

Purchasing Conditions of Wemhöner Surface Technologies GmbH & Co. KG

1. General

Our terms and conditions apply exclusively to our purchase orders and conclusion of contracts. Terms and conditions of the supplier deviating from our terms and conditions of purchase are only recognised insofar as we expressly agreed to them in writing. Unconditional acceptance of products and services of the supplier or payment for it does not constitute agreement.

2.0 Conclusion of Contract / Framework Agreements and Orders

Our orders must be placed in writing. An order with a corresponding note on the order form is effective without personal signature. The supplier is obligated to accept the order in the same form within a period of two weeks. After expiry of the period we are entitled to cancel the order. All conditions, specifications, standards and other documentations attached to the order or listed in the order are contents of the order. Further explanations detailing the delivery procedures are contained in a supplier's guideline which the supplier can obtain from us. The supplier has to consider the order as a business secret and to treat it confidentially. He is liable for all damages incurred by us from a damage of the above mentioned obligation.

2.1 Framework Agreements

If a written framework agreement has been concluded with the supplier for the delivery of special products, the purchase or release order concerning such products do not need to be confirmed. Single purchase orders within the framework agreement become effective, if the supplier does not disagree within 5 working days after receipt. An order confirmation deviating from the order will only be effective with our written confirmation. Release orders within agreed delivery schedule do not need to be confirmed.

2.2 Data Transmission

With the installation of a data transmission to the supplier the requirement of written purchase/release orders as specified under 2.0 shall no longer be required. However, any other legally binding statement deviating from or supplementing the outline agreement shall be made in writing.

3. Change of the Performance or Delivery Item

If we require modification of deliverables, the supplier has to inform us immediately in written form and proved about possible extra charges or reduced prices as well as about changes of delivery dates.

4. Force Majeure

Production interruptions according to unavoidable events entitle us to withdraw from the contract. Further all obstacles without fault delaying acceptance shall prolong the time for delivery and time of payment for the respective length of the event.

5. Delivery Terms

The agreed delivery dates and deadlines are binding. If the agreed delivery date can not be met, the supplier shall be in default without the necessity of a warning. The supplier must inform us immediately about any foreseeable delays in delivery. In the event of a delayed delivery we are entitled to legal claims. Additional costs, especially in the event of required covering purchases will be borne by the supplier. The unconditional acceptance of the delayed delivery does not constitute a waiver of claims.

6. Delivery

All delivery documents are to be completed with all information required by us, especially with order number, order position, commission number, schedule number, dimensions as well as quantity and weight of each position. Costs arising due to non-fulfilment of our delivery regulations are to be borne by the supplier. For quantities, weights and dimensions the values taken by our acceptance apply as long as no other proof is given. Unless otherwise agreed in writing, all deliveries follow free at place of use. Partial deliveries require our agreement and are to be indicated in the delivery documents. All shipments must be packed in appropriate packaging in compliance with the general regulations of the transport and forwarding industry. Costs for transport insurance and packaging are not accepted by us. In accordance with the German packing ordinance the supplier is obligated to take back the packing and to pay the costs for transport and recycling.

7. Invoices and Payments

The supplier is obligated to submit a separate invoice for each delivery or service. The wording of the invoice must match with our order description and must include the order number as well as the date of the order. Invoices, not bearing this information are to be returned and do not constitute maturity. The period for payment of the invoice starts with the workday of the reception of the orderly and testable invoice or the acceptance of the goods or the service – whichever is later.

Unless otherwise agreed following terms of payment applies:

Invoices with the date of receipt 1st – 15th of the month are payable at the 15th of the following month with a discount of 3%, or within 30 days by the end of the discount period to be paid net.

Invoices with the date of receipt 16th – 31st of the month are payable at the 30th of the following month with a discount of 3%, or within 30 days by the end of the discount period to be paid net.

Due to defective deliveries we are entitled to hold back the payment until orderly fulfilment without loss of any discounts or other payment benefits.

8. Guarantee and Material Defect

The supplier guarantees that the delivery item is free of material defects and defects of title and corresponds to the contractually agreed quality.

We are entitled to inspect the goods in recognised sample checks in the orderly business course. The supplier renounces objection of belated complaints, if he is immediately notified about defects found during the sample checks or about non-found defects during the procedure notified in writing.

Unless no other written agreement is made, the warranty period of the item is 24 months from the date of start of operation/usage of the end product, as far as no longer period of limitation exist according to § 438 Abs. 1 and Abs. 3 BGB.

If defects appear to the delivered items within the warranty period, after a written notification the supplier has to provide in an adequate time limit a free repair or a replacement without charge. In urgent cases and to prevent inappropriately high damages we are entitled to repair the damage by ourselves or by third parties and to demand reimbursements of expenses incurred. The same applies, if the supplier has not eliminated the defect after expiration of an appropriate period indicated by us in written form. The legal claims acc. to § 437 no. 2 and no. 3 shall remain unaffected.

If the item within the supplementary performance can not be used anymore or can be used only in part, then the period extends for the duration of the interruption of the utilization.

If the supplier has not eliminated the damages after two attempts we are entitled after written notification to cancel the order or to reduce the purchase price. Furthermore we are entitled to demand compensation for damages or reimbursement for wasted expenses.

9. Product Liability

In the event a product liability claim is asserted against us by a customer or by a third party, the supplier is obligated to release us from such claims, if the damage was caused by an error of the product provided by the supplier. In cases of fault-based liability, the supplier bears all costs and expenses, including the costs of any legal action. Content and scope of such recall action shall be agreed – if possible and reasonable – with the supplier. Apart from that, the legal provisions apply.

10. Property Rights

The supplier guarantees that no rights of third parties are infringed in connection with the supply of his delivery. Should a claim be asserted by a third party due to such infringement, the supplier shall exempt us from all claims and shall bear all necessary expenses in connection with such claims.

11. Documentation, Samples, Confidentiality

All documents, drawings, data, IT-information, software and objects (samples, models etc.) which are provided to the supplier by us for the performance or an order remain our property. They may not be reused, duplicated or made available for third parties without our written consent. Products which are manufactured with the assistance of our property according to our specifications or product in whose development we have been involved only be supplied to third parties with our written consent.

12. Retention of Title, Provision of Materials and Tools

We retain title to all parts provided by us to the supplier. Processing or alteration will be performed by the supplier on our behalf. If the goods subject to retention of title are processed with other goods not belonging to us, we will obtain co-ownership of the new items proportional to the value of the goods with title reserved as compared to that of the other goods at the time of processing.

If a part provided by us culpable damaged or destroyed in the suppliers area of responsibility, the suppliers liability shall also extent the repair or replacement of the provided parts. Damages shall be obliged to notify immediately. The supplier is entitled to insure at its own expense all provided parts, models or tools. At the same time, the supplier assigns any rights to claim compensation from this insurance. We retain title on tools paid and supplied by us. The supplier is obliged to use the tools only for the production of goods ordered by us. The assertion of retention on the parts is excluded unless the counterclaim is undisputed or has been established in law.

12. Applicable Law

All purchase contracts are governed by German law, with the UN agreement about contracts for international sale (CISG) of goods.

13. Place of Jurisdiction and Place of Performance

Place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship, also for bill of exchange and check processes as well as of an order of arrest or an interim injunction is Bielefeld. This does not apply for an exclusively statutory jurisdiction. We are also entitled to choose the competent court for the supplier.

The place of performance for the services to be rendered by both contracting parties is Herford.