

**MIWE** Michael Wenz GmbH

# Conditions of Purchase

Conditions of Purchase (CoP) of MIWE Michael Wenz GmbH Last update April 2021

## **1 General aspects (scope)**

1.1. The following Conditions of Purchase (hereinafter referred to as CoP) apply to all business relations between MIWE Michael Wenz GmbH (hereinafter referred to as MIWE) and their business partners and suppliers. The version valid at the time the contract is concluded shall be authoritative in each case. All orders and requests of MIWE are exclusively made on the basis of these general Conditions of Purchase. They are an integral part of all contracts concluded between MIWE and their contractual partners (hereinafter referred to as Suppliers). The CoP apply in particular to contracts on the sale and/or the delivery of moveable objects ("Goods"), without consideration of whether Supplier produces the Goods themselves or purchases them from sub-suppliers (Sections 433, 650 *BGB* (German Civil Code)) as well as accordingly to services and other contract relations.

1.2. The CoP only apply if Supplier is an entrepreneur (Section 14 *BGB*), a legal entity under public law or a special fund under public law.

1.3. Deviating provisions of the Suppliers are herewith contradicted. Deviating, opposing or amending conditions of Supplier shall only become part of the contract if and as far as MIWE has explicitly approved of their application in writing. This approval requirement shall apply in any case, e.g. also if MIWE accepts Supplier's deliveries without reservations despite knowing their General Terms and Conditions. Agreements made with Supplier in individual cases (including collateral agreements, supplements and amendments) shall take precedence over these Conditions of Purchase in all cases. For the content of such agreements, a written contract and/or a written confirmation on part of MIWE shall be decisive, subject to evidence to the contrary.

1.4. Legally relevant declarations and notifications of the contractual parties with regard to the contract (e.g. deadline, reminder, rescission) shall be made in writing, i.e. in written or text form (e.g. letter, email, fax). Legal formalities and other proof particularly in case of doubt regarding the legitimation of the declaring party shall remain unaffected.

1.5. Reference to the application of legal regulations shall be for clarification only. So the legal regulations shall also apply without such clarification unless they are directly modified or explicitly excluded in these CoP.

## **2 Orders and confirmations of orders; conclusion of the contract**

2.1. MIWE's order shall become binding upon written placing or confirmation at the earliest. Supplier shall inform MIWE about apparent errors (e.g. writing and calculation errors) and incompleteness of the order including the order documents for the purpose of correction and/or completion before acceptance; otherwise, the contract shall be regarded as not having been concluded.

2.2. Supplier is obliged to confirm MIWE's orders within a period of 3 days in writing or to particularly execute them without reservations by dispatching the Goods (acceptance). Any delayed acceptance shall be regarded as new offer and require acceptance by MIWE.

2.3. If the confirmation of order deviates from the order, MIWE shall only be bound if MIWE has not objected to the deviation in writing within 3 days following the receipt of the confirmation of order.

2.4. MIWE shall be bound to the order for a maximum of 1 week after the respective order is placed. If MIWE does not receive a confirmation of order from Supplier within this period, MIWE has the right to revoke the order.

2.5. MIWE is entitled to change place and time of the delivery as well as the type of packaging at any time by means of written notification with a period of at least 7 calendar days before the agreed delivery date. The same shall apply to changes in product specifications as far as they can be implemented within the scope of Supplier's normal production process without considerable additional expenses whereas in these cases, the notification period according to the preceding sentence is at least 1 week. MIWE shall compensate Supplier the proven and reasonable additional costs that resulted from the change. If such changes result in delays in delivery that cannot be avoided in the Supplier's normal production and business operation by means of reasonable efforts, the originally agreed delivery date shall be postponed accordingly. Based on careful evaluation, Supplier shall notify MIWE of the additional costs or delivery delays to be expected in writing, in due time before the delivery date, within 5 working days after receipt of the notification acc. to no. 2.5 s. 1, however, at the latest.

2.6. MIWE may, within the bounds of reasonableness for the supplier, demand changes to the design and the execution of the delivery item. The effects of such changes, in particular with regard to additional and reduced costs as well as delivery dates, are to be regulated appropriately by mutual agreement.

### **3 Delivery times and delays**

3.1. The agreed dates and deadlines are binding. The receipt of the Goods by MIWE shall be decisive for compliance with the delivery date or the delivery deadline. In the case of deliveries involving installation or assembly, their acceptance shall be decisive. If "ex works" delivery has not been agreed, Supplier shall make the Goods available in good time, taking into account the usual times for loading and dispatch.

3.2. If the agreed deadlines are not met due to circumstances for which Supplier is responsible, MIWE must be informed immediately and their decision obtained.

3.3. If the day on which the delivery must be effected at the latest can be determined based on the contract, Supplier will default upon expiry of this day without this requiring a reminder by MIWE. MIWE is also entitled, in accordance with the statutory provisions, to place Supplier in default. In case of default in delivery, MIWE shall be entitled to all legal claims without restrictions whereas a right of withdrawal or claims for damages instead of performance may only be asserted after unsuccessful expiry of a reasonable respite.

3.4. An unavailability proviso on the part of Supplier shall not be accepted.

### **4 Contractual penalty**

4.1 If Supplier enters into default on the delivery deadlines under number 3, Supplier shall pay a contractual penalty of 0.2% of the net invoice total for each working day beyond the missed deadline.

4.2 If Supplier enters into default with an agreed intermediate deadline (in the event that an order is subdivided into partial deliveries), Supplier shall pay a contractual penalty to the amount of 0.2% of

the net invoice total attributable to the partial quantities to be completed and delivered by the relevant intermediate deadline or each working day of delay for which Supplier is responsible, but no more than 3% of the net invoice amount of the corresponding partial performance.

4.3 The sum total of the contractual penalties shall be limited to a maximum of 5% of the net invoice total. MIWE shall be entitled to assert further claims for damage due to default, including contractual penalties arising on their part, taking into account the contractual penalty owed in this respect.

4.4 A contractual penalty that arises for an intermediate deadline shall be credited to any contractual penalties that arise later for other intermediate deadlines or the date of completion.

4.5 The contractual penalty may be asserted up to the final payment, even if it is not expressly reserved at the time of acceptance.

4.6 The arrangement on contractual penalties shall also apply to new or amended contractual deadlines.

## **5 Transfer of risk and delivery**

5.1 Unless otherwise agreed upon in writing, Supplier shall deliver to the place of delivery specified in the order according to DDP (Incoterms 2020) for both, cross-border and non-cross-border traffic. These costs are included in the price.

5.2 The transfer of risk shall take place upon the transfer of the sold Goods to MIWE at the place of receipt designated by MIWE and/or to the recipient, as designated by MIWE. If acceptance has been agreed upon, it shall be decisive for the transfer of risk. To the rest, as well, the legal regulations of the Law on Contracts for Work shall apply accordingly in case of acceptance. If there is default in acceptance by MIWE, this shall be equivalent to hand-over and/or acceptance.

5.3. Each delivery must be accompanied by a packing slip or delivery notes stating the contents and the full order identification (order number, item number and order item). Different articles must be packed and labelled separately.

5.4 The packaging of the delivered goods must be agreed with MIWE. The supplier is obliged to comply with the agreed packaging units and labelling. In individual cases, changes must be agreed with MIWE and approved. In general, goods must be packaged such that transport-, storage and ageing damage can be excluded with certainty. Supplier shall be liable for subsequent costs caused by deficient packaging. If a packaging regulation has been agreed upon, it is to be complied with.

## **6 Quality assurance, inspection for defects and warranty**

6.1. If a separate quality assurance agreement (QAA) has been concluded between MIWE and Supplier, the provisions agreed upon in that QAA shall apply. They shall be supplemented by the following provisions. If no separate quality assurance agreement has been concluded between MIWE and the suppliers, the following provisions alone shall apply.

6.2. According to the legal regulations, Supplier shall be particularly liable for the Goods having the agreed quality upon transfer of risk to MIWE. The product descriptions that are the subject matter of the relevant contract - particularly as they have been designated or referred to in MIWE orders - or that have been included in the contract in the same way as these CoP shall also be regarded as

agreement on the quality. It does not make any difference whether the product description comes from MIWE, the Supplier or the manufacturer.

6.3. If Supplier finds that the actual condition differs from the target condition, Supplier shall inform MIWE immediately and suggest planned countermeasures or replacement deliveries. Supplier undertakes to start checking product quality already during production. If the product parts change, MIWE shall be entitled to request initial samples and initial sample reports free of charge.

6.4. MIWE is not obliged to inspect the Goods or make special inquiries regarding possible defects upon conclusion of a contract. Partially deviating from Section 442 subsection 1 sentence 2 *BGB*, MIWE shall thus also be entitled to claims for defects without any restrictions if MIWE did not discover the defect upon conclusion of a contract due to gross negligence.

6.5. To the commercial inspection and notification duties, the legal provisions (Sections 377, 381 *HGB* (German Commercial Code) shall apply subject to the following condition: MIWE's inspection obligation is limited to defects which are apparent in the incoming goods inspection, externally inspecting the Goods and the delivery documents (e.g. transport damage, incorrect or short delivery) or in the quality inspection during the sampling process. If acceptance has been agreed upon, there shall be no inspection obligation. For the rest, it is decisive to which extent an examination is reasonable according to the ordinary course of business considering the circumstances of the individual case. MIWE's notification duty for subsequently discovered defects shall remain unaffected. Regardless of MIWE's inspection obligation, the complaint (notification of defect) shall in any case be regarded as in due course and in due time if it is sent within 14 working days from discovery and/or in case of apparent defects within 14 days from delivery.

6.6. Supplementary performance also includes the disassembly of the defective Goods and the re-installation if according to its type and intended purpose, the Goods have been installed in or attached to a different object; MIWE's legal claim to compensation of corresponding expenses shall remain unaffected. The expenses necessary for examination and supplementary performance shall be borne by Supplier even if it turns out that there actually was no defect. MIWE's liability for compensation in case of unjustified request for remedy shall remain unaffected; insofar, MIWE shall, however, only be liable if MIWE realized or did not realize due to gross negligence that there was no defect.

6.7. Regardless of the legal rights and the regulations in no. 6, the following applies: If Supplier does not satisfy their obligation of supplementary performance - at MIWE's option by remedy of defects (rectification) or delivery of Goods free from defects (replacement delivery) - within a reasonable period set by MIWE, MIWE may remedy the defect themselves and request from Supplier compensation of the expenses necessary for this purpose and/or a corresponding advance.

6.8. If supplementary performance by Supplier failed or is unreasonable for MIWE (e.g. due to special urgency, endangering of the operational safety or pending excessive damage), no period has to be set; MIWE shall, however, inform Supplier about such circumstances immediately, if possible in advance.

6.9. In case of material defects or defects in title, MIWE shall for the rest be entitled to reduce the purchase price or rescind the contract according to the legal regulations. According to the legal regulations, MIWE is moreover entitled to damages and compensation of expenses. Damages and



compensation of expenses shall include but are not limited to those costs resulting from a defective delivery which necessitates an overall inspection exceeding the usual incoming goods inspection and the associated expenses.

6.10. The warranty period shall be 24 months, starting from the transfer of risk pursuant to 5. In case of deliveries at different locations which are no MIWE locations, it shall start upon delivery to the MIWE customer. The statutory provisions shall also apply.

6.11. Upon receipt of MIWE's written notification of defect at Supplier's, the limitation of warranty claims shall be suspended until Supplier rejects MIWE's claims or declares the defect as remedied or otherwise denies continuance of negotiations regarding MIWE's claims. In case of replacement delivery and remedy of defects, the warranty period for replaced and reworked parts shall restart unless considering Supplier's behaviour, MIWE has to assume that they did not consider themselves obliged to complete the measure but only completed the replacement delivery or remedy of defect for goodwill or similar reasons.

6.12. If MIWE incurs costs as a result of the defective delivery of the contractual item, including but not limited to transport, infrastructure, labour or material costs, Supplier shall reimburse such costs according to the legal regulations. Supplier shall bear the costs and risk of the return of defective delivery items.

## **7 Prices and terms of payment**

7.1. The agreed prices are binding.

7.2. The terms of payment are based on the agreements within the scope of the orders. With bank transfer, the payment shall be regarded as having been made in due time if MIWE's transfer order is received by MIWE's bank before expiry of the payment deadline; MIWE shall not be responsible for delays caused by banks involved in the payment process. The deduction of a discount shall also be permissible if MIWE is offsetting or withholding a reasonable amount of payment on the grounds of defects. The payment period shall commence after the defects have been completely remedied.

7.3. All prices are exclusive of applicable statutory VAT.

7.4. If goods are to be delivered directly from the Supplier to a customer of MIWE, MIWE must always be notified of this prior to dispatch. All relevant transport data, such as the form of transport, the type of packaging, marking, number of packages, gross and net weight and customs invoices, packing lists, etc. included in the consignment must be communicated to MIWE no later than the day of dispatch. In this case, notwithstanding the rules in the preceding provisions, receipt of proof of delivery sent to MIWE by the Supplier shall be another prerequisite for maturity.

7.5. Payment of the invoice does not mean that the delivery is recognised as being in accordance with the contract or free of defects.

7.6. Invoices shall specify

- the tax number or the VAT ID number;
- the delivery note number or delivery date;

- the order number and/or the contact person and
- the billing address and the plant that placed the order.

If one or several of these specifications are missing and thus, within the ordinary course of business, the processing by MIWE is delayed, the payment periods specified in no. 7 shall be extended by the period of the delay.

## **8 Material supplies, tools and moulds**

8.1. Materials provided and all tools, samples, models, profiles, drawings, standard sheets, print templates, calculations, illustrations, gauges, software and other documents provided by MIWE shall remain the property of MIWE and are to be stored, labelled and managed separately free of charge. They may only be used for orders from MIWE. MIWE reserves all rights to such items. They are to be returned to MIWE automatically at the end of the contract, or immediately at the request of MIWE. In the event of loss or impairment of value, the supplier shall provide compensation. This shall also apply to the invoiced transfer of order-related material.

8.2. Processing or transformation of the material is for MIWE. MIWE shall immediately become the direct owner of the new or transformed object. Should this not be possible for legal reasons, MIWE and the supplier hereby agree that MIWE shall become the owner of the new object at all points in processing or transformation. The supplier shall store the new item free of charge for MIWE with the diligence of a prudent businessman.

## **9 Availability of spare parts**

9.1. Supplier shall, by means of a separate guarantee, guarantee to MIWE that the parts of its delivery shall be available for 10 years whereas comparable and/or compatible solutions shall be possible.

9.2. If production is discontinued, Supplier shall inform MIWE at least 6 months in advance with an advance notice.

## **10 Performance of work / insurance cover / liability of MIWE**

10.1. When performing contractual work on the premises of MIWE or third parties, Supplier shall observe the provisions of the applicable plant regulations and the existing regulations for entering and leaving the facilities.

10.2. MIWE shall not be liable for injury to life, limb or health unless said injury results from a negligent breach of duty on the part of MIWE or a wilful or negligent breach of duty on the part of a legal representative or vicarious agent of MIWE.

10.3. MIWE shall not be liable for other loss unless said loss results from a grossly negligent breach of duty on the part of MIWE or a wilful or grossly negligent breach of duty on the part of a legal representative or vicarious agent of MIWE.

10.4. The supplier shall provide sufficient insurance cover for the work to be performed, including but not limited to worldwide and unlimited business liability insurance. This must be presented to MIWE upon request.

## **11 Product liability and insurance coverage**

11.1 In the event of a claim against MIWE by the end customer on the basis of product or producer liability due to a defective product of Supplier, Supplier shall indemnify MIWE against liability and against claims of third parties.

11.2. Supplier shall in particular have a duty to reimburse MIWE for any costs and expenses it incurs in this respect, including but not limited to the costs incurred in recalls. To the extent possible and reasonable, MIWE shall inform Supplier about the content and scope of the recall measures and give Supplier the opportunity to comment. More far-reaching legal claims shall remain unaffected.

11.3. Supplier is obliged to maintain at their own expense a product liability insurance with a sum insured of at least EUR 1 million per insured event and at least EUR 5 million per annum which - unless otherwise agreed upon in the individual case - shall also cover the recall risk and line downtime damage. Upon request, Supplier shall send MIWE a copy of the liability insurance policy at any time.

## **12 Industrial property rights**

12.1. Supplier shall guarantee by means of a separate guarantee that its deliveries do not affect the rights of third parties, and shall indemnify MIWE in this respect against claims by third parties upon the first written request.

12.2. MIWE shall not be entitled to conclude, with the third party and without the consent of the supplier, agreements including but not limited to settlements of such claims.

12.3. Supplier's obligation to indemnify relates to all expenses necessarily incurred by MIWE arising from or in connection with claims by a third party.

## **13 Supplier recourse**

13.1. In addition to the claims for defects, MIWE shall be entitled to the legally provided recourse claims within a supply chain (supplier recourse according to Sections 445a, 445b, 478 *BGB*) without restrictions. MIWE shall be particularly entitled to request from Supplier exactly the type of supplementary performance (rectification or replacement delivery) which MIWE owes to their client in the individual case. The legal right of option (Section 439 subsection 1 *BGB*) shall not be restricted.

13.2. Before MIWE accepts or satisfies any claim for defect asserted by the client (including reimbursement of expenses according to Sections 445a subsection 1, 439 subsection 2 and 3 *BGB*), Supplier shall be notified, shortly presenting the facts, and asked for their written opinion. If no substantiated opinion is provided within a reasonable period and if no amicable solution is found, the claim for defect actually granted by MIWE shall be considered to be owed to the client. In this case, Supplier shall be obliged to render counter-evidence.

13.3. Claims of MIWE from supplier recourse shall also be applicable if the defective goods have been further processed by MIWE or any other contractor, e.g. by installing them into a different product.

## **14 Energy**

MIWE maintains an energy management system pursuant to DIN EN ISO 50001 as amended. Energy use, consumption and efficiency are therefore relevant procurement criteria for MIWE. Where



purchasing options are of equal merit, preference shall be given to the source of supply that is more advantageous from an energy point of view.

## **15 Confidentiality**

15.1. If a separate non-disclosure agreement has been concluded between Supplier and MIWE, the provisions therein shall apply. They shall be supplemented by the following provisions. If no separate non-disclosure agreement has been concluded between MIWE and the suppliers, the following provisions alone shall apply.

15.2. Supplier is obliged to keep the conditions of the order as well as any and all information and documents left to them for this purpose (except for publicly accessible information) secret and to only use it to execute the order. Without MIWE's prior written consent, Supplier is not allowed to refer to the business relationship in advertising material, brochures, etc. or to display delivery objects produced for MIWE.

15.3. Supplier shall oblige their sub-suppliers and vicarious agents according to this section 15.

15.4. The confidentiality obligations shall remain in force both during performance and also for a period of at least 7 years after conclusion of a contract.

15.5. If it becomes apparent for Supplier after the expiry of 7 years after the conclusion of a contract that with regard to the information, MIWE still has a considerable interest in secrecy, the confidentiality obligation shall survive until this interest in secrecy is omitted or the information has become publicly known according to 15.6.

15.6. The confidentiality obligation shall not apply if the information in question demonstrably - is or has become generally known or becomes generally known without the involvement of or fault on the part of the contracting party or - has been or is lawfully obtained by a third party.

15.7. Any publication or disclosure to third parties of information regarding the collaboration with MIWE shall require the prior written consent of MIWE.

## **16 Proof of REACH conformity**

16.1. Supplier shall assure that they comply with the requirements of the EU Regulation on Chemicals, REACH (Regulation (EC) No. 1907/2006 of 30/12/2006), as amended - hereinafter referred to as REACH Regulation - and, in particular, that substances have been registered. They shall further assure not to deliver any products containing substances according to Annexes 1 to 9 of the REACH Regulation, as amended.

16.2. If the delivered goods contain any substances listed in the "Candidate List of Substances of very High Concern" ("SVHC list") according to REACH, Supplier shall be obligated to notify MIWE immediately. This shall also apply if substances not yet listed are included in the list during ongoing deliveries.

16.3. If such substances are contained in the products delivered to MIWE, this must be communicated in writing prior to delivery, indicating the substance and its identification number (e.g. CAS) and including an up-to-date safety data sheet for the product to be delivered. The delivery of such products shall require separate release by MIWE.

16.4 Supplier is obliged to indemnify MIWE from any liability in connection with any non-compliance with the above regulations or to compensate MIWE for any damage incurred by MIWE from non-compliance with the regulations committed by Supplier or their sub-suppliers.

## **17 Compliance & data protection**

17.1. Supplier has an obligation to refrain from any activities that may result in criminal liability due to fraud or embezzlement, insolvency offences, anti-competitive offences, granting of undue advantages or corruption of any persons in its employment or of third parties.

17.2. Supplier undertakes to work and act in compliance with the standards of the UN Global Compact and BSCI Code of Conduct. Supplier shall also impose this mandatory requirement on any subcontractor and supplier and on all business units/companies of Supplier by means of a contract.

17.3. In the event of any breach of the above, MIWE shall have the right to abandon all negotiations and to withdraw from or terminate without notice all contracts with Supplier.

17.4. Supplier shall allow MIWE to conduct audits to verify whether the standards and requirements of the Code of Conduct are being met. An audit shall be announced in good time and no later than 7 days in advance.

17.5 MIWE and Supplier will only collect and process personal data in cases in which this is lawful according to Art. 6(1) point f, Art. 6(1) point c and in the individual case Art. 6(1) point b GDPR. If apart from that, data are to be processed, the data subject's consent will be obtained.

## **18 Assignment of claims**

Supplier claims against MIWE may only be assigned with the written consent of MIWE. This shall not apply if counter-claims are concerned.

## **19 Place of performance, place of jurisdiction, applicable law, miscellaneous**

19.1. The place of performance for deliveries and services shall be the place of receipt designated by MIWE. The supplier invoice shall in each case be issued to the MIWE plant placing the order.

19.2. The exclusive factual and local place of jurisdiction for all disputes arising out of the contractual relationship shall be the Regional Court of Würzburg [Landgericht Würzburg]. MIWE shall, however, in all cases also be entitled to raise a claim at the place of performance of the delivery obligation according to these CoP and/or a paramount individual agreement or at Supplier's general place of jurisdiction. Paramount legal regulations, particularly with regard to exclusive jurisdictions shall remain unaffected.

19.3. The law of the Federal Republic of Germany shall apply; conflict of laws provisions and the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

19.4. The requirement for the written form may only be waived in writing. Oral supplementary agreements shall not be valid.

19.5. If any provision is or becomes ineffective in whole or in part, this shall not affect the validity of the remaining provisions. The remaining provisions shall continue to apply.