Last updated: June 2020

General Terms and Conditions
for the Purchase of Goods and Services

Scope of application

These General Terms and Conditions of Purchase (hereinafter referred to as "GTCP") shall apply to all business relations with our business partners and suppliers (hereinafter referred to as "Contractual Partners"). The GTCP shall only apply if the Contractual Partner is a company (Section 14 BGB [German Civil Code]), a legal entity under public law or a special fund under public law.

The GTCP shall apply to contracts for the sale and/or delivery of movable goods (hereinafter referred to as "Goods") to us, irrespective of whether the Contractual Partner manufactures the Goods itself or purchases them from suppliers (Sections 433, 650 BGB). In addition, the GTCP shall apply to the provision of works (Section 631 BGB) and provision of services (Section 611 BGB) as well as other services (hereinafter referred to as "Services") against payment to us. Unless otherwise agreed, the GTCP in the version valid at the time of our order or, in any case, in the version last communicated to the Contractual Partner in text form shall also apply as a framework agreement for similar contracts in the future, without us having to refer to them again in each individual case. The Contractual Partner agrees to the validity of the GTCP at the latest with the unopposed execution of the delivery of the Goods or the provision of the Services.

Our GTCP apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Contractual Partner shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing. This requirement of consent shall apply in any case, for example, even if we accept the Contractual Partner's deliveries without reservation in the knowledge of the Contractual Partner's general terms and conditions.

Conclusion of contract

Our order shall be deemed binding at the earliest upon written submission or confirmation. The Contractual Partner shall notify us of obvious errors (e.g. typing and calculation errors) and incompleteness of the order including the order documents for the purpose of correction or completion before acceptance; otherwise, the contract shall be deemed not to have been concluded.

The Contractual Partner shall be obliged to confirm our order in writing within a period of one week or, in particular, to execute it without reservation by dispatching the Goods (acceptance). A delayed acceptance shall be considered as a new offer and require our acceptance.

2W Technische Informations GmbH & Co. KG
Geschäftsführer: Uwe Düring | Michael Süßl
Prokura: Melanie Huber
Lindberghstraße 40 | D-80939 München
Telefon: +49 89/5 20 35 –0 | Fax: +49 89/5 20 35-123
info@2Wgmbh.de | www.2Wgmbh.de

Münchenr Bank | IBAN: DE73 7019 0000 0000 3366 88
Kreissparkasse München Starnberg Ebersberg
IBAN: DE20 7025 0150 0005 0939 35 | BIC: BYLADEM1KMS
Commerzbank München | IBAN: DE67 7008 0000 0302 2298 00 | BIC: DRESDEFF700
UID-Nr. DE278109242 | Registergericht München HRA 97411

Delivery time and default in delivery

The delivery time stated by us in the order is binding. If the delivery time is not specified in the order and has not been agreed upon otherwise, it shall be 2 weeks from the conclusion of the contract. The Contractual Partner is obliged to inform us immediately in writing if it is likely to be unable to meet agreed delivery times – for whatever reasons. If this notification is not made or is made late, the Contractual Partner shall be liable for any damages resulting from this.

If the Contractual Partner does not perform its service or does not perform it by the agreed delivery time or if it is in default, our rights – in particular to rescind the contract and claim damages – shall be determined in accordance with the statutory provisions, whereby a grace period entitling us to rescind the contract and claim damages for non-performance shall generally be 14 calendar days. The regulations in Section 3.3 remain unaffected.

If the Contractual Partner is in default, we can – in addition to further legal claims – demand lump-sum compensation for our damage caused by default to the amount of 1% of the net price per completed calendar week, but not more than 5% of the net price of the Goods or Services delivered late. We reserve the right to prove that higher damages have been incurred. The Contractual Partner reserves the right to prove that no damage at all or only a significantly lower amount of damage has been incurred.

Performance, delivery, transfer of risk, default of acceptance

Without our prior written consent, the Contractual Partner shall not be entitled to have its services owed performed by third parties (e.g. subcontractors). The Contractual Partner bears the procurement risk unless otherwise agreed in individual cases (e.g. limitation to stock).

The Goods are delivered "free domicile" to the place specified in the order. If the place of destination is not specified and nothing else has been agreed, the delivery of the Goods or provision of the Services must be made to our registered office in Munich. The respective destination is also the place of performance for the delivery and any subsequent performance (obligation to be performed at the place of performance).

The delivery of the Goods must be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (article number and quantity) and our order identification (date and number). If the delivery note is missing or incomplete, we are not responsible for any delays in processing and payment resulting from this. Separately from the delivery note, a corresponding notice of dispatch including the same content shall be sent to us.

The risk of accidental loss and accidental deterioration shall pass to us upon delivery at the place of performance. In the event of acceptance, this shall be decisive for the transfer of risk and the statutory provisions of the law on contracts for works and services shall apply, unless otherwise agreed in these GTCP.

The statutory provisions shall apply to the occurrence of our default of acceptance. However, the Contractual Partner must also expressly offer us its Services if a specific or determinable calendar period has been agreed for an action or cooperation on our part (e.g. provision of material). If we are in default of acceptance, the Contractual Partner may demand compensation for its additional expenses in accordance with the statutory provisions (Section 304 BGB). If the contract concerns an unacceptable item to be manufactured by the Contractual Partner (individual production), the Contractual Partner shall only be entitled to further rights if we are obliged to cooperate and are responsible for the failure to cooperate.

Prices and terms of payment

The price stated in the order is binding. All prices include statutory value added tax, unless this is shown separately.

Unless otherwise agreed in individual cases, the price includes all Services and ancillary services of the Contractual Partner (e.g. assembly, installation) as well as all ancillary costs (e.g. proper packaging, transport costs including any transport and liability insurance).

The agreed price is due for payment within 30 calendar days from complete delivery and performance (including acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Contractual Partner shall grant us a 3% discount on the net amount of the invoice. For bank transfers, payment is deemed to have been made on time if our bank receives our transfer order before the payment deadline; we are not responsible for delays caused by the banks involved in the payment process.

We shall not owe any interest on maturity. The statutory provisions shall apply to default of payment.

We are entitled to set-off and retention rights as well as the defence of non-performance of the contract to the extent permitted by law. In particular, we are entitled to withhold due payments as long as we are still entitled to claims against the Contractual Partner arising from incomplete or inadequate deliveries of Goods and/or inadequate Services.

The Contractual Partner has a set-off or retention right only in the case of counterclaims that have been legally established or are undisputed.

Reservation of proprietary rights

We reserve the property rights and copyrights to illustrations, plans, drawings, calculations, instructions, product descriptions, advertising material and other documents which we provide to the Contractual Partner. Such documents shall be used exclusively for the contractual performance and shall be returned to us after completion of the contract.

The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as to tools, templates, samples and other items which we provide or otherwise make available to the Contractual Partner for production. Such objects are – as long as they are not processed – to be stored separately at the expense of the Contractual Partner, treated with care, insured to an appropriate extent against destruction and loss and protected against unauthorised access by third parties.

Any processing, mixing or combination (further processing) of provided objects by the Contractual Partner is carried out for us. The same shall apply if the delivered Goods are processed by us so that we are considered the manufacturer and acquire ownership of the product at the latest with the processing in accordance with the statutory provisions.

The transfer of ownership of the Goods to us must take place unconditionally and without regard to the payment of the price. If, however, we accept an offer from the Contractual Partner for transfer of ownership in an individual case, which is conditional on the payment of the purchase price, the Contractual Partner's reservation of title shall expire at the latest upon payment of the purchase price for the delivered Goods. In the ordinary course of business, even before payment of the purchase price, we shall remain authorised to resell the Goods with advance assignment of the resulting claim (alternatively, the simple reservation of title extended to resale). All other forms of retention of title are thus excluded in any case, in particular the expanded, the forwarded and the retention of title extended to further processing.

Quality, proof of origin and product labelling

For the delivery of the Goods and provision of the Services, the Contractual Partner shall comply with the latest recognised rules of technology as well as legal standards and other regulations such as VDE regulations for electrical parts, accident prevention regulations of the professional associations and the hazardous goods ordinance. The Contractual Partner shall indemnify us against all claims of third parties based on a violation of the aforementioned legal standards and regulations.

The Contractual Partner shall provide us with all prescribed and contract-specific test certificates and standard certificates required and shall provide systems for compliance with the regulations specified in Section 7.1 with the necessary information.

The Contractual Partner shall record in its quality records for all deliveries and Services the manner in which and by whom the defect-free manufacture, delivery and Services was ensured; the relevant evidence must be presented to us upon request. The Contractual Partner shall oblige its suppliers to the same extent.

The Contractual Partner shall send us the declarations regarding the origin of the Goods under customs law in good time, i.e. as a rule, 5 working days before delivery, and provide evidence of its details at our first request by means of an information sheet confirmed by the customs office. The Contractual Partner shall be liable to us for all disadvantages resulting from a declaration of origin not being transmitted or transmitted late.

The Contractual Partner shall label the Goods to be delivered to us in the manner specified or agreed by us. If there is no specification or agreement, the Goods shall not to be labelled.

Inadequate delivery

The statutory provisions shall apply to our rights in the event of material defects and defects of title of the Goods (including incorrect and short delivery as well as inadequate assembly, operation or operating instructions), the (works) Services and in the event of other breaches of duty by the Contractual Partner, unless otherwise provided for in the following.

In accordance with the statutory provisions, the Contractual Partner shall be liable in particular for ensuring that the Goods and (works) Services have the agreed quality at the time of transfer of risk to us. In any event, those product and service descriptions which – in particular by designation or reference in our order – are the subject matter of the respective contract or have been incorporated into the contract in the same way as these GTCP shall be deemed to be an agreement on quality. It makes no difference whether the product and service description originates from us, the Contractual Partner or the manufacturer.

We are not obliged to inspect the Goods or to make special enquiries about any defects at the time of conclusion of the contract. Partially deviating from Section 442 (1) (2) BGB, we are therefore entitled to claims for defects without restriction even if the defect remained unknown to us at the time of conclusion of the contract due to gross negligence.

For the commercial obligation of examination and notification of defects with regard to the Goods, the statutory provisions (Sections 377, 381 HGB [German Commercial Code]) shall apply with the following proviso: Our obligation of examination is limited to defects that are openly apparent during our incoming goods inspection under external examination including the delivery documents (e.g. transport damage, incorrect and short delivery) or which are recognisable during our quality control by random sampling. Insofar as acceptance has been agreed, there is no obligation of examination. Otherwise, it depends on the extent to which an examination is feasible in the ordinary course of business, taking into account the circumstances of the individual case. Our obligation to give notice of defects discovered later remains unaffected. Notwithstanding our duty of examination, our complaint (notification of defects) shall in any event be deemed to be prompt and timely if it is sent within 3 working days of discovery or, in the case of obvious defects, of delivery.

Subsequent performance shall also include the removal of the faulty Goods and their reinstallation, provided that the Goods have been installed in or attached to another item in accordance with their nature and intended use; our legal claim to reimbursement of corresponding expenses shall remain unaffected. The Contractual Partner shall bear the expenses necessary for the purpose of inspection and subsequent performance even if it turns out that there was actually no defect. Our liability for damages in the event of unjustified requests for the removal of defects remains unaffected; however, in this respect we are only liable if we have recognised or failed in a grossly negligent way to recognise that there was no defect.

Without prejudice to our statutory rights and the provisions in Section 8.5, the following shall apply: If the Contractual Partner fails to fulfil its obligation to provide subsequent performance – at our discretion either by remedying the defect (rectification of defects) or by delivering a defect-free item or producing a new work (replacement delivery) – within a reasonable period of time set by us, we may remedy the defect ourselves and demand compensation from the Contractual Partner for the expenses required for this or a corresponding advance payment. If the subsequent performance by the Contractual Partner has failed or is unreasonable for us (e.g. due to particular urgency, endangerment of operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; we will inform the Contractual Partner of such circumstances immediately, if possible in advance.

Supplier recourse

Our legally determined rights of recourse within a supply chain (supplier recourse in accordance with Sections 445a, 445b, 478 BGB) are available to us without restriction in addition to the claims for defects. In particular, we are entitled to demand from the Contractual Partner exactly the type of subsequent performance (repair or replacement) that we owe our buyer in the individual case. Our statutory right of choice (Section 439 (1) BGB) is not restricted by this.

Before we acknowledge or fulfil a claim for defects asserted by our buyer (including reimbursement of expenses in accordance with Sections 445a (1), 439 (2) and (3) BGB), we shall notify the Contractual Partner and request a written statement, giving a brief description of the facts. If a substantiated statement is not made within a reasonable period of time and no amicable solution is brought about, the claim for defects actually granted by us shall be deemed to be owed to our buyer. In this case, the Contractual Partner shall be responsible for providing proof to the contrary.

Our claims arising from supplier recourse shall also apply if the defective Goods have been further processed by us or another company, e.g. by installation in another product.

Manufacturer liability

If the Contractual Partner is responsible for a product defect, it shall indemnify us from claims of third parties to the extent that the cause lies within its sphere of control and organisation and it is liable in the external relationship.

Within the scope of its obligation to indemnify, the Contractual Partner shall reimburse expenses in accordance with Sections 683, 670 BGB which arise from or in connection with a claim by third parties, including recall actions carried out by us. We shall inform the Contractual Partner – as far as possible and reasonable – about the content and scope of recall measures and give it the opportunity to comment. Further legal claims remain unaffected.

The Contractual Partner shall take out and maintain product liability insurance with a lump sum coverage of at least EUR 10 million per personal injury/material damage.

Assignment of rights

Upon delivery of the Goods or provision of the Services, the Contractual Partner shall transfer all rights to the delivered Goods, Services or performance result, in particular all trademark and other labelling rights, copyright usage rights, design rights, related property rights within the meaning of copyright law (including all stages of development) and other intellectual property rights, which it acquires during the time and in connection with its activity, exclusively to us, without any restrictions in terms of time, space or content.

The transfer in accordance with Section 11.1 includes, among other things, our authority to use the works domestically and abroad in physical and non-physical form – whether in return for payment or free of charge – to reproduce them publicly, to duplicate them, to distribute them, to record them in digital or analogue form on image, data and sound carriers of all kinds and to reproduce and distribute them in turn. In particular, the transfer also includes the authority to make the works interactively usable by electronic means on all currently known transmission paths.

All of the above rights are granted or transferred to us at the latest at the time they come into existence as exclusive rights even beyond the time of termination of the contractual relationship and may be used, evaluated and transferred to third parties by us at our own discretion in whole or in part, also in the form of an exclusive or non-exclusive authorisation, or granted or transferred for evaluation as exclusive or simple rights of use without the consent of the Contractual Partner being required.

In particular, the Contractual Partner shall grant us the right to process and change the works and other Services it created and to reproduce, publish and distribute the works processed or changed in this way. The Contractual Partner shall also transfer to us the rights to types of use which are still unknown at the time of conclusion of the contract.

There is no obligation on our part to register or exploit the rights of use.

The Contractual Partner agrees within the scope of its right of determination in accordance with Section 13 (2) UrhG [German Copyright Act] that the Contractual Partner shall not be named and designated as the author within the scope of the exploitation of the contractual rights.

These works and other Services and all possible claims of the Contractual Partner for the granting or transfer of rights in accordance with this Section 11 shall be fully paid for with the remuneration owed under the contract, including for the period after termination of the contract.

The Contractual Partner shall indemnify us and our buyers against all claims of third parties arising from the use of the rights referred to in this Section 11 if the transfer fails for reasons within the sphere of the Contractual Partner or through its fault.

Third-party intellectual property rights

The Contractual Partner guarantees that no rights of third parties are infringed in connection with or by the delivery or performance. If claims are made against us by a third party in this respect, the supplier shall be obliged to indemnify us against these claims at the first request.

In the case of claims for damages by the third party, the Contractual Partner shall be entitled to prove that it is not responsible for the infringement of the rights of the third party. We are not entitled to make any agreements with the third party – without the consent of the Contractual Partner – in particular to conclude a settlement.

The Contractual Partner's obligation to indemnify refers to all expenses which we necessarily incur from or in connection with the claim by a third party, unless the supplier proves that it is not responsible for the breach of duty on which the infringement of property rights is based.

The limitation period for these claims is three years, starting with the transfer of risk.

Confidentiality

The Contractual Partner is obliged to keep all information entrusted to it in accordance with Sections 6.1 and 6.2 as well as our company and business secrets strictly confidential and not to use this information either for itself or for third parties. The obligation of secrecy does not apply to such information which was demonstrably already known to the Contractual Partner at the time of its notification, which is generally accessible or for which there is a legal obligation of disclosure. In case of doubt, the Contractual Partner shall be obliged to obtain our prior written consent as to whether or not a certain fact is to be kept secret. The duty of confidentiality applies in particular (but not exclusively) to information concerning our prices, Services, advertisements and sales promotion concepts.

The Contractual Partner is obliged to obligate its (also freelance) employees, suppliers and other third parties, which it employs for the fulfilment of the contract, in writing to comply with the obligations according to Section 13.1.

The Contractual Partner may only advertise the business relationship with us with our prior written consent.

Exclusion of liability

Subject to the following exceptions, we are not liable, in particular not for claims of the Contractual Partner for damages or reimbursement of expenses – regardless of the legal grounds.

The exclusion of liability regulated in Section 14.1 does not apply: (i) for our own intentional or grossly negligent breaches of duty and intentional or grossly negligent breaches of duty by our legal representatives or vicarious agents, (ii) for the breach of essential contractual obligations, i.e. such obligations whose fulfilment is essential for the proper execution of the contract and on whose compliance the Contractual Partner may regularly rely, (iii) in the case of injury to life, limb and health also by legal representatives or vicarious agents, (iv) in the case of the assumption of a guarantee and (v) in the case of legally binding liability situations.

The exclusion of liability regulated in Sections 14.1 and 14.2 shall also apply to breaches of duty committed before the time of conclusion of the contract. Our liability for such pre-contractual breaches of duty is excluded or limited to the same extent as our liability would have been excluded or limited if the breach of duty had only been committed after conclusion of the contract. Therefore, the Contractual Partner waives to this extent any claims for compensation to which it may be entitled and which have already arisen and we accept this waiver.

Limitation period

The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise stipulated below.

Notwithstanding Section 438 (1) (3) BGB and Section 634a (1) (1) BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. The 3-year period of limitation shall apply accordingly to claims arising from defects of title, whereby the statutory period of limitation for real claims for restitution of property of third parties (Section 438 (1) (1) BGB) shall remain unaffected; furthermore, claims arising from defects of title shall in no case become statute-barred as long as the third party can still assert the right – in particular in the absence of a period of limitation – against us.

Insofar as we are also entitled to non-contractual claims for damages due to a defect, the regular statutory period of limitation (Sections 195, 199 BGB) shall apply here, unless the application of the limitation periods of the law on sales or the law on contracts for works and services leads to a longer limitation period in individual cases.

Severability clause

If a provision of these GTCP is or becomes invalid/void or unenforceable in whole or in part for reasons of the law on the General Terms and Conditions in accordance with Sections 305 to 310 BGB, the statutory provisions shall apply.

If any present or future provision of these GTCP is or becomes invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the law on the General Terms and Conditions in accordance with Sections 305 to 310 BGB, the validity of the remaining provisions of this contract shall not be affected thereby and the provisions pursuant to Sections 16.3 and 16.4 below shall apply. The same shall apply if a gap requiring supplementation arises after the conclusion of the contract with the Contractual Partner.

Contrary to a possible principle according to which a severability maintenance clause shall in principle only reverse the burden of proof, the validity of the remaining contractual provisions shall be maintained under all circumstances and thus Section 139 BGB shall be waived in its entirety.

The parties shall replace the provision which is invalid/void/unenforceable for reasons other than the provisions relating to the law on the General Terms and Conditions in accordance with Sections 305 to 310 BGB or a gap which needs to be filled by a valid provision which corresponds in its legal and economic content to the invalid/void/unenforceable provision and the overall purpose of the contract. Section 139 BGB (partial invalidity) is expressly excluded. If the invalidity of a provision is based on a measure of performance or time (deadline or date) specified therein, the provision shall be agreed to be legally permissible to the extent that is closest to the original measure.

2W Technische Informations GmbH & Co. KG
Geschäftsführer: Uwe Düring | Michael Süßl
Prokura: Melanie Huber
Lindberghstraße 40 | D-80939 München
Telefon: +49 89/5 20 35 –0 | Fax: +49 89/5 20 35-123
info@2Wgmbh.de | www.2Wgmbh.de

Münchenr Bank | IBAN: DE73 7019 0000 0000 3366 88
Kreissparkasse München Starnberg Ebersberg
IBAN: DE20 7025 0150 0005 0939 35 | BIC: BYLADEM1KMS
Commerzbank München | IBAN: DE67 7008 0000 0302 2298 00 | BIC: DRESDEFF700
UID-Nr. DE278109242 | Registergericht München HRA 97411

Written form

Individual agreements made with the Contractual Partner in individual cases (including ancillary agreements, supplements and amendments) shall in any case take precedence over these GTCPs. Subject to proof to the contrary, a written contract or our written confirmation shall be decisive for the content of such agreements.

Legally relevant declarations and notifications of the Contractual Partner with regard to the contract (e.g. setting of a deadline, notification of defects, withdrawal or reduction) shall be made in writing, i.e. in written or text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimacy of the person making the declaration, remain unaffected.

Applicable law and place of jurisdiction

The GTCP and the contractual relationship between us and the Contractual Partner shall be governed by the laws of the Federal Republic of Germany to the exclusion of international uniform law, in particular the UN Sales Convention.

If the Contractual Partner is a business person within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive – also international – place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office in Munich. In all cases, however, we shall also be entitled to bring an action at the place of performance of the delivery or performance obligation in accordance with these GTCP or a prior individual agreement or at the general place of jurisdiction of the Contractual Partner. Priority statutory provisions, in particular those concerning exclusive jurisdiction, shall remain unaffected.