

General Conditions of Purchase
WILHELM NIEMANN GmbH & Co., Melle

§ 1. General – Scope

1. These Conditions of Purchase exclusively apply. Any conditions set by the supplier that are deviating from or are supplementary to these Conditions of Purchase will not be accepted unless we explicitly approved them in writing. These Conditions of Purchase shall also be valid if we accept the delivery of the supplier without reservation in recognition of contrary or supplementary terms and conditions of the supplier.
2. All agreements made between us and the supplier for the purpose of executing this order are to be stipulated in written form in this contract.
3. These Conditions of Purchase exclusively apply to entrepreneurs according to § 310 paragraph 4 German Civil Code.

§ 2. Quotation – Quotation documents

1. The supplier is obligated to accept our order within a period of two weeks after receipt of order.
2. We reserve the ownership and copyrights of photos, drawings, calculations and other documents. They may not be made accessible to third parties without our explicit written approval. They shall exclusively be used for the production on the basis of our order. After having carried out the order they have to be returned to us unsolicited. They shall be maintained in secrecy against third parties, thus the regulation of § 9 paragraph (3) is valid additionally.

§ 3. Prices – Payment conditions

1. Prices specified in the order are fixed prices. Prices include a delivery “free domicile” as well as any packaging, unless stipulated otherwise in writing. The return of the packing requires special agreements.
2. Invoices will be processed only if these include the order number specified in our order. The supplier is responsible for all consequences resulting from the non-observance of this commitment, unless he proves that he is not responsible for this.
3. We shall pay the purchase price, unless otherwise agreed in writing, either within 14 days after taking delivery and receipt of invoice, with a 3% discount, or within 30 days after receipt of invoice, net cash. The delivery has only then be carried out completely after having received all necessary documents like documentations, operating manuals, certificates and others.
4. We shall be entitled to claim statutory setoff and retention rights.

§ 4. Delivery time

1. The delivery date mentioned in the order is binding.
2. The supplier shall promptly notify us in writing if there will be likely delays in meeting delivery dates and deadlines, explaining the reasons for the delay and specifying how long they are expected to prevail.
3. In case of the delivery delay we shall be entitled to legal claims. We are especially entitled to demand compensation instead of the performance and cancellation after the fruitless end of an appropriate period. In case we demand compensation the supplier has the right to prove that he is not responsible for the breach of duty.

§ 5. Passing of risk – Documents

1. The delivery shall be effected free domicile unless otherwise agreed in writing.
2. The supplier is obligated to exactly indicate our order number on all shipping documents and delivery notes. If he omits this we are not responsible for any delays in processing.

§ 6. Defect inspection – Liability of defects

1. We are obligated to inspect the quality and quantity of the delivered goods within an appropriate period. The reprimand is in time if the supplier is notified within an appropriate time of 5 working days after receipt of the goods or regarding hidden defects after this has been detected.
2. The supplier shall be liable according to the applicable legal provisions, in particular for defects of the delivery, whereas this liability is in no way limited or disclaimed with respect to cause or amount. In principle we shall be entitled to choose the type of subsequent performance, either elimination of the defect or delivery of a new product. We explicitly reserve us the right for damages, especially the one of compensation instead of the performance.
3. We shall have the right to rectify the defects ourselves at supplier's costs in urgent cases or to avert danger or major damage.
4. Claims for defects shall lapse 36 months after the passage of risk.

§ 7. Product liability – Release – Product liability insurance protection

1. If the supplier is responsible for a product damage he is obligated to exempt us from any third-party claims on first demand if the cause for this lies in the supplier's domain and he is liable himself in the outside affair.
2. Within the scope of his liability for cases of damage in the sense of paragraph (1) the supplier is also obligated to reimburse to us all expenses according to §§ 683, 670 German Civil Code as well as according to §§ 830, 840, 426 German Civil Code that are incurred by or in connection with the repair actions at the final customer initiated by us. We will inform the supplier – as far as possible and reasonable – about content and extent of the recall action to be carried out and will give him the opportunity to express his opinion. Other legal claims remain untouched.
3. The supplier shall undertake to carry an extended product liability insurance with a blanket coverage of EUR 2,000,000.00 (two million Euros) per personal/property damage claim – as a lump sum. However, our claims shall not be limited to the amount insured.

§ 8. Protection rights

1. The supplier warrants that his consignment and its utilization do not violate any rights of third parties within the Federal Republic of Germany.
2. The supplier shall be obligated to indemnify us on our first written demand against all claims that third parties assert against us. We are not entitled to make any agreements with the third parties, especially a settlement, without approval of the supplier.
3. The duty of exemption of the supplier refers to all expenses necessarily incurred by or in connection with the use by a third party.
4. The limitation period is ten years after the completion of contract.

§ 9. Retention of ownership – Providing – Tools – Secrecy

1. Parts provided by us to the supplier remain our property. The parts are processed and treated by the supplier for us. If in connection with goods of third parties rights of ownership continuing to exist for the latter, then we shall acquire co-ownership in proportion to the objective values of these goods (purchase price plus value added tax) at the time of processing.
2. We reserve the ownership of tools provided by us. The supplier shall be obligated to use the tools solely for producing the parts ordered by us. The supplier is obligated to insure the tools made available by us for the original value on his own expenses against fire, water and theft damages. At the same time the supplier already now transfers us all compensation claims from this insurance. We herewith accept the transfer. The supplier must at his own expenses carry out care and maintenance for the tools provided. He has to inform us immediately about possible faults. If he omits this culpably claims for damages remain untouched.
3. Any photos, drawings, calculations and other documents and information made available by us shall be maintained in secrecy by the supplier. They may only be revealed to third parties with our explicit approval. This provision also extends beyond the duration of contractual relations. It ceases if the production knowledge contained in the photos, drawings, calculations and other documents made available has been made public.

§ 10. Place of jurisdiction – Place of fulfilment

1. In case the supplier is a registered merchant, the registered office of our firm is the place of jurisdiction. However, we are entitled to also sue the supplier at his place of residence.
2. Unless otherwise agreed in the order the registered office of our firm is the place of fulfilment.