

F.X. Meiller Fahrzeug- und Maschinenfabrik GmbH & Co. KG

General Purchase Conditions

Last Update: 1 January 2014



1 General

1. Our purchase conditions¹⁾ shall apply to the exclusion of all others to all of our orders and all deliveries to us. These purchase conditions shall also apply to deliverables ordered by us in the future unless there is agreement to the contrary.
2. Any general business terms and conditions of the supplier conflicting with or deviating from our purchase conditions shall not become part of the contract unless we have expressly consented to this. Acceptance of the supplier's goods or services or payment for such goods or services shall not constitute such consent.

2 Conclusion of Contract, Confirmation of Order

1. Orders shall always be confirmed without delay, but no later than seven days after the order is received. Otherwise, we (hereinafter also "buyer") shall be entitled to cancel the order. Any deviations in the order confirmation from our order shall be valid only if we expressly consent to them in text form. Only signed orders in text form or transmitted via an electronic data line shall be deemed valid. Orders placed orally or by telephone and any changes to orders already placed shall be subject to our confirmation in text form or via an electronic data line.
2. Call-forward notices as part of an order and call-forward planning shall be binding if the supplier does not object to them within two working days after receiving them.

3 Price

1. In the absence of any specific agreement, the prices shall be quoted ex works duty paid (DDP under Incoterms 2010) including packaging. Prices do not include value-added tax.
2. We do not provide compensation for the drafting of offers and the production of samples. Cost estimates shall be binding and free of charge unless the parties reach an express agreement to the contrary.

4 Terms of Payment

1. In the absence of a specific agreement, we shall settle the invoice either within 14 days less a 3% discount or within 45 days without deductions from the date the payment claim becomes due and the receipt of the invoice and of the goods or the rendering of the service. Payment shall be subject to an audit of the invoice. We shall be entitled to pay by check or rediscountable bill of exchange, the expenses for which would be borne by us. A reminder from the supplier shall be required in any event for the occurrence of a default in payment.
2. The supplier may not assign its accounts receivable or obligations or cause a third party to collect on its claims without our prior written consent.
3. The supplier shall be entitled to setoff only on the basis of counterclaims that are uncontested and ready for judgment or that have been established by way of a final and absolute judgment.
4. We may withhold payment or declare a setoff based on counterclaims.

5 Delivery and Delay in Delivery

1. Deviations from our contracts, call-forward notices and orders shall be subject to our prior written consent.
2. Schedules and deadlines agreed upon shall be binding. Delivery shall be deemed to have been made in due time if the goods are received at the location/place of performance defined by the buyer or agreed on. If delivery is not "ex works" (DDP under Incoterms 2010), the supplier shall make the goods available in due time in consideration of the time needed for loading and shipping to be agreed on with the forwarding agent.
3. If agreed deadlines are not met, the statutory rules shall apply. In the event of a delay in delivery, we shall be entitled to our statutory rights without limitations. If the supplier believes that there may be difficulties with regard to the manufacture, supply of input materials, meeting of the delivery deadline or similar circumstances that may hinder him in the timely delivery or delivery of the quality agreed upon, the supplier shall notify our ordering department without delay.
4. In the event of a delay in delivery, we may demand from the supplier a contractual penalty in the amount of 0.2% of the amount of the order affected by the delay in delivery per working day, up to a maximum of 5% of the amount of the order. The contractual penalty shall be higher or lower if we prove that the damage is higher or the supplier proves that the damage is lower. The contractual penalty shall be deducted from the loss caused by default to be compensated for by the supplier.
5. An acceptance of a delayed delivery or service without reservation shall not constitute a waiver of our claims for compensation due to delays in delivery or service.
6. Partial deliveries shall be excluded as a matter of principle unless we have reached an express agreement to this effect.

7. As for number of units, weights and measurements, subject to any other proof, the values determined by us at incoming goods shall prevail.
8. The supplier shall take back packaging materials at our request.
9. We shall be free to have the ordered items accepted by our agent at the supplier's plant. Invoices may not be issued prior to the date of our declared acceptance. Up to acceptance, the supplier shall bear the burden of proof that the ordered items are free of defects. The acceptance does not release the supplier from its warranty.

6 Transfer of Risk

The risk shall not pass to us until after the goods have been accepted by us or our agent at the place where the goods are to be delivered.

7 Delivery Note, Invoice

1. A delivery note in line with the applicable packaging instructions¹⁾ shall be included with each delivery. The invoice, one copy, containing the invoice number, order master records and any drawing or item numbers made out to such address as we provide for the purposes of invoicing, may not be included with the shipments. Any costs that we incur as a result of the supplier's failure to follow these packaging instructions shall be borne by the supplier. If one or more of these details is left out in the delivery note or the invoice and due to this our invoice processing in our ordinary course of business should be delayed, the payment deadlines set out in 4.1 shall be extended by the duration of the delay.
2. The invoice must contain all such information as is needed to claim input tax deductions, such as the taxpayer identification number or VAT identification number, invoice number and other mandatory information to be included in invoices under § 14 and § 14a of the German Value Added Tax Act (UStG). If an invoice does not contain such information, we shall not be obligated to pay the value-added tax as indicated. If we are denied input tax deductions due to a faulty invoice, the supplier shall reimburse the value-added tax paid by us.

8 Quality and Documentation

1. With respect to its deliveries, the supplier shall comply with such technical and scientific standards, technical data agreed upon, safety regulations and statutory safety provisions as are in effect at the time of delivery. Changes to the item to be delivered shall be subject to our prior written consent.
2. The supplier shall set up a corresponding quality management system and provide proof thereof. In its quality management records, the supplier shall record all products and when, how and by whom their flawless manufacture is ensured. The supplier shall record in special documents for items that require regulatory permission or approval the person who examined the features subject to permission or approval, the time when this was done and the manner in which it was done, as well as the results of quality tests. Specifications and records shall be kept for 15 years and submitted to the buyer upon request. The supplier shall obligate its own suppliers to the same degree to the extent provided for under the law.

9 Claims Based on Defects/Warranty

1. The acceptance shall be subject to an inspection for defects, particularly with respect to accuracy and completeness, to the extent and as soon as this is expedient in the ordinary course of business. We shall report any defects without delay after they are identified.
2. The statutory regulations on material defects and defects of title shall apply in the absence of any provisions to the contrary contained hereinafter.
3. We shall generally be entitled to choose the type of subsequent performance. The supplier may refuse the type of subsequent performance chosen by us if it will necessarily entail disproportionately high costs.
4. If a reasonable deadline set by us for subsequent performance has passed without success, we shall be entitled in urgent cases, particularly to avoid acute risks or more extensive damage, to remedy the defects or to cause a third party to remedy the defects at the supplier's expense. The same shall apply if, because of special urgency, a particularly great loss in proportion to the defect is to be anticipated and a request for subsequent performance is not possible or cannot reasonably be expected or if the supplier does not begin to carry out the subsequent performance without delay.
5. In cases involving a defect of title, the supplier shall indemnify us from any third-party claims unless the supplier is not responsible for the defect of title.
6. Claims based on defects shall become time-barred two years after the delivery of the subject of the contract (transfer of risk).
7. If the supplier satisfies its duty of subsequent performance by providing a replacement delivery, the limitation period for the replacement shall commence anew upon delivery of the replacement unless the supplier expressly and correctly reserved the right to make the replacement delivery only as a courtesy and to avoid disputes or in the interests of continuing this business relationship.

The same shall apply in the event of a repair if and to the extent the supplier has acknowledged the entitlement to subsequent performance.

8. If the delivery of the defective subject of the contract results in costs for us, particularly costs for transport, infrastructure, labour and material or costs exceeding the customary amount for incoming inspection, the supplier shall bear these costs within the limits of section 10 (Liability). This shall have no effect on our rights under §§ 478, 479 of the German Civil Code (*BGB*).

10 Liability

1. The supplier shall be liable for compensation for damage/losses and the expenditures that the buyer incurs directly or indirectly as a result of a faulty delivery, from non-compliance with regulatory safety regulations or from other legal causes unless the supplier is not responsible for the breach of such duties. In the event of damage resulting directly or indirectly from a breach of an independent guarantee, the supplier shall be liable on a no-fault liability basis.
2. If a claim is brought against the buyer under product liability law, the supplier shall indemnify the buyer if and to the extent the damage is due to a defect in the goods delivered by the supplier. In cases of liability based on fault, however, this shall apply only if the fault lies with the supplier. If the cause of the damage falls within the supplier's area of responsibility, the supplier shall bear the burden of proof. In such cases, the supplier shall bear all costs and expenditures, including the costs for any legal action or recall measure.
3. The supplier undertakes to take out employer's and product liability insurance, including insurance against financial losses related to the product and recall costs, with an insurer registered in the territory of the EU. The coverage amount for personal injury or damage to property and for financial losses related to the product and recall costs shall be commensurate with the relevant subjects of the contracts, but shall amount to no less than €5 million.
4. Persons who perform work on the buyer's premises in order to fulfil the contract must follow the applicable plant regulations. Liability for accidents that such persons may suffer on the premises shall be excluded unless they are caused by a wilful or grossly negligent breach of duty by the buyer, its legal representatives or its vicarious agents.

11 Retention of Title, Ownership of Materials and Means of Production Provided by Buyer

1. A valid reservation of title prolonged or extended by the supplier shall be subject to an express and separate agreement.
2. The materials provided by us shall remain our property and may be used only as prescribed. The processing of materials and the assembly of parts shall be carried out on our behalf. We shall own a share of the products manufactured using our materials and parts that the supplier stores for us in the proportion of the value of the materials provided to the value of the overall product.
3. Drawings, calculations, matrices, templates, samples, models, dies, tools and other manufacturing equipment that we provide to the supplier or pay for so that an order can be carried out shall remain or become our property; such items may not be used for deliveries to, made available to or brought to the attention of any third party without our prior written consent, and any reproduction of such items shall not exceed the limits of operational requirements and copyright regulations. This obligation shall be imposed on any subcontractors.
4. The goods produced subsequently may not be delivered to any third party without having been processed or as semi-finished or finished products without our written consent. The same shall apply to parts that the supplier has developed in accordance with our instructions or with our cooperation (e.g., by way of experiments, etc.).
5. A third party in terms of these provisions shall be defined as including such companies and persons that are involved in the distribution of our products in any way.

12 Documents and Confidentiality

1. Any and all business or technical information made available by us (including features shown in any provided objects, documents or software and any other knowledge or experience) shall be kept secret from third parties as long as and to the extent that it is not demonstrably public knowledge; it may be made available only to persons in the supplier's own organisation who must necessarily be involved in its use for the purpose of the delivery to us and who are likewise under a confidentiality obligation; such information shall remain our exclusive property. Information of this kind may not be copied or used for commercial purposes – except for deliveries to us – without our prior written consent.
2. If so requested by us, all information originating from us (including any copies or records made) and any objects provided on loan shall be returned to us without delay and in full or destroyed. We retain all rights to such information (including copyrights and the right to file applications for industrial property rights, such as patents, utility patents, etc.). If this information has been made accessible to us by third parties, this reservation of rights shall also apply in favour of such third parties.
3. The supplier may use advertising with our business relationship only with our written consent.

13 Customs, Proof of Origin

The supplier undertakes to allow the proof of origin and supplier's declarations to be checked by customs authorities at any time and to procure any required official confirmations. If the declared origin is not recognised by the authority, the supplier shall – if it has acted with intent or negligence – compensate us for the damage incurred.

14 Export Control

1. If deliverables provided by the supplier require export licences/permits, the supplier shall inform us of such circumstances in writing and of its own accord. If the supplier culpably fails to do so, it shall be obligated to provide compensation to us for the damage incurred. The supplier shall provide all required documents to us without delay after being requested to do so.
2. The supplier shall satisfy the respective applicable requirements of national and international export, customs and foreign trade legislation (hereinafter "foreign trade legislation") for all goods and services to be delivered and rendered. The supplier shall obtain any required shipment or export licences/permits unless the buyer, and not the supplier, is obligated under the applicable foreign trade legislation to apply for these licences/permits.
3. The supplier shall provide the buyer in writing at the buyer's request, but upon delivery at the latest, with all information and data that buyer needs to comply with the applicable foreign trade legislation relating to the export, shipment and import, and in the event of resale re-export, of the goods and services, in particular, for each product and each service:
 - The export classification number (ECCN) pursuant to the U.S. Commerce Control List (CCL), provided that the product is subject to the U.S. Export Administration Regulations
 - All correct export list categories (if the product does not fall under any export list category, this is to be indicated by "AL:N")
 - The commodity code pursuant to the current classification of goods for foreign trade statistics and the HS (Harmonised System) code
 - The country of origin (not preferential origin) and
 - If requested by the buyer: the supplier's declarations concerning preferential origin (if the suppliers are European) or certificates of preference (for non-European countries) (hereinafter "export control and foreign trade data")
4. In the event of changes regarding the origin or the properties of the goods or services or the applicable foreign trade legislation, the supplier must update and provide the export control and foreign trade data to the buyer in writing as early as possible, but at least one week prior to the delivery date. The supplier shall bear all expenses and losses incurred by the buyer due to a failure to provide the export control and foreign trade data or because incorrect data is provided.

15 Force Majeure

Force majeure, labour disputes, business disruptions not caused by the buyer, civil unrest, regulatory actions and other unavoidable events shall entitle the buyer – its other rights notwithstanding – to rescind the contract in part or in full, provided that such events cause a substantial reduction in the buyer's demand and are of substantial duration.

16 Place of Performance, Jurisdiction, Choice of Law

1. The place of performance shall be the buyer's plant as stated in the order unless a different delivery address has been defined in express terms. The place of performance for payments by the buyer shall be the buyer's registered place of business.
2. The courts in Munich shall have exclusive jurisdiction over all disputes arising from or in connection with any contractual relationship governed by these Conditions. We shall be entitled, however, to bring a legal claim against the supplier before a court at the supplier's registered place of business or branch office or before a court at the place of performance.
3. The contract shall be governed exclusively by the laws of the Federal Republic of Germany. The provisions of United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

17 Severability (Validity of These Conditions)

Should any provision of these Conditions or of any additional agreements concluded be or become invalid, this shall not affect the validity of the other Conditions. The parties shall replace such invalid provision with a provision that comes as close as possible to the spirit and purpose of such invalid provision.

⁹⁾ All documents and forms are also available as download at www.meiller.com/lieferanten