

Standard Terms and Conditions of Purchase of Karl Wörwag Lack- und Farbenfabrik GmbH & Co. KG

I. Content and conclusion of contracts

1. These terms and conditions of purchase apply to businesses, legal entities under public law or public-law special funds within the meaning of § 310 (1) of the German Civil Code ("BGB") only.
2. These terms and conditions of purchase apply exclusively. Terms and conditions of the supplier that contradict or differ from these terms and conditions of purchase do not become part of the contract unless we have expressly agreed to their application in writing.
3. These terms and conditions apply to all – including all future – orders for goods and services and their processing by the supplier. This also applies where we accept services without reservation in the knowledge that the supplier's terms and conditions contradict or differ to these terms and conditions of purchase.
4. The preparation and submission of quotes by the supplier is free of charge to us. The supplier is bound by submitted quotes for a period of two weeks from the day after it is received by us.

II. Order processing and delivery

1. Agreed delivery dates and delivery periods are binding and give rise to the due date for the performance of the supplier's services. Compliance with the delivery date depends on handover of the service owed at the place of destination. Unless otherwise agreed, the delivery period is complied with if the goods have been made ready for unloading at the place of destination within our usual hours of operation on a working day within the delivery period.
2. Deliveries that do not comply with the order specification may be rejected by us and returned to the supplier at the supplier's cost and risk. This also applies to excess, short or partial deliveries that the supplier is not entitled to make, unless their acceptance would be reasonable for us in the individual case.
3. The accidental loss or deterioration of the subject matter of the service remains the risk of the supplier – including in the event of prepaid and free deliveries – until the goods are handed over at the place of destination.
4. If the supplier reserves its title to the consignment, its terms and conditions apply so that title is transferred to us on payment of the goods and other forms of reservation of title (in particular current account or group reservation) do not apply.
5. We are only obliged to inspect the goods delivered and handed over with regard to their identity and defects on the basis of the accompanying documentation, as well as for any externally discernable damage incurred in transit and to report such defects to the supplier without delay after they are ascertained. The supplier undertakes to adapt its monitoring of outgoing goods accordingly.
6. We must give written notification of any defective delivery to the supplier without delay as soon as any defects are ascertained in the orderly course of business. The supplier waives its right to object to a delayed notification of defects to this extent.

III. Alterations to the contract

Alterations to the main service in relation to quality, amount, design, weight or other specification, including the manner of performance and execution, must be carried out by the supplier at our written request, unless the alteration is obviously unusual in the course of trade or obviously unreasonable for the supplier. If our request for alterations demonstrably affects agreed prices or delivery dates, these effects will be appropriately regulated by mutual agreement.

IV. Prices and terms of payment

1. The prices specified in the order are fixed prices and apply to DDP Stuttgart (Incoterms 2020) or other destination specified by us.
2. All prices are deemed to be gross prices in EUR (€). The relevant statutory amount of statutory turnover tax must be separately identified in the invoice.
3. The agreed prices cover all of the services that are included pursuant to the order, its particular conditions and any addenda, other agreements in relation to the services and ordinary commercial practice. Therefore included is, in particular, all packaging, customs clearance, transportation and insurance costs, as well as the costs of disposing of packaging material, all other fees and charges (e.g. licence fees, public-law fees and charges) and the cost of delivery, commissioning, acceptance, product or material documentation and all other documents, items and services as specified in the order or other contractual documentation.
4. The supplier's invoice will only become due for payment if the following preconditions are met: delivery in accordance with the contract and – alongside the statutory components (e.g. § 14 (4) of the German Law on Turnover Tax) – a complete and correct statement of the order number, order item, place of delivery, number of delivery items, delivery note number, delivery date and prices. If one of these particulars is missing or incorrect we are entitled to demand a corrected invoice. In this event, the due date for payment will then only be calculated from the time a corrected invoice that conforms to the contract is received.
5. The supplier must issue a separate invoice for each order. Billing must occur within 3 working days of handover of the goods/services owed.
6. Unless otherwise agreed in writing, our payment term for invoices is 30 calendar days after delivery and receipt of an invoice issued in accordance with the contract within the meaning of clause IV (4).
7. We reserve the right to choose our method of payment. In the event of payment by cheque, the timeliness of the payment depends on the cheque being received by the recipient within the payment period. If we pay by transfer, the transfer instruction must be received by the bank within the payment period.
8. Without our prior written consent, the supplier is not entitled to assign any accounts receivable from us or have them collected by third parties. If the supplier assigns any accounts receivable from us to a third party in derogation of this agreement without our consent, the assignment is nonetheless effective; however, we may discharge our payment obligation by making payment to the supplier or the third party at our option.
9. We are entitled to rights of set-off and retention in accordance with the statutory provisions. The supplier is not entitled to a right of set-off against accounts receivable by us, nor can the supplier exercise any right of retention unless its claim is uncontested, accepted by us, recognised by a non-appealable court decision or based on the same contractual relationship.

V. Rights to services and/or contractual services

1. In principle, we are entitled to all results (including test and development reports, suggestions, ideas, drafts, designs, proposals, samples, models, drawings and other documents) arising in connection with an order. We receive free, exclusive, irrevocable, temporally, locally and objectively unlimited, transferable and sublicensable rights of use for all contractual services. Insofar as the supplier engages subcontractors, he shall ensure by appropriate contractual agreements that the subcontractors also make the aforementioned results and rights of use available to us. Any use of the contractual services by the supplier or third parties requires our prior written consent.

2. If innovations (including in particular inventions, technical improvement suggestions, know-how, but also other individual intellectual and creative achievements) arise during the performance of the contractual services, the supplier shall be obliged to inform us of this and to submit all documents required for the evaluation of the innovations. We alone are entitled to file applications for industrial property rights. The supplier shall make use of such innovations vis-à-vis his employees in a timely manner and without limitation and shall support us in obtaining the industrial property rights, in particular by making the necessary declarations. Should we waive an application in writing vis-à-vis the supplier, the supplier shall be entitled to apply for the corresponding property right at his own expense. We are entitled to a non-exclusive, free of charge, unlimited in time, space and content and transferable right of use of the property rights granted to the supplier. We and the supplier shall each bear the employee invention compensation only for their own employees.
3. Insofar as the Supplier's industrial property rights already existing at the time of conclusion of the contract are required for the creation or exploitation of the contractual services, we shall irrevocably receive a non-exclusive, free of charge, transferable and sublicensable right of use, unlimited in time and place, for the exploitation of the contractual services by us or by third parties commissioned by us. The supplier shall inform us prior to the commencement of work which of his industrial property rights may be significant for the contractual services.
4. We are irrevocably entitled to the exclusive, free of charge and transferable right of use for all known and unknown types of use of the performance results which are subject to copyright. The supplier's right of disposal of models, methods, components, etc. that have been introduced or developed remains unaffected. The right of use also includes the right of economic exploitation, publication, duplication as well as the right of passing on to third parties for possible follow-up orders.

VI. Guarantee, liability and limitation period

1. The supplier undertakes to provide the goods free from material and legal defects. The supplier particularly affirms that its deliveries and services will conform to the contractually agreed characteristics and qualities, applicable standards and all safety, occupational safety, accident prevention and other applicable regulations.
2. If the delivered item is defective, the supplier shall subsequently perform the contract in the manner we determine and shall bear all costs and expenses thereby arising, including dismantling and installation costs.
3. All the expenses referred to in the above two paragraphs will be borne by the supplier, even if they are incurred by our customer.
4. If the defective goods have not yet been treated, processed, affixed or installed, the supplier shall, at our request and without delay, sort the goods and provide such subsequent performance as we shall choose. If the supplier refuses subsequent performance, it is unsuccessful or we cannot reasonably be expected to accept it or if the supplier fails to subsequently perform its obligations within an appropriate period considering the individual circumstances, we shall have further rights under § 437 nos. 2 and 3 of the German Civil Code (BGB) in relation to the defect. Under the same preconditions, we are entitled to remedy the defect ourselves or have the defect remedied by a third party at the cost and risk of the supplier. If, by exercising our warranty rights, we are obliged to return the goods, we have the right to send the goods back to the supplier at the supplier's risk.
5. If, notwithstanding compliance with the obligation to inspect the goods, the defect is not ascertained and notified to the supplier until after treatment, processing, affixing or installation has begun, we are likewise entitled to our statutory rights relating to defects and the right to remedy the defect ourselves in accordance with the previous paragraph. In particular, we can demand that the supplier refunds the costs of any dismantling and installation that is necessary for subsequent performance.
6. Any further claims arising from the delivery of defective goods pursuant to § 437 of the German Civil Code (BGB) or directly pursuant to the provisions referred to therein remain unaffected.
7. The supplier is liable to pay compensation in accordance with the statutory provisions for losses directly or indirectly suffered by us as a result of a defective delivery or the breach of other primary or ancillary obligations or other reasons attributable to the supplier, unless the supplier is not responsible for the breach of duty.

8. If a claim is made against us for which we are liable without fault and this liability cannot be excluded against third parties, the supplier shall indemnify us upon first request as if it was directly liable. § 426 (1) sentence 2 and § 426 (2) of the German Civil Code (BGB) shall apply in relation to the compensation payable between us and the supplier. This also applies in the event that a claim is made directly against the supplier.
9. If we wish to make a claim against the supplier pursuant to the above provisions, we will inform and consult with the supplier fully and without delay. We will provide the supplier with the opportunity to examine the claim and - particularly in the event of settlement negotiations - agree what measures should be taken.
10. Our claims in relation to defects will lapse 36 months after the transfer of risk. The limitation period begins when the delivery or services (as the case may be) owed are handed over in conformity with the contract. In any event, the supplier's liability for defects will end 10 years after the delivery of the goods at the latest. This limit does not apply if our claims are based on circumstances that were known to the supplier or which the supplier must have known and did not disclose to us.
11. The supplier hereby assigns, on account of performance, all claims to which the supplier is entitled against a prior supplier by reason of or in connection with the delivery of defective goods or goods with material defects within the meaning of § 434 of the German Civil Code (BGB). The supplier undertakes to supply us with all documentation and information necessary to assert such claims upon first request.

VII. Confidentiality and security of information

1. The supplier undertakes to keep confidential all information it receives from us or otherwise becomes aware of by fulfilling an order and which is identified as confidential or is confidential by virtue of its significance or nature. The supplier will use such information exclusively for the purposes for which it was made available pursuant to the contract and will not reproduce it, use it for its own or for a third party's purposes or disclose it to third parties. For this purpose, "disclose to third parties" is also deemed to include disclosure to associated companies within the meaning of the German Companies Act (Aktengesetz) and to persons or companies engaged by the supplier to fulfil the order.
2. All information, formulas, techniques, methods, models, designs and instruments provided by us, as well as specifications, photographs, drawings, calculations and other documentation made available by us (including quotes, work results or reports), as well as all other business or technical information directly or indirectly concerning the contractual services, is deemed to be confidential information. They are and remain our intellectual property and may only be disclosed by the supplier to third parties with our express written consent.
3. The supplier shall obtain equivalent undertakings from any sub-suppliers.

VIII. Extraordinary termination, force majeure

1. If a contracting party ceases its payments, the other contracting party has the right – at its option - to extraordinarily terminate or withdraw from the unfulfilled part of the contract. This also applies if a contracting party's economic situation deteriorates in such manner that the fulfilment of the contract is seriously jeopardised and the contracting party cannot provide sufficient security for the fulfilment of the contract within an appropriate period.
2. Force majeure, industrial disputes, riots, official measures, or other unforeseeable, unavoidable and grave occurrences release the contracting parties from their obligations to the extent that they are affected for the duration of the disruption. The contracting parties undertake to provide one another with all necessary and reasonable information and to adapt their contractual obligations to the change in circumstances according to the principles of good faith.

IX. Place of performance and jurisdiction

1. The place of performance for all of the supplier's services is our principal place of business, unless otherwise indicated in the relevant order. The place of performance for our payments is also our principal place of business.

2. The courts in the place of our principal place of business have exclusive jurisdiction unless a different place of jurisdiction is mandatorily prescribed by law.
3. We are entitled to bring claims in the courts of the place where the supplier has its principal place of business.

X. Corporate ethics and compliance

The supplier undertakes to comply with the provisions of the law, fair competition and the prohibition of corruption and bribery in accordance with the Wörwag Code of Conduct for suppliers.

XI. Sustainability policy in the supply chain

1. The supplier undertakes to use resources and raw materials sustainably, responsibly and sparingly in keeping with ISO 14001.
2. The supplier shall particularly endeavour to reduce energy and water consumption, as well as greenhouse gases. In addition, the supplier shall rely more heavily on renewable energy and appropriate recycling/waste disposal concepts.
3. The supplier shall deal with the management of chemicals responsibly.
4. The supplier shall endeavour to implement these requirements in the supply chain.

XII. Obligations to provide information for goods subject to export control

1. The supplier is obliged to inform us if the goods (including technology) provided are covered by export control lists (e.g. Common Military List, Annex I of the EC Dual-Use Regulation 428/2009, US Commerce Control List) according to German, EU or US export control law as well as the national export control law of the country of origin of the goods. If the goods provided are "US goods" in the sense of US export control law (= items subject to the EAR or subject to the ITAR), the supplier shall inform us accordingly. If the goods provided contain US shares, Supplier shall also be obligated to notify us of the value (usual purchase price or current market price) of the US share in total as well as the applicable export control classification (ECCN XXXXX or EAR99), if such information is available to Supplier. In order to fulfill the aforementioned duties to provide information, the supplier shall inform us of the relevant export list numbers (e.g. item of the German Export List or Annex I of the EC Dual-Use Regulation 428/2009, Export Control Classification Number [ECCN], U.S. Munitions List [USML] etc.) and, if applicable, the value of corresponding US shares in the goods of the respective goods items, stating our article number (if available).
2. Furthermore, the supplier is obliged to inform us immediately of any changes in connection with export control-relevant data of delivered goods.

XIII. Concluding provisions

1. The law of the Federal Republic of Germany applies exclusively, unless the contracting parties agree differently in writing. The application of the United Nations Convention on the International Sale of Goods dated 11.04.1980 is particularly excluded.
2. If a provision of these terms and conditions of purchase and any further agreements are or become ineffective, this shall not affect the validity of the remainder of the contract. The contracting parties undertake that they will then negotiate a provision to replace the ineffective provision in accordance with the principles of good faith.