

1) General

1. All orders and purchases are made solely according to these Terms and Conditions of Purchase. We only recognise any conflicting or deviating terms and conditions of purchase of our suppliers unless we have expressly approved these in writing or exceptions are permitted in these Terms and Conditions of Purchase.
2. For the contractual terms, the text of our order and, in addition, these Terms and Conditions of Purchase, have exclusive authority. For the public national or international standards listed in the order text, the respective valid version of the standard is to be applied.
3. Verbal agreements of any kind, including subsequent amendments and supplements to our Terms and Conditions of Purchase, are only binding following written confirmation by us.
4. The written requirement is also satisfied by email or fax.

2) Orders and contracts

1. If our orders are not accepted by the supplier in writing or by fax with a binding confirmation of delivery date within 5 business days of receipt, we are entitled to withdraw the order.
2. We may demand changes to the delivery item also after conclusion of the contract, provided this is feasible for the supplier. Given such a change in contract, the effects for both parties are to be taken into account appropriately, in particular with regard to additional or reduced costs and delivery dates.

4) Packaging, transport and insurance

- 1) The goods are to be safeguarded against damage by means of suitable packaging and appropriate transport accepted by us.
- 2) We take out the transport insurance ourselves. The costs for the forwarding insurance are not paid by us. We are a waiver customer for SVS-RVS.
- 3) The risk transfers at the receiving point designated by us.

5) Transport regulations

1. Hazardous materials in accordance with the regulation on carriage of dangerous goods by sea (GGVS) and the regulation on carriage of dangerous goods by rail (GGVE) (ADR, RID) are generally free carriage.
2. The INCOTERMS 2000 apply to all trade terms.
3. The delivery condition DDP is to apply exclusively to all purchases, whereby the destination, mode of transport and means of transport are prescribed by our purchasing department for each delivery.

6) Quality and guarantee

1. For his goods and services, the supplier is to observe the recognised codes of practice, the safety regulations and the agreed technical data. The standards are to be applied in their current version. Faultless quality and dimensions are to be ensured by the supplier by means of thorough final inspections. Changes to the delivery item and the delivery quantities require our prior written consent. Pending other proof, the values ascertained by us during the incoming goods inspection are authoritative for quantities, weight and dimensions.
2. Acceptance is carried out subject to verification that the delivery is free of defects, in particular with regard to correctness, completeness and suitability. We are entitled to examine the goods insofar as and as soon as is feasible within the due course of business. We give notice of any defects immediately upon discovery. In this regard, the supplier waives any claims regarding delayed notice of defects.
3. The limitation period for claims for defects begins with the delivery of the goods or the acceptance of service and amounts to two years for claims based on or in connection with the delivery of goods. Where, according to their normal use, these are employed in a building, these amounts to five years. In all other regards, the statutory terms apply.
4. At our option, we may demand either the elimination of the defect or replacement delivery free of defects. The supplier may refuse the type of performance chosen by us if it is only possible subject to disproportionate costs. In case of supplementary performance, the limitation period for replaced and repaired parts starts again. The expenses incurred through supplementary performance include those expenses incurred by our customers.
5. If, after receiving our claim for rectification, the supplier does not start immediately with the elimination of the defect, in urgent cases, especially to ward off acute danger or prevent major damage, we are entitled to effect rectification ourselves or have it effected by a third party at the supplier's expense.
6. If, as a result of defective delivery, we incur costs – in particular transportation, handling, labour or materials costs, or costs which exceed the usual scope of an incoming goods inspection - then these are to be borne by the supplier.

7) Product liability

1. If the supplier is responsible for product damage, he is obliged to release us from any third party claims for damages upon first request.
2. In this context, the supplier is also obliged to reimburse all expenses incurred by us or in connection with a product recall.
3. The supplier is to take out an appropriate level of insurance cover against all product liability risks, including the risk of a product recall, and provide us with a copy of the insurance policy on request.
4. The supplier is to carry out quality assurance of an appropriate type and extent in line with the latest technological standards, and is to provide us with evidence of this upon request.

8) Protective rights

1. The supplier guarantees that the delivery or use of the delivered goods does not violate any rights of third parties, particularly industrial property rights.
2. The supplier releases the purchaser and his customers from any claims arising from the use of such protective rights.

9) Payment

1. Unless agreed otherwise, payments are to be made within 14 days with a 3% discount or net within 30 days, each starting from receipt of the invoice, but not before receipt of the goods, or, in case of services, not before their acceptance, and if documentation inspection certificates (e.g. test reports) or similar documents are included in the scope of service, not before these are submitted to us as per agreement.
2. In case of defective delivery, we are entitled to withhold payment appropriately, whilst retaining our discount entitlement, until due performance is provided.
3. Assignment of a claim is only possible with our written consent.
4. Payment is subject to invoice verification.

10) Force majeure

1. Force majeure, labour disputes, riots, official measures and other unavoidable occurrences release us from the duty of timely acceptance for the duration of the interruption and to the extent of its effect. During such occurrences, and for 14 days afterwards, irrespective of our other rights, we are entitled to withdraw from the contract in whole or in part to the extent that such occurrences are not of insignificant duration and our requirements are considerably reduced due to the need for alternative procurement.

11) Tools / equipment costs and means of production

1. The tools and equipment required for manufacturing the goods ordered, as well as their maintenance and replacement, are fundamentally at the supplier's expense. We have the right to purchase and dispose of such tools, equipment or forms against payment of the cost price and taking into account wear and tear and amortisation.
2. Any tools, equipment or other means of production or templates and other data which are paid for or made available by us remain or become our property. They may only be used for deliveries and services to third parties with our prior written consent. The means of production in our possession are to be kept for us by the supplier carefully and free of charge, and submitted to us immediately on request at any time.

12) Property and provision of materials

1. Provisions in the supplier's delivery conditions concerning his reservation of title are recognised by us. We agree to assignments on the basis of an extended retention of title from the outset subject to the reservation of all rights against the assignee which we would have held against the supplier had the assignment not taken place.
2. Goods provided by us remain our property. They may only be used as intended. The supplier is to undertake an incoming inspection to verify that the goods provided are correct, and inform us of the results. For the processing of our goods by the supplier, we are deemed the manufacturer, without any obligations arising from this for us, and we acquire ownership of the newly formed product. If processed together with other materials, we acquire co-ownership in relation of the invoice value of our goods to that of the other materials. In case our goods are combined or mixed with one of the supplier's items, and this is to be viewed as the main item, the ownership of the item transfers to us according to the ratio of the invoice value of our goods to the invoice value (or in the absence of this, the market value) of the main item. In this case, the supplier is deemed the custodian.

13) Subcontracts

1. For subcontracts by us, in addition, the supplier is to inspect the subcontracted goods immediately upon receipt for any transport damage, obvious material defects, wrong deliveries and shortages, and to inform us directly of any objections.
2. The supplier may only process and manufacture subcontracted goods that are free of defects. He is to proceed appropriately, so that the designated purpose of the subcontracted goods is neither impaired nor endangered by the processing or manufacturing.

14) Place of performance and jurisdiction

1. The place of performance is the place where, as per order, the goods are to be delivered or the service performed.
2. If the supplier is a merchant, a corporate body under public law or a special fund under public law, the place of jurisdiction for all legal disputes arising directly or indirectly from contractual relations based on these Terms and Conditions of Purchase is Witten. At our option, we are further entitled to sue the supplier at the court of his principal office or his branch office or at the court of the place of performance.

15) Statutory provisions, applicable law

1. Provided this is not stipulated otherwise above, the statutory provisions of the law of the Federal Republic of Germany apply exclusively to the contract and its implementation, excluding application of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980.
2. If any provision of these Terms and Conditions of Purchase or the other agreements concluded is or becomes invalid, this does not affect the validity of the rest of the contract. The parties undertake to replace the invalid provision with a provision which represents the economic success as closely as possible.

§ 1 Introduction, scope

1. The following terms and conditions apply to all present and future business relations.
2. A commercial customer within the meaning of these terms and conditions is a person or legal entity, or a private partnership with legal capacity, with which a business relationship is entered into and which acts in the exercise of a commercial or independent occupational activity. Customers within the meaning of these terms and conditions are both consumers and commercial customers.
3. Deviating, contrary or supplementary terms and conditions shall not become a part of the contract, even if they are known, unless their validity is explicitly agreed in a written declaration.

§ 2 Conclusion of the contract

1. Our offers are non-binding. We reserve the right to make technical changes for the purposes of technical progress. We also reserve the right to make changes to the shape, colour and/or weight in the framework of what is reasonable. The documents that form part of an offer, such as illustrations, drawings, weights and dimensions, shall apply approximately only, unless they are expressly designated as binding. We reserve title to, and copy-right in, all estimates, drawings and other documents; they may not be made available to third parties without our approval.
2. Our prices are understood as ex works plus VAT at the current rate. We invoice packing separately. Packing will only be taken back if it is returned freight paid.
3. With an order for a product the customer declares bindingly that he wishes to acquire the ordered product. We have the right to accept the offer of a contract in the order within two weeks of receipt here. The acceptance may be expressed either in writing or by delivering the goods to the customer.
4. If a customer orders goods electronically we will confirm the receipt of the order without delay. The confirmation of receipt shall not be deemed to be a binding acceptance of the order. The confirmation of receipt may be combined with a declaration of acceptance.
5. The contract will be concluded subject to the proviso that our suppliers deliver to us correctly and on time. This shall only apply to cases in which we are not responsible for the non-delivery, in particular if we have concluded an agreement covering transaction with our supplier. We shall inform the customer without delay of the non-availability. In the event that consideration has already been provided, this will be reimbursed without delay.
6. If it is ascertained that the goods ordered are not available, we reserve the right to withdraw from the contract. Clause 5, sentence 3 and sentence 4 shall apply analogously in the event of withdrawal.
7. Contractual supplements, amendments or ancillary agreements must be confirmed by us in writing. Our sales staff are not authorised to conclude verbal ancillary agreements or to provide verbal assurances that go beyond the contents of the written contract.

§ 3 Delivery and costs

1. We will confirm the delivery date in writing.
2. Dates and periods for delivery shall not be binding unless otherwise expressly agreed in writing. Any fixed delivery period and delivery dates that we give shall be subject to the proviso that our supplier delivers to us correctly and on time. §2(5) also applies analogously.
3. Delays to delivery and performance caused by force majeure or other unforeseeable events that result in considerable hindrances to our delivery, or make it impossible for us to deliver, and for which we are not responsible (this includes in particular war, warlike events, official orders, the non-issue of export, import or transshipment permits, national measures to restrict trade, strikes, lockouts and other breakdowns of any kind, disruptions to traffic), whether these events occur here, or at our suppliers or their suppliers, shall entitle us to postpone the delivery or performance for the duration of the hindrance plus a suitable start-up period or to withdraw from the contract wholly or in part, in so far as it has not yet been fulfilled. The delivery period shall also be extended by the period in which the customer is in default with fulfilment of his contractual obligations.
4. If the hindrance lasts longer than three months the customer shall have the right, following a suitable period of grace (not less than 14 days), to withdraw from the contract wholly or in part, in so far as it has not yet been fulfilled. The customer shall not be entitled to claim damages if the delivery time is extended on application of No. 2, or if we are exempted from our obligation to deliver. The company WITT GASETECHNIK GmbH & Co KG may only rely on the above-mentioned circumstances if they notified the customer within a suitable period.
5. We reserve the right to make part deliveries.
6. Transport by rail or carrier shall only be carried out in the name and for the account of the customer.
7. Deliveries outside Germany are always for the customer's account.
8. Shipping instructions must be submitted with the order. If this is not done, we shall decide on the shipping type and the route.
9. Shipping takes place for the account and at the risk of the commercial customer. The customer is responsible for transport insurance for our deliveries and must pay the costs.
10. In the event of a default of delivery the customer may not withdraw from the contract until after expiry of a suitable period of grace.

§ 4 Default of acceptance

1. We shall be entitled for the duration of the default of acceptance by the customer to store the items for delivery at the customer's risk and expense. We may also use a carrier or warehousing company for this purpose.
2. For the duration of the default of acceptance the customer shall pay us a flat rate 1% of the purchase price, to a maximum of EUR 50.00, per month without additional verification as compensation for the accruing storage costs. The customer shall have the right to show that no damage occurred or was considerably less than the flat rate sum. In the event of higher costs we may demand compensation for these costs against vouchers.

3. If the customer refuses to accept the goods to be delivered on expiry of a deadline, or declares that he does not wish to accept the goods, we may refuse to fulfil the contract and demand damages for non-compliance. We shall be entitled to demand damages from the customer either in the form of 25% of the agreed purchase price as a flat rate payment or of payment of the actually accruing damage. In the event that we demand payment of the above-mentioned flat rate damages the customer shall have the explicit right to show proof that no damage occurred, or was considerably less than the flat rate sum that is demanded.

§ 5 Reservation of title

1. We reserve title to the goods until full payment of the purchase price and, in the case of a continuous business relationship, until full settlement of all payments due under this business relationship.
2. The customer agrees to take care of the goods. If maintenance work or inspections are necessary the customer shall carry them out at his own expense.
3. The customer agrees to notify us without delay of any attachment of the goods by third parties, for example in the event of distraint, and if the goods are damaged or destroyed. The customer shall also inform third parties of our position as owners. The customer shall inform us without delay of any change of possession of the goods and of any change of his address.
4. We shall have the right pursuant to the provisions of section 323 of the German Civil Code to withdraw from the contract and to demand the return of the goods in the case of behaviour by the customer in breach of the contract, in particular on default of payment or breach of an obligation under No. 3 and No. 4 of this clause.
5. The commercial customer shall have the right to resell the goods in the normal course of business. They hereby assign to us all claims in the amount of the invoice sum against third parties to which they are entitled as a result of the resale. We accept the assignment. After the assignment the commercial customer is authorised to recover the debt. We reserve the right to recover the debt ourselves if the commercial customer does not comply duly with their obligations to pay or are in default. In such cases the commercial customer shall notify us on demand of the debts that were assigned to us and of the debtors, provide all information necessary to recover the debt, hand over the appropriate documents and notify the debtors of the assignment.
6. The processing and machining of the goods by the commercial customer shall be carried out at all times in our name and on our behalf, without obliging us. If the goods are processed with objects that do not belong to us, we shall acquire co-ownership in the new object in the ratio of the value of the goods we supplied to the other processed objects. This shall also apply if the goods are connected to or inseparably linked with other objects that do not belong to us. In the event that the customer becomes the sole owner as a result of the processing or mixing, he hereby assigns us co-ownership in the ratio of the value of the goods we supplied. It is deemed to be agreed that the customer will safeguard the ownership or co-ownership rights for us.

7. Attachments or assignment as security of goods to which we hold title is not permitted.
8. We agree to release securities to which we are entitled in so far as their value exceeds the claims that are secured by more than 20%, if these have not yet been settled.

§ 6 Payment

1. The customer undertakes to pay the purchase price 30 days after receipt, net, without deductions and free of charge. The customer shall be in default on expiry of this deadline. During the period of default commercial customers shall pay interest on the money owed of 8 percentage points above the basic rate of interest. We reserve the right as against commercial customers to show proof of and to claim higher default damages.
2. In the case of several unpaid claims, payments from the customer shall be set off initially against the due debt, in the case of several due debts against the debt that provides us with the least security, in the case of several equally secure debts against the debt that is most onerous for the customer, in the case of several equally onerous debts against the older debt, and in the case of several debt of the same age against each debt in relationship. This shall also apply in cases where the customer has combined his payment with a redemption provision. If the customer must pay interest and costs in addition to the main debt, a payment that is insufficient to redeem the complete debt shall be set off firstly against the costs, then against the interest and finally against the main debt. This shall also apply if the customer has stipulated another setting off with his payment. We shall inform the customer without delay of the set off we have made.
3. Bank cheques will only be accepted subject to the provision that they are honoured and only as conditional payment. We are not obliged to accept bills of exchange.
4. All claims shall be due immediately if the customer is in default, deliberately does not comply with other material terms of the contracts or if we become aware of circumstances that are capable of minimising the customer's creditworthiness, in particular suspension of payments or if insolvency proceedings are pending. In such cases we shall be entitled to retain due deliveries or to carry them out only against provision of security.

§ 7 Prohibition of assignment

The assignment to third parties of claims against us is forbidden unless we expressly approved the assignment in writing. However, we will issue our approval in exceptional cases if the customer provides proof of material concerns or circumstances that outweigh our legitimate interests in the maintenance of the prohibition of assignment.

Claims under guarantee are not assignable.

§ 8 Transfer of risk

1. If the customer is a commercial customer, the risk of accidental loss and accidental deterioration of the goods passes to the customer on the handover, in the case of a sales shipment when the goods are delivered to the carrier, the freight forwarder or the person or agency that is otherwise designated to carry out the shipment.
2. If the customer is in default of acceptance, this shall be deemed to be same as a transfer.

§ 9 Claims arising from defects

1. Minor deviations of the goods with regard to their colour, dimensions or other quality and performance factors shall not be the foundation of any claims arising from defects.
2. If the customer is a commercial customer, in the event of any defects of the goods we shall have the option initially of providing a guarantee through re-working or a substitute delivery. Parts that are replaced shall become our property.
3. If the re-working is unsuccessful, the customer shall in principle be entitled to demand a reduction of the purchase price or cancellation of the contract (rescission). However, the customer shall not be entitled to withdraw from the contract in the case of a minor breach of contract, in particular in the case of minor defects.
4. Commercial customers agree to inform us of obvious defects within a period of two weeks of receipt of the goods. If this is not done, claims arising from defects shall be excluded. Subsequently detected defects must also be notified to us without delay; otherwise the goods shall be deemed to be approved, in including with regard to these defects. The notice of defects must be in writing and must describe the defect exactly. Posting in time shall be sufficient for compliance with the deadline. Commercial customers shall bear the burden of proof with regard to preconditions for a claim, in particular the defect itself, the time it was detected and the time the complaint of the defect was sent.
5. The customer agrees to return the goods complained about to us. In the event of the existence of a defect we shall reimburse the costs of the return shipment. The return shipment shall take place at the same time as the written notice of defect but in any case without delay after the notice of defect and a copy of the invoice we issued must be enclosed.
6. If the customer chooses to withdraw from the contract because of a legal or material defect after unsuccessful re-working, he shall not be entitled to claim damages because of the defect.
7. If the customer is a commercial customer, the statute of limitations for material defects and breaches of obligations shall be one year from delivery of the goods. This shall not apply if the commercial customer did not notify us of the defect within the deadline (see No. 4 above).
8. If the customer receives incorrect instructions for assembly/use we shall only be obliged to supply correct instructions for assembly/use and only if the defects in the instructions for assembly/use prevent correct assembly/use.

9. We do not provide the customer with any guarantees in a legal sense. This does not affect manufacturer's guarantees.
10. Claims arising under defect shall not justify the withholding of any payments, unless the claims are not in dispute or are unappealable.

§10 Limitations of liability

1. In the case of breaches of contract resulting from ordinary negligence our liability shall be limited to the average damage that is foreseeable and contractually typical for the type of goods. This shall also apply to breaches of contract resulting from the ordinary negligence of our statutory representatives or vicarious agents. We shall not be liable to commercial customers for immaterial breaches of contract resulting from ordinary negligence.
2. The above limitations of liability shall not apply to claims by the customer arising under product liability. The limitations of liability shall also not apply in the case of personal injury to the customer, damage to his health or loss of his life that is attributable to us.
3. We shall not be liable for damage to the product supplied if the customer does not comply with our instructions with regard to assembly, commissioning and handling the object of the sale or if an unauthorised interference is carried out.
4. Claims for damages by customers arising from a defect shall be subject to the statute of limitations one year after delivery of the goods. This shall not apply if we can be accused of gross negligence and in the case of personal injury to the customer, damage to his health or loss of his life that is attributable to us. We can be accused with regard to our own behaviour or that of our statutory representatives or vicarious agents, and this can also be attributed to us.

§11 Concluding provisions

1. The laws of the Federal Republic of Germany shall apply. The provisions of UN Convention on Contracts for the International Sale of Goods (CSIG) shall not apply.
2. If the customer is a merchant, a legal entity under public law or special asset under public laws, our registered office shall be the exclusive venue for all disputes arising under this contract. This shall also apply if the customer does not have a general venue in Germany or if the residence or usual place of abode are unknown at the time the action was brought.
3. If any provisions of this contract with the customer including these Standard Terms and Conditions is or becomes wholly or partially invalid, this shall not affect the validity of the remaining provisions. The wholly or partially invalid provision shall be replaced by a provision that most closely approaches the financial or legal intentions of the invalid provision.
4. Customers are informed that their data are saved separately as inventory and accounting data in the framework of applicable data protection regulations.