

PURCHASING TERMS
for production materials and operating assets

Scope of validity

1. These Purchasing Terms apply with regard to all businesses, legal entities and institutional funds under public law.
2. Our orders are placed under the following terms and conditions exclusively. Commercial terms and conditions of the Partner that are not specifically acknowledged by us shall not apply even if the Partner refers to them in specific correspondence, quotations, order confirmations, invoices etc., and even if we don't specifically object. Silence on our part does not imply consent.
3. The Purchasing Terms apply also to all future orders and contractual relationships between the Partner and ourselves.

General terms and conditions

4. The contracting parties shall confirm all oral covenants in detail in writing immediately.
5. Should any individual provision of these Purchasing Terms be or become invalid, then that does not affect the validity of all remaining terms and conditions.
6. We have the right to terminate the agreement with immediate effect for any material reason. Material reasons include, in particular, when it becomes obvious after the signing of the agreement that our rightful claims under the agreement are jeopardised by the lack of ability of the Partner to deliver, and if the Partner fails, despite a relevant warning, to credibly secure such ability to deliver within a reasonable deadline. Rights to terminate and rescind from the agreement, and the rights under Section 23 hereof remain unaffected.

Order

7. If the Partner does not accept our order within 2 weeks from its receipt, then we have the right to withdraw such order.
8. Delivery drawdowns become binding if the Partner does not object within 3 days from receipt the latest.
9. We have the right to request modifications of the ordered goods, except to the extent that such modifications would be unreasonable on the part of the Partner. Any impacts of such requests, in particular effects on additional or reduced costs and delivery terms, shall be regulated by an appropriate mutual agreement. However, the Partner is obliged to effect such changes as requested even before such agreements.

Long-term and drawdown agreements

10. We have the right to terminate agreements made for an indefinite term, or agreements with a term of 3 years or more with a notice period of 6 months.

Confidentiality

11. Each contracting party shall use all documents (including samples, models and data) that they obtain from this commercial relationship for the purposes of the jointly pursued purposes, and shall keep them confidential towards any third parties with the same care as their own respective documents and information, provided that such information is labelled by the other party as confidential, or if the other party has a clear interest in keeping such information confidential.

This obligation becomes valid with the first time when such documents or information are received, and shall end 36 months after the end of the commercial relationship.

12. This obligation does not apply to documents and information that are in the public domain, or which were already known to the recipient contracting party without them being bound by a confidentiality obligation; or which are subsequently disclosed to a third party who is authorised to disclose them; or which are developed by the recipient party without exploitation of the documents or information of the other contracting party that were to be kept confidential.

Drawings and specifications

13. Drawings and specifications that we disclose to the Partner remain our inalienable material and intellectual property, which shall be returned to us without any special warning upon delivery of the assignment.

The Partner shall transfer to us the ownership of all drawings and specifications that were produced on the basis of our data upon full payment of them.

Samples and production materials

14. Production materials (tools, forms, templates, parts, raw materials etc.) and documents (including samples and data) that we hand over to the Partner shall remain our property. Details shall be regulated in a separate "Tool Rental Agreement".

Prices

15. Prices shall be "FCA Partner" including packaging and loading on the truck, except if the parties agree otherwise.

Certificate of origin, certificates for value added tax and export limitations

16. The Partner shall include all necessary data in the certificates of origin required by us, and shall send them to us immediately in a properly signed form. The Partner shall inform us immediately and without any special notice if the data included in the certificate of origin of the delivered goods are no longer applicable.

17. The same appropriately applies to certificates under the law on value added tax in case of transactions with abroad and within the European Community.
18. The Partner shall inform us immediately if any delivery comes, partly or entirely, under the purview of any export limitations under German or any other law.

Payment terms, assignment of claims

19. Except if agreed otherwise, we pay, with the condition contained in section 21 hereof, within 15 days from delivery and receipt of the appropriate invoice with 3 % cash discount, or the net amount within 30 days.
20. Even if early delivery is accepted, the due date of payment shall be determined according to the agreed delivery deadline.
21. In case of defective delivery or delivery delay, we have the right to withhold the proportionate part of the payment until proper and complete delivery.
22. The Partner is not entitled to assign its claims against us to, or have it collected by, any third party unless with our written consent, which shall not be unreasonably withheld. In case of an extended reserved ownership title, such consent is deemed given.

If the Partner assigns its claims against us to a third party without our consent despite sentence 1 above, then such assignment is deemed invalid. We can, however, decide in our own discretion to pay to the Partner or to the third party, which shall release us from our obligations.

23. If it becomes obvious after the making of an individual contract that our claim for delivery is at risk due to the lacking ability of the Partner to deliver, and if we carry the obligation to pay in advance, then we have the right to refuse payment and to set a reasonable deadline for the Partner to make contemporaneous delivery of the goods against payment, or to provide security. The lacking ability of the Partner to deliver will be assumed if its creditworthiness rating with the credit rating agency is rated as unsatisfactory. In case of refusal by the Partner, or if the deadline lapses unsuccessfully, we have the right to rescind from the agreement, and to claim damages.

Delivery and transfer of risks

24. The notice of readiness for delivery or collection by the Partner shall be of merit for compliance with the delivery deadline or of the delivery term under FCA (Article 15), otherwise it is the time when the goods arrive to the agreed place of delivery.

If the FCA applies, all risks transfer to us with delivery to the carrier or the freight company, otherwise risks pass to us upon receipt of the goods at the agreed place of delivery.

The delivery term begins with the sending of the order confirmation, and shall be extended appropriately if any events of force majeure occur.

26. Partial deliveries are only possible on the basis of a separate agreement.

Delivery delay

27. If the Partner can predict that the goods cannot be delivered within the agreed delivery deadline, then the Partner shall inform us thereof in writing immediately, and shall communicate the reasons for such delay, and shall also, to the extent possible, identify the expected delivery date.

In case of delivery delay we are entitled to claim a penalty of 0.2 % of the net order value per working day, which, however, may not exceed 5 % in total. We can claim such penalty until the final payment is made. Other claims for late delivery remain unaffected. Such penalty shall nevertheless be deducted from any eventual claims for damages.

Reservation of ownership

28. The Partner shall retain ownership of the delivered goods until full payment of them (simple reservation of ownership title).

Testing goods upon receipt

29. Goods shall be checked for visible defects, shortages and transport damages upon receipt. No additional testing obligation applies. We shall notify the Supplier of shortcomings within a reasonable time after their discovery. In this context the Supplier waives its right to object any late notices of defect.

Physical defects

30. The goods must comply with the agreed specifications, must be developed according to the latest technical standards, and shall be suitable for unlimited use for the purpose defined in the agreement. The goods must also comply with relevant legal and regulatory safety requirements applicable in the Federal Republic of Germany and in the countries of origin and destination. The time of transfer of risks shall be of merit for assessing the compliance of the goods with the agreement.
31. The Partner shall also comply with the legal regulations of the European Union and the Federal Republic of Germany as from time to time valid, e.g.:
- the REACH Directive (Directive EC Nr. 1907/2006),
 - the Elektro- und Elektronikgesetz (ElektroG) [Law on Electric and Electronic Devices] and the Elektro- und Elektronikgeräte-Stoff-Verordnung (ElektroStoffV) [Ordinance on Materials Used in Electric and Electronic Devices] as national implementations of the Directives 2002/95/EC (RoHS I) and 2011/65/EU (RoHS II), and the Directive 2002/96/EC (WEEE) und
 - the Altfahrzeugverordnung (AltfahrzeugV) [Ordinance on Old Vehicles] as national implementation of the EU Directive 2000/52/EC.

The Partner shall immediately inform us of any relevant changes in the goods, or their delivery capacity, or their possible use, or quality caused by legal regulations, particularly by the REACH Directive, and shall agree with us on proper measures in each case individually. The same applies appropriately when and to the extent that the Partner realises that there is a threat that such changes will happen.

32. Claims for physical damages lapse after 36 months. This does not apply if the law provides on a longer term, particularly for defects in a building or a product that, pursuant to its ordinary use, has been used for the purpose of a building and has caused a defect in the same.
33. If the Partner misses a deadline reasonably set for it without repairing the defect or delivering a replacement free of any defects, then we have the right to repair such defect ourselves or have a third party repair it to the cost of the Partner. Legal rules on the dispensability of setting a deadline, and all rights under the law concerning defects, including the right of recourse, remain unaffected.

Defects of title

34. The Partner warrants that all supplies are unencumbered by any rights of any third parties, and particularly that the supply or use of the goods does not infringe on the patents or other industrial rights of any third parties in the country of the agreed place of delivery, the European Union, Switzerland, Turkey and – to the extent disclosed by the Partner – the intended countries of use.
35. If, pursuant to the law, the Partner is liable to third parties directly, then the Partner shall keep us free from all claims of third parties resulting from the eventual violation of intellectual property rights, and shall carry all necessary costs that arise in this context.
36. Claims under defects of title shall lapse within the same term as claims for physical defects.

Other claims, third party liability insurance of the Partner

37. Except if the parties provide otherwise, the provisions of the law shall prevail.

The Partner undertakes to take out and maintain an employer's and product liability insurance of appropriate scope and amount. If we are entitled to any additional claims for damages that are not covered by the insurance, then these remain valid unaffected.

Our liability

38. Possible claims for damages under whatever title can be asserted against us only in case of intentional or grossly negligent conduct on the part of our legal representatives or executives, and in case of culpable violation of material contractual obligations, i.e. of obligations the delivery of which allows the ordinary delivery of the agreement in the first place, and the delivery of which is and can be reasonably and usually expected by the Partner. In case of any culpable violation of material provisions of the agreement we are liable only for damages that are typical for the agreement and reasonably expectable.

This limitation of liability shall not apply in cases when we carry a mandatory liability under the Law on Product Liability for personal or property damages, and in case of injuries to life, body or health.

Force majeure

39. Events of force majeure, riots, measures by the authorities, extreme weather situations, and other unforeseeable, unavoidable and serious events – with the exception, however, of labour disputes, and any defaulted deliveries of suppliers – shall release the contracting party from its contractual obligations for the duration of the disturbance and to the extent it has an effect on delivery. The contracting parties are obliged, to the extent as it can be reasonably expected, to provide the necessary information immediately, and to adjust their obligations to the changed circumstances in good faith.

Place of delivery, jurisdiction, and applicable law

40. Place of delivery for the delivery of the goods and for quality complaints is the place of destination as defined by us.
41. Our registered seat shall be the place of jurisdiction for all legal disputes that arise, including any procedures involving cheques or bills of exchange. We also have the right to file claims at the registered seat of the Partner.
42. The contractual relationship is governed by the law of the Federal Republic of Germany exclusively.