

General purchasing conditions of WKW.automotive

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)

I. Prevailing conditions

These purchasing conditions apply to all present and future supply and performance rendered by the supplier to any company in the WKW Group, hereinafter referred to as 'the orderer', supplementary to all other agreements with the supplier, even if they are not referred to expressly in further transactions or when a new contract is in the making. Purchasing conditions of the supplier which differ from or contradict these conditions will not under any circumstances become part of the contract. Amendments and additions require to be made in writing. These purchasing conditions can be requested at any time from the orderer in the currently valid version, and / or downloaded on the Internet at www.wkw.de. The version accessible on the Internet shall in all cases be definitive.

II. Ordering, commencement of production, changes

1. Supply contracts (orders and order acceptance) and on-call orders and any amendments or additions thereto require to be made in writing. For on-call orders, this shall also include remote data transmission (e-mail and EDI) and telefax.
2. Unless any other agreement is made, the following shall apply: if the supplier does not accept an order within three working days (Mon. - Fri.) of receipt, the orderer shall have the right to revoke it. On-call orders are deemed to have been accepted by the supplier bindingly if he does not object in writing within three working days (Mon. - Fri.) of receipt at the latest.
3. The supplier shall take all precautions to guarantee data exchange in accordance with the system configurations of the orderer and to ensure compatibility. The supplier shall bear the costs of changes in the orderer's system configuration, in particular as a result of specifications issued by customers of the orderer. If the orderer is under obligation to his customers to check the system configuration, the supplier shall allow such check to be carried out by the orderer and the orderer's customer.
4. Within the framework of what is reasonable, the orderer may call for changes to the articles to be delivered as regards their design and finish at any time. The effects of such changes, in particular with regard to increases and reductions in cost and delivery deadlines, are to be dealt with consensually before the changes are actually adopted.
5. Production for series supply shall not be commenced until the initial samples have been inspected and cleared by the orderer.

III. Force majeure

1. Force majeure, in particular natural disasters, fire, flooding, civil unrest, war, import and export embargoes and other unforeseeable events or circumstances which are unavoidable and major for one of the parties shall, for the duration of the disruption and within the scope of its influence, release the party affected from its obligations to perform. The parties shall inform each other without delay if they can see that it will not be possible for them to fulfil their contractual obligations as a result of force majeure.

Within the framework of what is reasonable, each of the parties shall be under obligation to make available to the other party without delay the necessary information and to adapt its obligations to the altered circumstances in good faith.

2. For the duration of any delay on the supplier's side, the orderer has the right to obtain the goods from other sources and to reduce the delivery quantities quoted in the contract and / or

the on-call order without becoming liable to the supplier in any way. If the hindrance persists for longer than three months, each of the parties shall have the right to rescind the contract, there being no rights to claim for damages whatsoever. Furthermore, if a hindrance to performance arises or occurs and looks likely to last for three months or more, each of the parties shall have the right to give notice of termination of the current contract with immediate effect. Their doing so will not give the other party the right to assert any claims for compensation or performance. Any claims for the reimbursement of payments or futile expenditure or for services rendered shall remain unaffected by the abovementioned release from the obligation to perform occasioned by force majeure.

IV. Prices

Prices agreed are in euros net, inclusive of packaging and carriage paid to the delivery address, unless any other agreement has been made.

V. Payment, passage of title

1. Unless any other agreement is made, 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 have duly been received by the orderer.
2. On each invoice, and in all other correspondence, the orderer's order and item numbers are to be quoted, as is the delivery quantity supplied.
3. In the case of incorrect delivery, the orderer has the right to retain payment *pro rata* until correct and proper performance has been rendered, or to offset it against any claims for compensation.
4. The supplier shall not, without the prior written approval of the orderer, which may not be withheld unreasonably, have the right to assign his claims against the orderer or have them collected by third parties.
5. Payment for goods made by the orderer does not mean that the goods may be regarded as having been acknowledged as correct or accepted.
6. Upon payment at the latest, the goods delivered in each case shall become the property of the orderer.
7. If goods delivered to the orderer by the supplier are the subject of an extended retention of title in favour of the previous supplier or a third party, the supplier shall inform the orderer of the fact prior to delivery, stating the exact name of the obligee and the exact nature of the latter's claim. The orderer has the right to redeem the obligee's retention of title by means of direct payment to the obligee, offsetting the amount against the claims of the supplier.

VI. Confidentiality

1. The parties undertake to treat as business secrets of the other party all commercial and technical information, knowledge, data and documents, expertise, calculations, methods and processes such as are not manifest but become known to them through the business relationship. They shall place their employees under obligation in writing to treat such information, knowledge, data and documents, expertise, calculations, methods and processes to the same extent. The same applies to vicarious agents, subcontractors and consultants.

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2. Drawings, models, templates, samples and similar objects may not be surrendered to unauthorised third parties or made accessible to them in any other way. Any copying of such items is to be documented accordingly, and is only permissible within the framework of operational requirements and in compliance with the copyright regulations. On termination of the contractual relationship, all the documents, records and objects listed in this provision are to be returned or destroyed at the request of the obligee.
3. The orderer does not accept any liability for risks incurred in agreed data transmissions. The supplier shall indemnify the orderer against all third-party claims asserted in the context of such risks.
4. The parties may only use their business association for advertising purposes after having received prior written permission from the other party.

VII. Deliveries, packaging

1. Deliveries are to be carried out in accordance with the instructions of the orderer. Unless otherwise specified, delivery 'carriage paid' (DDP Incoterms 2010) is agreed. If Incoterms are agreed, they shall apply in the version that is valid at the time in question. The supplier shall bear the costs of packaging and those of packaging disposal by the orderer, unless the supplier – in agreement with the orderer – disposes of the packaging himself.
2. Each shipment is to be accompanied by a delivery note on which the order number, the item number, the article and the quantity are stated using the standard commercial designations.
3. When making deliveries, and when entering upon the business premises of the orderer, the supplier shall pay heed to the latter's house rules and place his vicarious agents and employees under obligation to do likewise. If the supplier deploys any subcontractors, he shall also place them under obligation to adhere to the house rules of the orderer. Prior to the commencement of work on the business premises of the orderer, the supplier is under obligation to request the orderer's pre-printed form FB 11-33 (record of briefing entitled 'deployment of outside firms') and to pay heed to its contents.
4. Without being requested to do so by the orderer, the supplier is under obligation to enlighten the latter in writing as to the origin of the goods supplied as per customs legislation (supplier's declaration). If the origin of the goods to be delivered changes, the supplier shall notify the orderer of the fact in writing immediately and without being requested to do so. If the orderer is disadvantaged as a result of an improper, delayed or incorrectly submitted supplier's declaration and / or change notification, the supplier shall be liable in full unless he was not responsible. If requested to do so by the orderer, the supplier shall furnish proof that the information on the origin of the goods is correct in the form of an information certificate confirmed by customs administration.

VIII. Delivery periods, delivery deadlines, consequences of default

1. Delivery deadlines and delivery periods agreed in the context of on-call orders are binding. The day of delivery is deemed to be the day on which the goods arrive at the goods-in department of the orderer or, in the case of performance, the date of final acceptance. If a delivery deadline is not met, the orderer has the right to obtain the missing quantities or performance from other

suppliers. Compensation is to be made by the supplier for loss or damage incurred by the orderer as a result of such delays or as a result of his having thus purchased goods in replacement. In particular, this includes claims made by customers of the orderer. The orderer has the right to refuse any goods which are delivered prematurely or to put them into storage at the expense and risk of the supplier. The supplier shall notify the orderer without delay of any foreseeable delays in delivery.

2. If a contractual penalty has been agreed for late delivery, the orderer may assert a claim for said penalty until such time as payment for goods delivered has been made in full or, in the case of performance, until final payment.
3. If the supplier fails to meet an agreed delivery deadline, the orderer shall set the supplier a reasonable extension period in which to complete performance. The same shall apply if it becomes clear in advance that the supplier will not meet an agreed delivery deadline. If the extension period expires without success, the orderer shall have the right to rescind the contract; the orderer shall in such a case also be entitled to assert all his other statutory rights. The same as in the preceding sentences of this paragraph shall also apply if a counter-performance is to be rendered in parts and the supplier fails to meet the delivery deadline agreed for the rendering of a part of that performance, upon which the orderer may then also rescind the contract for the rendering of the performance as a whole if it is no longer reasonable to expect him to accept it; in such a case the orderer may, in addition to all his statutory rights, also demand compensation in lieu of performance, unless the supplier is not responsible for the delay.

IX. Entitlements relating to goods supplied, warranty

1. Supply and performance must, at the time of passage of risk or final acceptance, be of the agreed quality in accordance with the state of the art in science and technology, and be usable for the purpose intended. As minimum requirements, the statutory regulations covering the freedom of products from defects, the accident prevention regulations, the regulations on environmental protection, and the standards usually applied in industry are at all times integral parts of the supplier's obligations to perform. This also applies to the fulfilment of conformity requirements, in particular on the basis of European harmonised standards and the certificates required for conformity thereto, for example relating to use of the CE marking. It is also an integral part of the supplier's obligation to perform that he comply not only with the recognised rules of science and technology, but also with the agreed technical data and all the relevant statutory and official safety regulations applicable in Germany in their current version; this also applies to relevant EU regulations.
2. The supplier shall bear all costs incurred by the orderer on account of defective goods; in particular the costs of fault location, the costs of installation and removal, the costs of transport, infrastructure, labour and materials and all or any charges imposed by the customers of the orderer.
3. The supplier shall scrutinise the ordering information provided by the orderer and raise any objections without delay in writing, drawing attention in particular to misgivings, incompleteness or errors and making proposals to remedy them.
4. The supplier shall inspect the performance of his own suppliers and that of the orderer and shall be answerable for any defects therein as if they were his own.

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5. If the supplier fails to comply with the orderer's call for supplementary performance in the period set by the orderer, or if it is not reasonable to expect the orderer to assert claims for supplementary performance – in particular in cases of urgency – , the orderer has the right, at the expense of the supplier, and without setting an additional period, either (a) to procure replacements for defective parts or (b) to rectify defects himself or (c) to have them rectified by third parties.
6. If goods of the same kind are delivered and found to be defective repeatedly, the orderer has the right to rescind the entire supply contract, provided that he has notified the supplier of the defectiveness of the goods in writing and provided that the latter continues to deliver defective goods after such notification.
7. Prior to shipment, the supplier shall inspect the goods to see that they are free of defects and document such inspection. The orderer is under obligation to inspect the goods on receipt for obvious transport damage, identity and quantity. The orderer is not under any obligation to make inspections that go further than that.
8. Unless any other agreement has been made, claims for defects shall fall under the statute of limitation 60 months after the handing over of the goods or – in the case of performance – 60 months after final acceptance. If the supply and performance are destined to be treated and / or processed further or delivered elsewhere, said period shall not begin until the beginning of such treatment or processing and / or until further delivery to the third party or parties in question, though it shall in all cases commence 6 months after the handing over of the goods or final acceptance at the latest. In cases of replacement delivery and rectification of defects the warranty period shall begin anew in respect of the parts concerned.
9. If defects are discovered in supply and performance within the first 6 months after the passage of risk, the supplier shall bear the burden of proof if he wishes to show that said defects were not yet present at the time of the passage of risk.

X. Liability, insurance

1. The supplier shall hold harmless and indemnify the orderer and the orderer's customers against all liabilities, costs, loss, damage and expenditure caused by death, personal injury or damage to property or attributable to such, said death, personal injury or damage to property having been occasioned by (a) defective goods, (b) a breach of obligation on the part of the supplier, or (c) non-compliance with applicable law, legislation, regulations, provisions or announcements.
2. If a third party asserts a claim or claims against the orderer, the orderer shall inform the supplier of the fact in writing. On due request, the supplier shall give the orderer all reasonable assistance in the warding off and pursuance of claims.
3. If employees, representatives or other vicarious agents of the supplier are on the business premises of the orderer, the supplier shall be liable for all acts and failures to act by such persons both on and near the business premises of the orderer and undertakes to hold harmless and indemnify the orderer against all liabilities incurred by damage to property, personal injury or death (including court costs and costs of prosecution) such as are attributable to acts and failures to act on the part of the supplier's vicarious agents.
4. To protect against loss or damage, the supplier shall take out extended product liability insurance. He shall maintain such for

the duration of the supply relationship and provide evidence thereof without being requested to do so. The orderer and the supplier shall come to a separate agreement on the size of the sums insured. If in an insurance case the insurer does not agree to the assignment of insurance claims to the orderer, the supplier shall instruct the insurer to make payment to the orderer exclusively.

5. The supplier undertakes to insure all goods which he manufactures for the orderer or which he has received from the orderer for processing against damage of all kinds, in particular damage caused by water, fire or wind, in a sufficient sum at his own expense, and to provide the orderer with evidence of his having taken out such insurance without being requested to do so.
6. The supplier undertakes to ensure that he also enjoys adequate insurance cover such as is usual in industry against any product liability and recall costs that may be incurred. In the case of recall campaigns, the supplier is under obligation to reimburse all expenditure arising from or in connection with the carrying out of such campaigns, if the recall is attributable to the products of the supplier.

XI. Quality, documentation

1. If the supplier's supply and performance are destined for products to be used in the automotive industry, the supplier shall set up and maintain a certified quality management system in accordance with the recognised standards of the international automotive industry such as ISO 9001 ff, VDA 6.3, ISO/TS 16949 and the corresponding environmental management systems. If the supplier does not have or is not in a position to operate any such systems, he shall inform the orderer of the fact and document his processes in accordance with the latter's instructions, and he shall manufacture his products in accordance with the test procedures and using the test equipment specified by the orderer. The orderer and his customers have the right to audit the management systems. In consideration of the orderer's responsibility toward his customers, in particular in the automotive industry, the supplier shall issue the orderer with all the necessary information and grant the orderer – while safeguarding his own rightful interests in protecting his trade secrets – access to all documents, records, production facilities, processes and methods. This shall also apply if such a wish is imposed directly by a customer of the orderer and the customer himself wishes to be granted access to the supplier.
2. If the supplier should deploy any subcontractors, he shall place them under contractual obligation to meet these same quality requirements and to grant the orderer and the orderer's customers the right to carry out audits in their production facilities.
3. As regards the initial sample testing on products for the automotive industry, the publication "Assuring the quality of supplies in the automobile industry – supplier assessment, initial sample testing", published by the German Automobile Industry Association (VDA), will be incorporated in the contractual relationship. Furthermore, the quality guidelines and / or quality agreements of the orderer, which the supplier must request from the orderer, shall also apply. Regardless of that, the supplier shall continually examine the quality of the articles to be delivered. The parties shall inform each other of possibilities for quality improvement.

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- Any changes to the articles to be delivered shall require the prior written approval of the orderer. In particular, once production-stage initial samples have been approved by the orderer, neither the appearance, the qualities nor the material may be changed without prior written approval from the orderer.

XII. Industrial property rights, property of the orderer

- Having been engaged and thus authorised (by virtue of such engagement) to use the confidential expertise and other industrial property or trademark rights of the orderer, the supplier does not acquire any rights of his own relating thereto. The orderer, and only the orderer, shall remain entitled to all rights. The supplier shall not have the right to use or avail himself of such rights for any purposes other than the fulfilment of his obligations to supply and perform in respect of the orderer. He shall safeguard said rights as business secrets of the orderer.
- Drawings, samples, calculations, tools, test equipment or other material and immaterial aids made available to the supplier for the rendering of supply and performance to the orderer shall be and remain exclusively the property of the orderer. They are to be stored separately by the supplier, inventoried, maintained, serviced and labelled as the property of the orderer. Items of this kind may only be disclosed to third parties or made accessible to them in any other way if the orderer has given his prior written permission. Copying is only permissible with the written agreement of the orderer and in accordance with the copyright regulations.
- The supplier shall incorporate the obligations listed in XII. 2. in any contracts made with subcontractors.
- The supplier shall inform the orderer without delay of any access gained by a third party or parties to property of the orderer as listed in XII. 1. and 2. and facilitate and assist him in all legal defence. A separate agreement will be made covering the costs of compensation.
- If resources are made available to the supplier which are the property of a third party or parties, the orderer shall inform the supplier of the fact. The supplier shall fulfil the obligations imposed on the orderer by the third party or parties concerned relating to the handling of such resources.
- If any claims are asserted against the orderer or third parties for infringement of patent or trademark rights and / or copyright in connection with the manufacture or use of the supply / performance, the supplier shall be under obligation to indemnify the orderer or third parties against said claims and make compensation for any loss or damage incurred thereby, including judicial and extrajudicial costs. The supplier can only claim contributory negligence on the part of the orderer or third parties in the infringement of industrial property rights if he can prove that they acted with intent or in a grossly negligent manner.

XIII. Provision of parts and lending of tools, replacement parts

- If the orderer makes parts available to the supplier, the orderer reserves ownership of said parts. Any treatment, processing or reconstruction by the supplier will be carried out on behalf of the orderer. If the goods subject to rights of retention thus made available are processed together with other objects which do not belong to the orderer, the orderer shall acquire co-ownership of the newly manufactured thing in the proportion of the value of

the goods subject to rights of retention (purchase price plus turnover tax) to the other admixed parts at the time of processing.

- If the mixing is done in such a way that the thing of the supplier is to be seen as the principal thing, it shall be deemed to have been agreed that the supplier shall transfer to the orderer co-ownership of said thing *pro rata* in terms of value. It is hereby agreed that the supplier shall store the goods of which the orderer is the sole owner or co-owner diligently, without expense / compensation and free of charge.
- If the security rights to which the orderer is entitled under XIII. 1. and / or XIII. 2. exceed the purchase price of all the goods subject to retention of title of the orderer for which payment has not yet been made by more than 10%, the orderer shall, if so requested by the supplier, be under obligation to release security rights at his own discretion.
- The orderer and the supplier shall conclude separate contracts covering the manufacture of tools by the supplier for the orderer and / or the lending of tools by the orderer to the supplier. The contents of said contracts shall take precedence over the provisions in this paragraph XIII., the latter applying only supplementarily or in case no such separate agreements are actually concluded. The supplier shall be under obligation to transfer to the orderer ownership of the tools whose manufacture the orderer commissioned. The orderer reserves ownership of loaned tools.
- The supplier undertakes to use loaned tools exclusively for the purpose of producing the goods that are to be delivered to the orderer, and not for any other purpose. It is incumbent on the supplier to carry out the necessary servicing and inspection work and all repair and maintenance work at his own expense on the tools of the orderer, and to do so in a timely and thorough manner. The supplier shall notify the orderer of any abnormal occurrences immediately and in writing. The supplier shall insure the tools owned by the orderer at their replacement value at his own expense against loss or damage by fire, water and theft unless more extensive insurance cover has been agreed. The supplier here and now assigns all claims for compensation from said insurance to the orderer. The latter accepts said assignment.
- The supplier is aware of the fact that the orderer is, in accordance with the usual conditions, especially in the automotive industry, under obligation to continue delivering goods for up to 15 years after the end of worldwide series production. The supplier undertakes to take all precautions such as will ensure that the orderer is in a position to fulfil this demand.
- After discontinuation of worldwide series production, the supply of replacement parts, in respect of which the supplier is under obligation to the orderer, shall continue for 36 months at the supplier's last valid series price plus the costs actually incurred by the supplier for special packaging. After the expiry of said 36-month period, all suggestions on the part of the supplier for price increases in respect of the supply of replacement parts are to be listed by the supplier in detail and evidence of said increases is to be provided as a basis for price negotiations.

XIV. Miscellaneous

- If insolvency proceedings are instituted regarding the assets of the supplier, the orderer has the right to rescind that part of the contract which has not yet been performed.

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2. The law of the Federal Republic of Germany shall apply exclusively, there being no recourse to the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Place of performance and exclusive legal domicile shall be the registered office of the orderer. The orderer has the right to take action against the supplier at any other domestic or foreign judicial venue at which action is taken against the orderer himself by third parties.
4. If any provision of these conditions should be or become invalid, this shall not affect the validity of the remainder of the contract. The parties shall be under obligation to replace the invalid provision with a clause which resembles it as closely as possible, both in legal terms and in terms of its economic aim.