

Terms of Purchase

Terms and Conditions of Purchase

of the companies BWS Philipp Boecker + Wender Stahl GmbH & Co. KG and

Philipp Boecker + Wender Stahl Besitzgesellschaft mbH & Co. KG

(Translation: The original German version has priority) As of 12/2011

1. General provisions – Scope of application
 - 1.1 Our Terms and Conditions of Purchase shall apply exclusively: we shall not recognise terms and conditions of the supplier that conflict or deviate from our Terms and Conditions of Purchase, unless we have expressly approved their validity in writing. Our Terms and Conditions of Purchase shall therefore also apply if we unconditionally accept a delivery made by the supplier without reservation in full knowledge, knowing that the terms and conditions of the supplier conflict or deviate from our Terms and Conditions of Purchase.
 - 1.2 All agreements made between us and the supplier for the performance of the contract shall be fully set down in writing in the respective contract.
 - 1.3 Our Terms and Conditions of Purchase shall only apply vis-à-vis companies in accordance with Art. 310 para. 1 BGB [German Civil Code].
 - 1.4 Our Terms and Conditions of Purchase shall also apply for all future business with the supplier.

2. Offer – Offer documentation
 - 2.1 The supplier shall be obligated to accept our order within a period of two weeks.
 - 2.2 We reserve the right of ownership and copyright to images, drawings, calculations, technical data and other specification documents as well as models; they shall not be made accessible to third parties without our express written approval. They shall exclusively be used for the processing of our order and shall be automatically returned to us on completion of the order. They are to be kept confidential from third parties; the provision set out at 8.5 additionally applies.

3. Prices – Terms of payment
 - 3.1 The price set out in the order shall be binding. Unless otherwise agreed in writing, the price includes cost of delivery to our domicile and packaging. The return of the packaging shall require a separate agreement.
 - 3.2 Prices shall include VAT. Legal value added tax shall be included in the price.
 - 3.3 We can only process invoices if they, in accordance with the instructions in our order, quote the order number given in the order. The supplier shall be liable for all consequences resulting from the failure to comply with this obligation insofar as it does not prove that it was not responsible for this omission.

3.4 Unless otherwise agreed in writing, we shall pay the purchase price within 14 days from the delivery and receipt of the invoice and documents with a 3% discount, or net within 30 days from receipt of the invoice.

3.5 We shall be entitled to set off and retain amounts insofar as permitted by law.

3.6 Any prepayment obligation agreed in individual cases, for example, shall not apply if circumstances arise that suggest that it is doubtful that the supplier will provide goods and services as per the contract. This shall therefore also particularly apply if our credit insurance company refuses to cover the order or parts of the order carried out by the supplier. In addition, a threat shall also arise when, in particular, the supplier inadequately fulfils its contractual obligations to us or to third parties or is slow to pay. In this case, delivery versus payment for goods and services shall replace the prepayment.

4. Delivery period

4.1 The delivery period set out in the order shall be binding.

4.2 The supplier is obligated to immediately inform us in writing if circumstances arise, or come to its attention, that result in the fact that the stipulated delivery periodtime cannot be met.

4.3 We shall be entitled to all statutorylegal claims in the event of delayed delivery. In addition, we shall be entitled to request a lump sum for damages due to delay amounting to 1% of the delivery value per full week, however not more than 10%: further statutory claimslegal entitlements remain reserved. The supplier shall be entitled to prove to us that no or considerably less damages resulted from the delay.

5. Delivery Commitment – Transfer of Risk - Documents– Product safety

5.1 Unless otherwise agreed in writing, the delivery is to be made free domicile.

5.2 The supplier shall be obligated to quote our order number exactly on all shipping documents and shipping invoices. If it fails to do so, we shall not be held responsible for processing delays.

5.3 As part of the implementation of the REACH Regulation (EC) no. 1907/2006 the supplier shall, in particular, automatically assume the following obligations and fulfil them as soon as possible in each case:

- Notify whether and to what extent the required pre-registration was made by 01/12/2008 was made for the substances/preparations/articles in the deliveries (Art. 28 REACH Regulation).
- Notify the substances contained in the deliveries and the registration number (Art. 31-33 REACH Regulation).
- Send up-to-date safety data sheets for the substances/preparations contained in the deliveries (Art. 31 REACH Regulation.);
- Provide information on registration numbers, possible registration obligations and details on the issued or denied authorisations, details on restrictions, other available useful information on the establishment and application of suitable risk management measures including specific stipulations (Art. 32 REACH Regulation).

- Provision of sufficient information for the safe use of articles in accordance with Art. 33 REACH Regulation.

5.4 The supplier shall label the goods and the packaging in accordance with the statutory legal provisions (for example REACH Regulation (EC) no. 1907/2006 on the registration, evaluation, authorisation and restriction of chemicals) in the country of origin, at our place of business and at the delivery location and shall deliver all necessary information (for example safety data sheet) with the goods. If the supplier requires information from us for this purpose, it shall be required to request it from us in good time.

5.5 The delivered goods must be free of any radioactive radiation, which could cause health detriment to workers and general public. Maximum permissible values have to comply with the strictest regulations valid for Germany (f.e. Council Directive 96/29 EURATOM)

6. Inspection for defects – Liability for defects

6.1 Through application of the rules of customary quality management systems like DIN EN ISO 9001 and implementation of his general duty to take care, the supplier ensures, that all goods delivered to us are free from defects. In order to avoid unnecessary double inspection, our receiving inspection is limited to check the following attributes:

-for identity and quality only the bills of delivery are examined without any proper material testing

-defects that can be detected visually from the outside and transport damages.

Our right to claim remains unrestricted for deliveries with defects which cannot be detected immediately with the abovementioned receiving inspection or where the conformity of a delivery with its contractual specification cannot be assessed at delivery. In this respect the supplier resigns from plea for lapse of time for complaint with regard to our limited receiving inspection.

6.2 We shall be entitled to the full statutory legal claims for damages; in every case we shall be entitled to demand from the supplier remedy of the defect or the delivery of a new item, at our choosing, as we desire. The right to damages, in particular that to damages instead of performance, remains expressly reserved.

6.3 We shall be entitled to remedy the defects ourselves at the cost of the supplier when there is danger in delay.

6.4 The limitation period shall amount to 36 months, calculated from the transfer of risk.

7. Product liability – Release – Liability insurance protection

7.1 Insofar as the supplier is liable for product damage, it shall be obligated to release us from claims for damages from third parties on first request as far as the cause lies in its area of control and responsibility and it is liable in the external relationship.

7.2 As part of its liability for damages in the meaning of 7.1., the supplier shall also be obligated to reimburse any expenses arising from or in connection with a recall made by us as per Art. 683 and 670 BGB [German Civil Code] and as per Art. 830, 840 and 426 BGB. We shall inform the supplier of the content and extent of the recall measures to be made insofar as this is possible and reasonable and give it the opportunity to make a statement. Other statutory legal claims shall remain unaffected.

7.3 The supplier undertakes to hold a product liability insurance that covers the foreseeable damages typical of the contract. If we are entitled to further claims for damages, these shall remain unaffected.

8. Reservation of proprietary rights – Provision – Confidentiality
 - 8.1 The ownership of the delivery items shall be assigned to us unconditionally and without encumbrances upon transfer . Never theless, simple reservation of proprietary propriety rights in the General Terms and Conditions of the supplier shall be accepted.
 - 8.2 Insofar as we provide parts to the supplier, we reserve ownership of these parts. Processing or machining by the supplier shall always be carried out for us. If our goods subject to the retention of title are processed with other items that do not belong to us, we shall acquire the joint ownership of the new item in proportion to the value of the item (purchase price plus VAT) to the other processed items at the time of the processing.
 - 8.3 If our goods provided by us subject to the retention of title are inseparably mixed processed with other items that do not belong to us, we shall acquire the joint ownership of the new item in proportion to the value of the item subject to the retention of title (purchase price plus VAT) to the other mixed processed items at the time of the intermixture. processing. If the mixing is carried out in such a way that the supplier’s item is regarded as the main item, it shall be agreed that the supplier shall transfer to us proportional joint ownership; the supplier shall hold the sole ownership or the co-ownership thus granted on our behalf.
 - 8.4 The supplier is obligated to keep all images, drawings, calculations, technical data and other specification documentation and information it receives strictly confidential. They shall only be disclosed to third parties with our express consent. The obligation to maintain secrecy shall also apply after the performance of this contract; it shall expire once and insofar as the production knowledge contained in the transferred images, drawings, calculations and other documents has become generally known.
 - 8.5 Insofar as the security rights to which we are entitled as per 8.2. and/or 8.3. exceed the purchase price of all our currently unpaid goods subject to the right of retention that have not yet been paid by more than 10%, we shall be obligated to release the security rights on the supplier’s request, selecting them at our choosing.

9. Place of jurisdiction – Place of performance
 - 9.1 Insofar as the supplier is a trader, our place of business is in the jurisdiction of Iserlohn; however we shall be entitled to also bring legal action against the supplier at its domicile.
 - 9.2 The law of the Federal Republic of Germany shall apply, to the exclusion of the UN law on sales.
 - 9.3 Unless otherwise stated in the order, our place of business in Iserlohn shall be the place of performance.

10. Final provisions
 - 10.1 If individual provisions are or become invalid, this shall not affect the validity of the remaining provisions. In the place of the invalid provisions, such regulations shall be introduced that come as close as possible to the commercial purpose of this contract with respect for the interests of both parties.
 - 10.2 All our previous terms and conditions of purchase shall be superseded by these Terms and Conditions of Purchase.

Note in accordance with Art. 33 BDSG [German Federal Data Protection Act]: the supplier’s data will be processed electronically.