

I. General

1. Unless otherwise agreed for individual cases have in writing, all business connections with our suppliers or agents ("**suppliers**") are exclusively subject to our terms and conditions of purchase, in as far as these include no regulation they are subject to the legal provisions.
2. Unless expressly agreed in writing, opposing or deviating general conditions of trade are not accepted, not even in the case of a non-contested acceptance of a consignment in the knowledge of opposing or deviating general conditions of trade.
3. Our terms and conditions of purchase are equally valid for all future transactions with the supplier without need of specific reference in each individual case.

II. Purchase Orders and Conclusion of Contract

1. Our requests for quotation are not binding until such time as we submit a binding purchase order either in the form of an offer made by ourselves or in the form of the acceptance of the supplier's offer.
2. Should the supplier submit a quotation in response to our request for a quotation he is then bound to adhere therein to our request with regard to scope, condition of the goods and any other specifications and in the case of deviations to point these out expressly and in a clearly visible accentuated form. Any quotation compiled by the supplier is effected free of charge for us.
3. Unless a shorter term is specified in individual cases, orders placed by us in the form of an offer are binding for 14 days ("term of acceptance"). We are no longer bound by our order after expiry of the afore-mentioned term.
4. Unless acknowledged by us in written form ("purchase order"), oral or electronic quotations are not valid. A fax is acknowledged as a written form. Changes or amendments to the order likewise require for their validity our written agreement.
5. Acceptance of our offer on the part of the supplier must also be effected within the afore-mentioned term in writing ("confirmation of purchase order"). We are entitled to revoke our offer until such time as the confirmation of purchase order of the supplier has been received.
6. In such cases where a confirmation of purchase order deviates from our purchase order, the contract is only valid in as far as we expressly agree the confirmation of purchase order in writing. In the absence of such afore-mentioned agreement any payments or acceptance of goods or services on our part does not constitute agreement. To allow for correction, the supplier is bound, before acceptance, to point out to us any obvious errors (e.g. typing errors or miscalculations) and incompleteness in both the purchase order and the purchasing documents. Should this not be the case the contract is regarded as null and void.
7. The respective mandatory technical directives and standards are applicable to the purchase order.

III. Subsequent Amendments

1. Should it become necessary due to special operational circumstances, we are entitled to demand subsequent amendments to the agreed goods and services with an appropriate adjustment of the return service. This is especially valid if the reasons could not have been foreseen on conclusion of the contract and are customary amendments or reasonable for the supplier in the individual case.
2. In the case of such an afore-mentioned amendment, the effects on delivery dates and possible extra or reduced costs are to be regulated amicably and appropriately. However, increases in price or extensions of delivery times are only accepted if these are actually and proven to be linked to the amendment and only if the supplier informs us of such in writing immediately on amendment of the purchase order.

IV. Delivery Times, Delay in Delivery

1. The agreed delivery times are binding.
2. The receipt of the goods or services at a place of receipt or disposition specified by us or the point of time of successful acceptance is decisive for the observance of the delivery date or time limit.

3. In the case of delivery earlier than agreed, we reserve the right to return the goods at the expense of the supplier or to store the goods on our premises at the expense and risk of the supplier until such time as the goods can be stored at the location designated by us at conclusion of the contract.
4. Should circumstances arise or become apparent to the supplier that entail his not being in a position to fulfil the agreed time limit, he is bound to give us immediate notice of the delay in writing and include the reasons for the delay and its estimated length.
5. Should the supplier not fulfil his obligations or should he be in default, we are entitled to the benefit of all legal claims without restriction.
6. In the case of a default of delivery in accordance with para. IV no. 1 being attributable to the supplier, the supplier is liable to pay to us delay damages at a rate of 0,15 % of the gross total value of the contract for each day of delay, however, in total not more than 5 % of the gross total value of the contract.
In addition to our right to fulfilment we are entitled to demand the delay damages as a minimum sum of damages payable by the supplier in accordance with legal provisions; our right to claim for incurred or accruing damages over and above the afore-mentioned remains unaffected hereof. In such a case the forfeited damages will be credited. Should we accept the delayed goods or services, the delay damages may still be claimed by us providing the submission of an appropriate reservation to the supplier is made within 5 calendar days starting with the date of receipt of the delayed delivery.
7. The supplier may make no claim for any outstanding documents required of us unless he has sent a reminder for these in which he set a reasonable extension of time and unless he has not received afore-mentioned documents within the agreed time limit.
8. Circumstances of force majeure may only exonerate the agent from his obligations if he notifies us of such without undue delay in writing stating the exact circumstances and the expected duration.

V. Packaging, Dispatch and Passing of Risk

1. We must be notified of the dispatch of every delivery without delay by means of an appropriate advice of dispatch that is separate from but identical in content to the delivery note.
2. Deliveries are to be effected in accordance with our current dispatch and packaging instructions of which the supplier has been informed. Packaging materials must be taken back by the supplier on our request. The goods must be packed in such a way that damage in transport is prevented as best as possible.
3. Purchase orders are to be delivered to us in the exact numbers and at the desired delivery times. Shortshipments or overdeliveries require separate agreements.
4. Unless originally agreed or subsequently approved by us, the supplier may not make partial deliveries. Should a defect in quality be detected in a partial delivery that justifies the fear that agreed future partial deliveries will also be defect, we are entitled to refuse acceptance of any further partial deliveries and to partially or completely withdraw from the contract in such cases where the supplier fails to dispel the justification of our fears by objective means and within a reasonable time limit. Any more extensive legal or contractual rights remain unaffected by such a withdrawal.
5. Unless overdeliveries are agreed, they will be returned to the supplier's address at the supplier's expense and risk.
6. Deliveries are understood to be "free domicile" to the place indicated on the purchase order. Should the place of destination not be indicated nor otherwise agreed, the delivery is to be made to our place of business at D-86136 Friedberg, Äußere Industriestraße 18. The respective place of destination is also the place of delivery (debt to be discharged at creditor's domicile).
7. A delivery note must be enclosed in the consignment stating date (issue and despatch), contents of consignment (number of items, markings and number of packages) as well as our order identification (date and number if necessary). We cannot be held responsible for delays in the processing resulting from missing or incomplete delivery notes
8. The risk of accidental loss or deterioration of goods passes to us on delivery of goods at the place of delivery. In as far as an acceptance is agreed or required, this is binding for the passing of risk. Further more, acceptance is subject to the appropriate legal provisions of the contract for services law. Delivery or rather acceptance is given if we are in default of acceptance.

9. The occurrence of default of acceptance is determined by the legal provisions. Even in such case as a set time or determinable date is agreed for an act or cooperation on our part (e.g. purchase order for materials), the supplier is obliged to expressly offer us his goods or services. The supplier is entitled to indemnification of his additional expenditure in accordance with the legal provisions should we be in default of acceptance. Should the contract pertain to a matter to be produced by the supplier and which is untenable, the supplier is only then entitled to more extensive rights should we have committed ourselves to co-operation which we have failed to fulfil.
10. Should the supplier retain the title to the delivered goods, this retention is only valid until such time as actual payment has been effected for the goods in as far as we have not gained title to the goods by means of processing, combining or connecting. Neither prolonged or extended retentions of title nor multiple or current account reservations are accepted.

VI. Subcontracting

Unless previously agreed by us in writing, the supplier is not entitled to have his obligations of performance executed by third parties (e.g. subcontractors). Should the supplier violate this culpably, we are then entitled to withdraw from the contract. Our right to claim for damages remains unaffected hereof.

VII. Prices, Invoices and Terms of Payment

1. The price stated in the purchase order is binding. Should the price not be stated in the purchase order and not otherwise agreed, the prices of the supplier at the time of the purchase order shall be valid as firm prices. All prices are understood inclusive of VAT unless this is shown separately.
2. Unless otherwise agreed in individual cases, the price includes all services and incidental services of the supplier as well as all incidental costs (e.g. correct packaging, transportation costs, customs duties as well as possible transport and liability insurances).
3. Payment of the agreed price is due within 30 calendar days of the complete delivery of goods and services (inclusive of any agreed or legally required acceptance where applicable) as well as correct issuing of the invoice. A 3 % early payment discount on the net total of the invoice is granted to us by the supplier if payment is effected within 14 calendar days. The supplier grants a 2% discount for payment effected within 30 days.
4. Invoices are to be submitted separately after each delivery with VAT shown separately, and with the purchase order indicator and number of each individual item.
5. All payments are made solely to the supplier. The cession to a third party of his demands against us for payments are hereby excluded.
6. Unless we demand and receive a deposit from the supplier to the amount of the afore-mentioned payment in such cases where payment is made before the passing of risk, the assignment of the delivery item is understood as agreed. Any deposits or part payments are not regarded as acknowledgement of the contractual correctness of the delivery of goods and services.
7. We are entitled in full to the rights of setting-off and retention as well as the exception of the non-fulfilment of contract. We are most especially entitled to withhold payments due for as long as we have claims against the supplier deriving from defective deliveries.

VIII. Liability for Defects

1. Unless otherwise agreed in the following, our rights in the case of defects of both quality and title of the goods (including incorrect or short shipment as well as improper installation, inadequate installation, operating or user manuals) and any other breach of duty on the part of the supplier are subject to the legal provisions.
2. The supplier is liable in accordance with the legal provisions that at the time of passing of risk to us the goods have the agreed appearance and workmanship. All delivered goods and services must comply with state-of-the-art technology, relevant legal provisions and the provisions and directives of public authorities, Employer's Liability Insurance Associations and trade associations. Any deviations from these provisions required in individual cases require our written agreement. This agreement does not restrict the supplier's liability for defects. Should the supplier have reservations concerning the kind of execution we require, we must be informed of such immediately in writing.

3. The supplier undertakes to use environmentally friendly products and processes, in as far as these are economically and technically reasonable, for his delivery of goods and services as well as for subcontracts and incidental services of third parties. The supplier is responsible for ensuring that the delivered goods and packaging materials are not harmful to the environment. He is liable for all damage incurred through his culpable violation of afore-mentioned obligations. The supplier is obliged to surrender the respective safety data forms valid for each consignment with the delivery. The supplier releases us from all claims for damages lodged by third parties in the case of his culpably not surrendering the safety data forms or surrendering them late. The same applies to all later amendments.
4. Supplier is and remains solely responsible for the full compliance of delivered products or parts of products with the requirements of Directive 2002/95/EG (RoHS) as of 27 January 2003 and all further releases as well as all national regulations issued in execution of this Directive. Therefore all delivered products or parts of products must be suitable and fit for RoHS compliant production. In case of proven violations of national or international RoHS Compliance regulations due to supplier fault, supplier undertakes to exempt and hold us harmless from any claim, liability, loss, damage, judgment and external responsibility, irrespective their legal ground, and to bear any and all harm, loss or damage arising to our disadvantage in the event of infringement. Supplier undertakes to duly notify us about the earliest possible disposability of RoHS compliant products. As far as products of parts or products cannot be supplied as traceable RoHS compliant after 30th June 2006 we reserve cancellation of blanket or single orders exempt from any charges at your expense.
5. Further more, those product descriptions – particularly those mentioned or referred to in our purchase order - that constitute the subject matter of the respective contract or, those that have been incorporated into the contract in like manner as the purchase terms, are the basis of the agreement of appearance and workmanship. There is no difference made here whether the product descriptions derive from us, from the supplier or from the manufacturer.
6. In as far as appearance and workmanship have not been agreed, a defect of quality is given in such cases where the product is not suitable for the utilisation as is laid down in the contract. Further more, in accordance with the extension of the legal provisions, a defect of quality is also given in the case that the goods do not have the qualities that we were led to expect from the product descriptions of the supplier or the manufacturer: whereby it suffices if we received the product description after conclusion of the contract (e.g. together with the goods).
7. In divergence from § 442 art. 1, sentence 2 German Civil Code, we are also entitled to claim for defect damages in full should the defect have been unknown to us on conclusion of the contract due to gross negligence.
8. Commercial examination and reprimand duties are subject to the legal provisions with the following provisions:
Our examination duties are limited to defects, including those in the shipping documents, that are easily brought to light by appraisal of appearance during our incoming goods inspection as well as during our quality sampling procedure (e.g. transportation damage, incorrect or short shipments). Where acceptance is agreed or legally required no examination duty is required. Further more, taking the circumstances of the individual case into consideration, it depends on the extent to which examination is feasible in the proper course of business. The supplier will be notified of apparent defects of the goods and services without delay in written form as soon as they are detected during a proper course of business, but at the latest within 8 working days after receipt of the delivery. Our reprimand duties concerning defects detected at a later point of time remain unaffected hereof. In all cases our reprimand (notice of defect) will be considered as immediate and in due time if it is received by the supplier within 8 working days.
9. Should the supplier not fulfil his obligation of subsequent performance – either by remedying the defect (subsequent improvement) or by delivery of goods free of defect (replacement) the choice here to be ours – within a reasonable time limit set by us, we are entitled to remedy the defect ourselves and to demand reimbursement from the supplier for the necessary expenditure as well as adequate advance payment; this is not valid in the case that the supplier was entitled to refuse subsequent performance. In as far as a subsequent performance by the supplier is abortive or unacceptable for us (e.g. special urgency, danger to operational safety, danger of a disproportionately high loss) no time limit is required: the supplier must be notified of this

immediately, if possible in advance and he must be given the opportunity to ascertain whether a there is a defect not either himself or by a representative. Further more, in the case of a defect of quality or title we are entitled to a reduction in purchase price or to the cancellation of the contract in accordance with the legal provisions. In addition we are entitled to damages and reimbursement of expenses in accordance with the legal provisions.

10. In as far as a supplier's delivery of the includes software, rights or other objects for which the right of use is only granted by means of a corresponding licence, the necessary licences are to be transferred to us with the delivery and without surcharge. The supplier assumes liability in tort for the existence, transferability and enforceability of such licences.
11. The supplier assumes further liability in tort to ensure that no industrial property right (e.g. patents, registered designs, brand or trade names) as well as no copy right or any other right of a third party will be violated by his delivery. Should a claim be lodged against us by a third party on the grounds of alleged violation of law, the supplier is obliged to indemnify us at our first request. The respective extent of the indemnity obligation is subject to para. IX.2 of these General Conditions of Trade.
12. Irrespective of afore-mentioned indemnity obligation, the terms of this General Conditions of Trade are applicable to the liability of the supplier with the following provisions:
 - there is a defect of title should a third party assert a right against us in reference to the subject matter of the contract which, in accordance with the agreements with the supplier, we are not obliged to accept. Furthermore, the same applies to the existence, transferability and enforceability in as far a right is subject of the contract.
 - should there be a defect of title, the supplier is obliged to provide us with the right to non-restrictive use (subsequent improvement) or - if we so choose – to modify the subject of the contract in a manner reasonable for us in such a way that it is free of the defect of title (replacement).
 - the supplier is liable for damages and reimbursement of expenses even if he had no knowledge of the defect of title or if he can otherwise not be held responsible. Our entitlement to a reduction in purchase price or to the cancellation of the contract remains unaffected hereof.

IX. Product Liability, Manufacturer's Liability

1. In as far as the supplier is responsible for product damage, he is obliged to exempt us from any claim of a third party including the expenses for necessary legal defence in this respect as the causation falls under his domain and organisational sphere and he himself is liable in relation to third parties.
2. Within the scope of his obligation to exemption, the supplier is obliged to reimburse such expenditure that arises from or in connection with the claims of third parties, inclusive of callbacks executed by us. The supplier will be given notice – in as far as this is possible and reasonable – of the scope of the call-back and will be given the opportunity of written comment. Further legal claims remain unaffected hereof.
3. The delivered objects will be marked in such a way by the agent that are permanently recognised as his products. The agent undertakes to carry out and prove on our demand a quality assurance appropriate in manner and scope and in accordance with state-of-the-art technology.

X. Supplier Recourse

1. Apart from our defect claims, we are entitled in full to a legally defined recourse within a supply chain (supplier recourse according to §§ 478, 479 German Civil Code). In particular, we are entitled to demand exactly the same subsequent performance (subsequent improvement or replacement) required from us by our customer in individual cases. Our statutory right of choice is not affected hereof. (§ 439 para.1 German Civil Code)
2. Before recognising or fulfilling defect claims (including reimbursement of expenses) lodged by our customers, the supplier will be notified and requested to submit a written comment on receipt of a summary of the facts of the case. Should no comment be received within a reasonable period of time nor an amicable solution found, the actual defect claim granted will be recognised as being due to our customer; in such a case it rests with the supplier to submit counter-evidence.
3. In addition to the legal provisions, our claims to supplier recourse are valid even in such cases where delivery to a customer is not executed - for any reason whatsoever.

XI. Limitation Period

1. Unless decided otherwise, the reciprocal claims of the contract partners become time-barred subject to the legal provisions.
2. In deviation from § 438 art. 1 No. 3 German Civil Code, the general time limitation for defect claims is 3 years from the time of delivery. In as far as an acceptance is agreed, the time limitation commences with the acceptance.
3. All contractual defect claims are subject to the limitation period of contract law including the aforementioned extensions - within the legal scope. In as far as no contractual claim for a defect exists, these are subject to regular statutory limitation (§§ 195, 199 German Civil Code); however, the extraordinary limitation periods will be valid in such cases where the application in individual cases would lead to a longer limitation period.
4. Claims arising from defect of title – contractual as well as noncontractual – are subject to the aforementioned para. 3 sentence 2. Further more and under no circumstances do such claims become time-barred as long as third parties are still entitled to lodge claims against us – particularly if due to the fact that these are not time-barred. The statutory limitation for claims for restitution of tangibles of third parties (§ 438 para. 1 Nr. 1 German Civil Code) remains unaffected.

XII. Provision of Materials

1. We retain the title to materials provided by us which are to be stored separately, marked and managed free of charge. They may only be used for our contracts. In the case of depreciation or loss the agent is liable for their replacement and must take out appropriate cover at his own expense. This also applies to the provision of materials bound to the contract for which a fee has been charged.
2. Any processing or transformation of the materials is carried out on our behalf. We have immediate title to the new or transformed object. Should this not be possible for legal reasons, the supplier and we agree at the time of placing the order that the title of the new or transformed object passes to us at the moment of its coming into being. The supplier stores the new or transformed objects in safekeeping for us with the due care of a respectable businessman.

XIII. Drawings, Models, Tools etc. Confidentiality

1. We retain the title to all drawings, models, moulds, samples, profiles, standard sheets, printing templates, gauges or any other documents or tools that have been provided or paid for by us. These may neither be given to third parties nor used for any purpose other than the fulfilment of the order. They must be secured against unauthorised use or examination. Under reservation of further rights, we are entitled to demand their surrender as soon as the supplier violates his legal or contractual obligations to us.
2. The supplier is obliged to take all due care of the afore-mentioned objects and to take out cover against fire, theft or other loss at his own expense. He is obliged to return these to us immediately on conclusion of the order without having to be asked and storing copies, duplicates etc.
3. The supplier undertakes to treat all non-evident commercial or technical details that come to his knowledge through the business relationship as business secrets and to not make them available to third parties. Subcontractors are to make such undertakings in like manner.

XIV. Data Protection

The agent agrees to allow us to store and make use of his data in as far as these are required by us within the scope of the business relationship.

XV. Final Provisions

1. Should any provision of these Terms and Conditions of Purchase be wholly or partly invalid, this shall, however, in no way affect the validity of the Terms and Conditions of Purchase and/or any other agreements made by the parties. Should no provision exist in optional statutory law in such a case of invalidity, the parties undertake to replace the invalid provision with a valid provision that is nearest to the commercial intent.
2. Place of performance and exclusive – also international – place of jurisdiction for all existing or related contractual relationships between the supplier and us is Augsburg.

Pfaff-silberblau Hebezeugfabrik GmbH & Co.KG

General Terms and Conditions of Purchase Dated 06/2006



However, we also entitled to file action before the court with jurisdiction in the location of the supplier's principal office.

3. In addition to these conditions German Federal law is exclusively valid to the exclusion of UN Sales Act (CISG).

Dated: April 2004