

General Conditions of Purchase of Heine + Beisswenger Stiftung + Co. KG (Version 02/2017)

I. Applicability

1. These General Conditions of Purchase apply to current and future orders of goods and services, and the handling thereof. We do not recognise the seller's terms and conditions, or any conditions differing from these Conditions of Purchase, unless stated otherwise in these Conditions of Purchase or in the agreement with the seller. If we accept goods without expressly refusing the seller's terms, then this on no account means that we recognise them.
2. Verbal agreements by our employees shall not become binding until confirmed in writing.
3. When we draw up offers, we do so for free and without commitment.
4. The Incoterms in their latest version shall govern the interpretation of commercial clauses.

II. Prices

1. The agreed price is a fixed price.
2. If prices are "free to the door", "free to destination" or include any other free types of delivery, then they shall include shipping and packaging costs. If delivery is not included, then we will always select the cheapest freight method unless we have stipulated a particular kind of shipment.

III. Payment

1. Unless agreed otherwise and unless the seller offers better conditions, payment within 14 days shall attract a 3% early payment discount, within 21 days a 2% early payment discount, and within 30 days net.
2. Payment and discount periods begin upon receipt of invoice, but not before receipt of goods and, in the case of services, before they are approved, and, where documentation, test certificates (such as inspection certificates) and similar documents are part of what is being delivered, not before these are handed over to us as contractually stipulated.
3. Payment shall be by cheque or by transfer. Payment shall be considered on time if the cheque is posted on the due date or if the bank is instructed to execute the transfer on the due date.
4. Maturity interest shall not be given. Interest on arrears shall be five percentage points above the base rate. We shall always be entitled to demonstrate that damages due to postponement are less than what the seller is demanding.
5. We shall enjoy the statutory rights to offset and retain title. In particular we are entitled to withhold the purchase price if the agreed test certificates compliant with EN 10204 are not supplied.

IV. Delivery deadlines / delay

1. Agreed delivery deadlines and periods are binding. We must be informed immediately in writing if delivery delays seem imminent. Appropriate suggestions should be given to us about how to mitigate the consequences.
2. The delivery date or deadline shall be measured by when the goods are received by us, unless agreed otherwise in writing.
3. If the seller is delayed in delivering, then we shall enjoy the statutory rights. In particular, if we set an appropriate period of grace and it lapses with no outcome, we can demand compensation instead of delivery. Our right to delivery only ends when the seller has paid compensation.
4. The seller may only cite a lack of necessary documents which we should have supplied if the seller did not receive those documents even after warning us in writing.

V. Retention of title

1. With regard to the seller's right to retain title, their conditions shall apply with the proviso that ownership of the goods shall be transferred to us upon payment, and the extended form, known as Kontokorrentvorbehalt (current account retention) shall not apply.
2. The seller can only demand the goods through retention of title if it has already withdrawn from the agreement.

VI. Performance of delivery and transfer of risk

1. The seller shall carry the risk of accidental destruction or deterioration, including in the case of free delivery, until the goods are handed over at their destination.
2. Partial deliveries require our approval.
3. Excess and short deliveries are only permitted within the customary limits.
4. The seller shall carry the cost of packaging unless agreed otherwise in writing. If we do on occasion carry the cost of packaging, then we must be charged as little as possible. The obligation to take packaging back shall be based upon the German Packaging Ordinance dated 21.08.1998, as most recently amended.

VII. Declarations on nature of origin

1. At our request, the seller shall provide us with a supplier's declaration about the preferential origin of the goods.
2. If the seller provides declarations about the preferential or non-preferential origin of the goods sold, the following shall apply:
 - a) The seller undertakes to enable customs officials to check evidence of origin, to provide the necessary information and to furnish any necessary confirmations.
 - b) The seller is obliged to compensate for any damages arising because the declared origin is not recognised by the responsible authorities on account of a lack of certification or because there is no way of verifying it – unless, that is, the seller is not at fault.

VIII. Liability for defects and limitation

1. The seller must supply us with goods that are free of material defects and defects of title. The seller must ensure that the items and services they supply comply with the recognised rules of technology and any contractually agreed properties and standards.
2. When we receive the goods, we will check their quality and completeness in whatever way is reasonable and technically feasible. Unless there are specific reasons to believe that goods may be defective, a reasonable incoming inspection consists of an external examination with the naked eye, and not an examination of the inner properties of the goods. Notice of defects shall be deemed punctual if received by the seller within eight working days by letter, fax, e-mail or telephone. The period within which to notify of defects begins when we (or, in the event of a drop-shipment, our customer) notice the defect, or should have noticed it.
3. If the goods have a material defect, then we shall enjoy the statutory rights to choose. If the seller attempts to rectify it, then this shall be considered unsuccessful after only one attempt. We shall have the right to withdraw, even if the duty which the seller has breached is only minor.
4. We can ask the seller to reimburse expenses relating to a defect and payable by us in relation to our customer, even if the defect already existed when the risk was transferred to us.
5. Our claims for defects shall be subject to a 36 month period of limitation. This period begins when notice of the defect is given punctually as defined in point 2 above. The seller's liability for defects shall cease no later than ten years after delivering the goods. This limitation shall not apply if our claims are based on facts which the seller knew about or could not have been unaware of, yet did not reveal to us.
6. The seller shall hereby cede to us by way of fulfilment any claims which the seller shall have the right to make against its own suppliers on account of and in relation to the delivery of defective goods or other goods whose guaranteed properties are lacking. The supplier shall provide us with any documents needed to assert such claims.

IX. Payment of the statutory minimum wage

1. Regarding our orders for services or work done within Germany, the supplier undertakes to obey the regulations of the Minimum Wage Act (*Gesetz zur Regelung des allgemeinen Mindestlohns*) dated 11 August 2014, as most recently amended). The supplier undertakes to pay its employees the statutory minimum wage and to oblige its subcontractors to do the same, along with any other contractors they may use. The supplier declares that it is not excluded from the awarding of public contracts.
2. If services and work are done in the economic areas or sectors of industry mentioned in § 2a of the Illegal Employment Act (*Gesetz zur Bekämpfung der Schwarzarbeit und illegalen Beschäftigung*), then the following shall apply: The supplier is obliged, at our request and at any time, to provide us with proof of payment of the minimum wage by the contractor and, where relevant, the contractor's subcontractors, for the last two years subject to mandatory logging in compliance with § 17 MiLoG. This proof should be furnished by providing records of working hours and the amounts paid for them. Furthermore, the supplier will, at our request and at any time, allow us to inspect the relevant (anonymised) wage and salary lists. There will be a contractual penalty of €10,000 for every time the supplier fails to comply with this duty to furnish proof.
3. Should we be held liable by third parties in this respect (§ 13 MiLoG, § 14 AEntG), then the supplier will indemnify us against any claims, including the cost of legal defence, upon our first written request.
4. If the contractor contravenes the regulations stated here, we shall be entitled to terminate the contractual relationship without notice. The same applies if the supplier breaches agreed duties to furnish proof.

X. Place of fulfilment, jurisdiction and applicable law

1. The place of fulfilment for delivery is our place of business unless agreed otherwise.
2. The place of jurisdiction is Stuttgart. We can institute proceedings against the seller in its own jurisdiction and in the place of jurisdiction of our own branch office with which the agreement was concluded, as entered into the commercial register.
3. Any legal relationships between us and the seller shall be governed not only by these Conditions but also by German law, including the UN Convention on Contracts for the International Sale of Goods (CISG) dated 11.04.1980.

XI. Applicable version

The German version of these General Conditions of Purchase shall be authoritative if there is any doubt.