

# General Terms and Conditions of Purchase of Werner & Pfleiderer Lebensmitteltechnik GmbH

## 1. Scope/order placement

1.1 The legal relationships between supplier and Werner & Pfleiderer Lebensmitteltechnik GmbH, hereinafter referred to as WPL, shall be governed by these terms and conditions. Amendments and supplements must be made in writing. Other general terms and conditions shall not apply, even if they have not been expressly objected to in individual cases.

1.2 Contracts determine the delivery item and the conditions and shall be binding if they are issued on WPL forms with a proper signature, and are available at WPL countersigned by the supplier. The latter shall also apply to amendments. The delivery items shall be specified by the WPL material number stated in the contract as well as the documentation prepared for this purpose. A quantity and deadline obligation for deliveries shall only arise through the delivery schedule or call-off orders created/placed by WPL, which can be transmitted to the supplier in accordance with Art. 126 b German Civil Code (BGB) in text form and without signature, if the supplier does not object within 7 days of receipt.

1.3. In accordance with Art. 126 b BGB, single orders (orders) outside the scope of contracts may be placed in text form, waiving the signature requirement, up to a maximum order value each specified by WPL. If the supplier does not object to the single order immediately upon receipt, it shall be deemed accepted by the supplier without the requirement of an order confirmation.

1.4. Transfer of the order to third parties shall not be permitted without the consent of WPL.

1.5. Changes to products or conversions in the supplier's manufacturing, which result in a change in the specification of the drawings or quality standards, or otherwise affect the operational safety and function of the WPL products, shall only be permissible subject to the prior written consent of WPL.

## 2. Delivery and performance deadlines

2.1. Delivery shall take place within the deadlines specified in the delivery schedule, single orders or call-off orders. Compliance with deadlines is, due to series production, an essential contractual obligation.

2.2. Compliance with the deadline shall be determined by the date of receipt at the WPL facilities or the contractually agreed place of delivery.

2.3. If delivery has not been agreed "free works", the supplier shall make the goods available in good time, taking into account the usual time required for loading and dispatch, and register them with the agreed freight forwarder for collection.

## 3. Delay in delivery

3.1. If the agreed deadline for delivery cannot be met due to circumstances for which the supplier may be held responsible, the supplier shall be obliged to compensate WPL for the damage caused by the delay. Acceptance of the delayed delivery or service shall not constitute a waiver of any further claims arising from the delay. Foreseeable delays in delivery must be reported to WPL at an early stage.

3.2. If delivery is made earlier than agreed, WPL may return the goods at the supplier's expense. If the goods are not returned in the event of premature delivery, they shall be stored at WPL until the agreed deadline for delivery at the expense and risk of the supplier. If premature deliveries are accepted, the due date of the purchase price shall be determined by the agreed deadline for delivery.

3.3. In the event of delay in delivery, a contractual penalty of 0.5 % per commenced calendar week but not more than 5 % of the value of the delayed part of the delivery or service shall be due for payment, offset against any compensation for damages in excess thereof. Otherwise, Art. 340 BGB shall apply.

## 4. Terms and conditions of payment

4.1. Unless agreed otherwise in writing, payment shall be made after delivery and receipt of invoice by bank transfer or check within 30 days with deduction of 3 % early-payment discount, or within 45 days without deduction. If delivery "FCA" (Incoterms 2000) has been agreed, the time of loading of the goods plus the usual transport time shall be decisive for payment.

4.2. In the event of faulty delivery WPL shall be entitled to withhold payment proportionate to the value until due fulfillment.

4.3. In the case of day-to-day deliveries, WPL shall be entitled to aggregate payment at the end of each week without losing the right to the agreed early-payment discount, even if a separate invoice is issued for each individual delivery.

4.4. The invoice shall be submitted to the production facilities to be supplied no later than 14 days before the due date. It must include the number and date of contract and order, the VAT identification number for cross-border deliveries within the EU, the place of unloading, number and date of the delivery slip, and the quantity of the invoiced goods. The invoice may only refer to one delivery slip.

4.5. WPL shall be entitled to set off against the supplier claims of the supplier against claims of WPL. Assignments of the supplier's claims to third parties shall only be permissible with the written consent of WPL. Consent shall not be withheld for no important reason. WPL reserves the right to make payments by check, bill of exchange or acceptance subject to the respective bank rate, but in no case more than 0.5 percent above the base interest rate valid on the due date.

4.6. If the delivery item is a construction or work performance, Art. 16 of the official contracting terms for award of public works contracts VOB/B shall apply.

4.7. The supplier shall not be entitled to raise the defense of uncertainty according to Art. 321 BGB.

## 5. Receiving inspection, quality assurance, parts requiring documentation

5.1. Concerning quantities, dimension, weights, and quality of a delivery, the values determined by us at receiving inspection are decisive. Acceptance shall be subject to examination for correctness and suitability, and otherwise in accordance with WPL's quality regulations.

5.2. The supplier shall be obliged to observe and comply with all manufacturing and testing procedures specified or agreed for WPL products, and to produce inspection certificates. Unless specifically stipulated by the contracting partners, the supplier may define the required inspection strategy its own responsibility. The supplier shall grant WPL access on a problem-related basis.

5.3. The supplier shall select the inspection equipment in such a way that all contractual as well as reasonable quality characteristics according to the general state of the art can be inspected. The inspection equipment shall thereafter be monitored at appropriate intervals. Our inspection personnel and the domestic and foreign authorities shall have the right to inspect the quality of the material and/or the manufacturing process of the delivery items at the supplier's facilities during working hours.

5.4. Payment of the purchase price shall not constitute acceptance of the faultless, correct delivery. The supplier thus waives the objection of omitted receiving inspection and delayed notification of defects (Art. 377) if the complaint concerns quality defects of the delivered products. The notification of defect period is limited to 24 months from delivery.

5.5. The supplier shall be obliged to comply with the state of the art, the safety regulations, and the technical date required for the delivery, and to continuously verify the quality of the products. If the product requires a manufacturer's declaration/declaration of conformity (CE) in the sense of the EC Machinery Directive, or a RoHS Declaration of Conformity in the sense of the WEEE Directive 2002/95/EC for electrical components, the supplier shall procure these and provide them on request, and at his own expense.

## 6. Notification of defect

WPL shall immediately notify the supplier in writing of any defects in the delivery as soon as these are discovered in the ordinary course of business. The supplier shall in this respect waive the objection of delayed notification of defect.

## 7. Freight, packaging, insurance and passing of risk

1. Unless agreed otherwise in writing, deliveries shall be made free works, including packaging and freight. The supplier shall bear the risk of shipment. Otherwise, Incoterms 2000 shall apply.

2. WPL is self-insurer and therefore a customer exempted from forwarding, logistics and warehousing insurance.

## 8. Warranty

The supplier shall be liable for any defects of material and title in the delivery items as follows:

### 8.1. Material defects:

If defective goods are delivered, the supplier shall first be given the opportunity of supplementary performance by rectification or subsequent delivery prior to the commencement of production (machining or assembly), unless this is unacceptable for WPL. If the supplier is unable to do this or does not immediately comply with this, WPL may, in urgent cases, such as an imminent production stoppage, rectify the delivery item itself at the supplier's expense, have it rectified by a third party, or withdraw from the contract and return the goods at the supplier's risk. The supplier shall bear any costs incurred thereby. If the same goods are repeatedly delivered in faulty condition, WPL shall be entitled to withdraw from unfulfilled scope of delivery following a written warning. WPL shall make the parts to be replaced by the supplier immediately available on request and at the supplier's expense.

### 8.2. Defects of title:

The supplier shall be liable for ensuring that the industrial property rights of third parties (e.g. rights to work results) are not infringed. Should the use of the delivery item infringe the industrial property rights of third parties, the supplier shall indemnify WPL against all claims. On request, the supplier shall inform WPL of the use of published and unpublished own and licensed industrial property rights and applications for industrial property rights to the delivery item.

### 8.3. Period of limitation:

The period of limitation for claims from clauses 8.1 and 8.2 shall be 12 months after delivery of the end product to the end customer, but no longer than 24 months after delivery to WPL. WPL's right of recourse against the supplier due to material defect claims pursuant to Art. 478, 479 BGB shall remain unaffected. WPL shall be able to assert these even if the end customer is not a consumer but an entrepreneur.

8.4. The warranty shall otherwise be governed by the statutory regulations.

## 9. Liability

Unless agreed otherwise, the supplier shall be obliged as follows to compensate the damage incurred by WPL directly or indirectly as a result of faulty delivery, breach of official safety regulations or any other legal grounds for which the supplier is responsible:

The supplier shall only be liable if he is at fault for the damage caused, unless it is a case of strict liability (e.g. product liability). The supplier shall indemnify WPL internally to the extent that he would also be directly liable against claims against WPL on the basis of strict liability by third parties, whose rights cannot be waived. Art. 254 BGB shall apply mutatis mutandis.

The supplier shall be liable for measures taken by WPL to avert damage (e.g. special inspection, recalls) to the extent that the underlying damage is attributable to this measure. The supplier shall in this respect be granted the opportunity to examine the case of damage. The supplier shall assume responsibility for compliance with the accident prevention regulations or the safety recommendations of the trade associations, the factory inspectorate, or similar.

## 10. Manufacturing equipment/material provided by WPL

Developed parts, manufacturing equipment such as models, samples, dies, tools, gauges, technical drawings as well as the rights to these and the like which have been provided to the supplier by WPL or which have been manufactured by the supplier according to specifications and at the expense of WPL, as well as material and aids provided to the supplier free of charge for machining and processing within the framework of an order, shall remain the property of WPL or become the property of WPL and may in no way be passed on to third parties or otherwise made available for use or be used for third parties without written consent even after termination of the contract. Furthermore, this manufacturing equipment shall be made available to WPL free of charge and in perfect condition after termination of the contract. Manufacturing equipment paid proportionately by WPL may be taken over by WPL at the end of supply at the current value of the supplier's share. The supplier may only sell delivery items developed by WPL (e.g. manufactured according to WPL specifications or drawings) and/or that bear WPL trademarks and/or the WPL part number exclusively to WPL. Direct deliveries to the WPL dealer network or third parties are generally excluded. The supplier shall further undertake not to offer such parts in catalogs or other advertising or sales documents. In the event of a breach of the aforementioned obligations of the supplier, WPL shall be entitled to withdraw from the contract and to demand the surrender of the advantage obtained for the breach of contract, or compensation for the damage incurred. The supplier shall store the material for WPL with the diligence of a prudent business man, and shall be obliged to inform WPL immediately of any seizures or other security measures that could impair the property of WPL. WPL shall be obliged to draw attention to any deviations in the manufacturing equipment, e.g. between samples and drawing, before commencement of production.

## 11. Confidentiality

The contracting parties agree to treat all non-public commercial and technical details, which become known to them through the business relationship, as business secrets. Drawing and models, gauges and samples as well as similar objects may not be passed on or made accessible to third parties. Without the consent of WPL, the supplier may not use the fact of the business relationship for advertising or public relations purposes. Subcontractors shall be accordingly obliged to comply with this provision.

## 12. Third-party workers

Each individual deployment of WPL-external workers (subcontractors) requires a written assignment by WPL. The calculation of working time performed by subcontractors working for WPL, shall only be recognized on the basis of the working hours, signed by WPL, or its agents, or the customer.

WPL shall be entitled to withdraw from the contract if WPL becomes aware of serious violations of occupational health and safety, and if the supplier does not immediately remedy such violations. WPL shall, moreover, be entitled to issue the order of immediate suspension of work to the supplier's personnel. Damages caused by delay shall in this case be borne by the supplier.

## 13. Force majeure

Force majeure, labor disputes and other unforeseeable, unavoidable or serious events shall release the contracting parties for the duration of the disruption and to the extent of its effect from their obligations to perform. This shall also apply if these events occur at a time when the affected contractual partner is in default. The contracting parties are obliged to provide the necessary information immediately within reason, and to adjust their obligations in good faith to the changed circumstances.

## 14. Obligation to procure spare parts

The supplier undertakes to execute orders for spare and wear parts for at least 10 years after the last delivery. The warranty provision set forth in clause 8 shall apply for spare parts.

## 15. Data privacy

WPL shall be entitled to process personal data received within the scope of the business relationship within the meaning of the German Federal Data Protection Act. The place of performance shall be the respective registered office of the facilities to be supplied. The place of jurisdiction shall be the court responsible for the place of performance. WPL shall also be entitled to appeal to the courts at the supplier's registered office. The law of the Federal Republic of Germany shall apply. The application of the Hague Conventions Relating to a Uniform Law on the International Sale of Goods of 7/1/1964 and the provision of the United Nations Convention on Contracts for the International Sale of Goods of 4/11/1980 is excluded.