

General Terms of Purchase; Wemas Absperntechnik GmbH

Edisonstraße 20, 33334 Gütersloh, Germany

1. Scope of application

1.1 All existing and future contractual relationships between the supplier and WEMAS ABSPERRTECHNIK GMBH shall be governed exclusively by the following terms and conditions.

1.2 The supplier's general terms and conditions of business and deviating agreements shall only apply if they have been recognised in writing by WEMAS ABSPERRTECHNIK GMBH.

1.3 Every offer made by the supplier is free of charge and non-binding for WEMAS ABSPERRTECHNIK GMBH. The supplier must ensure that all information (technical, commercial or logistical) required for the calculation has been taken into account before submitting an offer.

2. Orders

2.1 Orders and changes to orders must be made in writing. The content of the oral order shall only apply if it has been confirmed in writing.

2.2 The supplier is obliged to check the order for errors and ambiguities and to inform the purchaser about the clarification.

3. Delivery periods and performance content

3.1 The delivery periods agreed in the order are binding. As soon as the supplier becomes aware that they cannot fulfil their contractual obligations or cannot fulfil them on time, they must inform WEMAS ABSPERRTECHNIK GMBH of this, stating the reasons and the expected duration of the delay.

3.2 If the supplier does not fulfil the service within the agreed delivery time, they shall be liable in accordance with the statutory provisions. The regulations in section 3.3 remain unaffected.

3.3 If the supplier is in arrears, WEMAS ABSPERRTECHNIK GMBH can - in addition to further legal claims - demand lump-sum compensation for the damage caused by the delay in the amount of 1% of the net price per completed calendar week, but in total no more than 5% of the net price of the goods delivered late. WEMAS ABSPERRTECHNIK GMBH reserves the right to prove that WEMAS ABSPERRTECHNIK GMBH has incurred higher damages. The supplier reserves the right to prove that WEMAS ABSPERRTECHNIK GMBH has not incurred any damage at all or only a considerably lower damage.

3.4 The supplier must deliver the goods in compliance with legally and officially mandatory provisions (in particular the relevant safety, environmental protection, hazardous substances, hazardous goods and accident prevention regulations) and with the properties required in the order and in the supplementary procurement documents.

4. Shipping regulations and place of delivery

4.1 The supplier is obliged to pack the goods to be delivered in a customary and appropriate manner. The supplier is solely liable for damage resulting from improper packaging.

4.2 The dangerous goods must be labelled and packed in accordance with national and international regulations. The supplier is liable for all damage resulting from non-compliance with the relevant shipping instructions.

4.3 Each delivery must be accompanied by a delivery note which indicates both the order number of WEMAS ABSPERRTECHNIK GMBH and the description of the contents according to type and quantity.

4.4 Unless otherwise agreed in writing, the delivery shall be made to the place of delivery specified in the order, delivered duty paid (DDP Gütersloh Incoterms 2020). Section 4.7 remains unaffected.

4.5 Unless otherwise agreed with the supplier, delivery shall be made in mesh boxes or on exchangeable, undamaged Euro pallets.

4.6 Unless otherwise agreed, the supplier is obliged to take back the transport packaging upon delivery. If this is not taken back by the supplier, WEMAS ABSPERRTECHNIK GMBH is entitled to charge the supplier for the costs incurred for disposal.

4.7 The supplier is obliged to cover the risk of accidental loss by taking out transport insurance. The claims for compensation from the transport insurance are assigned to WEMAS ABSPERRTECHNIK GMBH.

4.8 The risk of accidental loss and accidental deterioration of the goods shall pass to WEMAS ABSPERRTECHNIK GMBH upon delivery at the place of performance. If acceptance has been agreed, this shall be decisive for the transfer of risk.

5. Prices

5.1 The agreed prices are fixed prices. The prices refer to the delivery terms DDP ("Delivery Duty Paid" according to Incoterms 2020).

5.2 Unless otherwise agreed, payment shall be made on the 15th of the following month with 3% discount or within 30 days net. The period begins with receipt of the contractual performance and a proper and verifiable invoice. A single copy of the invoice must be submitted to our head office, Edisonstraße 20 in Gütersloh.

5.3 The contractual remuneration shall cover all ancillary services (including packaging and transport).

5.4 WEMAS ABSPERRTECHNIK GMBH will not accept price increases or price escalation clauses unless these have been expressly agreed in the contract. WEMAS ABSPERRTECHNIK GMBH shall not accept surcharges for small quantities.

5.5 All correspondence must contain the following information: number and date of the order, department, delivery note and invoice, reference and number of the packaging, number of items invoiced (each type listed separately), gross and net weight. If the invoice relates to goods of different orders, the quantity belonging to each order must be specified separately.

5.6 The payment does not constitute recognition of prices.

5.7 In the event of an incomplete or defective delivery, WEMAS ABSPERRTECHNIK GMBH is entitled to withhold payment in proportion to the value of the goods until proper fulfilment.

5.8 The assignment of claims against WEMAS ABSPERRTECHNIK GMBH to third parties is excluded.

6. Quality management

6.1 The supplier is obliged to monitor the quality of their deliveries in terms of type and scope and suitable quality systems that correspond to the latest state of the art.

6.2 Modification of the delivery item requires the written approval of WEMAS ABSPERRTECHNIK GMBH.

6.3 WEMAS ABSPERRTECHNIK GMBH is entitled to inspect the delivery items and services at any time. Furthermore, WEMAS ABSPERRTECHNIK GMBH shall be entitled to carry out a quality audit on the supplier's premises in order to ensure that WEMAS ABSPERRTECHNIK GMBH's requirements are met during production.

7. Secrecy and retention of title

7.1 WEMAS ABSPERRTECHNIK GMBH reserves ownership and copyrights to illustrations, plans, drawings, calculations, execution instructions, product descriptions and other documents. Such documents are to be used exclusively for the contractual performance and are to be returned to WEMAS ABSPERRTECHNIK GMBH after completion of the contract. The documents are to be kept secret from third parties, even after termination of the contract. The obligation to maintain secrecy shall only expire if and insofar as the knowledge contained in the documents provided has become generally known.

7.2 The above provision shall apply accordingly to substances and materials (e.g. software, finished and semi-finished products) as well as for tools, templates, samples and other objects that WEMAS ABSPERRTECHNIK GMBH provides to the supplier for production. Such objects - as long as they are not processed - must be stored separately at the supplier's expense and insured against destruction and loss to an appropriate extent and marked as the property of WEMAS ABSPERRTECHNIK.

7.3 Any processing, mixing or combination (further processing) of provided objects by the supplier is carried out for WEMAS ABSPERRTECHNIK GMBH. The same applies if the delivered goods are further processed by WEMAS ABSPERRTECHNIK GMBH, so that WEMAS ABSPERRTECHNIK GMBH is considered to be the manufacturer and acquires ownership of the product in accordance with the legal regulations at the latest with the further processing.

7.4 The transfer of ownership of the goods to WEMAS ABSPERRTECHNIK GMBH must take place unconditionally and without regard to the payment of the price. If, however, WEMAS ABSPERRTECHNIK GMBH accepts an offer of transfer of ownership from the supplier, which is conditional upon payment of the purchase price, the supplier's reservation of ownership shall expire at the latest upon payment of the purchase price for the delivered goods. WEMAS ABSPERRTECHNIK GMBH remains authorised to resell the goods in the ordinary course of business even before payment of the purchase price, with advance assignment of the resulting claim (alternatively, the simple reservation of title extended to resale). All other forms of retention of title are thus excluded in any case, in particular the extended, the forwarded retention of title and the retention of title extended to further processing.

8. 8. Defective delivery and guarantee

8.1 The statutory provisions shall apply to the rights of WEMAS ABSPERRTECHNIK GMBH in the event of material defects and defects of title of the goods (including incorrect and short delivery as well as improper assembly, faulty assembly, operation or operating instructions) and in the event of other breaches of duty by the supplier, unless otherwise specified below.

8.2. The supplier undertakes to check the contractual items for defects before delivery.

8.3 In accordance with the statutory provisions, the supplier is liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk to WEMAS ABSPERRTECHNIK GMBH. In any case, those product descriptions which - in particular by designation or reference in the order of WEMAS ABSPERRTECHNIK GMBH - are the subject matter of the respective contract or which have been included in the contract in the same way as these general terms of purchase shall be deemed to be an agreement on quality. It makes no difference whether the product description originates from WEMAS ABSPERRTECHNIK GMBH, the supplier or the manufacturer.

8.4. The supplier guarantees freedom from defects in accordance with the agreed specifications and the suitability of the material for the particular application. If the supplier is not aware of the intended use, information about this must be requested immediately from WEMAS ABSPERRTECHNIK GMBH.

8.5 Notwithstanding § 442 Paragraph 1 S 2 BGB, WEMAS ABSPERRTECHNIK GMBH is entitled to claims for defects without restriction even if the defect remained unknown to WEMAS ABSPERRTECHNIK GMBH at the time of conclusion of the contract due to gross negligence.

8.6 The statutory provisions (§§ 377, 381 HGB) shall apply to the commercial obligation to examine and give notice of defects, with the following proviso: The obligation of WEMAS ABSPERRTECHNIK GMBH to examine shall be limited to defects which become apparent during the incoming goods inspection at WEMAS ABSPERRTECHNIK GMBH under external inspection including the delivery documents and during the quality control of WEMAS ABSPERRTECHNIK GMBH in a random sampling procedure (for example transport damage, wrong and short delivery). Insofar as acceptance has been agreed, there is no obligation to examine. Otherwise, it depends on the extent to which an examination is feasible in the normal course of business, taking into account the circumstances of the individual case. The obligation of WEMAS ABSPERRTECHNIK GMBH to give notice of defects discovered later remains unaffected. In all cases, the complaint of WEMAS ABSPERRTECHNIK GMBH (notification of defects) shall be deemed to be immediate and timely if it is received by the supplier within 10 working days.

8.7 All costs arising from the rectification of defects are to be borne by the supplier. The costs incurred by the supplier for the purpose of inspection and rectification (including any dismantling and installation costs) shall be borne by the supplier even if it turns out that no defect actually existed. WEMAS ABSPERRTECHNIK GMBH's liability for damages in the event of an unjustified request for the rectification of defects shall remain unaffected; however, in this respect, WEMAS ABSPERRTECHNIK GMBH shall only be liable if WEMAS ABSPERRTECHNIK GMBH has recognised or grossly negligently failed to recognise that there was no defect.

8.8 If the supplier does not fulfil their obligation for subsequent performance - at the discretion of WEMAS ABSPERRTECHNIK GMBH by eliminating the defect (rectification) or by delivering a defect-free item (replacement delivery) - within a reasonable period of time set by WEMAS ABSPERRTECHNIK GMBH, WEMAS ABSPERRTECHNIK GMBH can eliminate the defect themselves and demand compensation from the supplier for the necessary expenditure or a corresponding advance payment. If the supplementary performance by the supplier has failed or is unreasonable for WEMAS ABSPERRTECHNIK GMBH (e.g. due to particular urgency, endangerment of operational safety or the threat of disproportionate damage), no deadline needs to be set; WEMAS ABSPERRTECHNIK GMBH shall inform the supplier of such circumstances immediately, if possible, in advance.

8.9. The defective deliveries are to be replaced immediately with defect-free goods within a reasonable period of time. If the defect is not remedied within a reasonable grace period set for the supplier, WEMAS ABSPERRTECHNIK GMBH is entitled to claim damages in accordance with the statutory provisions.

8.10 Otherwise, WEMAS ABSPERRTECHNIK GMBH shall be entitled to reduce the purchase price or withdraw from the contract in the event of a material defect or defect of title in accordance with the statutory provisions. In addition, WEMAS ABSPERRTECHNIK GMBH shall be entitled to compensation for damages and expenses in accordance with the statutory provisions.

9. Supplier regress

9.1 WEMAS ABSPERRTECHNIK GMBH is entitled to the legally determined recourse claims of WEMAS ABSPERRTECHNIK GMBH within a supply chain (supplier recourse according to §§ 445a, 445b BGB) without restriction in addition to the claims for defects. In particular, WEMAS ABSPERRTECHNIK GMBH shall be entitled to demand from the supplier exactly the type of subsequent performance (repair or replacement) that WEMAS ABSPERRTECHNIK GMBH owes their customer in the individual case. The legal right of choice of WEMAS ABSPERRTECHNIK GMBH (§ 439 para. 1 BGB) is not restricted by this.

9.2 Before WEMAS ABSPERRTECHNIK GMBH recognises or fulfils a claim for defects asserted by their customer (including reimbursement of expenses in accordance with §§ 445a paragraph 1, 439 paragraph 2 and 3 BGB), WEMAS ABSPERRTECHNIK GMBH shall notify the supplier and request a written statement with a brief description of the facts. If the statement is not made within a reasonable period of time and if no amicable solution is brought about, the claim for defects actually granted by WEMAS ABSPERRTECHNIK GMBH shall be deemed to be owed to their customer; in this case, the supplier shall be responsible for providing proof to the contrary.

10. Producer liability

10.1 If the supplier is responsible for a product damage, they must indemnify WEMAS ABSPERRTECHNIK GMBH from third party claims to the extent that the cause is within their area of control and organisation and they are liable themselves in the external relationship.

10.2 Within the scope of their obligation to indemnify, the supplier must reimburse WEMAS ABSPERRTECHNIK GMBH for expenses in accordance with statutory provisions which arise from or in connection with a third-party claim, including recall actions carried out by WEMAS ABSPERRTECHNIK GMBH. WEMAS ABSPERRTECHNIK GMBH shall inform the supplier - as far as possible and reasonable - about the content and scope of recall measures and give the supplier the opportunity to comment. Further legal claims shall remain unaffected.

10.3 The supplier must take out and maintain product liability insurance with a lump sum coverage of at least EUR 1 million per personal injury/property damage.

11. Limitation period

11.1 The mutual claims of the contracting parties shall become statute-barred in accordance with the statutory provisions, unless otherwise provided for below.

11.2 Notwithstanding § 438 paragraph 1 No. 3 BGB, the general limitation period for claims for defects is 3 years from the passing of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year period of limitation also applies accordingly to claims arising from defects of title, whereby the statutory period of limitation for real claims for surrender by third parties (§ 438 paragraph 1 No. 1 BGB) remains unaffected; furthermore, claims arising from defects of title do not become time-barred under any circumstances as long as the third party can still assert the right - in particular in the absence of a period of limitation - against WEMAS ABSPERRTECHNIK GMBH.

11.3 The statute of limitations of the right of purchase including the above extension shall apply - to the statutory extent - to all contractual claims for defects. Insofar as WEMAS ABSPERRTECHNIK GMBH is also entitled to non-contractual claims for damages due to a defect, the regular statutory period of limitation (§§ 195, 199 BGB) shall apply, unless the application of the limitation periods of the law of sale leads to a longer limitation period in individual cases.

12. Choice of law and place of jurisdiction

12.1 These general terms of purchase and all legal relations between WEMAS ABSPERRTECHNIK GMBH and the supplier shall be governed by the law of the Federal Republic of Germany, excluding international uniform law, in particular the UN Convention on Contracts for the International Sale of Goods. The prerequisites and effects of the reservation of title are subject to the law of the respective storage location of the item, insofar as the choice of law made in favour of German law is inadmissible or ineffective.

12.2 If the supplier is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising from the contractual relationship is the place of jurisdiction of WEMAS ABSPERRTECHNIK GMBH. However, WEMAS ABSPERRTECHNIK GMBH shall also be entitled to file suit at the place of performance of the delivery obligation.

13. Tools

13.1 Tools that have been manufactured by the supplier for the order become the ownership of WEMAS ABSPERRTECHNIK GMBH upon payment and must be identified as such. Upon request, these tools must be handed over to WEMAS ABSPERRTECHNIK GMBH.

13.2 The supplier shall bear the costs for the maintenance, repair and replacement of the tools.

13.3 The documents provided by WEMAS ABSPERRTECHNIK GMBH (e.g. drawings, models, samples) may neither be duplicated nor made available to third parties. These documents must be sent to WEMAS ABSPERRTECHNIK GMBH after completion of the order.

14. Insurance, minimum wage and data protection

14.1 With regard to liability for personal injury, property damage and financial loss resulting from the execution of the order, the supplier must ensure that there is sufficient insurance cover for the reason and the amount and must provide proof of this on request.

14.2 The liability of the supplier is not limited in amount by the conclusion of an insurance policy.

14.3. The supplier undertakes to pay the employed employees at least the statutory minimum wage in accordance with the Minimum Wage Act and to fulfill all other obligations arising from the Minimum Wage Act. In the event that the supplier, or third parties employed by him, violate the minimum wage law and claims should be made against WEMAS ABSPERRTECHNIK GMBH, the supplier undertakes to fully indemnify WEMAS ABSPERRTECHNIK GMBH from these claims.

14.4. WEMAS ABSPERRTECHNIK GMBH collects, processes, uses and stores personal data to the extent and for as long as it is necessary for the business relationship with the supplier (Art. 6 Paragraph 1 b, f GDPR). Further details, in particular general information on visiting the website www.wemas.de and on the rights of those affected, can be found in our data protection declaration: Data protection - WEMAS.

15. Severability clause

If one of the aforementioned provisions of these General Terms and Conditions of Purchase becomes invalid for any reason, the remaining provisions shall retain their full legal validity. In the event of contradicting statements, the German version applies.