

Valid for:

Allgaier Werke GmbH, Allgaier Automotive GmbH, Allgaier Process Technology GmbH, Mogensen GmbH & Co. KG, Allgaier Sachsen GmbH

as “purchaser”

1. General

- 1.1 These general conditions of purchase (conditions of purchase) exclusively apply; differing, conflicting or supplementary general terms of business of the supplier only form an integral part of the agreement to the extent that the purchaser has expressly consented to this in writing. This consent requirement also applies if the purchaser, knowing the supplier's general terms of business, accepts the supplier's services without reservation.
- 1.2 These conditions of purchase also apply for future agreements on the sale and/or the delivery of moveable property with the same supplier, without the purchaser having to refer to them again each time.
- 1.3 Individual agreements with the supplier reached in individual cases take precedence over these conditions of purchase.
- 1.4 Material declarations and notices to be issued to the purchaser by the supplier after contracts are concluded (such as deadlines, reminders, declaration of withdrawal) must be made in writing to take effect.
- 1.5 References to the applicability of statutory regulations are for the purposes of clarification only. Even without such a clarification the statutory regulations therefore apply, provided they are not directly modified or expressly excluded in these conditions of purchase.

2. Project knowledge

Prior to concluding contracts, in order to implement a project the supplier is obliged to carefully examine the project-specific documents provided for the implementation and to acquire comprehensive knowledge of all of the underlying conditions relevant for his performance, particularly with regard to the location and the specific execution of all components and the legal requirements relating to his work.

3. Conclusion of contract/orders

- 3.1 The orders issued by the purchaser are not considered binding until written confirmation of the order by the purchaser, at the earliest. Any further changes, supplementary agreements, additions, etc. require written confirmation by the purchaser's “purchasing” department. The entire correspondence must be maintained here, indicating all complete order data.
- 3.2 The supplier is bound to confirm the purchaser's orders in writing within a period of 5 days or to execute them without reservation (acceptance), usually by sending the goods.
Late acceptance is considered to be a new offer and requires the purchaser's acceptance by written confirmation.
- 3.3 The contracts comprise the details of the order issued together with all related documents (in particular: drawings, conditions of supply and performance information or other details of technical or other characteristics). The contracts are also based on the latest technology, all relevant legal terms and conditions and the regulations and guidelines issued by government agencies, employer's liability insurance associations and professional associations. This also applies, in particular, to the EC Machinery Directive 2006/42/EC and its implementation in German law.
- 3.4 Those goods and services that can be provided by the latest state of the technology are considered to be included in the volume and price. A price increase following the conclusion of the contract for goods and services corresponding to the state of technology upon conclusion of the contract is ruled out.
- 3.5 The purchaser's delivery schedule within an existing supply agreement is binding, unless the supplier objects in writing within 48 hours from receipt of the delivery schedule due to the impracticality of the delivery due to the required volumes or times, specifying the earliest possible delivery date.
- 3.6 The fulfilment of the orders by a third party on behalf of the supplier is only permitted with the written consent of the purchaser. Where such consent is given, the third party engaged by the supplier is deemed to be a vicarious agent of the supplier. Unless otherwise agreed in individual cases, the supplier bears the procurement risk.

4. Delivery times and delayed delivery

- 4.1 The delivery times agreed in the contract are binding. The supplier is obliged to notify the purchaser in writing without delay if he does not expect to be able to meet agreed delivery times.
- 4.2 The supplier is in arrears as soon as he fails to meet agreed delivery deadlines. If the supplier is in arrears, the purchaser can demand flat-rate compensation totalling 0.2% of the net price of the goods or service due for each complete calendar day, with the total figure not exceeding 5% of the net price of the goods or service due. The purchaser is entitled to demand the flat-rate compensation in addition to the fulfilment and as the minimum amount of compensation owed by the supplier based on the legal requirements; this does not affect the assertion of further claims. If the purchaser accepts the late goods or service, the purchaser will enforce the flat-rate compensation no later than upon final payment.
- 4.3 The above regulations also apply to cases where the supplier provides partial or full goods or services, but those goods or services are not acceptable.

5. Force majeure

In the event of force majeure, labour disputes, unrest and similar unforeseeable events on the supplier side, the supplier must notify the purchaser of these without delay. If such unforeseeable events arise on the purchaser side, or on that of his customer, and if they disrupt the work process of the purchaser or that of his customer, the purchaser is exempt from a purchase obligation or obligation to pay compensation for the duration of such events and for the extent of their impact.

6. Series deliveries

- 6.1 Series deliveries cannot begin until the purchaser has accepted the samples supplied in writing. This case, and other cases where the order assignment, delivery etc. depends on the samples being accepted, involves a purchase on approval based on the sample.
- 6.2 Once the order is issued, the supplier must notify any intended changes to approved samples to the purchaser in advance, by supplying the new samples. These require the written consent and approval of the purchaser. The same applies if there are deviations from approval records.

7. Delivery, supply

- 7.1 When delivery has been agreed "ex works" (Incoterm EXW), the supplier is obliged to communicate his readiness for shipment and define the freight forwarder to be tasked in consultation with the contact address given on the order. The supplier is liable for additional costs that arise compared with the usual costs if a freight forwarder is tasked without the purchaser's will, or against the purchaser's will.
- 7.2 Unless expressly agreed otherwise, partial deliveries are not allowed.

- 7.3 If the packaging and shipping requirements prescribed by the purchaser and statutory take-back obligations are not observed, the purchaser is entitled to refuse receipt of the goods. The supplier must take back the packaging material upon the purchaser's request.
- 7.4 Delivery receipts must be attached to all shipments. These receipts must include all of the individual components of the shipments as well as dimensions, weights and order data. If the delivery receipt is missing or if it is incomplete or faulty, the purchaser will not be responsible for resulting delays in processing and payment.
- 7.5 The purchaser is a waiver customer pursuant to 29.2.1 German Freight Forwarders' Standard Terms and Conditions (*Allgemeine Deutsche Spediteurbedingungen (ADSp)*).

8. Payment, compensation, assignment

- 8.1 Invoices should bear the purchaser's order, article and delivery receipt numbers and the supplier number.
- 8.2 The price specified in the order is binding. All prices are taken to include statutory VAT, unless disclosed separately.
- 8.3 Unless otherwise agreed in individual cases, the price includes all of the supplier's services and ancillary services (such as assembly and installation) as well as all ancillary expenses (such as packaging and transport costs).
- 8.4 The agreed price is due for payment within 60 calendar days from completion of the service by the supplier (including any approval / acceptance of work agreed) and receipt of a proper invoice. If the purchaser pays within 30 calendar days of receipt of the proper invoice, the supplier will grant the purchaser a discount of 3% on the net value of the invoice.
- 8.5 The supplier is only entitled to offset against claims of the purchaser or to assert a right of retention if, and to the extent that, his claim is uncontested or a legally-binding decision has been made in respect of his claim. The purchaser is also entitled to balance claims against claims from the supplier to which an affiliated company is entitled under Sections 15 ff AktG.
- 8.6 The assignment of claims against the purchaser is only possible with the purchaser's consent. This does not apply if monetary claims are involved. Suppliers who intend to include claims against the purchaser in factoring agreements must disclose this prior to contracts being concluded.

9. Transfer of ownership

- 9.1 The processing, mixing or combination (further processing) by the supplier of items provided by the purchaser or items provided by third parties is performed for the purchaser. The purchaser undertakes the further processing of the goods delivered himself.
- 9.2 The transfer of ownership of the goods to the purchaser is unconditional and not dependent on the payment obligation being met.
- 9.3 Separately-agreed reservation of title of the supplier lapses no later than upon complete payment for the goods delivered. The purchaser is also entitled to resale prior to complete payment. The purchaser can cede receivables from the resale to the supplier in advance. All other types of reservation of title, particularly the extended reservation of title, forwarded reservation of title and reservation of title extended for further processing, are excluded.

10. Warranty for defects

- 10.1 Unless subsequently otherwise stipulated, statutory provisions apply for the rights if the goods have material defects and defective titles, or if there are other breaches of duty by the supplier. Figure 13 applies for statutory limitation.
- 10.2 The relevant location of the supplier's supplies and services is the place of fulfilment for the supplier's subsequent performance obligations.
- 10.3 The product descriptions that are subject of the relevant agreement, particularly by way of designation or reference in the purchaser's order confirmation, are taken to constitute the agreement on the quality of the goods. It makes no difference here whether the product description comes from the purchaser, from the supplier or from a third-party manufacturer.
- 10.4 In contrast with Section 442 (1) Sentence 2 BGB, the purchaser is also entitled to warranty claims if the purchaser remained unaware of the deficiency upon conclusion of the contract due to gross negligence.
- 10.5 The statutory provisions apply for the obligation of examination and notification of defects pursuant to Section 377 HGB with the following stipulation: The obligation of examination is limited to defects that openly surface during the purchaser's reception inspection under external appraisal by way of spot-checks. If formal approval / acceptance of work has been agreed, there is no obligation of examination. In addition, the extent to which the purchaser's business normally conducts examinations according to the particular circumstances in individual cases is decisive. The statutory obligation of notification of defects for faults discovered subsequently is not affected. The objection is considered to have been issued on time and without delay if it is received by the supplier within 10 working days from the discovery of the fault.
- 10.6 The supplier will also bear the costs incurred for the inspection and rectification (including any dismantling and installation costs) if it is discovered that there was in fact no fault. Where requests to rectify defects are unjustified, the purchaser shall only be liable for compensation if the purchaser had positively recognised, or failed to recognise through gross negligence, that there was not in fact any fault.
- 10.7 If the supplier does not meet his supplementary performance obligation within a legally appropriate period set by the purchaser, the purchaser is entitled to rectify the fault himself and to demand an adequate advance payment and the refunding of the necessary expenses from the supplier.

11. Liability

- 11.1 If the supplier is responsible for damage to a product, he must release the purchaser from third-party claims to the extent that the cause is within the sphere of his control and organisation.
- 11.2 As part of his obligation of release, the supplier must refund expenses to the purchaser arising from or in relation to a third-party claim for the elimination or containment of the damage.
- 11.3 The supplier must conclude and maintain a product liability insurance policy with a flat coverage of no less than EUR 5 million per personal injury/damage to property.
- 11.4 The supplier is obliged to comply with the German Minimum Wage Act and shall be liable for any damages of the purchaser incurred due to a violation of the provisions of the German Minimum Wage Act by the supplier. Insofar, the supplier shall indemnify the purchaser from any possible claims of third parties. Upon request of the purchaser, the supplier is obliged to prove the compliance with the German Minimum Wage Act by appropriate documentation to the purchaser. Any violation of the German Minimum Wage Act by the supplier will cause an extraordinary right of the purchaser to terminate the contractual relationship with the supplier immediately without prior notice.
- 11.5 Other than the breach of cardinal obligations, in other words, obligations that are a basic prerequisite for the proper performance of the contract and the meeting of which the contractual partners typically depend, and are entitled to depend, and personal injury, the purchaser is only liable for gross negligence and intent. The purchaser's maximum liability is limited to the total gross value of the order.
- 11.6 Where the purchaser provides the supplier with means of transport or other ancillary equipment (e.g. forklifts or crane runways) for unloading, in-house transport and/or for providing the supplies and services, the supplier is liable for damage resulting from the use of this equipment.

The same applies if the purchaser provides the supplier with personnel (e.g. forklift and crane runway drivers, assistants). These employees, in undertaking these activities, operate under the sole overall responsibility and direction of the supplier. The supplier is responsible for any damage caused by the personnel supplied by the purchaser and for any other personnel or external companies tasked by the supplier.

12. Guarantees

- 12.1 The supplier guarantees the characteristics, technical data and performance data expressly specified and described in the technical specifications/functional specifications and/or the delivery specifications.
- 12.2 In addition, the supplier guarantees the correct function and operational readiness of the supplies and services without a shift limitation in all matters for a period of 36 months after final acceptance. Downtimes due to defects in the supplies and services and their rectification extend the warranty period of all supplies and services by a corresponding period. For exchanged or repaired components, the warranty period recommences upon delivery or installation, where owed.

13. Limitation

- 13.1 Unless subsequently otherwise stipulated, the parties' claims lapse in line with the statutory regulations.
- 13.2 In contrast with Section 438 (1) No. 3 BGB, the general limitation period for warranty claims is three years from the passing of risk. If formal approval / acceptance of work has been agreed, the limitation begins upon formal approval / acceptance of work. In the case of parts from suppliers, the limitation begins with the delivery to the purchaser's end customer, but no later than three months following delivery to the purchaser. For newly delivered or repaired deliveries, limitation begins again unless the supplier has expressly only eliminated the relevant fault as a goodwill gesture. The three-year limitation period also applies to legal deficiencies, although the statutory limitation period for issuing claims of third parties in rem is not affected. Furthermore, claims arising from legal deficiencies will not lapse if the third party can still assert the right against the purchaser.
- 13.3 The limitation periods under sales law, including the above provisions, apply for all contractual warranty claims. Where the purchaser is also entitled to non-contractual claims due to a defect, the usual statutory limitation period applies, unless the sales law or the above provisions lead to a longer limitation period in individual cases.

14. Documents and tooling, contractual penalty

- 14.1 All types of documents and tooling such as samples, drawings, models, tools, and mathematical specifications that the purchaser provides to the supplier or has paid for are the purchaser's property. The purchaser must be notified in writing without delay in the event of damage or loss. The documents and tooling and goods manufactured with them may not be passed on to third parties or used for the supplier's own purposes. They must be kept secret and returned to the purchaser in good condition without delay upon request, without retaining copies or individual specimens. They will be returned no later than upon the termination of the assignment or the final breaking off of negotiations.
- 14.2 The supplier undertakes not to deliver the semi-finished and finished products manufactured with the documents and tooling, and the tooling itself, to third parties, even if they include parts rejected by the purchaser. The purchaser may consent to their surrender in individual cases.
- 14.3 For each case of infringement of the obligations governed by 14.1 and 14.2, the supplier must pay the purchaser a contractual penalty totalling 5% of the gross value of the relevant order (in the case of the use of documents) and the goods to be manufactured with the relevant facilities (in the case of the use of tooling). If several orders have been issued, the contractual penalty will be calculated on the basis of the entire delivery quantity. The purchaser reserves the right to enforce higher compensation arising in individual cases. In this case, the contractual penalty is to be charged against the continued compensation.

15. Confidentiality, advertising and data protection

- 15.1 The supplier undertakes to keep all commercial and technical information obtained by the purchaser during the performance of the order, and all work results, secret. This does not apply if the relevant information is generally known.
- 15.2 The confidentiality obligation also extends to all of the supplier's employees and persons tasked by the supplier, irrespective of the type of collaboration or its legal arrangement. The supplier undertakes to impose corresponding confidentiality obligations on this group of people. The supplier will also take appropriate precautions to prevent third parties from gaining access to the work results or information obtained by the purchaser.
- 15.3 The supplier is not authorised to advertise by using the business relationship with the purchaser without the purchaser's consent. This applies, in particular, to inclusion in a list of references.
- 15.4 The supplier is obliged to warrant and monitor compliance with the statutory provisions pertaining to privacy. The supplier must further subject all persons engaged for the performance of the contract to these privacy-related obligations. This particularly applies to the undertaking to comply with data secrecy pursuant to Section 5 "Bundesdatenschutzgesetz" (BDSG). Upon request, the supplier shall undertake to the principal's privacy officer to furnish evidence of having subjected third parties to said obligations in the form required by law.
- 15.5 The supplier shall only process personal data in an order-specific context and according to the instructions of the ordering party pursuant to Section 11 BDSG. When processing order-specific data, the supplier shall warrant adequate privacy measures to ensure the confidentiality, availability and accuracy of the data and shall further ensure compliance with the required technical and organizational safety measures concerning privacy pursuant to Section 9 BDSG. The ordering party is at all times entitled to verify such data being processed in accordance with the directions and whether the technical and organizational measures taken to ensure privacy are observed. The supplier is obliged to surrender the information required for order control purposes. The ordering party is entitled to prescribe further technical and organizational privacy measures on a case-by-case basis.

16. Trademark rights and rights of use

All of the copyrighted rights of use arising during the performance of the order, commercial property rights to contractual services and to all of the work results obtained through the contract are passed to the purchaser without any additional compensation. The purchaser is exclusively entitled to these rights, with no restrictions on space and time.

17. Place of fulfilment

17.1 The relevant ship-to location for deliveries is also the place of fulfilment of the contractual obligation ("Bringschuld").

17.2 The supplier's place of business is the place of fulfilment for payments. Decisive for the timeliness of the payment is the submission at the purchaser's place of business.

18. Social Responsibility

18.1 The supplier undertakes to observe the principles of the 'Corporate Social Responsibility' of purchaser (see www.allgaier.de).

18.2 The purchaser and the supplier acknowledge their observance of the following regulations and standards: UN Guiding Principles on Business and Human Rights (2011), Directives of the UN Initiative Global Compact (Davos 01/99), content of the 'Declaration on fundamental principles and rights at work' of the International Labour Organisation (Geneva 06/98). The purchaser and the supplier will especially observe the following values and principles: compliance with all applicable laws and regulations, preservation of human rights, interdiction of child labour and forced labour, no discrimination, safe and appropriate working conditions, positive and negative freedom of association, interdiction of bribery and blackmail as well as the protection of the environment.

19. Choice of law and place of jurisdiction

19.1 The laws of the Federal Republic of Germany exclusively apply. The application of international law, and in particular the United Nations Convention on Contracts for the International Sale of Goods, is ruled out.

19.2 The purchaser's place of business is the exclusive place of jurisdiction – including the international place of jurisdiction – for any disputes arising from the contractual relationship. The purchaser is entitled to lodge a complaint at the place of fulfilment of the delivery obligation or at the supplier's place of business.