

General purchasing conditions



I. General

Only the following purchasing conditions apply to all our orders, transactions and call-off orders. Any alterations or additions require our prior approval in writing. We do not recognize any other general purchasing conditions unless we have agreed to their applicability expressly in writing. Our purchasing conditions also apply if we unconditionally accept a delivery from the supplier while aware of conditions of the supplier's which contradict or deviate from our own.

Our purchasing conditions will also apply to all future transactions with the supplier.

II. Ordering

Orders, transactions and call-off orders and any alterations / additions thereto require to be made in writing; remote data transmissions and computer printouts are valid without being signed. Unless the supplier objects within two weeks of having received the order, the order will be deemed to have been accepted unless we revoke it within that period. Call-off orders are binding unless the supplier objects within 3 working days of receipt.

III. Delivery

The decisive moment for adherence to delivery deadlines is the moment at which the goods arrive on our premises. We are to be informed immediately of any foreseeable delay in supply or performance or, as the case may be, any supply or performance that does not meet the quality required for compliance with the contract. The acceptance of delayed or defective performance does not entail any waiver of the right to claim compensation. Deliveries are made in accordance with Incoterms 2012, DDP to our receiving centers, unless otherwise agreed.

If delivery has not been made by the agreed deadline, we have the right to rescind the contract after the expiry of a reasonable extension period set by ourselves. This does not affect the statutory regulations relating to the dispensability of setting an extension period. Moreover, we also have the right to claim compensation for extra costs incurred by the purchase of any goods in replacement.

IV. Force majeure

Force majeure, industrial action, breakdowns or stoppages for which we are not to blame, unrest, regulatory action by authorities and other unavoidable events or circumstances release us for as long as they prevail from the obligation to accept deliveries in due time. During such events or circumstances and for a period of two weeks after the end thereof, we shall – notwithstanding any other rights – have the right to rescind the contract wholly or partly, provided that said events or circumstances are not of insignificant duration and provided that our requirements are reduced considerably on account of our having been obliged by said events or circumstances to procure the goods elsewhere.

General purchasing conditions



V. Prices, shipping, passage of risk

Unless any other agreement has been made, prices are carriage and duty paid (DDP in accordance with Incoterms 2012) to our receiving centers inclusive of packaging. The method of conveyance is to be agreed with us. If possible and permissible, we shall take care of the disposal of packaging material in agreement with the supplier at the latter's expense. Otherwise, the supplier will regularly collect the packaging material from us at his own expense and dispose of it in the proper manner. Loaned packaging items e.g. spools, drums and boxes must be credited at their full amount. The passage of risk takes place at the receiving center quoted by ourselves.

VI. Payment

Unless any special agreement has been made, invoices are to be settled within 14 days less 3% prompt-payment discount or within 30 days less 2% prompt-payment discount or within 60 days net without discount. The period for payment begins as soon as the supply or performance has been rendered in full and we have received the correctly issued invoice.

In case of defective supply we have the right to retain payment pro rata until such time as correct and proper performance has been made. We still reserve the right to deduct prompt-payment discount in such cases. The period of payment then begins when the correctly issued invoice has been received and a subsequent delivery has been made with defect-free goods.

Payments do not entail any recognition of the supply or performance as being in conformity with the contract. Second copies of invoices are to be marked as duplicates.

VII. Warranty

1. With regard to the obligations incumbent upon us to inspect goods for defects and notify the supplier if any defects are found, the separate provisions of the quality assurance terms which form part of the contractual relationship apply. For the rest, we shall inspect incoming goods as regards their identity and quantity and for any defects that can be recognized on the exterior. We will notify the supplier of defects without delay as soon as they are discovered in the ordinary course of business. To that extent, the supplier waives the right to refuse notification of defects on account of its being delayed. Notification is in all cases deemed to have been given in good time if it is received by the supplier within a period of 5 (five) working days calculated from the moment when the goods were received or, in the case of hidden defects, from the moment of their discovery.
2. The supplier guarantees the freedom of the goods he supplies from defects in accordance with the following provisions, if the liability for defects is not covered by a separate agreement or by the incorporation of warranty provisions of our customer's which deviate from our own.

General purchasing conditions



3. We are entitled to the statutory rights to assert warranty claims in unabridged form; we have the right to request the supplier at our discretion to rectify the defects or deliver a new thing in all cases. We expressly reserve the right to claim damages, in particular compensation in lieu of performance.
4. Having informed the supplier that we are about to do so, we have the right to rectify the defects ourselves at the expense of the supplier if there is imminent danger or particular urgency.
5. If goods of the same type have been delivered and found to be defective on repeated occasions, we shall have the right to rescind the contract having issued a written warning if a further delivery of defective goods is made. Said rescission shall also apply to any partial deliveries that have not yet been made.
6. There will be no warranty claims if the defect is attributable to failure to observe operating, servicing or installation instructions, unsuitable or improper use, incorrect or careless treatment or natural wear and tear in respect of the articles delivered, or if said articles are tampered with by ourselves or a third party.
7. The warranty period for defects is 36 (thirty-six) months from the time at which the product in which the contractually agreed product is installed is delivered to the end customer, but 48 (forty-eight) months at the most after delivery of the contractually agreed product to ourselves.

VIII. Intellectual and industrial property rights

1. The supplier guarantees that no third-party rights are or will be infringed in connection with the fulfillment of his contractual obligations.
2. The parties will inform each other in writing without delay of all such infringements of third-party rights which they suspect or of which they gain knowledge. At our own discretion, and subject to the agreement of the supplier – which may not be withheld inequitably – we can freely select a legal representative of our own for defense against all such claims or lawsuits. The supplier will assist us in our investigations of, defense against and handling of such claims. Such assistance will include the provision of all the documents we require for our defense.
3. If we so request, the supplier will provide detailed information regarding all industrial and intellectual property rights which are or become known to him and which apply in the development or manufacture of the goods, relate to them or are connected with them in any other way. If an allegation is made to the supplier regarding an infringement of third-party rights, he will be under obligation to initiate any steps necessary to ensure that we can obtain the goods from him without such infringement.
4. If a claim is made against us by a third party based on an alleged infringement of industrial or intellectual property rights, the supplier will be under obligation to indemnify us against said claim at the first written request; we do not have the right to make any agreements with the third party – without the approval of the supplier – especially not to make a compromise. The obligation of the supplier to indemnify us

General purchasing conditions



relates to all expense necessarily incurred by us from or in connection with the third-party claim. Notwithstanding, the supplier is not liable if the infringement arises from the manufacture of goods in accordance with our instructions and if the supplier, in spite of having applied the diligence customary in this line of business, was not in a position to know that following said instructions would lead to the infringement of third-party industrial or intellectual property rights.

5. The period of limitation for legal imperfections in title is 5 (five) years, calculated from the time at which the contract is concluded.

IX. Product liability and insurance

1. If the supplier is responsible for any loss or damage caused by a product in accordance with the statutory and contractual provisions, he will be under obligation to indemnify us against third-party claims for damages, in particular those of our customers, at the first request, provided that the cause is to be found in his domain and sphere of organization and that he himself is liable toward third parties.
2. In the context of his liability for cases of loss or damage within the meaning of Art. IX Clause 1 of these conditions, the supplier is also under obligation to reimburse any expense in accordance with §§ 683 and 670 of the German Civil Code (BGB) and §§ 830, 840 and 426 of the BGB arising from or in connection with a recall campaign carried out by ourselves and / or third parties, especially by our customers. In particular, the supplier indemnifies us against all claims of our customers asserted in connection with measures taken to protect them (including recall). We shall keep the supplier informed regarding the content and scope of any recall measures to be carried out – provided that this is possible and reasonable – and give him the opportunity to comment. Other statutory entitlements to claim will remain unaffected by this.
3. The supplier undertakes to maintain product liability insurance valid worldwide with an insured sum of at least 3 million EUR per case of personal injury / damage to property and insurance against costs incurred in recall campaigns with an insured sum of at least 2.5 million EUR – lump-sum – , and to provide us on request with confirmation of said insurance. Suppliers of goods designed to be installed in motor vehicles are under obligation to maintain motor vehicle recall costs insurance with an insured sum of at least 5 million EUR – lump-sum.

X. Work carried out

Persons who carry out work on our factory premises in performance of the contract must pay heed to the provisions of the respective factory regulations.

General purchasing conditions



XI. Liability

In cases of damage to property and pecuniary loss or damage caused by negligence, we and our non-managerial staff and vicarious agents are liable only in cases of breach of a material contractual obligation. In terms of its amount, however, such liability is limited to the foreseeable typical loss or damage at the time when the contract was concluded. Material contractual obligations are obligations which form the essence of the fulfillment of the contract and in compliance with which the customer may routinely trust.

For the rest, the statutory provisions apply. The right to assert product liability claims remains unaffected by this clause.

XII. Substances or parts made available by ourselves

Substances or parts made available by ourselves remain our property. They may only be used for the purpose intended. Substances are processed and parts assembled on our behalf. It is understood by both parties that we are co-owners of products made using our substances and parts in the proportion of the value of the substances or parts made available by us to that of the product as a whole. Said product will be stored by the supplier on our behalf. The supplier will procure replacements in cases of impairment or loss.

XIII. Tools, molds, samples etc.

Tools, molds, samples, drawings, test instructions, data sheets, proofs, production devices and gages provided by ourselves, like the objects made using them, may neither be passed on to third parties nor used without our written approval for any purpose other than the contractual purposes. They are to be protected against unauthorized inspection and use. Subject to further rights, we may call for them to be returned if the supplier is in breach of these obligations.

XIV. Confidentiality

Provided that it is not generally known or has not become known to him in any other lawful way, the supplier will not make any information he has acquired from us accessible to third parties, either during the business relationship or after its termination, and he will only use such information as it relates to his carrying out the orders issued. Products manufactured in accordance with documents designed by ourselves such as drawings, models and the like, or in accordance with our confidential information or with our tools or copied tools, may not be used by the supplier himself or offered or supplied to third parties, and especially not exploited to his own ends in the registration of industrial property rights. The same applies analogously to printing orders.

General purchasing conditions



XV. Export control and customs duty

1. The supplier is under obligation to inform us in his business documents of any licensing requirements pertaining to (re-)exports of his goods under German, European or US export and tariff regulations and to the export and tariff regulations of the country of origin of his goods. As a minimum requirement, the supplier will provide the following information in respect of each item in his quotations, order confirmations and invoices:
 - the export list number in accordance with Appendix AL of the German foreign trade regulations or comparable items from relevant export lists
 - for US goods, the ECCN (export control classification number) in accordance with the US Export Administration Regulations (EAR)
 - the trade origin of his goods and the components thereof, including technology and software
 - whether or not the goods have been transported through the USA, manufactured or stored in the USA or made with the aid of US technology
 - the statistical product number (HS code) of his goods, and
 - the name of a contact in his company who can deal with any queries we may have.
2. If we so request, the supplier is under obligation to send us in writing all other foreign trade data on his goods and their components, and to inform us in writing without delay (prior to the delivery of the goods affected) of any changes to the above data.

XVI. Substances and materials in products

1. The supplier hereby gives his assurance that he complies with the requirements of the EU chemicals regulation REACH (EC) no. 1907/2006 of 30 December 2006 as amended from time to time – hereinafter referred to as the REACH regulation – , and in particular that the substances have been registered. Under the REACH regulation we are not under obligation to obtain a license for goods supplied by the supplier.

The supplier also hereby gives his assurance that he will not supply any products which contain substances listed in

- Appendices 1 to 9 of the REACH regulation as amended from time to time
- Council Decision 2006/507/EC (the Stockholm Convention on Persistent Organic Pollutants) as amended from time to time
- EC Regulation no. 1005/2009 on substances that deplete the ozone layer as amended from time to time
- the Global Automotive Declarable Substance List (GADSL) as amended from time to time (at www.gadsl.org)
- RoHS 2 (2011/65/EC) for products in accordance with their application.

General purchasing conditions



2. In as much as any obligations to send product-related information arise from the End-of-Life Vehicle Directive 2000/53/EC and the German law on the launching, return and environmentally sound disposal of electrical and electronic equipment (ElektroG), the supplier is under obligation to make that information available for his products. The material data required by the End-of-Life Vehicle Directive will be made available to us exclusively via the International Material Data System (IMDS).
3. The supplier undertakes to acquire and process exclusively so-called 'conflict-free' raw materials such as comply with the standards of the Organisation for Economic Cooperation and Development (OECD: 'Due Diligence Guidance for Responsible Supply Chains of Minerals from Conflict-Affected and High-Risk Areas').
4. The supplier is under obligation to indemnify us against all liability connected with his failure to comply with the abovementioned regulations and standards and / or to compensate us for any loss or damage we incur as a result of such non-compliance.

XVII. Replacement parts for discontinued series production items

Even after the discontinuation of series supply, the supplier undertakes to deliver replacement parts at reasonable prices for a period of 15 (fifteen) years. With our approval, replacement parts may also be supplied from ongoing production. Said approval will only be given if it does not involve us in any additional expense and provided that there is no deterioration in quality. We shall agree to the premature discontinuation of readiness to deliver after 5 (five) years if it is reasonable for us in economic terms to undertake a final stock-up, and if our requirements are foreseeable.

XVIII. Minimum Wage Law

The supplier assures that he observes the provisions of the law regulating the general minimum wage (Minimum Wage Law) and obliges its sub-suppliers to do the same. On request, the supplier will prove the compliance with the above assurance. In case of a violation against this assurance, Eichenauer reserves the right to withdraw or cancel the contract. In case of a violation against the assurance the supplier is liable to exempt Eichenauer from third party claims and reimburse any penalties imposed on Eichenauer in this context.

XIX. Assignment of claims

The assignment of claims is only permissible with our written approval.

XX. Place of performance

Place of performance is the place at which the goods are to be delivered as stated in the order, or at which performance is to be rendered.

General purchasing conditions



XXI. Legal domicile, applicable law

Exclusive legal domicile is Landau in der Pfalz. Applicable law is that of the Federal Republic of Germany, there being no recourse to the United Nations Convention on Contracts for the International Sale of Goods (CISG).