GENERAL PURCHASING CONDITIONS

Of Wera Werk s.r.o.

1. Validity

The following Purchasing Conditions apply to all our purchase orders, including future orders placed on parties with whom we have entered into contract, even if these conditions have not again been expressly agreed.

2. Conclusion of contract

All of our purchase orders, subsidiary agreements and undertakings are valid only when given in writing. Insofar as members of our staff may verbally enter into subsidiary agreements or give undertakings, these shall at all times require our written confirmation.
Commercial letters of confirmation from parties with whom we are contracting, even when not repudiated by us, shall not bring into effect any contract the content of which may deviate from our purchase order and from other written statements made by us.
Repudiations of contracts already in existence will be considered only if received by us within five working days.

3. Variations of the subject of supply

Insofar as is reasonable for the party with whom we are contracting, we may demand variations in respect of design and realisation in the subject of supply or in performances to be effected.
The consequences of such variations, in particular in respect of increases and reductions in cost and in respect of delivery times, shall be accommodated by mutual consent and in an appropriate manner.

4. Prices

All prices are fixed prices.
Insofar as no express agreement on price has been reached, within the framework of on-going business relationships, our contracting partner's list price shall apply in accordance with a price list issued to us within the previous 12 months prior to our purchase order. Should such a price list not have been given to us within the previous 12 months, within the framework of on-going business relationships the price most recently charged by our contracting partner for this or comparable performances shall apply. In all other cases, the average prices ruling in this sector shall be considered to be agreed.
If list prices have been agreed on, our contracting partner may only charge those prices which accord with the price list most recently brought to our attention, unless said party, no later than at the time of our purchase order, shall have advised us expressly and in writing of a change of price.
Unless otherwise agreed, the price shall include the shipping costs for delivery free our works, as well as transport insurance and packing.
In the case of purchase orders placed abroad, goods shall be delivered to us at the agreed price duty paid.
We do not accept price adjustment or price increase clauses, neither do we agree to accept the list price applying on the date of delivery.

5. Invoicing and payment

Invoices should be sent to us by separate post, enclosing a duplicate copy clearly marked as such. They must include our business reference and our order number and conform to the legal requirements relating to turnover tax. Invoices which do not conform to the above conditions may be returned to our contracting partner for completion.
Our payments will be made 21 days following receipt of the complete invoice less 3 % discount, or within 30 days without deduction. We shall also be entitled to deduct a discount in the event that we may make offset or make any legitimate retention.
We have the right at our choice to make all payments either in cash, by bank transfer, cheque or bill of exchange.
Costs arising from international money transfers shall be borne by the party with whom we are contracting.
The date of payment shall be the date of our performance. We do not agree to accept due date or default interest in excess of interest legally owing.

6. Delivery and transfer of risk

Risk in terms of both performance and price shall transfer to us only upon receipt of goods and performances either at our premises or at the place of receipt specified by us.
Shipment must be notified to us no later than at the time goods are despatched. Our shipping address and our order number must be specified in the shipping notes and in the addressing of packages.
Each delivery must be accompanied by a correctly completed delivery note which must contain in their entirety the details required by us. These details are as follows: order no. + date, order item no. for each item delivered, order code no. + article designation for each item delivered, cost centre, project no. (where available), name of recipient and a reference to the delivered quantity of each delivery item, whether this be a part-delivery = T, full delivery = G or a replacement delivery = E. Details required on delivery notes may be varied by us at any time unilaterally by means of a written notification and by dint of said notification of variation shall become part of the contract. In the absence of such a delivery note, or if such note should fail in whole or in part to include the specified details, we shall be entitled to return the goods at the expense of the party with whom we are contracting or to accept the same whilst charging for the additional cost involved.

7. Delivery times and dates

The delivery times and delivery dates specified in our purchase order are binding. Delivery times apply from the date of our written order. The delivery date is the date upon which goods are received at our premises or at the place of receipt specified by us; for performances this date shall be the date of acceptance.
Should our contracting partner for whatever reason risk any delay in delivery, we must be informed immediately of the reasons and expected duration of the delay.

Should our contracting partner delay in making delivery, we shall be entitled to demand lump-sum damages for said delay in the amount of 1 % of the value of the supply for each complete week of the delay, subject to a maximum of 10 % of the value of the supply. We reserve the right to claim any actually incurred losses in excess of this amount.

Our contracting partner shall have the right to prove to us that no loss or a significantly lower loss resulted from the delay.

8. Goods check and notification of defects

Deliveries involving significant unit quantities of the same items, in particular smaller vendor parts, are examined by us by the statistical sampling procedure. The supplier acknowledges that we shall thereby have satisfied our obligation under § 377 HGB [Commercial Code] to examine the goods. Should sampling in this way reveal defective items we are entitled at our choice either to reject the entire delivery without further examination or to conduct a further examination for which the party with whom we are contracting shall bear all costs.

We are obliged immediately to notify our contracting partner only of those defects which are obvious and easily ascertainable without examination; in other respects §§ 377, 378 HGB [Commercial Code] shall not apply.

Insofar as goods are delivered not to us, but in accordance with contract directly to a processor nominated by us or to our customer, §§ 377, 378 HGB [Commercial Code] shall not apply. We are however obliged to check the product manufactured by the processor nominated by us in accordance with §§ 377, 378 HGB [Commercial Code] as soon as it is received by us and to notify immediately any defects which are obvious and easily ascertainable without examination, also any excesses or shortfalls in performance.

9. Quality, documentation and guarantee

The party with whom we are contracting shall be liable therefor that the goods or performance shall conform to the acknowledged standards of engineering and to the relevant technical Standards. Said party shall also give an assurance that the goods or performance meet the requirements arising from their intended purpose.

The contracting party shall be obliged at our request to provide a specimen, sample, and / or data sheets in respect of the goods. The characteristics of said specimen or sample, also specifications contained in the data sheets or in test certificates shall count as assured characteristics.

The period of guarantee given by our contracting partner shall at variance from §§ 477, 638 BGB [Civil Code] in the case of moveable property be one year, insofar as no longer period shall result from the following provisions.

The guarantee period in respect of the supply of moveable property shall be two years,

- if the goods are not intended for immediate processing, but are intended to be held in store as stock, and this is known to the supplier.
- in respect of defects which typically cannot be ascertained via a normal goods inwards check and which first become apparent as a result of complaints by the user.
- in the case of the supply of technical equipment and systems, which may be determined to be free from defects only after extended operation in the approved manner.
- if defects were notified on receipt, but the goods were accepted subject to reservation because at the time of acceptance no exact statement could be given regarding consequential errors / injuries. The contracting party shall be liable for consequential losses notified by Messrs Wera at a later date.

Over and above our legal guarantee entitlement, in the case of purchase contracts we shall have the right to require the party with whom we are contracting to make good defective goods within a reasonable period of time with the proviso that, should this period of time expire without satisfactory result, besides our legal guarantee entitlement, we shall have the right to eliminate the defects ourselves or have these eliminated by a third party and to demand from the contracting party reimbursement of the costs incurred in eliminating the defects, including compensation for dismantling and assembly. The contracting party shall however have no claim to undertake reworking.

The guarantee period for items which have been made good or supplied as replacements shall in turn be one year, alternatively two years, in accordance with the above provisions.

10. Assignment

The assignment of claims against us is permissible only with our express written approval.

11. Product liability

Should claims be made against us in accordance with §§ 823 to 853 BGB [Civil Code] or with the Law of Product Liability by our customers or by third parties as a result of defects in goods or services supplied to us by the party with whom we are contracting, said party shall indemnify us insofar as such claims on the part of customers or third parties might also be substantiated against the contracting party or which can no longer be substantiated only on account of the time which has meanwhile elapsed.

In these circumstances, the contracting party must also indemnify us against the costs of legal proceedings brought against us as a result of such claims.

The party with whom we are contracting shall also be obliged to reimburse us for all expenses arising from or in connection with any recall programme undertaken by us insofar as such recall programme shall result from product risks, defects or damages for which said party is at least co-responsible in accordance with §§ 823 to 853 BGB [Civil Code] or with the Law of Product Liability.

Insofar as is possible and reasonable, we will inform the party with whom we are contracting of the content and extent of any recall measures intended by us, and give said party the opportunity to respond.

The above provisions shall not apply, insofar as any intent or gross negligence may exist on our part in respect of the product errors or defects.

The party with whom we are contracting shall undertake to take out and maintain product liability insurance which is adequate to cover the extent of the transaction and the possible risks.

12. Models, tools, specimens, drawings

Models, matrices, templates, specimens, tools, drawings or other documents or manufacturing resources which we may make available shall remain our property. The party with whom we are contracting shall undertake not to allow any form of access to such items to third parties without our express approval, nor to reproduce these nor to use them for purposes other than the fulfilment of the order placed by us.

The same shall apply to drawings or documents prepared by the contracting party to our specifications; whereby it shall be agreed that title to these documents shall transfer to us upon their creation and that said documents are held in safe custody for us by the contracting party.

For each breach of the above-mentioned obligations, the party with whom we are contracting shall undertake to pay to us a contractual penalty in the amount of 10,000.-- EUR. This shall not affect any entitlement on our part to claim compensation for any losses actually incurred in excess of this amount, however the contractual penalty to be paid shall be offset against the claim for compensation for loss. For each breach of the above mentioned obligations, the party with whom we are contracting shall undertake to pay to us a contractual penalty in the amount of 10,000.-- EUR.

13. Protected rights

The party with whom we are contracting guarantees that the goods to be manufactured or supplied by him breaches no domestic or foreign protected property rights. The contracting party undertakes to compensate us or our customers for any losses arising from a breach of protected property rights occasioned by the goods manufactured or supplied by him, to join us as a third party in any litigation brought against us as a result of any breach of protected property rights and to indemnify us against the costs of such litigation.

The above provisions shall not apply insofar as the party with whom we are contracting shall have manufactured the subject of his supply in accordance with drawings or models provided by us or with such similar sundry descriptions or specifications of ours and neither knows nor yet needs to know that protected rights might thereby be breached.

In the event of such a case, we undertake to compensate our contracting partner for any losses arising from a breach of protected property rights occasioned by goods manufactured or supplied by him, to join him as a third party in any litigation brought against him as a result of any breach of protected property rights and to indemnify him against the costs of such litigation.

The parties to the contract mutually undertake to inform one another immediately they become aware of any breach of protected property rights or apparent breach of protected property rights and to give one another the opportunity by mutual agreement to counteract any corresponding claims.

The party with whom we are contracting must inform us in the event that he holds any patent or protected utility model right of his own in respect of the goods to be manufactured or supplied, or if any such right held by any other party is to be made use of.

14. Retention of title

The contracting party is entitled to supply goods against simple retention of title until they have been paid for in full. We do not accept more extensive arrangements for the retention of title, in particular so-called expanded or extended reservation of ownership or group ownership clauses.

In the event of items which are our property being processed or combined with items which are not our property, we shall have joint title to the new item thereby created in the ratio of the value of our property to the remaining processed goods or items. The same shall apply if items and goods are delivered for processing by third parties on our behalf and our account directly to the party with whom we are contracting.

15. Confidentiality

The parties to the contract shall mutually undertake to treat all commercial and technical details of which they become aware as a result of their collaboration and which are not in the public domain as if they were their own commercial secrets and in respect of these to maintain absolute confidentiality towards third parties.

In the event of a breach of the above-mentioned agreements, the parties to the contract undertake to pay a contractual penalty in the amount of 10,000.-- EUR. This shall not affect any entitlement on our part to claim compensation for any losses actually incurred in excess of this amount, however the contractual penalty to be paid shall be offset against the claim for compensation for loss.

16. Place of fulfilment, place of jurisdiction, applicable law

The place of fulfilment for all claims between the parties to the contract shall be the delivery address specified by us, or for lack of other specification, Wuppertal.

Exclusive place of jurisdiction for all disputes arising from contracts for supplies and performances shall be Wuppertal, insofar as the party with whom we are contracting is a commercial entity.

The relations between the parties to the contract shall be regulated exclusively by the law applying in the Federal Republic of Germany to the exclusion of international commercial law.

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