

# CONDITIONS OF PURCHASE

For all orders placed with

**SAGEMA GmbH**  
A.-Schemel-Straße 9  
5020 Salzburg  
Österreich  
FN 53160 b,

the following conditions apply to the extent that no other written agreements have been made:

## 1. Scope of application, changes

For our orders it is solely our conditions of purchase that shall apply that are also applicable to all future business, without the need for special and repeat reference to be made to this. The supplier's terms of business conditions to the contrary shall apply only if they have been expressly acknowledged in writing by us for each individual case.

Offers made by the supplier shall be free of charge for us and are not grounds for any kind of obligation whatsoever. Our non-response shall not under any circumstances be deemed as acceptance.

We can request changes to the subject of the contract even after the contract has been finalised, as long as this is reasonable for the supplier. Where such a change to the contract is made, both parties must give appropriate consideration to the outcomes especially as regards cost overruns or reduced costs, in addition to delivery dates.

## 2. Awarding orders

Orders shall be made only in writing, by fax or e-mail. Agreements or changes to the contract made in another form shall not be binding until acknowledged by us in writing.

## 3. Confirmation of order

Each order or order request must be confirmed in writing immediately by the supplier giving details of a binding delivery date.

This shall also apply if we order partial shipments based on a binding outline contract. We must receive confirmation within a period of five days. The period begins on the day on which we issue the order. If we do not receive this acknowledgement within this period, then our order expires; a contract shall only materialise if we accept the delayed confirmation expressly in writing. The confirmation shall be deemed as an unconditional acceptance of our order and recognition of our conditions of purchase.

Instances of confirmation of the order that diverge from our

order shall be regarded as a new offer and then become the subject of the contract only when we have approved this in writing.

Our non-response to a new offer shall not be deemed as acceptance; a shipment shall be deemed rather as a subsequent acknowledgement of our order or of our conditions of purchase, and in such cases we shall be entitled though not obligated to accept the shipments under our conditions; we shall be obliged to no greater extent to return or warehouse the shipments of goods that have not been requested.

The contrary shall apply only if the confirmation of order contains an express contradiction or an express divergence; it shall not be sufficient to submit differently worded terms of business, a note to this effect in addition to any other explanation in the predefined part of the order confirmation. Any confirmation that expressly contradicts our order and/or our conditions of purchase shall be deemed as a rejection of our order, and shall not be binding on us. Our non-response shall not be deemed as acceptance; a shipment shall be deemed rather as a subsequent acknowledgement of our order and our conditions of purchase; we shall be entitled to accept the shipment subject to our conditions in such cases.

## 4. Extent of order

The shipment must ensue exactly as specified in our order. Concerning excess or reduced shipments, our written approval must be obtained. If more is shipped than is ordered, then our acceptance of the excess quantities by us does not entail any change to the contract. Rather, the excess shipped portion shall be recovered at our request by the supplier at his expense. Reduced quantities should be made up for immediately at another aliquot price reduction to the extent that a reduced shipment is expressly accepted by us.

## 5. Delivery date

The supplier is obliged to fulfil the service punctually. Any circumstances (force majeure included), which render keeping to the delivery dates impossible must be notified immediately, detailing the reasons and the likely extent of the delay. In the event of non-fulfilment of the agreed delivery periods and delivery dates, we reserve the right either to insist on fulfilment of the contract and to contest compensation for the delay, or to withdraw from the contract and to contest compensation for non-fulfilment. Over and above this, we shall be entitled to obtain a replacement for delayed shipments or reduced shipments at the supplier's expense from a third party.



## 6. Quality of shipment

All shipments must be unconditionally in proper condition and suitability as required by the order, or if a particular requirement is not specified then their condition and suitability must be in keeping with what is usual in the trade. The condition and suitability required by the order shall be deemed as assured quality.

For all foodstuffs and packaging supplied to us, irrespective as to whether these are utilised for production or trials, a specification must be submitted. Specifications must be provided immediately by the supplier whenever changes are made, and updated at least annually and provided to us.

With shipping of foodstuffs, of other materials used in production of foodstuffs, of packaging materials for foodstuffs in addition to other miscellaneous materials which come into contact with processes involving foodstuff manufacturing or packaging, then it will be deemed as an assured quality that they satisfy all conditions relevant to statutes on foodstuffs in force in Austria and Germany, and which are insignificant for the purpose notified or known to the supplier. Packaging, labelling and insurance of the goods shall be at the supplier's expense until the shipment is accepted.

With shipment of foodstuffs or packages, the condition of packaging of the products in transit and the means of transport must be perfectly hygienic. All shipments must be labelled according to the relevant specifications.

Where machinery and technical equipment of any kind are shipped, then it shall be deemed as an assured quality that they satisfy all statutory provisions in force in Austria and Germany on accident prevention and other safety measures, in addition to environmental protection and all generally recognised standards (e.g. ÖVE\*, CE and DIN standards).

The supplier hereby assents to our representatives being entitled to visit his production plant during normal working hours without prior notification, and that the quality assurance measures implemented by him (his quality assurance system) can be examined by us and the associated documents can be viewed by us.

## 7. Guarantee

The supplier accepts the guarantee that his shipment has the contractually assured qualities, and that it satisfies the relevant statutory provisions (e.g. provisions relating to technical safety, occupational medicine, environmental protection and food legislation), and that it does not contain any defects that obliterates or diminishes the value or utility of normal or contractual use, and that it does not infringe the rights of third parties. The supplier is obliged to notify us immediately of all essential technical and factual information relating to the product, also any information involving product changes, and furthermore the manufacturer of the product as well as the name of the importer who has brought the product into circulation.

If claims arising from defects have not been separately agreed, then the period for contesting them shall be two years from receipt of the goods to the extent that a longer guarantee period is not applicable in law. To uphold our

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\* Austrian Association of Electrical Engineering

rights it shall suffice to provide notification of defects which must ensue within six months after receipt of shipment. We reserve the right in the event of notification of defects to receive a refund of the purchase price wholly or partially, or for rectifying the fault to defer payment or to reclaim payment or to offset this payment by way of reverse invoices with other invoices.

In the event of any defect of items shipped - even where no-fault applies - that is notified by us within a period of six months after receipt of shipment, the supplier is obliged to rectify the defect free of charge or take back the shipped items at no charge and to provide a replacement with freight prepaid, or to reduce the purchase price. In the event of any defect in assured quality - even where no fault applies - (see Item 6), which is notified by us within the statutory or agreed guarantee period, the supplier shall at our discretion be obliged to pay compensation for non-fulfilment and compensation for all consequential damage and costs of rectifying defects.

Where an evident defect is proven, the notification of defect must be stated within six weeks after receipt of shipment. The relinquishment of an immediate notification of complaint upon acceptance of goods shall not be deemed as approval of the goods, by way of derogation from paragraphs 377 and 378 of the commercial code.

## 8. Liability

To the extent that the shipment or service of the supplier is defective, to the extent that the supplier infringes or fails to observe contractual obligations relating to care, custody, information or other contractual accessory obligations (breach of contract), then he shall be liable to us for damages arising from this without the need to furnish further proof than that concerning an objective disregard of duty, the original connection to the damage arisen and the extent of damage.

To the extent that the liability of the supplier depends on the statutory provisions of his necessarily being responsible for breach of contract, then he can exempt himself from his liability by proving that he was not at fault. He is responsible for any liabilities caused by his assistants as well as his own suppliers in fulfilling and executing the tasks of the supplier as for any liabilities caused by himself. The supplier shall not be able to exempt himself from his liability by proving that he judiciously chose and supervised his assistants or his own suppliers.

To extent that we are liable, the supplier shall not hold us liable for any claims made by third parties. Checking the quality of the goods by us shall have no effect on the liability of the supplier.

If claims are made against us for infringements of official safety regulations or because of domestic or foreign regulations governing product liability or statutes arising from defectiveness of our products which can be traced back to the products of the supplier, then we shall be entitled to claim damages to the extent that the damage was caused by the products shipped by the supplier. This claim for damages shall also include the costs of precautionary product recall.

The supplier shall hold adequate public liability insurance protection. The supplier shall insure adequately against all

risks arising from product liability including risk of product recall. The supplier shall furnish proof on demand that he holds suitable insurance.

#### **9. Infringement of patent rights**

The supplier shall keep us and our customers free from third-party claims arising from possible infringement of patent rights, and shall also bear any costs accruing to us in this regard.

#### **10. Shipment**

Shipping addresses are indicated on the front page of our written order. Costs arising from non-observance shall be borne by the supplier.

Shipment is undertaken free of charge as far as the indicated location of utilisation. If to the contrary this shipment is agreed ex works or shipment warehouse, then the sender shall accept the responsibility of selecting the most favourable freight routes and the correct consignment note declaration. The transport risk is borne solely by the supplier upon shipment free of charge as far as the location of utilisation.

#### **11. Invoices**

The invoices must be properly issued - according to the current state of legislation in force. Where shipments take place between member states of the EU, indication of the VAT ID number of both contractual parties is mandatory.

Invoices must be submitted in duplicate upon shipment. For shipments from non EU states, invoices in duplicate must be packaged along with the goods. Invoices must be issued to the company indicated on the order.

#### **12. Terms of payment, prices**

The price indicated on our order is a fixed price with an upper limit and agreed. Any increase in price requires our express written approval. If no price has been indicated on our order, then the binding price quoted by the supplier must be confirmed by us in writing.

The purchase price becomes payable after 60 days. The period commences after receipt of the shipped item, delivery note and invoice. Where payment is made within 14 days upon fulfilment of all conditions for the start of the period, then 3% discount will apply, whereby receipt of transfer instructions at our bank for the period is decisive.

#### **13. Proprietary rights**

Proprietary rights will be acknowledged by us only up to settlement of the respective invoice for the shipment concerned. An extension of proprietary rights is also excluded even in the absence of our express objection.

#### **14. Supplier's duty of care of materials and documents**

Suppliers to whom goods, materials or documents have been provided by us for the execution of services shall be liable for all consequential damage. Goods, materials and documents shall remain our property. Any processing to which these are subjected shall be for our benefit.

The WIBERG Gruppe cannot be named as a reference unless we have given our prior express approval.

If in the course of collaborative work suppliers are granted access to business and operational secrets, they shall

commit to maintaining confidentiality. The supplier shall be liable for any damage that arises from infringement of this obligation to secrecy.

In the event of an infringement against the required obligation to secrecy, a contract penalty irrespective of culpability to the amount of €50,000 is agreed that is not subject to judicial mitigation.

#### **15. Place of fulfilment**

The place of fulfilment for shipment to us is the shipment address indicated. If the stated shipment address does not materialise as the place of implementation, then at our discretion the factory in Salzburg, Austria or Freilassing, Germany shall be deemed as the place of fulfilment.

The place of fulfilment for our payments shall at our discretion be exclusively Salzburg, Austria or Freilassing, Germany.

#### **16. Applicable law, place of jurisdiction**

To the contract, including the question of its valid materialisation and its prior effects and repercussions, solely Austrian law on material goods law shall be applicable, whereby UN purchase law is expressly excluded.

The sole place of jurisdiction for all disputes arising directly or indirectly from the contract is the actually responsible court of the Land capital Salzburg. We are entitled to resort to another court responsible for the purchaser.

#### **17. Partial validity**

Should any condition of our conditions of purchase be ineffective for any reason, then all remaining conditions shall continue to be valid. In place of the conditions that have become ineffective, the nearest legal and economic provision shall apply.

Where points are unclear from the English translation, then the German original version shall be the arbiter in case of doubt.