

Terms and Conditions of Purchase 08-2018

Applicable from 1 August 2018

1. Conditions agreed

These terms and conditions of purchase shall apply to our orders to the exclusion of any terms and conditions of sale of the supplier to which we object in advance. The execution of our order shall constitute acceptance of our terms and conditions of purchase for these and all subsequent orders, even if reference is made to the supplier's terms and conditions in an order confirmation, a delivery note, an invoice or any other letter from the supplier.

2. Purchase order

Purchase orders are only binding in writing or in electronic form. Telephone or verbal orders or additions to orders require our confirmation in writing or in electronic form.

3. Duties of protection, secrecy

(1) Drawings, models, matrices, templates or samples provided by us shall remain our property. If drawings, models, matrices, templates or samples are developed or produced for us in execution of the order, they shall become our property.

(2) The supplier shall transfer to us exclusively and irrevocably all rights arising for us from the execution of the order in accordance with the Patent Act, the Utility Model Act and the Design Act. The supplier irrevocably shall grant us an exclusive right of use with regard to the representations developed for us in the execution of the order, such as drawings, sketches, samples, etc. The compensation for the transfer and granting of these rights is included in the purchase prices unless otherwise agreed in individual cases.

(3) The supplier expressly undertakes not to reproduce the documents and objects made available to him without our prior written consent, nor to make them available for inspection or disposal to third parties, make them accessible or otherwise use them for any purpose other than our orders. He undertakes not to deliver the goods manufactured thereafter to third parties either in their raw state or as a semi-finished or finished product. The supplier is obliged to regard such documents and objects as well as the know-how transferred by us within the scope of the business relationship as business secrets and to treat them confidentially. The supplier shall also keep secret all information gained through its use; this does not apply if this information becomes publicly accessible without his intervention. The supplier shall assume liability for any damage incurred by us as a result of culpable breach of this obligation. All documents and items shall be returned to us if they are no longer required for the execution of the order.

4. Prices

(1) Unless otherwise agreed, the prices stated in the order are fixed prices including packaging, freight, insurance and other ancillary costs, fees or charges (DDP Destination Incoterms® 2010).

(2) If the prices have not yet been fixed when the order is placed, the supplier shall enter them in the copy of the order to be returned. A contract is not concluded until we have accepted the prices.

(3) Price increases shall only become effective if they have been agreed with us in writing prior to delivery. If the supplier reduces the prices agreed with us generally after conclusion of the contract or within the payment period, the reduced price shall also be charged to us - also for deliveries already made.

5. Delivery, documents, shipping clause, performance risk

(1) The performance risk shall pass to us upon proper delivery (DDP destination). Proper delivery requires compliance with the following delivery conditions:

(2) The customary or agreed packaging regulations shall be adhered to exactly; any additional costs or losses arising from non-compliance shall be borne by the supplier. The supplier shall be liable for damage to the goods caused as a result of defective packaging, even after transfer of risk.

(3) We shall be informed of the delivery time in good time (dispatch notification). In the case of parcel shipment, a text message with the code for shipment tracking is sufficient.

(4) Each delivery is to be accompanied by a delivery note; our order number as well as any other necessary data should always be stated on the delivery note as well as on invoices and other correspondence.

(5) All contractually agreed and legally required accompanying documents and product labels must be attached to the delivery. The EU origin of the goods must be certified. Goods which are not properly documented or marked will not be accepted by us or will be separated and stored at the expense and risk of the supplier.

(6) We shall not be obliged to accept partial, excess or short deliveries that have not been agreed.

(7) We shall not be obliged to accept goods which are recognizably damaged, considerably defective or incorrectly delivered. If the damage or defect is only recognisable after receipt, we shall separate the goods and store them at the supplier's expense and risk.

(8) If delivery on call has been agreed, the Supplier shall maintain an adequate stock for delivery within 3 working days. Upon request, we shall confirm the adequacy of the quantity of goods held in stock.

(9) If the provision of a consignment stock has been agreed, the agreed stock shall be kept at the supplier's expense and under his own responsibility and shall be sorted for withdrawal according to the FIFO principle ("first in, first out").

(10) If the delivery of goods has been agreed for installation in buildings, structures or land, the order shall be documented in such a way that it can be reproduced at any time. This applies both to the technical design and to the use of the materials, parts and components used. The declaration of performance is to be published at any time available or handed over with the goods. If necessary, the declaration of conformity must be supplied with the goods. The retention period for the documentation is 10 years from delivery. The data must be protected against theft or destruction (including fire) for the duration of the retention period. The data may also be stored by us if required and after consultation.

6. Delivery time, obstacles

(1) If the delivery dates/periods stated in the order are not objected to within 3 days of receipt of the order, we shall be entitled to plan on the basis of the dates stated. The dates stated by us shall then be regarded as binding and confirmed accordingly.

(2) The agreed delivery times (deadlines, dates) are binding unless a non-binding delivery time or a delivery on call has been expressly agreed. If delivery times are not determined on a calendar basis, the start of the period shall be the time of receipt of our binding order.

(3) Scheduled deliveries may not be made either too early or too late. Delivery more than three working days early shall not lead to earlier payment of the purchase price. It shall be stored by us until the agreed date at the supplier's expense and risk.

(4) If an unavoidable delay in delivery is to be expected, the supplier undertakes to inform us of this without delay and to offer a new delivery date at the same time. If this is later than 2 weeks after the agreed delivery date, we shall be entitled to withdraw from the contract.

(5) If a delivery or an agreed partial delivery is culpably not made in whole or in part on the agreed date, we shall be entitled to withdraw from the contract after a period of 2 weeks has elapsed without result and to demand reimbursement of expenses as well as compensation for the loss of confidence or damages instead of performance.

(6) Force majeure entitles us to withdraw from the contract in whole or in part or to postpone delivery or acceptance to a later date in the event of temporary obstacles (e.g. strikes, lock-outs, operational disruptions, etc.). The supplier shall not be entitled to claim damages in such cases.

(7) Our claim to compensation for any damage caused by default in accordance with Section 10 paragraph (3) shall not be affected by a delayed delivery or the exercise of the right of withdrawal. In the event of a culpable delay in delivery, we shall be entitled to retain 5% of the net purchase price of the delayed part of the delivery as a contractual penalty without proof of a concrete occurrence of damage.

7. Acceptance

(1) If acceptance prior to delivery has been agreed, it shall be formal and recorded by us. The supplier shall invite us to accept the goods with a reasonable lead time of at least three working days. The acceptance date must be agreed in a timely manner so that the agreed delivery date can be met and the defects and remaining work recorded during acceptance can be remedied before delivery.

(2) Fictitious acceptances are excluded. A waiver of acceptance declared by way of exception must have been declared by us in writing.

(3) If acceptance after delivery has been agreed, the supplier shall be obliged to participate in the formal acceptance by us.

(4) In the event of refusal of acceptance, an assessment of the condition shall be recorded.

Bankverbindungen:

Geschäftsführung:

8. Invoicing and terms of payment

(1) Invoices shall state the order identification numbers and the numbers of each individual item in accordance with our order. If these details are missing, invoices are not verifiable and not due. The invoice shall be sent to the address stated on the order; it may not be enclosed with the deliveries.

(2) Unless no special payment has been agreed, we shall pay within 14 working days with 3% discount or within 30 working days net. The date of receipt of the invoice shall be decisive. If the delivery is effected after the receipt of the invoice, the date of the day on which the delivery takes place or, if provided for, the delivery item has been accepted shall apply.

9. Quality of goods, inspection and complaint, guarantee and warranty

(1) The supplier shall guarantee that the goods have the quality specified and presupposed in the contract, comply with the recognised rules of technology and have no defects impairing their use, consumption or processing.

(2) Agreed material or quality certificates and documents for the identification of serial parts to guarantee agreed traceability must be enclosed with each delivery.

(3) The supplier warrants that they have established and maintain an effective quality assurance system for their products for quality inspections. Unless otherwise agreed in individual cases, the quality assurance system must at least meet the requirements of DIN EN ISO 9001 in its latest version.

(4) If the commercial duty to examine and the requirement to give notice of defects applies, we shall give notice of transport damage or obvious defects without delay. Beyond the obligation to carry out sample inspection, we shall inspect each delivered part for obvious defects prior to processing. The supplier acknowledges that this type of inspection is to be regarded as an inspection that is practical in the ordinary course of business. Defective parts discovered will be sorted out and reported immediately.

(5) Without prejudice to the statutory rights of recourse pursuant to Sections 445a et seq. German Civil Code and Sections 478 et seq. German Civil Code, the supplier shall provide warranty for goods not delivered as agreed or for defective goods as follows:

(6) We are entitled to choose between subsequent delivery and rectification of defects even if the defects only become apparent during the treatment or processing of the delivered goods or if defective goods which are not recognisable have been treated or processed or incorporated into other goods.

(7) Instead of rectifying the defect, we shall be entitled, without prejudice to our other claims, to remedy the defects ourselves or have them remedied by others at the supplier's expense if the supplier fails to remedy the defect immediately or refuses supplementary performance, despite notification of the defect and the imminent damage. The same shall apply if the supplier has not remedied the reported defect or supplied a replacement within a period of 2 weeks. If the supplier allows a period of 2 weeks set with the notice of defects to elapse unused, we shall be entitled to withdraw from the contract and demand reimbursement of expenses as well as compensation for reliance damage or compensation for damages instead of performance. We shall no longer be obliged to accept supplementary performance after the deadline has expired.

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(8) Unless otherwise agreed, the defects liability period shall commence upon delivery, shall be 36 months for all warranty and claims based on defects and shall be suspended upon receipt of our written notice of defect. If the delivery of goods for installation in buildings, structures or land has been agreed, the period shall be five years and three months. The suspension of expiration according to Section 445b German Civil Code on rights of recourse remains unaffected.

(9) If acceptance after delivery has been agreed, the warranty period shall commence at the time of acceptance.

(10) For rectified or replaced goods, the period begins anew after acceptance of the rectification work or delivery of the replacement goods if the supplier has not expressly fulfilled the rework as a gesture of goodwill or does not expressly object to the restart of the period upon acceptance of the rectification work or delivery of the replacement goods.

10. Liability

(1) The supplier guarantees that the products delivered by him are free of defects and fully comply with the statutory provisions. Should claims be made against us within the scope of product liability on account of defects attributable to causes set by the supplier, the supplier shall indemnify us internally.

(2) Unless expressly agreed otherwise, the supplier's liability shall be agreed without limitation as established by law. The supplier shall maintain a business and product liability insurance which is to be proven on request and which satisfies the requirements of the intended use of the goods as recognisable to the supplier. The supplier shall be entitled to receive the information required for risk assessment from us.

(3) The supplier shall be liable for damage caused by delay to the extent permitted by law. Without proof of the specific amount of damage, we shall be entitled to charge 15 % of the agreed net purchase price of the delayed part of the delivery. It is admissible to prove that a damage has not occurred or that it has been lower.

(4) Liability for claims for damages arising from breach of contract shall be governed by the statutory provisions. Based on the guarantees given and the quality assurance system set up, the fault of the supplier shall be presumed in the event of damage. Furnishing proof of exoneration is admissible.

11. Offsetting

We shall also be entitled to set off claims against the supplier if the due dates of the mutual claims are different or if different forms of payment have been agreed.

12. Assignment of accounts receivable

The assignment of the supplier's accounts receivable is prohibited without our prior written consent.

13. Right of withdrawal in special cases

We shall be entitled to withdraw from the contract if insolvency proceedings are applied for against the supplier's assets, if bills of exchange or cheques are protested, if payment difficulties are not only temporary, in cases of not only temporary, unjustified non-payments or if extra-judicial composition proceedings (moratorium) are sought.

14. Place of performance, jurisdiction, applicable law

(1) The contractual relationship is subject exclusively to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (United Nations Convention of 11 April 1980 on Contracts for the International Sale of Goods; CISG – "Vienna Sales Law").

(2) If the supplier is not an entrepreneur, the statutory provisions shall apply instead of our Terms and Conditions of Purchase.

(3) Place of performance for delivery and payment is 74211 Leingarten.

(4) If the supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law or has no registered office in the Federal Republic of Germany, D-74072 Heilbronn/Neckar shall be the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship. In all cases, we shall be entitled, at our discretion, to take legal action at the supplier's place of business.

The above terms and conditions supersede our previous terms and conditions of purchase and shall apply to all contracts concluded after August 1, 2018.

Leingarten, July 2018

WIBRE Elektrogeräte Edmund Breuninger GmbH & Co. KG

Bankverbindungen:

Geschäftsführung: