

General Purchase Terms and Conditions

of TERBERG Spezialfahrzeuge GmbH



1. Scope of application, conflicting business terms, future transactions, overriding agreements

- 1.1 These General Purchase Terms and Conditions ("General Purchase Terms") apply to all contracts we conclude with our vendors and contractors ("Supplier(s)") including our related orders and acceptance confirmations.
- 1.2 The General Purchase Terms apply exclusively. Supplier terms conflicting with or deviating from these General Purchase Terms will not be accepted, unless they have been specifically approved by us in the particular case, and whether or not we, being aware of Supplier business terms contrary to or deviating from these General Purchase Terms, have unconditionally accepted the Supplier's deliveries and services.
- 1.3 In ongoing business relationships, the General Purchase Terms also apply to all future transactions between the Supplier and us, whether or not they have been expressly incorporated by agreement again.
- 1.4 Any individually negotiated agreements with the Supplier (including individually negotiated side agreements, amendments and changes) as well as any conflicting terms in our orders and acceptance confirmations shall take precedence over these General Purchase Terms.

2. Written form/text form, orders, formation of contract, modifications, Supplier declaration

- 2.1 All orders and acceptance confirmations, changes and other side agreements and arrangements made prior to or at the conclusion of the contract must be set forth in written form or text form (for example letter, fax, email, herein after "written form" or "in writing") to become legally effective.
- 2.2 The Supplier shall without delay confirm all our orders in writing, stating the order number. We may cancel any order that the Supplier has not accepted within two weeks after the receipt of the order.
- 2.3 The Supplier shall without delay alert us to any contradictory, incorrect or incomplete information about the goods or services in the order and await written clarification from us before dispatching the order confirmation or starting to perform the contractually agreed services.
- 2.4 Without our prior consent, the Supplier will not make any modifications, for example to the design, the composition, the method of dispatch or the packaging of the goods.
- 2.5 At our request, the Supplier shall submit a long-term supplier's declaration in conformity with EU law. If we have not been provided with a long-term supplier's declaration, the Supplier at the conclusion of the contract and at our request shall forward to us the required declarations certifying the origin of the goods for customs purposes. If necessary the Supplier will prove the information about the origin of the goods by way of an information certificate issued by the Supplier's customs office. The Supplier will be liable under the law for any and all disadvantages sustained by us as a result of a Supplier declaration being submitted not in proper form or late.

3. Prices, invoicing, payment terms, setoff and withholding rights

- 3.1 The prices indicated in our orders are fixed prices. Unless agreed otherwise, the prices are inclusive of delivery, "DDP place of fulfilment" (INCOTERMS 2020) as set out in section 5.2 and inclusive of all expenditures in connection with the deliveries and services owed by the Supplier, in particular but not limited to the cost of any inspection, acceptance, documentation, preparation of technical documents, packaging, shipping, customs and border clearance charges, and insurance. Where "DDP place of fulfilment" has not been agreed and the Supplier is obliged to dispatch the goods, the Supplier shall choose the most economic shipping method. Where the agreed price is not "inclusive of packaging", the packaging shall be billed at cost.
- 3.2 Invoices must be submitted by email and be verifiable. Invoices must indicate the product number and product name, our order number, the date of the order, the shipping note number and the date of the delivery or service.
- 3.3 Unless agreed otherwise, payment shall be made within 14 days after delivery or (for work results) acceptance and receipt of a contractual invoice as set out in section 3.2 with a 2% discount, or within 30 days net.
- 3.4 Any invoice failing to meet the criteria of section 3.2 above may be rejected by us, in which case the beginning of the above periods for payment shall be determined by the date of receipt of the new, duly prepared invoice. In the event of early delivery or services the agreed date of delivery or service shall take the place of delivery or service for the calculation.
- 3.5 Our setoff and withholding rights are governed by the applicable laws.

4. Delivery dates and times, pre-schedule deliveries and delivery by instalments, excess and short delivery, late delivery, contractual penalty

- 4.1 All dates and times for deliveries and services as indicated by us and/or as agreed are binding.
- 4.2 Unless agreed otherwise, deliveries are "DDP place of fulfilment" (INCOTERMS 2020) as set out in section 5.2. Where "DDP place of fulfilment" has not been agreed, the Supplier shall provide the goods in a timely manner considering the time commonly required for loading and dispatch and, if applicable, arrange for their dispatch with the carrier designated by us.

- 4.3 Pre-schedule deliveries and services, delivery/services by instalments as well as excess and short delivery are permitted only with our consent and must be identified accordingly in the shipping papers.

- 4.4 The Supplier shall without delay advise us in writing of any foreseeable delay in deliveries and services, indicating the reasons and the anticipated duration of the delay. This applies also in any event of force majeure, operational disruption, shortage of raw materials, etc. If the Supplier fails to so notify us at all or in a timely manner, the Supplier will be liable for any loss incurred by us unless the Supplier is not responsible for the absence of a (timely) notification.

- 4.5 If the Supplier is late with any delivery or service, we will have the right to charge a contractual penalty in the amount of 0.3% of the net value of the goods or services with which the Supplier is late but no more than 5% of the net value of such goods or services, for each completed day. Notwithstanding Sec. 341(3) BGB (German Civil Code), we may claim the contractual penalty until our final duty, for example the final payment, has been fulfilled. Nothing in this shall prejudice any further rights and remedies we may have for reason of the delay. Contractual penalty payments will be credited against any claims for damages as may exist.

5. Labelling/packaging, place of fulfilment for deliveries and services, shipping note

- 5.1 All goods must be duly and properly packaged and labelled in accordance with our instructions. The Supplier will be liable for any loss incurred by us as a result of the Supplier having packaged or labelled the goods improperly or contrary to our instructions, unless the Supplier is not responsible for the goods having been packaged or labelled improperly or contrary to our instructions. Where the Supplier is obligated to take back transport packaging in accordance with the German Packaging Act (Verpackungsgesetz) or foreign legislation the Supplier must retrieve the packaging from the place of fulfilment at the Supplier's expense.
- 5.2 The place of fulfilment for all deliveries and services shall be the place of delivery indicated in the order, unless agreed otherwise and notwithstanding the provisions of section 3.5. If no place of delivery is indicated in the order, the place of fulfilment shall be at our registered office in Hamburg.
- 5.3 Every delivery of goods must include a shipping note indicating our order number and describing the content of the delivery by our product number(s) (if stated in the order), the nature and the quantity of the goods. The Supplier shall reimburse us for any cost incurred as a result of culpable noncompliance with the above provisions.

6. Withholding right, setoff and assignment by the Supplier

- 6.1 The Supplier may assert withholding rights with respect to deliveries of goods or work results only on the basis of claims from the same contractual relationship that are undisputed or have been established by final enforceable judgment. Any setoff by the Supplier shall only be permitted on the basis of Supplier counterclaims that are undisputed or have been established by final enforceable judgment.
- 6.2 The Supplier is not permitted to assign its claims against us or have them collected by a third party, unless the Supplier has granted its supplier an extended reservation of title in the ordinary course of business. Nothing in this shall prejudice Sec. 354a HGB (German Commercial Code).

7. Passage of title, processing of delivered goods prior to the passage of title

Where a reservation of title has been agreed for delivered goods, the title passes to us at the latest upon payment of such goods. We have the right to process, sell or otherwise dispose of delivered goods in the ordinary course of business, including before the passing of the title.

8. Quality requirements, compliance, in particular RoHS/CE marking

- 8.1 With respect to the Supplier's deliveries and services, the Supplier is responsible for observing the current state of the art and the agreed technical data and specifications, without prejudice to further duties as may exist.
- 8.2 The Supplier, at its expense, is responsible to ensure compliance of its deliveries and services with all applicable requirements of European and national law governing the lawful distribution within the European Economic Area, Great Britain and Switzerland, in particular but not limited to the Directive 2011/65/EU of the European Parliament and of the Council of 8 June 2011 on the restriction of the use of certain hazardous substances in electrical and electronic equipment (RoHS) as applicable from time to time and the national transposition measures. Where required by law, goods must be provided with a CE marking (for example electrical and electronic equipment) and must be labelled and packaged in compliance with the applicable legal requirements. For any delivery of electrical and electronic equipment, the Supplier shall proactively and at the Supplier's expense provide us with a current EU declaration of conformity prior to the delivery and shall continually update the declaration in the event of ongoing business relationships. The Supplier shall be liable to us under the law for any and all losses and costs caused by any breach of these obligations and shall indemnify us against third party claims in this respect.
- 8.3 The Supplier shall comply with all other national, European and international laws applicable to the deliveries and other services, in particular but not limited to environmental protection, health and safety protection (including

any minimum wage), product safety, anticorruption, antiterrorism, and data protection legislation, as applicable from time to time, at the Supplier's expense. The Supplier will not take part in any child labour scheme, be it actively or passively, directly or indirectly.

9. Lack of conformity, warranty, time bar on warranty rights

- 9.1 Our warranty rights are governed by the applicable laws as amended by the terms of this section 9 and section 10.2.
- 9.2 With respect to deliveries of goods, we shall report any obvious lack of conformity to the Supplier within 14 days after the delivery and any latent nonconformity within ten days after it was discovered.
- 9.3 The Supplier shall bear all necessary expenditures in connection with determining and removing any lack of conformity, including expenditures incurred by us. Where the nonconforming goods have been incorporated in or attached to another product in accordance with their nature and intended purpose, the Supplier, as part of the cure to be provided, shall at our discretion either undertake the removal of the nonconforming item and fitting or attachment of the repaired or delivered conforming item at the Supplier's expense, or reimburse us for the necessary expenditures.
- 9.4 Any payment or acceptance of delivery of the goods by us from the Supplier prior to the determination of a lack of conformity shall not constitute an acknowledgment that the goods are free of any nonconformity or release the Supplier of its liability for lack of conformity.
- 9.5 We may at our discretion choose between the removal of a nonconformity or delivery of a replacement or, where work results are concerned, the completion of a new work result.
- 9.6 Where, due to particular urgency, it is not possible or reasonable to set a deadline for the Supplier to provide cure, we, without prejudice to our legal remedies, have the right to undertake or arrange for substitute performance and claim reimbursement of the necessary expenditures from the Supplier. We will give the Supplier advance notice of any such substitute performance, where possible.
- 9.7 Our warranty claims become time-barred 36 months after the beginning of the statutory limitation period; nothing in this shall prejudice any suspension or interruption of the limitation period as may be provided by law.

10. IP rights, indemnification, time bar

- 10.1 The Supplier grants us non-exclusive, perpetual, worldwide, irrevocable and assignable rights of use in all deliveries and work results eligible for intellectual property protection in order to integrate them in other products, distribute them and make them available to the public on the internet. In particular but without limitation, this includes the right to modify, edit or otherwise transform the deliverables and work results for purposes of integration and to distribute the deliverables and work results in the original or in a modified, edited or transformed form.
- 10.2 The Supplier shall indemnify us against any and all claims of third parties resulting from any infringement of patents, copyrights, design rights, trademark rights, name rights and other intellectual property rights and applications for intellectual property rights ("IP Rights") through the contractually agreed use of the deliverables and work results, unless the Supplier is not responsible for the infringement of rights. This applies equally to all necessary expenditures incurred by us in connection with any such third party claims, in particular the costs of legal defence.
- 10.3 Where the Supplier may be held liable under this section 10.2, the Supplier will be liable for all consequential losses incurred by us, particularly as a result of shortage of supplies and disruptions of production. The time bar on these claims is governed by section 9.7.

11. Supplier's liability for product damage, recalls, insurance

- 11.1 Except as otherwise provided in these General Purchase Terms, the liability and time bars are governed by law. Supplier liability limitations and liability disclaimers will not be accepted.
- 11.2 In the event of any product damage the Supplier will indemnify us against any third party claims, to the extent that the damage falls within the Supplier's sphere of control and organisation and the Supplier is liable in relation to third parties.
- 11.3 In the event of any necessary recall and/or recall ordered by the authorities or other actions required to avert danger to individuals or property of third parties, the Supplier will be liable for all expenditures, costs and losses incurred by us as a result of such recall or other action. The Supplier shall indemnify us against any such third party claims where the cause of the recall or other action is lack of conformity of the deliverables and/or packaging or services with the contract, particularly lack of conformity with the agreed specifications or contractual representations or a product defect, unless the Supplier is not responsible for the lack of conformity within the meaning of section 11.2 above. Nothing in this shall prejudice any further rights or remedies we may have.
- 11.4 Without prejudice to any further duties, the Supplier shall notify us without delay if the Supplier becomes aware of any specific circumstances with a view to the goods delivered or services rendered that necessitate a recall or other action according to section 11.3 above by us or by the Supplier and/or establish a relevant risk of product liability. The contracting parties shall seek to coordinate the further steps, while we will have the right to take the final decision on a voluntary recall campaign. Nothing in this shall prejudice any statutory reporting duties of the contracting parties.

- 11.5 The Supplier shall at the Supplier's expense and at least for the duration of the business relationship maintain liability insurance, including product liability insurance, providing for adequate coverage for the Supplier's deliveries and services; the product liability insurance shall provide a minimum cover of EUR 5 million per claim for personal injuries and property damage (including exclusive pecuniary losses) and a maximum annual indemnity limit of no less than EUR 10 million. Copies of the insurance policies shall be submitted to us upon request.

12. Confidentiality, advertising

- 12.1 The Supplier shall treat as confidential any trade secrets that we share with the Supplier or which are disclosed to the Supplier in connection with the business relationship with us, unless the trade secret (a) was in the public domain at the moment of its disclosure or becomes public domain thereafter, (b) is disclosed to the Supplier by a third party without breaching any nondisclosure obligation or (c) was in the possession of or known to the Supplier at disclosure. Trade secrets include our internal procedures, knowhow, business strategies, business plans and digitally embodied information, regardless of whether they are identified as "confidential" or "classified", whether they are of any special economic value to the Supplier or whether we have any other technical or organisational measures in place to protect confidentiality. The Supplier may use the trade secrets only to fulfil the Supplier's obligations under this contract and shall without delay return all trade secrets to us at our request.
- 12.2 The Supplier shall not advertise the business relationship with us or use it for reference purposes, except with our express consent.

13. Severability, governing law, place of jurisdiction

- 13.1 If any of the provisions of these General Purchase Terms are wholly or partially invalid, nothing in this shall prejudice the validity of the remaining terms and of the contract with the Supplier in its entirety.
- 13.2 The governing law shall be German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 13.3 The place of jurisdiction for all disputes arising between the Supplier and us shall be the ordinary courts of law at our registered office in Hamburg if the Supplier is a merchant or a legal person under public law or has no general forum in Germany. We have the right, however, to bring legal proceedings against the Supplier before any other court having legal jurisdiction. Nothing in this shall prejudice the validity of any statutory provisions on exclusive jurisdiction.