

General Terms & Conditions of Purchase

§ 1 Scope of Application

1. The following General Terms & Conditions of Purchase ("Terms & Conditions") apply to all orders placed by NEUMAN & ESSER Verwaltungs- und Beteiligungsgesellschaft mbH ("NEA"). They apply to contracts for the purchase of goods, contracts for works and services and to contracts for services as well as to other similar contracts.
2. Unless NEA has previously consented to them in writing, it will not recognize any of the Supplier's standard business conditions which are contrary to or vary from its own. This applies even if NEA unconditionally accepts the goods delivered despite being aware that the Supplier's General Terms & Conditions of Sale or Supply are contrary to its own. The aforementioned provision will not affect any individual agreements.
3. In the case of ongoing business relationships, these Terms & Conditions will also apply to future transactions which do not expressly refer to them provided that only the Terms & Conditions were incorporated into the previous contract.
4. These Terms and Conditions only apply to persons who are entrepreneurs pursuant to section 310(1) of the German Civil Code (Bürgerliches Gesetzbuch - BGB) as well as to legal persons or special funds under public law.

§ 2 Offer, Documents Detailing the Supplier's Offer, Conclusion of Contract

1. To be valid orders placed by NEA must be in writing and legally signed by it. Subsequent agreements and oral agreements must be confirmed by NEA in writing in order to be effective.
2. No contract is formed until the Supplier confirms NEA's order in writing.
3. If an order constitutes an offer within the meaning of § 145 of the German Civil Code, NEA will be bound by it for a period of two weeks calculated from the date the Supplier receives the order or for a period of three weeks calculated from the date the order is sent. NEA will not be bound by a late order confirmation/acceptance from the Supplier even if NEA does not expressly reject such order confirmation/acceptance.
4. NEA reserves all proprietary rights and copyright in images, drawings, calculations and other documents; they may not be made available to third parties without NEA's express written consent. They may only be used for production based on the order; the Supplier must return them to NEA after completion of the order. Such documents must be kept secret from third parties; in this respect § 9 supplements this provision.

§ 3 Prices and Payment Terms

1. The price shown in the order is binding. In the absence of a written agreement to the contrary, the price includes "door-to-door" delivery including packaging. Upon request from the Supplier, NEA will send back reusable packaging unpaid and at the Supplier's risk.
Where NEA and the Supplier agree in writing on delivery ex works or warehouse, the Supplier agrees to send the shipment using the least expensive means unless NEA has given express instructions for a certain kind of shipping. If it is necessary for the Supplier to expedite shipment in order to meet a delivery deadline, it will be responsible for the costs. Even where goods are delivered ex works, the Supplier will bear the costs of the packaging. Transport insurance will only be taken out by NEA.
2. VAT in the statutory amount is payable on the agreed prices.
3. NEA will only process invoices which contain the order number shown in NEA's order; the Supplier will be responsible for the results of any failure to comply with this obligation unless it can show that they were not its fault.
4. Unless agreed otherwise in writing, NEA will make payment within 30 days from full receipt of the goods or services and receipt of an invoice with a 2% discount for prompt payment, or pay the net invoice amount within 60 days from full receipt of the goods or services and receipt of an invoice.
5. NEA will be entitled to the full range of set-off and retention rights stipulated by law.

§ 4 Delivery Times

1. The delivery dates specified in NEA's order are binding. The goods ordered must be received by the recipient designated in the order by the stipulated delivery date.
2. The Supplier is obliged to notify NEA in writing without delay if circumstances occur or become known to it which indicate that it will not be possible to comply with the delivery date. Such notification will not release the Supplier from its liability under § 4(3) for damage resulting from the delay in delivery.
3. In the event of late delivery, NEA will be entitled to the rights provided by law. In particular, NEA will be entitled to demand damages in lieu of performance and rescission after it has allowed the Supplier a reasonable additional period for delivery and the Supplier has not delivered within this period. If NEA demands damages, the Supplier will be entitled to show that the breach of duty was not due to any fault on its part.
4. Where NEA is entitled to demand a contractual penalty from the Supplier for late delivery, NEA will be entitled to exercise its right of reservation under § 341(3) of the German Civil Code up until it makes its final payment.

§ 5 Passing of Risk, Documents

1. Unless otherwise agreed in writing, goods will be delivered door-to-door.
2. The Supplier is obliged to give NEA's correct order number on all shipping documents and delivery notes; if the Supplier fails to do so, NEA will not be responsible for any delays in processing.

§ 6 Proof of origin, export restrictions

1. The supplier shall, at the request of the purchaser, at any time name the origin of his delivered goods resp. their own manufacturers or suppliers. Proofs of origin requested by the purchaser shall be made available by the supplier immediately in full and signed version.
2. The supplier shall inform the purchaser without being asked if his deliveries are subject to import or export restrictions in whole or in part.

§ 7 Warranties

1. In the case of contracts for the purchase of goods, NEA is obliged to examine within a reasonable period of time whether the goods delivered are of the quantity and quality required by the contract. Notice of non-conformity will be considered timely if received by the Supplier within 5 working days from receipt of the goods. In the case of hidden defects, notice of non-conformity will be considered timely if received by the Supplier within 5 working days from discovery of the non-conformity.
2. NEA is entitled to the full range of warranty rights provided by law; in any event it is entitled to elect whether to demand that the Supplier repair the defect or deliver new goods. The Supplier will be responsible for all necessary expenses connected with a cure, including, but not limited to the costs of transport, travel, labor and materials as well as all installation and removal costs at the installation site of the equipment. NEA expressly reserves the right to demand damages, in particular the right to demand damages in lieu of performance.
3. In the case of contracts for the purchase of goods, NEA may remedy the defects itself at the Supplier's expense where the Supplier is in default or there is a particular need for urgency. In the latter case, prior to remedying the defect, NEA will notify the Supplier and - to the extent possible under the circumstances in the particular case - set it a short and reasonable deadline for cure. § 637 of the German Civil Code applies in respect of contracts for works and services.
4. In the case of contracts for the purchase of goods, the warranty period is 36 months calculated from the passing of risk unless the mandatory provisions in § 478 or § 479 apply or the law provides for longer warranty periods (for example, §438(1) no. 2 of the

German Civil Code). The statutory warranty periods apply in the case of contracts for services and contracts for works and services.

§ 8 Liability, Product Liability, Indemnification, Third-Party Liability Insurance Protection

1. The Supplier is liable for damage caused by its willful default or negligence in accordance with the statutory provisions.
2. Where the Supplier is liable for damage caused by a product, it must, upon first demand, fully indemnify NEA against claims for damages by third parties if the causes of the damage originated within the Supplier's sphere of influence and organizational control and if it is itself liable to a third party. The Supplier's obligation to indemnify NEA covers all of the expenses which NEA necessarily incurs on the basis of or in connection with a lawsuit against NEA by a third party. In particular, the Supplier is obliged to reimburse NEA for any expenses pursuant to § 683 and § 670 of the German Civil Code or pursuant to § 830, § 840 and § 426 of the German Civil Code arising from or in connection with a recall campaign carried out by NEA. Insofar as it is possible and reasonable to do so, NEA will inform the Supplier as to the content and scope of the recall measures to be carried out and give the Supplier an opportunity to respond. The foregoing will not affect NEA's other statutory rights.
3. The Supplier agrees to maintain product liability insurance with lump sum coverage in the amount of €10 million per case of personal injury or property damage; any further claims to damages by NEA will remain unaffected.

§ 9 Intellectual Property Rights

1. The Supplier warrants that its supplies of goods or services or works do not infringe any third-party intellectual property rights within the Federal Republic of Germany.
2. If a third party makes a claim against NEA in relation to the foregoing, the Supplier will be obliged to indemnify NEA against such claim after NEA's first written request that it do so. Without the Supplier's consent, NEA is not permitted to enter into any agreement with the third party and, in particular, is not permitted to conclude a settlement.
3. The Supplier's obligation to indemnify NEA covers all of the expenses which NEA necessarily incurs on the basis of or in connection with a claim against NEA by a third party.
4. The limitation period is three years from the passing of the risk.

§ 10 Retention of Title, Items Provided by NEA, Tools

1. NEA reserves title to any parts or other material that it may supply. The Supplier is obliged to store, mark and manage separately items to which NEA has reserved title. The Supplier must compensate NEA in the event of the depreciation in value or loss of the items to which NEA has reserved title.
2. The Supplier may only use the parts or materials provided by NEA for orders from NEA. If the Supplier processes the parts or materials or transforms them into new products, this will be deemed to be done on behalf of NEA. If the items to which NEA has reserved title are processed with other items which do not belong to it, NEA will acquire co-ownership rights in the new product in the ratio of the value of its items (purchase price plus VAT) to the value of the other items processed at the time of processing.
3. If the item which NEA has provided is inextricably mixed with other items which do not belong to it, NEA will acquire co-ownership rights in the new product in the ratio of the value of the item to which it has reserved title (purchase price plus VAT) to the value of the other items which were mixed at the time of mixing. If the items are mixed in such a way that the item belonging to the Supplier must be seen as the main product, the Parties agree that the Supplier will transfer a proportionate co-ownership share of the product to NEA; the Supplier will protect the sole ownership or co-ownership of NEA.
4. NEA reserves title to the tools it provides; the Supplier is obliged to use the tools exclusively for the production of goods ordered by NEA. The Supplier is obliged to insure tools belonging to NEA at replacement value against damage from fire or water and against theft and to do so at its own expense. At the same time, the Supplier herewith assigns all of its rights to compensation under the insurance to NEA; NEA accepts such assignment. The Supplier is obliged to carry out any necessary maintenance work and inspections as well as all maintenance and repair work in respect of tools belonging to NEA at its own expense on a timely basis. The Supplier must report any malfunctions to NEA immediately; willful or intentional failure to do so may give rise to a right to claim damages on NEA's part.
Unless there is an express agreement to the contrary, tools must be returned to NEA in usable condition at the latest when the last remaining part of a shipment is delivered.
If the Supplier experiences production difficulties, NEA will be entitled to demand the return of those tools belonging to it.
5. If the value of NEA's security interests under subsections 1, 2 and/or 3 exceeds the purchase price of all goods unpaid for by NEA which are subject to a reservation of title by more than 10%, NEA will be obliged, upon request from the Supplier, to release some of the security interests. NEA may choose which security interests it wishes to release.

§ 11 Confidentiality

The Supplier is obliged to treat as strictly confidential all images, drawings, calculations and other documents and information that it receives from NEA. It is only permitted to disclose same to third parties with NEA's express consent. The duty of confidentiality will survive the completion of this contract; it expires if and to the extent that the manufacturing know-how contained in the images, drawings, calculations or other documents becomes part of the public domain.

§ 12 Place of Performance, Jurisdiction, Arbitration

1. Unless the order provides otherwise, NEA's place of business is the place of performance.
2. If the Supplier is a merchant (Kaufmann), a legal person or a special fund under public law, the courts at NEA's place of business (Sitz) will have jurisdiction. This also applies in litigation where evidence can only be produced in the form of documents. NEA is, however, also entitled to sue the Supplier at the courts at the place where the Supplier has its place of business.
3. Prior to commencing court proceedings NEA is entitled to refer any disputes arising out of or in connection with the contract to a court of arbitration. In this case the Arbitration Code of the German Arbitration Institution e.V. (Deutsche Institution für Schiedsgerichtsbarkeit e.V.) Beethovenstraße, Cologne applies.

§ 13 Final Provisions

1. Collateral agreements, warranties, amendments or additions in respect of these Terms & Conditions or the contract must be made in writing and must be expressly identified as such. The same applies to a waiver of the requirement of writing.
2. Statements, representations and warranties by NEA's employees, contractors or agents must be confirmed by NEA in writing in order to be valid.
3. The Supplier is not permitted to assign its rights from its contractual relationship with NEA without NEA's prior written consent.
4. German law applies to all claims arising under this contract. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is excluded.
5. In the event that an individual provision of these Terms & Conditions is or becomes invalid or void, or if NEA and the Supplier mutually agree not to implement a provision, this will not affect the validity of the remaining provisions hereof. The same applies in the event of any gaps in the Terms & Conditions. The invalid or unenforceable provision or the omission will be replaced with the provision which is as close as legally possible in its commercial intent to the provision it is replacing.