

General Terms and Conditions of Purchase

Wieser Automation – Maschinenbau GmbH

1. General

The legal relationship with our Contractual Partner is based exclusively on these Terms and Conditions of Purchase. Conflicting conditions of the Contractual Partner shall not apply even if the contract is executed, and even if we have not expressly objected.

Our order shall be deemed to have been accepted either if not objected in writing at the latest within 3 working days, calculated from date of dispatch, or when the execution has commenced. Until the time of acceptance, we are entitled to cancel the order without further consequences.

All documents relating to our orders must be accompanied by our order number.

2. Prices

Prices are fixed prices and include costs for functional and quality testing including the corresponding measurement protocols, paint, corrosion protection, as well as required packaging (see Item 5) and documentation.

3. Delivery

The delivery date specified in the order is binding. The Contractual Partner must submit a written, binding order confirmation within three working days of receipt of an order. If a delivery period is specified this will start, unless otherwise agreed, with the date of submission of the order.

Deliveries before the specified date are only permitted with our express permission and do not justify a change to the agreed payment terms.

Partial/excess delivery and short delivery of an order item are only permitted if expressly agreed.

Decisive for the timeliness of a delivery and/or service is the complete fulfilment of the contract, including the provision of the documentation, training / instruction, execution of the assembly, transfer of test protocols, etc.

The Contractual Partner undertakes to indicate the customs tariff number and the country of origin for each order item no later than upon submission of the invoice belonging to an order. Alternatively, a long-term supplier declaration can be provided.

4. Delivery delay, contractual penalty

The Contractual Partner is obligated to inform us immediately upon recognising the risk of a delayed delivery in writing and in detail with regard to any damage occurring to the end customer.

In the event of default, we shall be entitled to stipulate that the Contractual Partner specify a reasonable deadline to effect its performance, with the declaration that we will refuse acceptance of the service after the deadline has expired unsuccessfully.

If the fulfilment of the contract does not take place before expiry of this period, we shall be entitled, at our discretion, to withdraw from the contract and to claim the reimbursement of all damages, including loss of profits, incurred by us or the end customer.

In the event of a delay in delivery we are in any case entitled to deduct a penalty of 1.0% to a maximum of 10% of the total order value from your invoice for each week of delay commenced and order item. We may reserve the assertion of a penalty until the final payment.

The deduction of a delay penalty does not release you either from your obligation to deliver and/or render service, or exclude compensation claims exceeding the penalty claims.

5. Packaging

The packaging must be of a commercially standard, functional and flawless nature and must be such that it is sufficient to protect the goods until they arrive at our factory or at the specified place of destination or installation. We are entitled, but not obligated, to return packaging at the expense and risk of the Contractual Partner.

6. Shipment

The terms of delivery specified in the order on the basis of INCOTERMS 2010 shall apply. For domestic deliveries, the Contractual Partner bears the risk up to the place of unloading at the destination.

If components are provided by us or by third parties, the Contractual Partner shall bear the risk for these components from the time of delivery or handover to the same. The transport risk shall be borne by the commissioning agent or the executing agency. This also applies to the return delivery to us or the forwarding of the goods.

For the purpose of shipping and a smooth receipt of goods, the Contractual Partner must enclose a delivery note stating our order data, such as order number, order item number, our part number and exact description of the contents of each consignment. Failure to provide this data in the delivery note required for the acceptance of the delivery or in case of unavailability of the same, we are entitled to reject the delivery at the expense and risk of the Contractual Partner. Combined delivery of several items from different orders and a combined delivery note is permissible only if clear assignment notes are provided on diverse orders and order items.

In the case of deliveries from other EU countries, the consignment note must be accompanied by a customs invoice (3-fold) and proof of origin valid for the preferential import customs clearance (declaration of origin, movement certificate, etc.) free of charge. The export customs clearance is provided by the Contractual Partner at its expense and risk. For deliveries of goods not manufactured in Austria and for customs clearance, the goods must be accompanied by a presupplier declaration stating our part number.

The delivery of goods to our factory in 5440 Scheffau am Tennengebirge, Scheffau 342 shall be effected exclusively at the time of receipt of goods at the valid goods acceptance times (MON-HOUR 7.30 am to 4 pm, FR 7.30 am to 11.30 am).

In the event of non-compliance with these regulations, all damage, risks and costs shall be borne by the Contractual Partner.

Unless otherwise stated in the offer of the Contractual Partner, we assume that export authorisations are not required in the country of manufacture. In the case of required export licences, these are to be provided by the Contractual Partner at latter's expense and risk.

7. Guarantee

The Contractual Partner assumes full guarantee for itself, its subcontractors or presuppliers for the compliant, complete and faultless execution, for the usual and assured features of the delivery and/or services, for the compliance with all applicable, statutory and regulatory provisions valid at the place of destination of a period of 24 months. Furthermore, it guarantees that the design, construction, functionality and production technology of the order item correspond to the latest state of the art, that only first-class material in suitable quality has been used and that this is suitable for the intended use. In the case of immovable goods or goods intended for installation or use with immovable goods, a guarantee period of 48 months shall apply, or shall be agreed separately.

In the case of engineering, consulting, software or documentation services as well as in the case of a personnel assignment, the Contractual Partner assumes the unqualified guarantee for the correctness and completeness of the written and verbal information and instructions.

The Contractual Partner guarantees the execution of training, maintenance, repair and overhaul services in relation to the delivered products in return for customary remuneration as well as replacement and wearing parts deliveries for a period of 15 years from the date of fulfilment of the contract.

The guarantee period starts from the moment the goods are taken over by the end customer or, if used in our factory, on the occasion of the first use of the goods.

The Contractual Partner agrees that we are obligated to examine the delivery item and to complain of defects only on the occasion of the transfer of the final product to our end customer.

The Contractual Partner shall remedy shortcomings at its own expense and risk through repair, replacement and/or subsequent delivery. If it fails to meet its obligation without delay, we shall be entitled to remove, remedy the defective, or provide services not rendered ourselves or have these remedied through third parties at the expense and risk of the Contractual Partner. Further obligations of the Contractual Partner remain unaffected.

In the event of the repair of the contractual item through replacement of the defective parts, the guarantee period starts to run again for the latter. At the same time, the guarantee of the total product is extended by the period during which the product could not be used due to the defect and its removal.

Should we as manufacturer of end product be liable for damages which are attributable to defects in the raw material or subproduct supplied by the supplier, the supplier shall fully indemnify us against such a liability and provide full recourse regardless of fault. In addition, it agrees to provide us with the best possible support in any legal dispute with third parties.

If the Contractual Partner asserts that a defect in the delivered product or the service provided does not exist in the sense of product liability provisions, it must also provide us with the proof.

8. Payment

Unless otherwise agreed, payment shall be made within 30 days with a 3% discount or within 60 days net after fulfilment of all conditions specified in the order and after proper receipt of the invoice.

Unless agreed otherwise, agreed advance payments are made within 30 days with 3% discount or within 60 days net after receipt of advance payment invoice.

The payment does not constitute an acknowledgement of the properness of deliveries or services and thus no waiver of claims to which we are entitled of whatever kind.

9. Invoicing

Invoices are to be sent to us in a single copy in compliance with the applicable formal requirements of sales tax regulations.

When using staff for installation, repair or maintenance work, the Contractual Partner shall report to our designated officer specified in the order before start of work. The invoices are to be accompanied by the original service and material certificates signed by our officer. Services and material that are not confirmed by our officer shall not be reimbursed.

10. Documentation

Together with the delivery, the Contractual Partner shall provide us with proper documentation, in particular on the properties of the product, its use, its operation, further processing or installation, etc., such as product descriptions, storage, operating and maintenance instructions, installation instructions, spare and wear parts lists in German, upon request in English, and shall guarantee their completeness and accuracy; otherwise it shall be liable to us and the end customer for damages arising from the violation of these provisions.

11. Confidentiality

The documents provided to the Contractual Partner, such as specifications, drawings, computer documents and the like remain our property, must be kept secret from third parties and may not be reproduced or made accessible to third parties without our consent.

The use of the order or our logo or company logo for advertising purposes is only permitted with our express written permission.

We are entitled at any time to carry out inspections of the production status and quality of the Contractual Partner or its presuppliers and subcontractors.

With the exception of standard parts, we shall be provided with the names of the subcontractors and presuppliers who are associated with performance of the contract at our request. However, a legal relationship between us and the subcontractors and presuppliers does not arise. The Contractual Partner is liable for the selection and culpability of its subcontractors and presuppliers.

12. Place of performance, transfer of ownership

The place of performance is our factory in 5440 Scheffau am Tennengebirge, Scheffau 342 or the delivery address stated on the order.

Tools, components or materials provided by us remain our property. The Contractual Partner is obligated to inspect these tools, components or materials upon receipt, immediately report damage to the forwarder and report deviations to us, then carry out a precise identification and a separate, careful storage at its risk.

Drawings, models, plates, samples, manufacturing equipment, fixtures and other aids needed to execute an order shall become our property upon payment, provided that they have been manufactured by the Contractual Partner or one of its subcontractors at our expense. They are to be surrendered to us after fulfilment of the contract or at first request. The storage, maintenance and repair is carried out at the expense and risk of the Contractual Partner for its own purposes and in particular is not allowed for third parties.

The transfer of ownership is analogous to the transfer of risk.

13. Withdrawal

In the event of serious breaches of contract, we are entitled to withdraw from the contract subject to setting a reasonable period. Serious breaches of contract include, in particular, non-compliance with delivery dates as well as deficiencies that could jeopardize the fulfilment of the contract with the end customer.

In this case we are entitled, without prejudice to our other legal possibilities, to rectify defects or render the services not provided at the place of use of the order item by ourselves or through third parties at the expense and risk of the Contractual Partner. The obligations of the Contractual Partner remain unaffected.

In the event of insolvency proceedings of the Contractual Partner or in the event of a change in the ownership structure we are entitled, without prejudice to procedural consequences, to withdraw from the contract in whole or in part. The Contractual Partner is obligated to inform us of such circumstances immediately.

14. Other rights

The Contractual Partner is liable for ensuring that no third-party property rights (patent, trademark, design rights, territorial protection, etc.) are infringed by the contractual use of the goods or services provided. It shall indemnify us against all claims arising from the infringement of such property rights and undertakes to obtain the necessary authorisations (licences) at its expense.

We are entitled to pass on the technical documentation of the Contractual Partner to the end customer to the extent required.

15. Applicable law, place of performance, jurisdiction

The exclusive application of the Austrian substantive law is agreed to the exclusion of the provisions of the UN Sales Convention.

The jurisdiction of the competent court for Wieser is agreed for all disputes arising from the concluded contract with regard to its interpretation, etc.

16. Other provisions

Explicit contractual agreements with the Contractual Partner departing from these Terms and Conditions of Purchase take precedent over the Terms and Conditions of Purchase.

Amendments of contractual agreements and amendments to the Terms and Conditions of Purchase as well as other statements to be made on the basis of or in connection with the contractual relationship are effective only if made in writing, whereby declarations by fax or e-mail comply with the written form requirement.

Should a clause of this contract be or become invalid or should the contract be incomplete, this shall not affect the remaining content of the contract. The invalid provision shall be replaced by a provision that comes closest to the intent and purpose of the invalid provision in a legally effective manner. Gaps in the contract must be filled likewise.