



## **STANDARD TERMS OF PURCHASE (STP) OF THE COMPANY CARL WALTHER GMBH & CO., PRODUKTIONS KG**

### **1. General, scope**

**1.1.** Our Standard Terms of Purchase (STP) apply exclusively; we do not accept any supplier's terms which are contrary to or deviate from our STP, unless we have expressly confirmed such acceptance in writing. Our STP apply even if we are aware of supplier terms or conditions which are contrary to or deviate from our STP and nevertheless accept deliveries from the supplier without reservation.

**1.2.** All agreements reached between us and the supplier at the time when this contract is concluded for the purpose of implementing the contract must be incorporated into this contract in writing.

**1.3.** Our STP only apply vis-à-vis businesses if the seller is an entrepreneur within the meaning of § 14 German Civil Code (BGB), a public law legal entity or a public law special fund.

**1.4.** The STP apply in particular to contracts for the sale and/or supply of movable items ("goods"), regardless of whether the seller produces the goods itself or buys them from other suppliers (§§ 433, 651 BGB). Unless otherwise agreed, the version of the STP which applies at the time when the purchaser places its order or in any event the version last supplied to it in text form will also apply as a framework agreement to future contracts of the same type, without any necessity for us to point this out again in each individual case.

**1.5.** Statements as to the applicability of statutory regulations are only for clarification. Such statutory regulations therefore apply even in the absence of any such statement, unless they are directly modified or expressly excluded in these STP.

### **2. Offer**

**2.1.** Our order only becomes binding at the earliest when placed or confirmed in writing. The seller must draw our attention to any obvious errors (e.g. in spellings, calculations) or omissions from the order, including the order documentation, so that these can be corrected/rectified before acceptance. Otherwise the contract will be deemed not concluded.

**2.2.** The seller must confirm our order in writing within 3 working days or execute it without reservation, in particular by dispatching the goods (acceptance).

**2.3.** Acceptance later than this will constitute a new offer and be subject to acceptance by us.

### **3. Confidentiality**

**3.1.** We reserve title and copyright to illustrations, samples, models, drawings, calculations and any other accompanying items supplied as a basis for production. These may not be made accessible to any third party without our express written consent. They may only be used for production purposes pursuant to our order, and after the completion of our order they must be returned to us proactively. They must be kept secret from third parties, and the provisions of the Confidentiality Agreement apply here in addition.

**3.2.** The above provision applies as appropriate to substances and materials (e.g. software, finished and semifinished products) as well as tools, submittals, samples and any other items we provide to the supplier for production purposes. As long as they have not yet been worked on, such items must be stored separately at the seller's expense and insured adequately against destruction and loss. Attention is drawn to § 10 of the STP.

### **4. Prices, terms of payment**

**4.1.** The price stated in the order is binding. All prices include statutory value-added tax, unless this is shown separately. Unless otherwise agreed in writing, the price includes delivery free to the customer's address, including all supplier services and subsidiary services (e.g. assembly, installation) and all ancillary costs (e.g. proper packing, transport including any transport/public liability insurance); compare § 10 STP. Any return of packaging materials must be agreed separately.

**4.2.** The invoice and consignment note must be issued after delivery, quoting the order number, the order date, the exact order text and the article and drawing numbers. The supplier is liable for all consequences of any failure to meet the above obligation, unless it proves that it was not responsible.



**4.3.** Unless otherwise agreed in writing, we will pay the purchase price within 14 days following delivery (including any formal acceptance procedure agreed upon) and receipt of the invoice minus 3% discount on the net amount or within 30 days following receipt of the invoice. If payment is by bank transfer, it will be deemed punctual if our transfer instruction reaches our bank before the expiry of the payment deadline. We are not responsible for delays caused by the banks involved in the payment procedure.

**4.4.** Our rights to offset or withhold or plead nonperformance are as prescribed by law. We are in particular entitled to withhold payments due as long as we still have claims against the seller based on incomplete or defective performance.

**4.5.** No interest is payable on arrears. The rules on payment default are as prescribed by law.

**4.6.** The supplier is only entitled to offset or withhold on the basis of counterclaims which are legally final and binding or undisputed.

## **5. Delivery time / contract penalty**

**5.1.** The delivery time specified in the order is binding. The supplier must inform us immediately in writing if circumstances arise or become apparent to it which could prevent the agreed delivery deadline from being met. This is without prejudice to any claims on the grounds of late delivery.

**5.2.** If the supplier fails to perform at all or fails to do so within the agreed delivery time or is late with performance, we are entitled to enforce our statutory rights, in particular our rights to cancel and claim damages. This is without prejudice to the provisions of Subs. 3.

**5.3.** If the supplier is in default, we are in addition to enforcing our additional legal rights entitled to claim fixed compensation for our resulting losses equal to 1% of the net price per complete calendar week, subject however to a maximum equal to 5% of the net price of the goods delivered late. We remain entitled to prove that our losses were greater. The seller remains entitled to prove that no loss or only a substantially smaller loss was suffered.

**5.4.** We are entitled to take delivery of the items ordered at the supplier's plant. Taking delivery in this way will neither relieve the supplier of its warranty obligations nor affect the scope of the inspection required.

**5.5.** We are entitled to rectify defects ourselves at the supplier's expense if a delay would give rise to risks or if the case is particularly urgent.

## **6. Performance, delivery, passing of risk, late acceptance**

**6.1.** The supplier is not permitted to have its contracted goods and services supplied by a third party (e.g. a subcontractor) without our prior written consent. The supplier must bear the procurement risk for its goods/services, unless otherwise agreed in an individual case (e.g. restriction to stocks).

**6.2.** Delivery within Germany must be made free of charge to the destination specified in the order. If no destination is specified and nothing else has been agreed, delivery must be made to our business premises in Ulm. The delivery destination is at the same time the place of performance for the delivery and any supplementary performance.

**6.3.** The consignment must be accompanied by a consignment note stating the date (of issue and dispatch), the contents of the consignment (article number and number of articles) plus our order identification details (date and number). If the consignment note is missing or incomplete, we will not be responsible for any resulting delays in processing or payment. A corresponding notice of dispatch containing the same information must be sent to us separately from the consignment note.

**6.4.** The risks of accidental destruction and accidental deterioration will pass to us on the handover of the items at the place of performance. If a formal acceptance procedure has been agreed upon, the risk will pass when this takes place. Otherwise, the rules of the law applicable to special-order contracts apply accordingly when a formal acceptance procedure has been agreed upon. If we fail to accept delivery on time, this will be deemed equivalent to handover / formal acceptance.

**6.5.** The conditions for us to be deemed in default with acceptance are as prescribed by law. However, the supplier must expressly offer us its goods/services even if a specific or determinable calendar date has been agreed upon for action or cooperation on our part (e.g. provision of materials). If we fall into default with acceptance, the supplier is entitled as prescribed by law to claim compensation for its additional expenditure (§ 304 German Civil Code (BGB)). If the contract is for a nonfungible item to be produced by the supplier (custom order), the supplier is only entitled to exercise further rights if we have undertaken to provide assistance and are responsible for our failure to do so.



## **7. Defective delivery**

**7.1.** Unless otherwise agreed below, the rules governing our rights in the event of material or legal defects in goods (including deliveries of incorrect items or insufficient quantities, incorrect assembly/installation, inadequate assembly/installation, operating or usage instructions) and in the case of any other breaches of obligation by the supplier are as prescribed by law.

**7.2.** By law the supplier is in particular liable for ensuring that goods are of the agreed quality at the time when the risk passes to us. Relevant agreements as to quality in any event include product descriptions which form part of the contract concerned, in particular because they are mentioned or referred to in our order or integrated into the contract in the same way as these STP. It makes no difference here whether a product description originated from us, from the seller or from the manufacturer.

**7.3.** Contrary to § 442 Subs. 1 P. 2 German Civil Code (BGB), we are entitled to enforce our claims in the event of defects without restriction even if we were unaware of the defect at the time when the contract was concluded as a result of our own gross negligence.

**7.4.** The rules governing the obligations of a merchant (as defined by German law) to inspect goods and submit complaints are as prescribed by law (§§ 377, 381 German Commercial Code (HGB)), subject to the following: Our obligation to inspect goods is limited to defects which are clearly visible on an external inspection of both the goods and the shipping documents on receipt (e.g. transport damage, incorrect items, insufficient quantities) or which can be detected by means of random sampling in the course of our quality control procedure. If a formal acceptance procedure has been agreed upon, there is no obligation to inspect. Otherwise, it depends on how feasible an inspection is in the ordinary course of business and in the circumstances of the individual case. This does not affect our obligations with regard to the submitting of complaints about defects discovered later. Without prejudice to our obligation to inspect, notification by us of any defect will in any event be deemed immediate and punctual if it is sent out within 15 working days following discovery or in the case of clearly visible defects following delivery.

**7.5.** Supplementary performance includes the removal of the defective product and its reinstallation if the item concerned was, in accordance with its nature and purpose, fitted into or onto another item. This is without prejudice to our legal entitlement to reimbursement of the associated costs. The supplier must bear the costs necessarily incurred for inspection and supplementary performance, even if it turns out that there was in fact no defect. This does not affect our liability to pay damages in the case of an unjustified demand for the rectification of a defect. We are, however, only liable here if we either knew that there was no defect or if our ignorance of this fact was the result of gross negligence on our part.

**7.6.** Without prejudice to our statutory rights and the provisions of Subs. 5, the following applies: If the supplier fails to meet its obligation to remedy a defect – by repairing it or by supplying a new, perfect item to replace it, at our discretion – within a reasonable deadline set by us, we are entitled to rectify the defect ourselves and require the seller to reimburse the necessary costs of doing this and/or provide us with an appropriate advance. If the supplier tries to remedy the defect and fails, or if it is unreasonable to expect us to permit it to do so (e.g. due to particular urgency, a threat to the safety of our operations or a risk of disproportionately serious losses), there is no need for a deadline to be set; we will inform the supplier of any such circumstances immediately, if possible beforehand.

**7.7.** In the event of a material or legal defect, we are also entitled by law to reduce the purchase price or withdraw from the contract. We are also entitled by law to claim damages and reimbursement of costs.

## **8. Supplier recourse**

**8.1.** In addition to our claims based on defects, we are entitled without restriction to enforce our statutory right of recourse within a supply chain (supplier recourse as per §§ 445a, 445b, 478 German Civil Code (BGB)). We are in particular entitled to demand from the supplier exactly the same form of supplementary performance (repair or replacement) as we owe to our own customer in the individual case. This does not imply any limitation of our statutory right to choose (§ 439 Subs. 1 BGB).

**8.2.** Before we acknowledge or satisfy a claim from our customer based on a defect (including one for reimbursement of costs pursuant to §§ 445a Subs. 1, 439 Subs. 2 and 3 BGB), we will inform the supplier, provide it with a brief account of the facts and request a written response. If no substantiated statement is received within a reasonable period and no mutually acceptable solution is found, the rights in the event of a defect which we have in fact granted will be deemed to be owed to our customer. In such a case, it is up to the supplier to prove otherwise.



**8.3.** Our rights pursuant to the principle of supplier recourse apply even if the defective item has been subjected to further processing by us or another entrepreneur, e.g. by fitting it into another product.

### **9. Producer's liability**

**9.1.** If the supplier is responsible for product damage, it must indemnify us from third-party claims to the extent that the cause lay within its sphere of control and organization and it is itself externally liable.

**9.2.** Pursuant to its obligation to indemnify, the supplier must reimburse costs in accordance with §§ 683, 670 German Civil Code (BGB) which arise out of or in connection with a third-party claim, including any recall campaign carried out by us. As far as possible and reasonable to expect, we will inform the supplier of the nature and scope of any recall campaign and give it an opportunity to comment. This is without prejudice to any additional statutory rights.

**9.3.** The supplier must take out and maintain product liability insurance providing at least EUR 10 million of cover per personal injury / material damage claim.

### **10. Industrial property rights**

**10.1.** The supplier hereby undertakes to supply its goods free of any third-party rights.

**10.2.** The supplier must indemnify us against any third-party claim based on such a right. This does not apply if the supplier was not responsible for the breach of rights in question and was not in breach of its merchant's duty of care (merchant as defined by German law) by being unaware of the breach of rights at the time of delivery. Without the supplier's consent, we are not entitled to conclude any agreements, in particular including any settlement.

**10.3.** The supplier's obligation to indemnify applies to all costs which we necessarily incur and which arise out of or in connection with a third-party claim.

**10.4.** § 6 Subs. 3 applies as appropriate to the statute-barring of claims based on legal defects.

### **11. Reservation of title, provision of tools**

**11.1.** We reserve title to any items we provide to the supplier. Any processing or transformation carried out by the supplier is carried out on our behalf. If our reserved goods are mixed, combined or processed with other items which do not belong to us, we will acquire a share of the title to the new item corresponding to the ratio of the value of our item (purchase price plus VAT) to the value of the other items processed at the time of processing.

**11.2.** If the item we provide is indivisibly mixed with other items not belonging to us, we will acquire a share of the title to the new item corresponding to the ratio of the value of the reserved item (purchase price plus VAT) to the value of the other items mixed at the time of mixing. If the mixing is carried out in such a way that the supplier's item must be regarded as the main item, it is hereby agreed that the supplier will transfer a proportional share of title to us; the supplier must keep custody of the sole title or share of title for us.

**11.3.** We reserve title to tools, equipment/devices, measuring instruments and gages; the supplier undertakes to use the tools concerned exclusively for the production of the goods ordered by us. The supplier must at its own expense insure tools belonging to us at their replacement value against fire and water damage and theft. At the same time, the supplier hereby assigns to us with immediate effect all claims to compensation arising out of this insurance.

**11.4.** The supplier must punctually carry out all necessary servicing, inspection, maintenance and repair work on our tools at its own expense. It must notify us immediately of any malfunctions. If it culpably fails to do so, our rights to claim damages will not be affected. Here, the tool contract concluded applies.



## **12. Hazardous materials**

If the supplier supplies items which qualify as hazardous substances within the meaning of the German Hazardous Substances Ordinance (GefStoffV), the supplier must proactively make the relevant EC safety data sheet (§ 6 GefStoffV) available before delivery. The same applies to any information relating to statutory marketing restrictions.

## **13. Quality assurance and environmental protection**

**13.1.** Radioactive substances must be discussed with the relevant radiation protection officer before delivery.

**13.2.** The supplier must without fail ensure that its consignments comply with the quality agreement (Quality Assurance Agreement) concluded with the customer.

## **14. Data protection**

Pursuant to § 33 German Data Protection Act, the customer hereby points out that it will store the supplier's data in accordance with the German Data Protection Act.

## **15. Legal venue, place of performance**

**15.1.** Our registered place of business is the legal venue. We are, however, also entitled to sue the supplier at its own legal venue.

**15.2.** Unless otherwise stated in the order, the place of performance is our registered place of business.

**15.3.** Our contractual relationship with the supplier is exclusively subject to German law, with the UN Convention on the International Sale of Goods being excluded.

## **16. REACH clause**

The supplier undertakes to give notice of any hazardous substances within the meaning of the current version of the German Chemicals Act / REACH Ordinance contained in the products it supplies (substances/materials, mixtures, manufactured items) as required by the relevant statutory notice rules and to satisfy its obligations pursuant to the relevant legislation in its capacity as a producer, importer or downstream user (within the meaning of the REACH Ordinance) of a substance/material, mixture or manufactured item.