



WMH GROUP GERMANY. QUALITÄT.

## Conditions of Purchase **Westdeutscher Metall-Handel GmbH**

Status 01/2012

### **1. General**

#### 1.1

Our Conditions of Purchase apply exclusively; we do not acknowledge any terms of the Supplier which differ from or conflict with our Conditions of Purchase, unless we have expressly confirmed their application in writing. Our Conditions of Purchase shall also apply in the event of our unconditional acceptance or payment of deliveries of products or services from the Supplier (hereinafter: subject of the contract), in the knowledge that the Supplier's conditions are contrary to or differ from our Conditions of Purchase.

#### 1.2

Our Conditions of Purchase also apply for all future deliveries and services from the Supplier to us.

### **2. Conclusion and modifications of the agreement**

#### 2.1

Orders, transactions and call-off orders as well any modifications and amendments made thereto are to be made in writing. Orders and call-off orders may also be placed by means of remote data transmission, fax or email.

#### 2.2

Verbal agreements made prior to or during closing of the contract must be confirmed in writing by the Purchasing Department. Item 2.1 sentence 2 shall remain unaffected.

#### 2.3

Verbal agreements following closing of the contract, especially subsequent modifications and amendments to our Conditions of Purchase, including this clause, as well as collateral agreements of any kind, must be confirmed in writing by the Purchasing Department in order to become effective.

#### 2.4

Quotations are binding and not subject to compensation, unless explicitly agreed otherwise.

#### 2.5

Should the supplier not accept the order within three days after receipt, we shall be entitled to revoke the order. Call-off orders become binding if the Supplier does not object to the order within three working days after receipt.

### **3. Delivery**

#### 3.1

Deviations from our contracts and orders are permissible only after our prior written consent.

#### 3.2

Agreed delivery dates and deadlines are binding. Compliance with the delivery time or the delivery deadline shall be determined by our receipt of the goods. Deliveries are dispatched ex works (DAP, DDP in accordance with Incoterms 2011) to the address provided by us, in as far as no other agreement has been made. However, we reserve the right to instruct the supplier to make the goods available in good time, in consideration of the time required for delivery and shipment which is to be agreed with the forwarding agent.

#### 3.3

If the Supplier has agreed to carry out the installation or assembly and no agreement to the contrary has been made, the Supplier shall bear all necessary ancillary expenses such as travel expenses, provision of tools as well as daily allowances, unless otherwise agreed.

#### 3.4

If agreed delivery dates are not observed, the statutory provisions apply. If the supplier foresees difficulties regarding the manufacture, supply of materials, compliance with the delivery deadline or similar circumstances, which could prevent him from delivering on time or in the agreed upon quality, the Supplier shall notify our Purchasing Department immediately.



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### 3.5

The unconditional acceptance of delayed deliveries or services does not imply a waiver of claims for compensation, which we are entitled to due to the delay of deliveries or services; this shall apply until full payment of the amount owed by us for the respective delivery or service has been made.

### 3.6

Partial deliveries are generally not permitted, unless they are reasonable or we have expressly agreed to them.

### 3.7

Unless proven otherwise, item numbers, weights and dimensions shall be those determined by us during the incoming goods inspection.

### 3.8

With regard to software, which is included in the scope of the products which we supply, including their documentation, we have, in addition to the rights of use to the extent permitted by law (§§ 69a ff. German copyright law), the rights of use with the agreed performance characteristics and in the scope required for contractual use of the item. We are also entitled to create backup copies without an express agreement.

### 3.9

All deliveries of work equipment and substances must comply with the safety-related conditions of purchase of WMH GmbH according to GPSG and/or REACH. These are to be requested if necessary.

## 4. Force Majeure

Force Majeure, labour disputes, unforeseen interruption of operations, unrest, official measures and other unavoidable events entitle us to, notwithstanding our other rights, withdraw fully or partly from the contract, insofar as they are not of insignificant duration and lead to a considerable decrease of our demand.

## 5. Delivery Note and Invoice

The details stated in our orders and call-off orders apply. The invoice is to be sent, as a single copy, to the respective address printed on the invoice and should include the order number and other classifying information; it may not be enclosed with the deliveries.

## 6. Pricing and transfer of risk

If no special agreement has been made, all prices are considered to be ex works duty paid (DDP according to Incoterms 2011) including packaging. Value added tax is not included. The Supplier bears the risk of accidental loss up until the goods have been received by us or our representative at the destination to which the goods are to be delivered in accordance with the contract.

## 7. Conditions of Payment

Unless otherwise agreed, the invoice shall be paid within a period of 14 days with deduction of a discount of 3% or within a period of 30 days without a discount, from the date on which the payment and receipt of the invoice as well as the goods or rendering of the service is due. Payments are made subject to verification of the invoice.

## 8. Warranty claims and recourse

### 8.1

Acceptance is subject to an examination for faultlessness, especially correctness, completeness and suitability. We are entitled to inspect the subject of the contract, insofar and as soon as this is feasible according to the ordinary course of business; complaints regarding identified defects shall be issued immediately by us. In this respect the supplier foregoes objection to delayed complaints.



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8.2

The statutory provisions concerning defects of material and title shall apply, unless otherwise stipulated in the following.

8.3

We are generally entitled to select the type of subsequent performance. The Supplier is entitled to refuse the type of subsequent performance selected by us subject to the provisions stated in § 439 (3) BGB (German Civil Code).

8.4

If the supplier fails to remedy the defect promptly upon our request to do so, we shall, in urgent cases, in particular to avert danger or prevent major damages, be entitled to carry these out ourselves at the expense of the supplier or to have them remedied by a third party. Claims based on material defects become time-barred after a period of 2 years, unless the object was used for a building in compliance with its customary use and has thus caused the building to be defective. The limitation period for material defects starts with the delivery of the subject of the contract (transfer of risk)

8.5

In case of defects of title, the supplier shall indemnify us against any possible claims by third parties. The limitation period with regard to legal defects shall be 10 years.

8.6

For parts of the delivery which are reconditioned or repaired within the limitation period, the limitation period shall recommence from the time the Supplier has fully complied with our claims for subsequent performance.

8.7

If, as a result of defective delivery of the subject of the contract, we incur costs, particularly transport costs, travel costs, labour costs, material costs or costs for incoming goods inspections which exceed the usual scope, these costs shall be assumed by the Supplier.

8.8

If we take back products produced and/or sold by us as a consequence of the deficiency of the subject of the contract delivered by the supplier or if our sales price was reduced due to said deficiencies or other claims have been raised against us due to said deficiencies, we reserve the right to exercise recourse against the supplier, whereby an otherwise required notice period is not required to assert our claims arising from a defect.

8.9

We are entitled to demand compensation from the supplier for expenses which we had to bear in relation to our customer, because the latter has made a claim against us for reimbursement of the expenses required for the purpose of subsequent performance, in particular, transport, infrastructure, labour and material costs.

8.10

Notwithstanding the provisions in clause 8.4, the limitation period in the cases of clauses 8.8 and 8.9 shall end, at the earliest, two months after the time at which we have fulfilled the claims filed by our customer against us; at the latest, however, 5 years after delivery by the Supplier.

8.11

Should a defect of an item be detected within 6 months after transfer of risk we shall assume that this defect already existed in the moment of risk transfer, unless this assumption is incompatible with the type of object or defect.

## **9. Product Liability and Recall**

In the event that claims are asserted against us on the basis of product liability, the Supplier is obliged to indemnify us from and against any such claim or liability, if and to the extent that such damage is caused by a defect in the subject of the contract delivered by the Supplier. In cases of fault-based liability this only applies if the Supplier is at fault. If the cause of the damage lies within the Supplier's area of responsibility, he shall bear the burden of proof. In the above-mentioned cases the supplier bears all costs and expenses, including the costs for any legal proceedings or recall campaigns. In all other respects the statutory provisions apply.



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## **10. Execution of Work**

People performing contractual work on the factory premises must observe the provisions of the respective company regulations. Liability for accidents on our premises in which these persons are involved shall be excluded, unless they were caused by an intentional or grossly negligent breach of duty by our legal representative or agent.

## **11. Provision**

Any materials, parts, containers and special packaging provided by us shall remain our property. These may be used only for their intended purpose. The processing of materials and the assembly of parts will be carried out on our behalf. It is agreed that we shall be the joint owner of the goods manufactured from the materials and parts supplied by us at the ratio of the value of the materials provided to the value of the product as a whole, which insofar is stored by our Supplier on our behalf.

## **12. Documentation and Confidentiality**

### **12.1**

All business and technical information made available by us (including features of any objects, documents or software and any other know-how or experience), as long as and insofar as it is not demonstrably known to the general public, must be treated as confidential with respect to third parties and may only be made known to individuals within the supplier's operations whose knowledge of such is necessary for the purpose of effecting delivery to us and who have likewise given a written undertaking to maintain confidentiality; all such information remains our exclusive property. Such information may not be duplicated or used for commercial purposes without our prior written consent, other than for deliveries to or services for us. At our request, all information obtained from us (if applicable including copies or notes) and items provided on loan shall be returned immediately and in full or destroyed.

We reserve all rights to such information (including copyright and the right to apply for proprietary rights such as patents, utility patents and semi-conductor protection. In so far as these were made available by third parties; this reservation of rights shall also apply in favour of said third parties.

### **12.2**

Products manufactured on the basis of documentation drafted by us such as drawings, models and the like, or based on our confidential information, or manufactured with our tools or copies of our tools, may not be used by the supplier nor offered or supplied to third parties. The same applies to our orders for print.

## **13. Place of performance**

The place of performance is the place to which the goods are to be delivered as ordered and in accordance with the contract.

## **14. General Provisions**

### **14.1**

If one of the provisions of these Terms and Conditions and of additional agreements reached should be or become ineffective, this shall not affect the validity of the Terms and Conditions in other respects. The contractual partners are obliged to replace the invalid provision with a regulation which is, as far as possible, equivalent to it in terms of economic outcome.

### **14.2**

Essen is the place of jurisdiction for all disputes arising directly or indirectly from contractual relationships that are based on these Conditions of Purchase. We are further entitled to initiate legal action against the Supplier at a court near the supplier's headquarters or his place of business or at a court of the place of performance.

### **14.3**

The contractual relationships shall be governed exclusively by German law with the exception of the conflict of laws provisions and the United Nations Conventions on Contracts for the International Sale of Goods (CISG).