

# GENERAL TERMS AND CONDITIONS OF PURCHASING OF WEPF GMBH (GTC)

Status: 1.th of August 2018



## I. Scope of applicability

1. These General Terms and Conditions of Purchasing ("GTC") (GTC of WEPF GmbH, Schlauch-Rohr-Technik, Max-Planck-Strasse 15, D-89584 Ehingen, Germany ("we" or "WEPF")) shall apply to all business transactions governing the supplying of goods to WEPF by the Supplier.
2. The scope of applicability of these GTC shall be restricted to agreements with business enterprises (*Unternehmer*), legal persons under public law, or an investment fund under public law (*Sondervermögen*). These GTC shall not apply to transactions with consumers within the meaning of § 13 of the *Bürgerliches Gesetzbuch* (the Civil Code, the "*BGB*").
3. These GTC shall apply exclusively. The inclusion of terms and conditions of the Supplier that contradict, supplement, or deviate from our GTC is herewith controverted. Nor shall such have any applicability even if we accept a delivery of the Supplier with knowledge of or without express objection to the deviating terms and conditions of the Supplier.
4. Any individual agreements (including ancillary agreements, restatements, and amendments) made with the Supplier in the individual instance shall in each instance take precedence over these GTC.
5. These GTC shall also apply to any future business transactions between WEPF and the Supplier, without requiring a renewed inclusion.
6. The foregoing shall be without prejudice to any rights, extending above and beyond these GTC, to which WEPF is entitled under the provisions of law or pursuant to other agreements.
7. The provisions of these GTC shall be without prejudice to the allocation of the burden of proof under provisions of law.
8. If a provision of these GTC makes reference to the written-form (*Schriftform*), then the written-form requirement (*Schriftformerfordernis*) shall be preserved by the use of the text-form (*Textform*) (§ 126b BGB).

## II. Rights in documents

1. Documents relayed within the framework of the contract initiation shall remain our property and shall be allowed to be made available to third parties only with prior written consent.
2. We shall be exclusively entitled to all rights, including, but not limited to, patent, copyrights, and inventor's rights in documents, designs, devices, drawings, calculations, drafts, and plans created by us. The making of such accessible to third parties shall be allowed only insofar as we have issued our express consent for this purpose.
3. If we leave the above-described objects or documents, then there shall be no transfer or granting of rights (license) to the Supplier.

## III. Contract formation

1. Prior to acceptance, the Supplier shall have to advise us of obvious errors (e.g., misspellings or miscalculations) and any incompleteness of the order, including the order documents, for the purpose of correction and/or rendering such complete.
2. Contract formation shall be effected via our ordering.

3. The Supplier should confirm to us the contract entered into and brought about by our order confirmation/order within a time period of two (2) business days, using at minimum the text-form (*Textform*).

## IV. Delivery time; failure to meet the delivery date; compensatory damages

1. Subject to an expressly deviating agreement in the individual case, a delivery date communicated by us shall be binding.
2. The Supplier shall not have the right to perform prior to elapsing of the delivery date.
3. The Supplier shall be obligated to inform us in writing without undue delay if it likely cannot comply with stipulated delivery times – regardless of the reason. Any assertion of damages arising from default shall not be precluded as a result, any more than from a later acceptance of the delayed delivery or performance.
4. If the Supplier enters into default, then WEPF shall be able to demand for each week commenced a sum in the amount of 0.5% of the order value, but totaling a maximum of 5% of the order value. We shall have the right to demand the damages alongside the fulfillment of the order. WEPF reserves the right to substantiate greater damage, and the Supplier reserves the right to substantiate lesser damage.

## V. Performance; performance by third parties; delivery slip; passage of risk; default of acceptance

1. The Supplier shall have the right to have third parties (e.g., subcontractors) render the performance owed by it, insofar as through this, the justified interests of WEPF are not deleteriously impaired. For the performance intended to be rendered by third parties, the Supplier shall be obligated to inform us in a timely manner, in advance, concerning all circumstances which could be of importance in assessing whether a deleterious impairment of our interests is present.
2. The Supplier shall bear the procurement risk for its performances, if nothing else is stipulated in the individual case.
3. Subject to an expressly deviating agreement in the individual case, the delivery shall be effected "free domicile" to the location specified in the order. If the destination is not specified and nothing has been stipulated, then the delivery is to be effected to our business seat in Ehingen, Germany. The respective destination shall also be the place of performance (creditor-side performance and effectuation obligation (*Bringschuld*)).
4. A delivery slip is to be enclosed with the delivery, specifying the date, content of the delivery, quantity delivered, weight per packaging unit (gross/net), WEPF article number, and our order identification (order number).
5. The risk of accidental destruction and of the accidental impairment of the item shall pass to us upon handover at the place of performance. It shall equate to handover or acceptance if we are in acceptance default.
6. The following provisions shall apply in the event of the occurrence of acceptance default by us: even in such an event, the Supplier shall have to expressly offer its performance to us if a definite or definable calendar time period is stipulated for an action or for an assistive action on our part (e.g., provision of material). If we enter into ac-

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ceptance default, then the Supplier shall be able to demand, as contemplated by the provisions of law, compensation for its additional expenditures (§ 304 BGB). If the contract concerns an item to be fabricated by the Supplier and which item is non-fungible (individual fabrication), then the Supplier shall be entitled to additional rights only if we have committed ourselves to assistive action and if we are responsible for the omission of the assistive action.

## VI. Prices and terms and conditions of payment

1. The price specified in the order shall be binding. All prices are understood to be plus the statutory sales and value-added tax (*Umsatzsteuer*) valid as of the date of performance.
2. Insofar as nothing else has been stipulated in the individual instance, the price shall include all performances and ancillary performances of the supplier as well as all ancillary expenses (e.g., proper packaging and transportation costs, including any possible transportation and general liability insurance).
3. Invoices are to be submitted in duplicate with all appurtenant documents and data after delivery has been effected. To the extent that certifications concerning material inspections have been stipulated, such shall constitute a material part of the delivery and are to be sent to us by no later than with the goods.
4. Subject to an expressly deviating agreement in the individual case, the stipulated price is to be paid within thirty (30) calendar days from complete delivery and performance (including any stipulated acceptance). If we make payment within fourteen (14) calendar days, then the Supplier shall grant us a 3% early-payment discount (*Skonto*) off the invoiced amount.
5. In the event of bank wire transfer, payment has been effected in a timely manner if our wire-transfer order is taken into receipt at our bank on the Friday following the expiration of the notice period under no. 4.

## VII. Setoff; right of retention; assignment

1. We shall be entitled to rights of setoff and retention as well as the objection of a contract not met to plead non-fulfillment of the contract within the scope provided by law. We shall, in particular, have the right to withhold matured payments, as long as we still have claims against the Supplier, which claims arise from performances that are incomplete or defective.
2. The Supplier shall have a right of offset or retention only as against judicially established or undisputed counterclaims.
3. The Supplier shall be allowed to assign, in whole or in part, the rights and duties arising from the contractual agreement only after our prior written consent. The foregoing shall not apply to the assignment of a receivable for payment within the meaning of § 354a of the *Handelsgesetzbuch* (the Commercial Code, the "HGB").

## VIII. Provisions governing packaging and shipment

1. The Supplier shall have to comply with statutory and, additionally, with our packing provisions. If the Supplier culpably deviates herefrom, then all expenses, damages, etc., arising therefrom shall be to the detriment of the Supplier. The Supplier

shall have to take back any packaging material upon our demand.

2. Our order references are to be clearly and visibly affixed to the packaging.
3. The requisite delivery documents are to be enclosed with the goods. In particular, a delivery slip is to be enclosed in duplicate with every delivery.
4. Direct shipments to our customers are to be carried out only after our prior consent and in our name.

## IX. Ownership proviso

1. Any processing, commingling, or compounding (further processing) by the Supplier of objects provided shall be performed for us. The same shall apply in the event of further processing of the delivered goods by us, so that we are considered the manufacturer and acquire title in the product by no later than the time of the further processing, in accordance with the provisions of law.
2. The passage of title in the goods to us shall have to be effected absolutely, and without any consideration to payment of the price. If, however, in the individual case, we accept an offer of the Supplier upon which passage of title is conditioned upon the payment of the purchase price, then the ownership proviso of the Supplier shall extinguish by no later than upon payment of the purchase price of the goods delivered. By extension, in any event all other forms of ownership proviso shall be precluded, including, but not limited to, the extended and shared ownership proviso, and the ownership proviso extended to further processing.

## X. Stipulated material quality (*Beschaffenheit*) – quality inspections and assurance

1. The technical specifications, qualities, and standards set forth in our orders shall be a component of the contract and shall constitute the contractually stipulated material quality (*Beschaffenheit*). These shall also apply to subsequent orders and to amendments to and restatements of orders. If the Supplier has any concerns about the nature of the execution desired by us, then the Supplier shall have to communicate such to us in writing without undue delay. In addition to the stipulations governing material quality, the goods shall have to be suitable for the indicated as well as the customary purposes.
2. Also to be considered as an agreement concerning the material quality (*Beschaffenheit*) shall be those product descriptions which – particularly via designation or inclusion into our order – are the purpose of the respective contract or, in the same manner as the GTC, have been incorporated into the contract. In so doing, it shall make no difference whether the product description originates from us, from the Supplier or from the manufacturer.
3. For orders by sample, the delivery and the performance shall have to meet the specifications, qualities, and standards of the sample.
4. We shall have the right to inspect or to have third parties inspect, at the premises of the Supplier, its upstream suppliers, and its subcontractors, (i) the material procured by the Supplier for filling the order, (ii) the manufacturing process, and (iii) the goods readied for dispatch.

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5. Independently of the foregoing terms and conditions, the Supplier shall have to (i) continuously inspect the quality of its deliveries and performances at its own responsibility, (ii) maintain a corresponding quality assurance system, and (iii) upon demand submit to us the records concerning such. The Supplier shall conduct quality assurance suitable in nature and scope and commensurate with the latest state-of-the-art technology and shall verify such to us upon demand.
6. The Supplier promises that the goods delivered by it shall comply with (i) all relevant statutory rules and regulations of the Federal Republic of Germany, and – insofar as we have issued notice that we will use a divergent location – (ii) the provisions of law valid at this location as well. We shall receive the requisite documents, e.g., the conformity or manufacturer declaration, by no later than upon delivery of the goods. The requisite technical documents are to be enclosed with the delivery. The documentation shall be owed in the English or in the German language. The Supplier shall be entitled to choose.
7. To the extent not otherwise stipulated, the Supplier shall be obligated to label the objects in its delivery in such a manner that they can be permanently recognizable as its products. The Supplier promises that the necessary labeling, e.g., the CE-identification, shall be undertaken prior to dispatch. The Supplier guarantees the traceability of its goods delivered to WEPF over a time period of fifteen (15) years commencing from the acceptance of the delivery, and shall be obligated to make available to WEPF any and all information concerning such.

## XI. Claims for defects

1. To the extent that nothing else has been determined, the provisions of law shall apply to our rights in the event of (i) material defects and title defects in the goods (including incorrect and short delivery, as well as improper assembly and defective instructions for assembling, operation, and use), and (ii) other breaches of duty by the Supplier.
2. For the merchant's duty of inspection and to file notice of complaint, the following provisions of law (§§ 377, 381 HGB) shall apply, with the following proviso: our duty to inspect shall be confined to defects which, in the course of our incoming-goods control, become perceptible and evident upon external evaluation, including the delivery papers (e.g., damages incurred during transportation, incorrect and short delivery). If the Supplier has obligated itself to perform its own outgoing-goods control for quality assurance, then we shall be obligated to filing notice of complaint only of obvious defects, but not to inspect the goods. Such shall be without prejudice to our duty to file notice of complaint for subsequently discovered defects. In every case, our complaint (notice of defect) shall be deemed as being timely and without undue delay if it is received at the Supplier within five (5) business days of discovery of the defect.
3. If a defect becomes manifest within the first six (6) months of the passage of risk, then it shall be presumed that the item was already defective upon the passage of risk.
4. The expenditures (including any possible dismantling and assembly) for the purpose of inspection and subsequent improvement shall be borne by the Supplier. Such shall be borne by the Supplier even if it becomes evident that there

is actually no defect present. In the event of unjustifiable demands for remediation of defect, we shall be liable only to the extent that we recognized or due to gross negligence failed to recognize, as of the date of the demand, that there was no defect present.

5. If the Supplier does not comply with its obligation for subsequent performance – at our option, by remediation of the defect (subsequent improvement) or by delivery of a defect-free item (replacement delivery) – within a reasonable time period established by us, then we shall remediate the defect ourselves and demand from the Supplier compensation of the expenses necessary for this purpose or commensurate advance. If the subsequent performance by the Supplier fails or is unreasonable for us (e.g., due to particular urgency, jeopardizing of operational safety, or the looming occurrence of disproportionate damages), then the setting of a time period shall not be required; we shall inform the Supplier without undue delay as far as possible in advance of circumstances of this nature.
6. In fulfilling its obligations, the Supplier shall be liable for any culpability – as for its own culpability – of its employees and other third parties which the Supplier engages for the purpose of fulfilling its obligations.
7. Apart from such, in the event of a material or title defect, we shall have the right under provisions of law to reduction of the purchase price or to rescission from the contract. Moreover, in accordance with provisions of law, we shall have claim to compensatory damages and to reimbursement of expenses.

## XII. Supplier recourse

1. Along with claims for defects, we shall be entitled, without restriction, to our statutorily determined recourse claims within a supply chain (supplier recourse in accordance with §§ 445a, 445b, 478 BGB). In particular, we shall have the right to demand from the Supplier the type of subsequent performance owed by us to our purchaser in the individual case (subsequent improvement or replacement delivery). Our statutory selection right (*Wahlrecht*) (§ 439 para. 1 BGB) shall not be restricted hereby.
2. Before we acknowledge or meet a defect claim being asserted by our purchaser we shall notify the Supplier and request remedy of the defect. If the remedy of the defect is not made within a reasonable time period, then the defect claim actually guaranteed by us shall be deemed owed to our purchaser; in this event, any rebuttal shall be incumbent upon the Supplier.
3. Any claims of ours arising from supplier recourse shall also be valid if the goods, prior to their sale to a consumer, were further processed by us or by one of our purchasers, e.g., by being built into another product.

## XIII. Product liability and recall

1. If the Supplier is responsible for product damage, then it shall have to indemnify us in this regard from any third-party claims when the cause is established as being in its area of control and organization.
2. As part of the Supplier's obligation to indemnify, the Supplier shall have to reimburse expenditures as contemplated under §§ 683, 670 BGB, which expenditures arise from or in connection

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with an availment by third parties, including any recalls carried out by us. We shall – to the extent possible and reasonable – inform the Supplier about the contents and the scope of recall measures, and give the Supplier the opportunity to make a statement. Such shall be without prejudice to additional claims as provided by law.

## XIV. Insurance

1. The Supplier shall be obligated (i) to take out appropriate business liability insurance and product liability insurance, as well as appropriate insurance covering the costs of any recalls, which insurance shall cover the liability under the contractual agreement including under these GTC, and (ii) to maintain said insurance at a minimum through the expiration of the limitation period.
2. The insurance pursuant to Sect. 1 shall have to cover a liability amount of at least EUR 5 million per incidence of damage.
3. The Supplier shall be obligated to furnish, unsolicited and at least once per calendar year, substantiation that the insurance has been taken out and maintained.
4. The Supplier's duty to insure shall not constitute either (i) any preclusion of liability or (ii) an amount-based limitation of liability inuring to the benefit of the Supplier.

## XV. Non-disclosure

1. The contracting parties shall be obligated (i) to treat confidentially all information acquired in the scope of the cooperation and which has become known verbally or in writing, (ii) not to disclose such information to any third parties, and (iii) particularly not to use such information in competition with any contracting party.
2. In connection with the cooperation stipulated herein, the parties shall obtain access to documents, including, but not limited to, drawings, sketches, and patterns, verbal information, and knowledge and experience ("*Information*").
3. Both parties shall be obligated,
  - to keep the Information secret vis-à-vis any third parties and to refrain from publishing the Information;
  - to use the Information and the know-how acquired thereby only within the scope of the cooperation, and particularly not for their own manufacturing or deliveries to third parties;
  - to make the Information accessible only to employees who are engaged to fulfill the duties arising from the cooperation,
  - to take suitable measures to ensure that employees keep the Information secret and use it only for the purpose of fulfilling tasks within the scope of the cooperation.

All documents made available by both parties, including, but not limited to, drawings, sketches, and designs, shall remain the exclusive property of the party making them available. Both parties shall be obligated to treat and store these carefully, and after the end of the cooperation, to return them in their entirety, including any copies made, or to destroy them on demand.

4. The above obligations shall not apply to confidential information which, prior to receipt from the party furnishing the information, was either generally accessible or was in the possession of the recipient without any obligation of confidential treatment. Apart from such, the non-

disclosure obligations vis-à-vis the party furnishing the information shall end insofar as:

- the confidential information was, provably, publicly known at the time of the disclosure, or was generally accessible, or
  - the confidential Information came into the knowledge of the recipient via a third party without there being any provable breach of the non-disclosure duty, to which the party furnishing the information is obligated, or
  - the recipient, provably, and independently from the party furnishing the Information, disposes over the same confidential Information as the result of its own development or subsequent research, or
  - the confidential Information was released through written consent by the party furnishing the Information.
5. This obligation shall commence with retroactive effect as of the commencement of the cooperation and shall end five (5) years after the end of the business relationships between WEPF and the Supplier. Such shall be without prejudice to the provisions of law, including, but not limited to, rules and regulations of competition law, as well as other protective rights of the party furnishing the information.

## XVI. Furnishing goods and the means of manufacturing

1. Goods furnished by us, as well as models, matrices, templates, designs, tools, and other means of manufacturing, shall remain our property. The processing or restructuring of such goods shall be performed for us by the Supplier. The means of manufacturing shall not be allowed to be used for deliveries and performances to third parties. Material furnished shall remain – even if it is invoiced – our property. Its use shall be permissible only for our assignments. The processing or restructuring of the furnished material shall be effected for us. We shall become direct owners of the new item.
2. The Supplier shall have to treat the goods and the means of manufacturing carefully, to maintain them, and to insure them at their replacement value and at the Supplier's own expense, against damages arising from fire, water, and theft.
3. Upon our demand, the Supplier shall have to determine and report to us for our annual financial statement each year – in the event of justified occasion to do so, even more frequently – the actual inventory of the goods and means of manufacturing furnished by us.

## XVII. Limitation period

1. The reciprocal claims of the contracting parties shall lapse in accordance with the provisions law, to the extent that nothing else is set forth below.
2. In derogation of § 438 para. 1 no. 3 BGB, the general limitation period for defect claims shall be three (3) years from delivery to us. To the extent that an acceptance has been stipulated, the limitation period shall commence with the acceptance.
3. For parts subsequently improved or delivered as replacements, the limitation period shall commence running anew with the subsequent improvement or replacement delivery. For parts which are not in operational use during an inspection for defects and/or during the remediation



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tion of defects, the running limitation period shall be extended by the period of time during which operations were interrupted.

4. The limitation period of our warranty claims shall be tolled as long as the Supplier, who conducts an examination for the presence of a defect, (i) communicates the result of this examination to us and rejects the warranty claims or (ii) declares the defect to have been remedied or (iii) finds a remedy. The limitation period of our claims shall become effective by no earlier than three (3) months after the end of the tolling period.
5. The limitation periods of the purchase right, including the above extension, shall apply – in the scope as provided by law – to all contractual defect claims. To the extent that we are also entitled to extra-contractual compensatory damages, the ordinary statutory limitation period (§§ 195, 199 BGB) shall apply for this purpose, if the application of the limitation periods of the law pertaining to sales of goods does not, in the individual case, lead to a longer limitation period.

## **XVIII. Jurisdiction, applicable law**

1. The exclusive place of jurisdiction shall be the court competent for the seat of WEPF in Ehingen, Germany. The foregoing shall not apply, insofar as the Supplier is in fact a business enterprise (*Unternehmer*), but not a merchant (*Kaufmann*), a legal person under public law, or an investment fund (*Sondervermögen*) under public law.
2. Above and beyond Sect. 1, WEPF shall have the right to bring suit against the Supplier at its place of general jurisdiction (*allgemeiner Gerichtsstand*).
3. The law of the Federal Republic of Germany shall apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

## **XIX. Written-form (*Schriftform*)**

Any and all amendments to and restatements of these GTC, as well as the waiver of their application, shall require the written-form (*Schriftform*) as contemplated under § 126 BGB). Such shall also apply with regard to any possible waiver of the written-form requirement (*Schriftformerfordernis*).

## **XX. Severability clause**

1. Should one or several provisions of these GTC or parts of a provision be ineffective, then such ineffectiveness shall be without prejudice to the effectiveness of the remaining provisions or to the Agreement as a whole. However, having regard to the case-law of the Bundesgerichtshof, according to which a severability clause merely results in a reversal of the burden of proof, it is the express intention of the parties to maintain the validity of the remaining provisions of these GTC in all circumstances.
2. Sect. 1 and 2 shall apply *mutatis mutandis* in the event of a loophole.