of receipt quoted in EUR and exclusive of taxes, in particular of VAT, customs duties and other charges, packaging, carriage, tolls, postage and insurance.

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21. *Unless provided otherwise, all prices are free place of receipt in EUR inclusive of ...*

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21. *All prices include ..., but are exclusive of ...*

Certificates of Origin, Value Added Tax Certificates and Export Limitations

22. The partner is obliged to mark any certificates of origin demanded by us with all necessary particulars, to duly sign them and to make them available without delay. Moreover, the partner shall immediately inform us in writing and without request if the particulars in the certificates of origin for the goods delivered shall be no longer correct.
23. The same applies to any proofs for value added tax law purposes in case of cross border deliveries and intra-community supplies.
24. The partner shall immediately inform us if any delivery is fully or partly subject to export limitations under German or any other law.

Terms of Payment, Assignment of Claims

25. Unless provided otherwise and subject to the regulation of para 27, payment shall be made until ... days after delivery and receipt of the duly issued invoice by taking advantage of ... % cash discount or payment shall be effected net within ... days. The respective later date shall be decisive for the commencement of the payment period.
26. In case of acceptance of an early delivery maturity shall depend on the fixed date of delivery.
27. In case of defective delivery or any default in delivery we shall be entitled to withhold payment proportionally to value until delivery has been duly fulfilled.
28. Without our written consent which may not be refused unreasonably, the partner is not entitled to assign his claims against us or to instruct a third party with its collection. In case of an extended reservation of title our consent shall be deemed.

In the event that – contrary to sentence 1 – the partner assigns his claims against us to a third party without our consent, this assignment is nevertheless valid. However, we reserve the right according our choice to either effect payment to the partner or to the third party with liberating effect.

29. Should it become evident after the conclusion of the contract that our claim for delivery is endangered by a lack of capability to perform of the partner, payment may be refused and an appropriate limitation period may be set during which the partner must either render delivery versus payment or must provide a security. In case of refusal or expiry of the limitation period we shall be entitled to rescind the contract and to claim damages.

Delivery and Passing of Risk

30. Unless provided otherwise, delivery has to be executed “ex works” by the partner. The partner’s notification that the goods are ready for shipment or collection shall be decisive for whether the delivery date or period of delivery is met.

The risk shall be passed on to us with handing over the goods to rail, forwarder or carrier or with the beginning of the storage of the goods, but at the latest when leaving the premises or warehouse, even if delivery is executed by the partner.

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30. *Unless provided otherwise, delivery has to be executed “delivery free domicile” by the partner. The risk shall be passed on to us when the partner has stored the goods in our warehouse.*
31. *The delivery deadline begins with sending the order confirmation and shall be extended reasonably if the requirements of force majeure are given.*
32. *Partial deliveries shall be accepted at a reasonable scale and shall be invoiced separately.*

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32. *Partial deliveries shall only be accepted if agreed on by special agreement.*
33. Any production-related additional or short shipments shall be accepted within a scale of tolerance of ... % of the volume of the total order. The total price shall be adjusted accordingly.

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para 33 is dropped

Function in our in Enterprise

34. Any persons being employed in our enterprise in order to fulfil the partner’s obligations are subject to the provisions and regulations of our internal company regulations and our instructions with regard to accident prevention and (on-the-job) safety regulations, environmental or other regulations which have to be applied in our enterprise. Dangerous materials may only be used in our enterprise in co-ordination with our experts and must be duly marked.

Delivery default

35. Should the partner be able to foresee that the goods cannot be delivered within the delivery period he has to inform us in due time in writing and without delay, thereby communicating the reasons and stating the expected date of delivery, if possible. This shall not affect our claims out of the partner’s delivery default.

Retention of Title

36. The partner shall remain the owner to the goods delivered until full and final payment (simple retention of title).

Quality Defects

37. The goods must fulfil the specifications agreed upon and what must be assumed by the partner when being aware of the purpose of use, at least however, the indispensable mandatory legal requirements and must be state of the art. The point in time of the passing of the risk shall be decisive for the quality of the goods according to the contract.
- 37 a. When delivering the partner complies with the legal regulations as applicable in the European Union and the Federal Republic of Germany, eg the REACH regulation (regulation EU number 1907/2006), the law about the return and environmentally sound disposal of electrical and electronic equipment (Electrical and Electronic Equipment Act) as national implementation of the directive 2002/95/EG (RoHS) and the directive 2002/96/EG (WEEE) and the End-of-life Vehicles ACT as national implementation of the EU directive 2000/52/EG.

The partner shall immediately inform us about relevant changes in the product due to legal regulations, in particular the REACH regulation, its supply availability, use or quality and shall in individual cases agree with us on suitable measures to be taken. This applies as soon as and to the extent to which the partner realizes that such changes will happen.

38. Claims based on quality defects are subject to the limitation period prescribed by law unless otherwise provided.

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38. *Claims based on quality defects shall prescribe in ... months. This shall not apply if the law prescribes extended limitation periods, in particular for defects of a building and of goods which are inserted into a building according to typical use and which have caused the defectiveness thereof.*
39. In case the partner misses a fixed reasonable limitation period without having improved the goods or having delivered flawless goods we shall be entitled to eliminate the defect at the partner's expense on our own or by a third party. The legal regulations on the dispensability of fixing a limitation period as well as all legal rights because of defects including rights of recourse remain unaffected.

Legal Imperfections in Title

40. The partner guarantees that all deliveries are free of rights of third parties and particularly that with the delivery and the use of the goods no patents or any other industrial property rights of a third party shall be infringed in the country of the place of delivery stipulated, within the European Union, Switzerland, Turkey and – as far as communicated to the partner – within the intended countries in which the goods are to be used.

41. Insofar as the partner is directly legally liable to the third party the partner shall indemnify us from any claims of a third party out of industrial property right infringements and bears all necessary costs arising therefrom.
42. Claims due to legal imperfections in title prescribe in ... years.

Other Claims, Liability of Partners

43. Unless provided otherwise above the respective legal provision shall apply.

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43. *As far as the partner is responsible for any product damage he shall be obliged to indemnify us from any damages claimed by a third party as far as the reason lies within his range of command and organisation and as far as he shall be held liable himself in the legal relationship with third parties.*

Within the scope of this liability the partner shall also be obliged to reimburse any costs arising from or in connection with a product recall carried out by us or our customers pursuant to §§ 683, 670 German Civil Code as well as to §§ 830, 840, 426 German Civil Code. We shall inform the partner about the contents and the scope of the recall measures to be carried out - as far as possible and reasonable - and shall give him the opportunity to give a statement thereto. Any further legal claims remain unaffected.

The partner undertakes to hold a product liability insurance being appropriate in scope and amount. In case we are entitled to more extensive claims for damages these shall remain unaffected.

Our Liability

44. Any Claims for damages based on whatsoever legal basis may only be claimed from us in cases of intent, gross negligence of our legal representatives or principle executives and culpable infringement of essential contractual duties. In case of culpable infringement of essential contractual duties we shall only be held liable for the reasonably foreseeable damage immanent to the contract.

The limitation of liability shall not apply in cases of our mandatory legal liability according to the product liability law for personal injury or property damage and in case of injury of life, body or health.

Force Majeure

45. Force majeure, industrial action, riots, official measures, lack of supplies by deliverers and other unforeseeable, inevitable and severe events shall within the scope of its effect release the parties to the contract from their performance duties for the duration of the interruption. As far as reasonable, the parties to the contract are obliged to immediately provide any information required and to adapt their obligations to the changed situation according to the requirements of good faith.

Place of Performance, Place of Jurisdiction and Applicable Law

46. For both parties ... shall be the place of performance for any rights and obligations arising from this contract.

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46. *The place of performance for the delivery of the goods is the place of destination stipulated by us.*

The place of performance for our payments shall be the place of our enterprise which concluded the contract.

47. *Any legal disputes arising hereunder, also including disputes with regard to summary bill of exchange and cheque enforcement proceedings shall be settled before the court of the city of our business seat. We shall also be entitled to take legal action at the seat of our partner.*

48. *Exclusively the laws of the Federal Republic of Germany shall apply to the contractual relationship.*

The application of the Convention of the United Nations on the International Sale of Goods (CISG - "Wiener Kaufrecht") dated 11 April 1980 is excluded.

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