

# Wystrach GmbH General Terms and Conditions of Purchase

## 1. Scope and Document Hierarchy

- 1.1. Supplier's deliveries, services and quotations shall be governed by these General Terms and Conditions of Purchase ("**Conditions of Purchase**").
- 1.2. Any deviating, contrary or supplementary general terms and conditions of the Supplier shall only be part of the agreement if and to the extent that we have given explicit written consent to that effect. This requirement for consent shall apply in all cases, including but not limited to the event that we accept the Supplier's deliveries and/or services without reservation despite being aware of general terms and conditions of the Supplier.
- 1.3. These Conditions of Purchase shall also apply to future purchase orders submitted to and contracts for deliveries and/or services concluded with the Supplier, even if not explicitly referenced.
- 1.4. If and to the extent that any documents agreed upon by and between the Supplier and us (together the "**Contracting Parties**") (including any appendices in each case) contain provisions that contradict each other (hereinafter referred to as "Conflicts of Provisions") and there are no prevailing individual agreements in place, the documents shall apply in the descending order of priority below:
  - framework agreements concerning the supply/purchase of goods between the Contracting Parties;
  - quality assurance agreement;
  - general terms and conditions (General Terms and Conditions of Purchase of Wystrach);
  - individual agreements (including but not limited to purchase orders/order confirmations).To the extent there are no Conflicts of Provisions, the documents shall apply equally and supplement the provisions contained in the other documents.

## 2. Quotation

- 2.1. The Supplier shall adhere exactly to our request in the quotation; it shall indicate any deviations.
- 2.2. The quotation shall be made free of charge.

### 3. Ordering

- 3.1. Supply contracts and delivery schedules as well as any amendments or supplements to them must be in writing. The Supplier has an obligation to accept a purchase order within a reasonable period of time, and at the latest within a period of two weeks of receipt of the purchase order.
- 3.2. We reserve the right to accept excess or short deliveries.

### 4. Delivery Dates and Deadlines, Transfer of Risk

- 4.1. The delivery time specified by us in the purchase order or relevant delivery time in accordance with these Conditions of Purchase (delivery date or deadline) shall be binding. Compliance with the delivery time shall be determined on the basis of the time of receipt of the goods at the place of receipt specified in the purchase order.
- 4.2. The Supplier shall notify us in writing without delay if circumstances arise or become apparent under which the delivery time cannot be met.
- 4.3. If the day on which delivery shall take place at the latest can be determined on the basis of the contract, the Supplier shall be in delay in delivery (*Lieferverzug*) with effect from the end of that day, without this requiring any reminder on our part.
- 4.4. In the event of delay in delivery, we shall be entitled to assert statutory claims and/or exercise statutory rights, including the right of rescission and a claim for damages in lieu of performance (*Schadenersatz statt der Leistung*) following the expiry, without effect, of a reasonable grace period. We shall also have the right to assert further contractual claims and/or exercise further contractual rights to which we are entitled under these Conditions of Purchase and/or under any documents or agreements with the Supplier that have priority over these Conditions of Purchase (cf. sec. 1.4). The above provisions shall in particular not affect our rights to assert claims pursuant to sec. 4.5 of these Conditions of Purchase.
- 4.5. Should the Supplier be in delay in delivery, we shall, following prior written warning and at the latest upon payment of the invoice, be entitled to demand payment from the Supplier of a contractual penalty of 0.5% of the net price of the goods delivered late, for each commenced week of delay, but in total no more than 5% of the net price of the goods delivered late. The contractual penalty shall be credited against any damage caused by such delay for which the Supplier is liable.
- 4.6. Without our prior consent, the Supplier shall not be entitled to make early or partial deliveries.

- 4.7. Even if shipment of goods has been agreed, the risk shall not be transferred to us until the goods have been handed over to us at the agreed destination.

## 5. Conformity with Agreements/Requirements regarding the Goods

The Supplier shall ensure that its deliveries a) comply with the contractually agreed requirements, b) are free from any further material defects, defects in title or other defects and c) correspond to both the state of the art and applicable statutory requirements, including but not limited to those regarding manufacturing (to the extent applicable), quality (*Beschaffenheit*), labelling and supplementary and accompanying documentation.

## 6. Warranty and Notification of Defects

- 6.1. In the event of any material defects and/or defects in title (including incorrect and short deliveries, incorrect assembly and errors in assembly, operating or usage instructions), we shall be entitled to exercise our statutory claims and/or rights. We shall also have the right to assert further contractual claims and/or exercise further contractual rights to which we are entitled under these Conditions of Purchase and/or under any documents or agreements with the Supplier that have priority over these Conditions of Purchase (cf. sec. 1.4). This shall in particular not affect the provisions of sec. 8 of these Conditions of Purchase.
- 6.2. The Supplier shall in particular be liable for ensuring that the goods have the agreed quality at the time of the transfer of risk. Agreements concerning quality shall include but are not limited to technical specifications that are part of the contract in question, for example because they are stated or referenced in our purchase order. Apart therefrom, the statutory definition of defect (*Mangelbegriff*) shall apply. The term defect shall in this regard in particular include cases in which there is a suspicion based on specific facts, according to which the quality of the goods is not in conformity with the contractual requirements and/or requirements under statutory law, that such suspicion cannot be dispelled through measures that can be reasonably expected of us, and the non-conformity (i) has a negative impact on the re-saleability of the goods as separate products if the Contracting Parties had intended such re-saleability, or (ii) has a negative impact on the saleability of another product of which the goods have become a part on the basis of and in accordance with an agreement between the Contracting Parties.
- 6.3. Unless otherwise agreed by the Contracting Parties in a quality assurance agreement, the statutory provisions shall apply to commercial inspection and defect notification obligations (sections 377, 381 HGB, German Commercial Code), subject to the following conditions: our inspection obligation shall be limited to defects that come to light during our incoming goods inspection within the framework of checks for externally visible transport damage and quantity/identity non-conformities on the basis of the delivery notes or that are evident in our

sampling-based quality control. There is no inspection obligation if and to the extent that an acceptance requirement (*Abnahme*) has been agreed. Otherwise, such an inspection obligation shall depend on the extent to which inspection is feasible and can reasonably be expected in the individual circumstances in the ordinary course of business. This shall not affect our defect notification obligation for defects detected at a later point in time. Notwithstanding our inspection obligation, our notification of defects shall be deemed to be immediate and timely if we submit it to the Supplier within five working days (Mondays to Fridays) of receipt of the goods. Notification of hidden defects shall be deemed to have been given timely if the Supplier is notified within five working days of detection of the material defect.

- 6.4. Subsequent performance shall include the removal of the defective goods and their re-installation if the goods, in accordance with their type and purpose of use, have been installed in another object or attached to another object; this shall not affect our statutory right to claim compensation for corresponding expenses.
- 6.5. In the event that an inspection of the goods finds that there was in fact no defect and that our request for rectification was not justified, we shall only have an obligation to pay compensation for any loss incurred by the Supplier as a consequence of this if and to the extent that we, prior to or upon demanding defect rectification, recognised or were grossly negligent in failing to recognise that there was no defect.
- 6.6. Should the Supplier fail to fulfil its subsequent performance obligation – at our discretion either by rectifying the defect (defect rectification) or by delivering an item free from defects (replacement delivery) – within a reasonable grace period set by us, we shall be entitled to rectify the defect ourselves and to demand from the Supplier compensation for the necessary expenses incurred and/or a corresponding advance payment. In the event that subsequent performance by the Supplier fails or we cannot be reasonably expected to accept it (for example on the grounds of urgency, a risk to operational reliability or the imminent threat of disproportionate loss), no grace period need be set by us; we shall notify the Supplier of such circumstances without delay and if possible in advance.
- 6.7. Irrespective of the foregoing provisions of this sec. 6, in the event of defects in the goods, we shall be entitled in accordance with statutory regulations to reduce the purchase price, to withdraw from the contract and, if applicable, to request damages and reimbursement of expenses. We shall also have the right to assert further contractual claims and/or exercise further contractual rights to which we are entitled under these Conditions of Purchase and/or under any documents or agreements with the Supplier that have priority over these Conditions of Purchase (cf. sec. 1.4). This shall not affect the provisions of sec. 8 of these Conditions of Purchase.
- 6.8. Upon the Supplier's receipt of our defect notification, the limitation period for our rights on the grounds of defects in the goods shall be suspended until the Supplier rejects the rights we have exercised, declares that the defect has been rectified or refuses to continue negotiations

concerning the rights exercised by us. In the case of replacement delivery or defect rectification, the limitation period shall begin again for replaced or reworked parts unless the Supplier's behaviour has led us to assume that it did not consider itself obliged to implement the relevant measure but instead only provided the replacement delivery or rectified the defect out of goodwill or for similar reasons.

## 7. Recourse vis-à-vis Suppliers

- 7.1. We reserve in full all rights to recourse within the supply chain pursuant to sections 445a, 445b and 478 BGB (German Civil Code). We shall in particular be entitled to require from the Supplier such type of subsequent performance (rectification or replacement delivery) that we owe to our customer in a given case; neither this nor any other reason shall limit our statutory right to choose the type of subsequent performance pursuant to section 439 par. 1 BGB.
- 7.2. In the event that defective goods have been processed either by us or by a third party, for example if they have been installed in another product, this shall not affect our rights of recourse vis-à-vis the Supplier.

## 8. Product Liability and Recall

- 8.1. The Supplier shall inform us without undue delay of any and all non-conformities of the goods it has supplied to us (for the purposes of this sec. 8 referred to as the "**Product**" or "**Products**") with regard to statutory requirements and/or requirements agreed with us (hereinafter referred to as "**Product Defects**"); this shall apply in cases including but not limited to objections by public authorities. To the extent that this is legally permissible and reasonable, the Supplier shall notify us in advance of any notifications of existing or potential Product Defects that the Supplier intends to submit to public authorities under a statutory obligation, and shall grant us the opportunity to provide comments. In each case falling under the first or second sentence above, the Supplier shall provide us on request with all information and documents we need insofar (hereinafter in this sec. 8: any information and documents that are important in our objectified view). The foregoing provisions shall apply accordingly to potential non-conformities with statutory requirements and/or requirements agreed with us, of Products that the Supplier has delivered to us.
- 8.2. The Supplier shall be liable to us for any damages and/or expenses and shall indemnify us against any third-party claims resulting from delivery by the Supplier of Products having Product Defects; the Supplier's liability shall include any damages and/or expenses incurred by us, as a result of Product Defects, for recall actions or other measures taken to ensure safety or fulfil other legal obligations (hereinafter individually referred to as "**Measure**"). The foregoing sentence shall not apply if and to the extent the Supplier is not responsible for Product Defects.

- 8.3. The foregoing provisions of this sec. 8 shall not affect further claims by us and/or rights of ours vis-à-vis the Supplier based on statutory law and/or contract. The foregoing provisions of this sec. 8 shall not affect the statutory provisions governing contributory negligence.
- 8.4. The Supplier shall inform us without delay as soon as the Supplier intends to carry out a Measure or there is a risk of an administrative order to carry out a Measure. In such cases, the Supplier shall provide us on request with all information and documents we need insofar, including but not limited to those concerning the reason, type and scope of the Measure, and shall keep us continually informed. The same shall apply in the case of a Measure actually carried out by the Supplier.
- 8.5. The Supplier shall assist us if we are obliged to carry out a Measure as a result of a Product Defect in a Product delivered to us by the Supplier, and shall in particular provide any information and documents available to or to be held by the Supplier which are needed for preparing and carrying out the Measure, and to provide necessary cooperation and assistance for carrying out the Measure.
- 8.6. The Supplier is obligated to maintain insurance coverage at its own expense that is in reasonable proportion to the type, scope and duration of the transactions to be concluded with us. For this purpose, the Supplier shall maintain an extended product liability insurance policy. The coverage of this insurance must amount to at least EUR 5 million per insured event (lump sum for personal injury, property damage and pure financial loss). In addition, the Supplier shall maintain a recall cost insurance with a coverage of at least EUR 5 million per insured event. The insurance coverage shall also be maintained to the extent that the Supplier waives the duty of inspection and notification of defects towards us pursuant to sections 377, 381 German Commercial Code (HGB) or comparable applicable provisions. The insurance coverage must also cover insured events occurring abroad, with the exception of the USA/US territories and Canada.
- 8.7. The Supplier shall, upon our first request, submit to us proof of insurance coverage for the corresponding risks. Such proof of insurance must indicate both the amount and the scope of insurance cover and the validity period. In addition, the Supplier shall inform us of whether the corresponding insurance premiums have been paid. The Supplier undertakes to maintain its insurance policy/policies for as long as the Supplier is subject to any obligations under the contract/purchase order. This includes the time period up to the respective expiry of limitation periods for material defects/Product Defects. Any changes during the benefit period that affect the scope of insurance cover shall be communicated to us without undue delay and shall be part of the new proof of insurance to be submitted to us. In addition, the Supplier shall inform us of a change of the insurer.

## 9. Industrial Property Rights

- 9.1. In accordance with the following paragraph, the Supplier shall be liable for ensuring that the goods it supplies do not violate any third-party industrial property rights in countries of the European Union or other countries in which it manufactures or is going to manufacture the goods.
- 9.2. The Supplier shall indemnify us against any and all claims brought against us by third parties as a result of a violation of industrial property rights as set out in sec. 9.1 and shall reimburse all necessary expenses in relation to the assertion of such claims. This entitlement on our part shall not apply if and to the extent that the Supplier can show that it is not responsible for the violation of industrial property rights and that, exercising the diligence of a prudent businessperson, it could not have been expected to be aware of the violation at the time of delivery.
- 9.3. This shall not affect the right to assert further claims for defects in title.

## 10. Statute of Limitations

- 10.1. In deviation from section 438 par. 1 no. 3 BGB, the general limitation period for rights arising from defects shall be three years from the transfer of risk, unless and to the extent sections 445b, 478 par. 2 BGB apply. If and to the extent an acceptance requirement has been agreed, the limitation period shall commence upon acceptance. The three-year limitation period shall also apply accordingly to claims arising from defects in title, however without affecting the statutory limitation period for claims for recovery in rem by third parties under section 438 par. 1 no. 1 BGB; claims arising from defects in title shall not become statute-barred as long as the right in question can – in particular in the absence of limitation – still be exercised against us by the third party.
- 10.2. The rules on the statute of limitations regarding sales contracts, including the extensions under sec. 10.1, shall apply – to the statutory extent – to all contractual claims for defects. If and to the extent that due to a defect we are entitled to assert non-contractual damage claims, such claims shall be subject to the general statutory limitation period (sections 195, 199 BGB), unless the application of limitation periods under the rules on sales contracts leads to a longer limitation period in the respective case.

## 11. Spare Parts

- 11.1. The Supplier shall keep spare parts for the goods delivered to us for a period of at least 5 years after delivery.

- 11.2. Should the Supplier intend to discontinue the production of spare parts for the goods supplied to us, it shall notify us without delay after the decision on discontinuation. Subject to sec. 11.1, the decision must be taken at least 12 months before production is discontinued.

## 12. Prices, Invoicing and Payment

- 12.1. The agreed prices are fixed prices plus VAT where required by law. In the absence of a written agreement to the contrary, the price shall include delivery and transport to the delivery address indicated in the contract, including packaging costs.
- 12.2. If an "ex works" or "ex stock" price is agreed, we shall only bear the cheapest freight costs. Any and all costs incurred up until the time of handover to the carrier, including loading and cartage costs, shall be borne by the Supplier. The agreement on the place of performance shall not be affected by the type of pricing.
- 12.3. Unless otherwise agreed, we shall pay the purchase price, after delivery of the goods and receipt of an invoice entitling us to deduct input tax, at our discretion: - within 14 days at a 2 % discount or - within 30 days with no discounts.
- 12.4. All delivery notes and invoices must indicate the purchase order number, the article number, the supply quantity and the delivery address. Should one or more of these details be missing and processing by us be delayed as a result, the aforementioned payment deadline shall be extended by the period of the delay.
- 12.5. In the event of payment default, we shall owe default interest of five percentage points above the base rate pursuant to section 247 BGB.
- 12.6. For organisational reasons, we will make all of our payments without checking the services rendered by the Supplier. Payments shall not represent acceptance of any kind and/or any declaration that the deliveries comply with the contract.
- 12.7. We shall have a right of set-off and retention to the full extent permitted by law.

## 13. Order Documents, Tools and Retention of Title

- 13.1. Upon request, the Supplier shall submit to us for inspection and approval plans, construction drawings, calculations, etc. relating to the delivery and, if they are found to be correct, shall provide them to us in the number requested by us.

- 13.2. We reserve the title to or copyright to any and all purchase orders and jobs submitted by us and to drawings, illustrations, calculations, descriptions and other documents we place at the Supplier's disposal. Without our explicit consent, the Supplier shall neither make them accessible to third parties nor use or reproduce them itself or through third parties. The Supplier must return these documents to us in their entirety at our request if it no longer requires them in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. In this case, copies made by the Supplier are to be destroyed; the only exceptions to the above are for storage within the scope of statutory retention obligations and for the storage of data for back-up purposes within the scope of standard data back-up procedures.
- 13.3. Tools, devices and models that we make available to the Supplier or that are manufactured for contractual purposes and charged to us separately by the Supplier shall remain our property or become our property. The Supplier shall mark them as our property, store them carefully, protect them from damage of any kind and use them solely for the purpose of the contract. Unless otherwise agreed, the Contracting Parties shall each bear half of the costs of maintenance and repair. However, insofar as these costs are attributable to defects in items manufactured by the Supplier or to improper use by the Supplier, its employees or other vicarious agents, they shall be borne solely by the Supplier. The Supplier shall notify us without delay of any damage to these items that is not insignificant. Upon request, the Supplier shall return the items to us in proper condition if it no longer requires them for fulfilment of contracts concluded with us.
- 13.4. Any retention of title of the Supplier shall only apply if and to the extent that it relates to our payment obligation for goods to which the Supplier retains title. Extended or prolonged retention of title, in particular, shall be inadmissible.

## 14. Severability Clause

Should any provision of these Conditions of Purchase or of the contract in question be invalid, the remaining provisions shall continue to apply and the invalid provision shall be replaced by a valid provision which comes as close as possible to the purpose of the invalid provision without being invalid.

## 15. Place of Jurisdiction and Applicable Law

- 15.1. Exclusive place of jurisdiction for all disputes arising from or in connection with the contractual relationship is Weeze, Germany. However, we shall also be entitled to bring an action at the Supplier's general place of jurisdiction. Prevailing statutory provisions, in particular with regard to exclusive jurisdiction, shall remain unaffected.
- 15.2. The laws of the Federal Republic of Germany shall apply; the United Nations Convention on Contracts for the International Sale of Goods shall not apply.

## 16. Different Language Versions

If the Contracting Parties agree on an English and a German version of these Conditions of Purchase, the German version shall be authoritative to the extent there are contradictions between these versions.