

Valid for Walter Klein GmbH & Co. KG, Erbslöh Aktiengesellschaft,
Erbslöh Aluminium GmbH, Erbslöh Relingsystem GmbH,
WKW Erbslöh Automotive GmbH and Erbslöh Hungaria Kft.

(Issue: January 2016)

General purchasing conditions for capital goods, IT goods, services and general goods
(Issue: January 2016)

These purchasing conditions are to be used exclusively in business relationships between companies in the WKW Group and entrepreneurs within the meaning of Section 14 of the German Civil Code (BGB) ('suppliers'), relating to the rendering of services and work performance and the supply of goods such as machines and equipment, IT materials, catalogue goods and all other materials not used in products or production processes, and the respective documentation and the source and object code of any relevant software ('goods').

I. Prevailing conditions

1. All supplies of goods or services by the supplier to or for companies in the WKW Group (hereinafter referred to as the 'orderer') are made exclusively on the basis of these purchasing conditions. The same shall apply to all future business relationships, even if the applicability of these conditions is not expressly agreed therein anew. Contrary and / or contradictory sales conditions of the supplier shall not under any circumstances become part of the contract.
2. Any collateral agreements, amendments or additions to these purchasing conditions require to be made in writing. This also applies to any move made to alter or dispense with this requirement itself.
3. These purchasing conditions can be requested from the orderer and / or downloaded in their currently valid version on the Internet at www.wkw.de. The version accessible on the Internet shall in all cases be definitive.

II. (Framework) contracts, orders and on-call orders, changes

1. Framework contracts and agreements, (individual) supply contracts, (individual) orders and on-call orders and acceptance, objections, amendments and additions to such require to be made in writing. In the case of orders and on-call orders this also includes EDI, e-mail and fax transmissions.
2. If the supplier does not accept an order within three working days (Mon. - Fri.) of receipt, and if nothing else has been agreed, the orderer shall have the right to revoke said order. On-call orders become binding if the supplier does not object in writing within three working days (Mon. - Fri.) of receipt at the latest.
3. Within the framework of what can be deemed acceptable to the supplier, the orderer may call for changes to the articles to be delivered as regards their design and finish. If any such change renders a deviation necessary in terms of pricing or delivery date, the orderer is to be informed of the fact in writing in advance. In addition, the orderer and the supplier shall come to a mutually satisfactory written agreement as regards appropriate adaptation of the supply contract.

III. Engagement of third parties

In the case of deliveries of machines or equipment, the supplier undertakes to inform the orderer about the awarding of sub-contracts in advance in writing and obtain his written approval in advance in each individual case. The orderer shall only refuse to grant said approval for a substantial reason. In all cases, the supplier's direct legal responsibility to the orderer shall remain unaffected by the former's engagement of third parties.

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IV. Deliveries, obligation to inform

1. Unless otherwise agreed, the delivery dates and deadlines quoted in an order or on-call order are binding. It is the receipt of the goods at the delivery destination which determines whether or not the date or deadline has been met.
2. Unless otherwise agreed, deliveries are to be carried out 'free to works' (DDP in accordance with Incoterms 2010).
3. The supplier shall in all cases inform the orderer without delay and in writing of any delays which appear imminent.
4. The supplier shall bear all costs incurred by the orderer and customers of the orderer such as are caused by failure to adhere to delivery dates – in particular extra freight costs, costs of retrofitting, extra shifts, additional outlay for purchases of replacement goods – unless he is not responsible for said failure.
5. If the supplier is in default, the orderer has the right to demand a lump-sum penalty payment in the amount of 0.3% of the order value of the share of the goods or services affected by the delay for each working day of said delay – though the total amount of penalty payments shall not exceed 5% – unless the supplier is not responsible for the default. The supplier expressly reserves the right to provide evidence showing that the orderer sustained a smaller loss or did not in fact sustain a loss at all. The orderer's entitlement to claim for damage above and beyond the penalty remains unaffected by this, but the penalty payment is to be offset in such cases. The orderer continues to have the right to demand a contractual penalty until such time as payment has been made in full for goods delivered or, in the case of services, until final payment.
6. In the case of the unconditional acceptance of a delayed delivery, the orderer expressly reserves the right to assert the rights detailed in IV. 4 and 5 at a later point in time. Unconditional acceptance of a delayed delivery does not indicate that the orderer is prepared to waive his other claims for compensation or to make an acknowledgement of any kind.

V. Force majeure

Force majeure such as stoppages or breakdowns not caused by any fault of the party affected, civil unrest, regulatory actions by the authorities, industrial action and other events or circumstances which are unforeseeable, unavoidable and dire release the parties from their obligation to perform for the duration of the disruption and within the scope of their influence. The orderer, for his part, has the right to obtain the goods from other sources for the duration of the delay without becoming liable to the supplier in any way. Provided that the disruption is not of insignificant duration and provided that it results in a significant reduction in his requirements, the orderer has the right – notwithstanding his other rights – to rescind the contract in respect of the part of it that has not yet been fulfilled. This shall not apply in the case of hindrances to performance for which the orderer himself is responsible.

VI. Competitive strength

The orderer and the supplier are in agreement that the maintenance of the competitive strength of the goods is of major importance for the supply relationship. If the orderer is offered a comparable product at more competitive conditions, he shall inform the supplier of the fact in writing and set him a reasonable period of time in which to reestablish the full competitive strength of the goods. The supplier shall without delay draw up a catalogue of measures he intends to implement in order to reestablish said competitive strength, and shall make said catalogue available together with a revised quotation. The orderer and the supplier are in agreement as to the fact that the obligation to maintain competitive strength as described in this paragraph constitutes a material obligation of a supply relationship.

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VII. Prices, payment

1. Prices agreed will be subject to turnover tax at the current legally applicable rate. Prices are firm and constitute the overall price for the manufacture and supply of goods under a supply contract. The supplier does not have the right to adjust prices or invoice additional costs of any kind without the prior express written agreement of the orderer.
2. Unless otherwise agreed, payments are to be made within 30 days less 3% prompt-payment discount or 60 days net. Payment periods are deemed to have begun when a correct and proper invoice and defect-free goods / services have been received by the orderer.
3. In cases of premature delivery, the payment period shall nevertheless begin on the originally agreed delivery date.
4. In the case of defective deliveries, the orderer has the right to retain payment *pro rata* until such time as correct and proper supplementary performance has been rendered.
5. The supplier shall not, without prior written approval – which may not be withheld unreasonably – have the right to assign his claims against the orderer or have them collected by third parties.

VIII. Quality

1. In respect of his goods and services the supplier shall pay heed to and observe the following: accepted engineering standards, the agreed specifications, the quality, environmental, safety and inspection regulations, the agreed technical data, all legally binding specifications, and the purpose of deployment intended in each case. The supplier shall scrutinise the specifications and drawings and inform the orderer without delay of any modifications that may be necessary or any doubts he may have about implementability or suitability. Any changes being made to the articles to be delivered shall require the prior written approval of the orderer. This also applies to any relevant changes in the manufacturing process.
2. The supplier guarantees that his goods do not cause any harmful environmental effects or pose any other dangers such as could cause major detriments or pollution for humans or the environment. If the goods are machines or equipment, they must be fitted with pollution control devices such as correspond to the current state of technology, and enable the residues and waste incurred during operation to be eliminated with reasonable effort and expense.

The supplier also undertakes to:

- add a manufacturer's declaration in accordance with the currently applicable statutory basis to goods with moving parts (i.e. goods in which at least one part moves but which are not machines or equipment)
 - add a CE declaration of conformity in accordance with the currently applicable statutory basis to goods in the form of machines and equipment for production (such as lathes, assembly units, packaging machines, test stands)
 - add a safety data sheet in German – up to date at the time when said goods are delivered – in accordance with the currently applicable statutory basis to goods which constitute hazardous substances.
3. The supplier undertakes to pay heed to and comply with the standards, laws and other regulations which are relevant or applicable to the respective goods in both the country to which they are exported and the country in which they were manufactured, such as the requirements for electrical components issued by the German Association for Electrical, Electronic and Information Technologies (VDE), as minimum requirements. The supplier shall include in the delivery all the necessary test certificates and proofs as agreed from case to case. He shall indemnify the orderer against all claims arising from infringement of these laws and regulations under public and private law.
 4. In his quality records, the supplier shall record when, how and by whom the defect-free manufacture of the goods delivered was ensured, and draw up appropriate validation documentation. Said documentation is to be made available on request.
 5. To a reasonable extent, the orderer has the right to obtain information on the supplier's premises as to the latter's compliance with the provisions of this section, to inspect the relevant documents and records and, if he considers it necessary, to carry out an audit. The supplier shall assist him in doing so as necessary, making available documents and records and issuing information.

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IX. Inspection of goods, packaging, despatch, proof of origin, labelling

1. The supplier shall carry out a documented goods-out inspection with regard to the quality of the goods and provide the orderer with written evidence of his having done so if requested. He shall inform the orderer without delay and in writing of any defects or other quality problems that arise. The orderer is not under obligation to inspect goods immediately, but may do so in the ordinary course of his business. To that extent, the supplier shall have no right to reject notification of defects on the grounds that the goods-in inspection was delayed. Said goods-in inspection is limited to the quantity and identity of the goods and obvious transport damage.

2. All goods must be properly packaged, labelled and, with the diligence commonly applied in commercial practice, despatched in a way that ensures the lowest transport costs. The supplier shall be liable for damage resulting from defective or improper packaging. The supplier shall label the goods in the way specified by or agreed with the orderer.

3. The supplier shall without delay procure in full all documents, records and other information which are required in accordance with the customs regulations or other applicable statutory regulations, in particular (i) tariff preference documents, (ii) all documents providing proof of origin and (iii) all other information such as relates to the origin of the goods and materials contained therein as it relates to commercial or tariff preference law.

X. Notification of defects

1. On receipt of the delivery, the orderer shall carry out a goods-in inspection in accordance with IX. 1. The supplier will be notified by the orderer within a reasonable period of any defects not discovered in said inspection, as soon as said defects are discovered in the course of ordinary business practice. To that extent, the supplier waives his right to reject notification of defects on the grounds of its being delayed.

2. No payments made before ascertainment of the defects or acceptance of the goods or other clearances constitute any acknowledgement of the goods as being free from defects.

XI. Warranty

1. The supplier vouches for the fact that all the goods (i) correspond to and comply with the specifications, samples, drawings and other requirements that apply to them; (ii) are free of defects in terms of their design, manufacture and material; (iii) are of normal market quality and (iv) are suitable for the special purposes for which they were purchased.

2. In the case of defective goods, the orderer shall be entitled to his statutory rights, unless anything else is agreed here below or in a separate individual agreement.

Having been requested to do so, the supplier shall remedy the defect without delay. Such remedy shall, at the discretion of the orderer, be effected by rectification of the defects or by replacement delivery. All costs incurred in the remedy are to be borne in full by the supplier.

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If the orderer requests that a defect be remedied and the supplier fails to comply with said request within a reasonable period of time, the orderer shall have the right, at his own discretion

- a) to carry out the measures necessary to remedy the defect himself at the expense and risk of the supplier – notwithstanding the latter's ongoing warranty / guarantee obligations – or to have them carried out by a third party or parties
- b) to rescind the contract or call for abatement of remuneration or
- c) to claim for damages.

The orderer shall also be entitled to select the self-help option if he cannot reasonably be expected to wait for the supplier to carry out the remedy, in particular in cases of impending major loss or damage or default of delivery in respect of his own customers.

3. The supplier shall bear all the costs incurred as a result of his defective performance / goods. These include, in particular, costs of inspection and sorting, costs incurred in the removal of defective parts and installation of defect-free parts, and loss or damage incurred by customers of the orderer as a result of the default.

4. The warranty period shall be forty-eight (48) months as from delivery or, in the case of goods requiring acceptance, forty-eight (48) months as from acceptance of the goods, unless a longer period is prescribed as standard by statutory regulations or special agreement.

XII. Liability

1. Unless any other provision on liability is made in writing, the supplier shall be unrestrictedly liable in accordance with the statutory provisions.

2. If a third party asserts claims against the orderer such as have their origin in the supply or performance of the supplier and such as could also be asserted by the third party against the supplier, said claims resulting from liability of the kind that makes no distinction as to actual culpability, the latter shall indemnify the orderer *inter partes* to the extent to which he would be directly liable to said third party.

XIII. Insurance

The supplier is under obligation at his own expense to take out and maintain insurance covering his liability toward the orderer and third parties to a reasonable extent. Such insurance cover includes in particular (extended) product liability insurance, commercial liability insurance and environmental damage insurance with insured sums of at least 5 million euros for any given case. Processing damage is also to be insured against, with an insured sum of at least five hundred thousand euros per case of loss or damage. Without being requested to do so, the supplier shall provide evidence of his insurance cover each year by submitting up-to-date confirmation issued by the insurer.

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XIV. Industrial property rights / rights of use

1. The supplier gives his assurance that the use of his goods does not infringe against any patents, design rights, copyright or other rights relating to the intellectual property ('industrial property rights') of third parties. The supplier shall indemnify the orderer in respect of all legal disputes, loss or damage, claims and demands arising from the actual or alleged infringement of industrial property rights through the use or sale of the goods.
2. If industrial property rights of the supplier are necessary to the use of the goods by the orderer, the supplier grants the orderer the worldwide right to use, repair or copy goods delivered in the context of a supply contract or allow them to be used, repaired or copied by a third party or parties, said right being irrevocable, non-exclusive and free and unlimited in term and content.
3. If standard user software is the subject of a supply contract, the right of use shall apply in accordance with XIV. 2 above and shall be freely transferable. The supplier shall be under obligation to make the required software available to the orderer together with the underlying codes. There shall, expressly, be no remuneration for multiple use.
4. If a supply contract entails development work for which remuneration is made by the orderer, either via a one-off payment or via the parts price, all the results of said development work shall become the property of the orderer. The supplier shall grant the orderer an irrevocable, non-exclusive, free worldwide licence with the right to award sublicences granting permission to use, or permission to allow to be used, all the industrial property rights of the supplier established on the basis of such development work or which the orderer reasonably requires in order to be able to use the results of said development work.

XV. Property made available

1. All tools, templates, dies, measuring instruments, jigs, moulds, samples and associated software, drawings and other related documentation ('tools'), equipment or material made available to the supplier by the orderer or his customer or paid for or amortised by the orderer, and all replacements or additions, appendices, accessories and maintenance operations ('property made available') are and shall remain the property of the orderer or his customer unless any other agreement is made in writing, and shall be made available to the supplier on a loan basis.
2. The supplier may only use the property made available for the production of goods in the context of a supply contract with the orderer.
3. Property made available is to be labelled clearly as the property of the orderer or his customer and stored safely and separate from the property of the supplier. The supplier shall keep property made available in good condition at his own expense and, if necessary, replace it. The supplier shall bear the risk for property made available for as long as it is in his safekeeping or under his control; the supplier shall insure such property at his own expense, in a sum such as would correspond to the replacement cost and be payable to the orderer or his customer in a case of total loss. The supplier hereby assigns to the orderer all his entitlements to make claims against the insurer; the orderer accepts said assignment. The supplier shall treat property made available carefully and hold the orderer harmless in respect of all claims, liability, costs and loss or damage such as follow from the installation, use, storage or repair of the property made available or arise in connection therewith. The orderer or his customer have the right to visit the business premises of the supplier during the latter's usual hours of business and inspect the property made available and the relevant records.
4. The orderer has the right to remove the property made available or request its release at any time. He is not under obligation to state any reason or make any kind of payment for doing so. The supplier has no right of retention in respect of property made available on account of outstanding debts or for any other reason.

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XVI. Confidentiality

The supplier and the orderer undertake to treat as business secrets all commercial and technical details such as are not manifest but become known to them through the business relationships. Drawings, models, templates, samples and similar objects may not be surrendered to unauthorised third parties or made accessible to them in any other way. The copying of such items is only permissible within the framework of operational requirements and within that of the copyright regulations. Subcontractors are to be placed under obligation accordingly. The supplier may only use the business association for advertising purposes with the prior written approval of the orderer.

XVII. Retention of title

Ownership of the goods supplied passes over to the orderer upon payment in full at the latest. There shall be no prolonged or extended retention of title of the part of the supplier.

XVIII. Intra-group offset

The orderer has the right to offset with and against claims that are or will be due and which the orderer, or a company in which the orderer holds a direct or indirect participating interest of at least 50%, is entitled to make against the supplier or, as the case may be, which the supplier has against such a company. On request the supplier shall receive information about the participating interest concerned.

XIX. Parties' right of rescission and right to give notice of termination; obligation to inform

1. Each of the parties, in the case of a breach of material contractual obligations by the other party, such breach not being discontinued in spite of written warning, has the right to terminate the contract summarily or, as the case may be, to rescind it partly or wholly.

2. Furthermore, the orderer has the right to terminate the contract summarily if events cause either of the following situations:

- a major deterioration in the financial status of the supplier
- a major change in the legal position concerning ownership or shareholdings in the supplier's enterprise, in view of which it would not be reasonable for the orderer to expect the supply contract to continue.

The supplier is under obligation to inform the orderer without delay and in writing should either of the above-mentioned events occur.

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XX. General provisions

1. If any provision of these purchasing conditions or other agreements made between the parties should be or become invalid, this shall not affect the validity of the remainder of these purchasing conditions or said other agreements. The parties shall be under obligation to replace the invalid provision with a clause which resembles it as closely as possible in terms of its economic aim.
2. Place of performance shall be the place at which the products are to be delivered in accordance with the order or, as the case may be, at which the services are to be rendered. For the rest, place of performance is the registered office of the orderer.
3. Unless otherwise expressly agreed in writing, the legal relationships between the supplier and the orderer are subject to the law of the country in which the place of business of the ordering enterprise is situated. Under no circumstances shall there be any recourse to the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
4. Exclusive legal domicile is the registered office of the orderer. The orderer also has the right to institute legal proceedings against the supplier at any court competent for the supplier's place of business.