

General Purchasing Terms and Conditions of A.W. Faber-Castell Vertrieb GmbH, July 2017

I. General information/scope of validity

1. The following purchasing terms and conditions apply exclusively to our purchases from the supplier unless different individual written arrangements have been expressly made with the supplier.
2. Different agreements and conditions of the supplier are not valid. This shall also apply even if we do not expressly reject different conditions of the supplier when we accept deliveries without reservation and with knowledge of the different conditions of the supplier and we pay for these deliveries.

II. Contractual formation

3. Our orders are purchase offers that are accepted by the supplier.
4. The orders must be at least in textual form in order to be valid. Textual form refers to transmission by fax or email. Oral orders are binding only to the extent that we have confirmed them in writing or in textual form.
5. Acceptance of our order by the supplier can take place expressly (in textual form) or implicitly by executing the order. If the supplier does not accept our order within ten (10) working days after receipt of the order, we are entitled to revoke the order.
6. We can make changes or additions to our order at any time prior to acceptance by the supplier. Changes or additions to the order and contractual changes must be made in textual form.

III. Delivery and performance scope of the supplier

1. Delivery times

The delivery times stated in our orders are binding. Definitive for meeting the delivery deadline is our receipt of the goods unless expressly agreed otherwise.

2. Delay/rights upon delay

- a. As soon as the supplier has reason to assume that it cannot render performance by the agreed delivery deadline, it has to notify us without delay of the expected duration of the delay and state the reasons for the delay. The supplier can cite causes for the delay for which it is not responsible only if it has complied with the notification duty.
- b. If the supplier is in default of delivery, we are entitled – to the extent required by law – upon lapsing of a reasonable grace period at our option to demand damages in lieu of performance and/or to withdraw from the agreement. In addition, we are entitled to commission a third party to carry out contractual performance and to demand from the contractor reimbursement for necessary expenses and additional costs.
- c. The supplier's right to subsequent performance and our obligation to accept performance are excluded as soon as we demand damages in lieu of performance after the expiration of the deadline or we withdraw from the agreement. The same applies if we independently obtain replacement and demand from the contractor reimbursement of the necessary expenses and additional costs.
- d. Notwithstanding the above rights, in the event of delivery default we are entitled to charge one percent (1%) of the value of the order per completed calendar week of the delay, but no

more than a total of five percent (5%) as lump-sum damages, or to refuse payment for this amount in so far as the supplier does not provide evidence that we suffered lesser damage. The supplier is obligated to release us at first request from damage claims (including the costs becoming necessary for appropriate litigation) that third parties assert against us as a result of the supplier's delivery default.

- e. If despite delivery default we declare our willingness to accept the goods, the additional costs are to be borne fully by the supplier. The unconditional acceptance of the delayed delivery does not constitute any waiver of the compensatory claims to which we are entitled for late delivery.

3. Partial deliveries, excess deliveries, and early deliveries

Partial, early, and excess deliveries are permitted only if we have expressly consented to this beforehand in writing. In the event of early deliveries, we are entitled to store the goods until the agreed delivery time at the expense of the supplier.

4. Changes to the delivery subject

To the extent reasonable, we can demand changes to the delivery subject from the supplier. Increased and reduced prices as well as delivery dates are to be determined by mutual consent and to a reasonable extent.

5. Replacement parts

The supplier shall ensure and agrees that it will be possible to supply us or our customers with replacements or replacement parts for the contractual products for an additional ten (10) years after termination of the delivery relationship at reasonable, standard terms and conditions.

The supplier is also entitled to deliver replacement parts that are similar in nature and function in so far as it can no longer manufacture the replacement parts or does not have them in stock and has previously notified us of suspension of production of the original parts.

6. Sub-suppliers

The supplier may commission sub-suppliers only with our prior written consent. But this does not establish any legal relationship between us and the sub-suppliers.

The hiring of sub-suppliers does not relieve the supplier from its contractual responsibility to us. The supplier is liable for the selection and any fault of the sub-supplier.

7. Packaging and shipment

- a. The goods shall be delivered in product-appropriate packaging. Environmentally friendly packaging materials are preferable. Appearance, labelling, and contents must satisfy the legal requirements in the destination countries stated in the order (including environmental protection regulations). Single-use packaging will be taken back by the supplier at its expense. For the use of multi-use packaging, the supplier has to provide the packaging on loan. Return shipment will take place at the expense and risk of the supplier.

- b. If the packaging in which the goods are delivered arrives damaged, we are entitled to refuse to accept the shipment without examining the contents in so far as the damage is not

merely trivial. Return shipment will take place for the account and at the risk of the supplier.

- c. Each delivery shall include a delivery note with the information stipulated by us, specifically but not exclusively order number, goods designation, quantity, and weight.

IV. Reservation of title

We will always undertake processing, mixing, or combining (further processing) of items provided by the supplier for ourselves so that we are considered the manufacturer and acquire title to the product at the latest upon further processing in accordance with the statutory provisions.

Transfer of title of the goods to us has to take place unconditionally and without consideration of payment or price. But if in the particular case we accept an offer of the seller subject to purchase price payment for transfer of title, then the seller's reservation of title will expire at the latest upon purchase price payment for the delivered goods. In the due course of business, we remain authorized even before purchase price payment to resell the goods under prior assignment of the claim arising therefrom (alternatively validity of the simple reservation of title extended to resell). In any case, all other forms of reservation of title, specifically but not exclusively the expanded reservation of title extended to further processing, are thereby excluded.

V. Prices

1. The prices stated in the order are binding. If a price is not stated in the order, the price must be stated in the order confirmation of the supplier. In that case, the stated price is regarded as agreed only in so far as it is confirmed by us in writing.
2. Unless expressly agreed otherwise in writing, all prices up to the destination location/place of use include packaging, freight, and transport costs, insurance, customs and other ancillary charges and include the statutory value-added tax.
3. If we make an exception by declaring our agreement to assumption of ancillary costs, then they shall be charged at the verifiable cost price.

VI. Invoices, payment terms, assignment

1. Invoices

The supplier is obligated to issue a separate invoice for each order. We will execute invoices only if they meet the legal requirements and contain standard information under the German Commercial Code, for example the order date and the order number used by us. Invoices that do not include this information will be rejected and do not establish any due date.

Invoices are to be issued in euros unless otherwise expressly agreed. The statutory value-added tax is to be listed separately.

2. Due date

Unless expressly agreed otherwise in writing, payment will be made fourteen (14) days at a discount of four percent (4%) or thirty (30) days after receipt both of a proper and auditable invoice as well of the goods, whichever is later. If we make an exception by accepting early deliveries, the due date of the corresponding payment will be based on the originally agreed delivery date. For bank remittances, payment has been made in time if our remittance order is verifiably received by our bank before the payment deadline. Payments do not signify any recognition of the delivery as contractually conforming but rather are made subject to the reservation of subsequent claims.

3. Offset rights and rights of retention, objection of non-performed contract

- a. We are entitled to offset rights and rights of retention as well as the objection of non-performed contract to the extent permitted by law. For defective or incomplete deliveries, we are in particular entitled to withhold payment – without loss of discounts and similar payment incentives – until proper fulfilment.
- b. The supplier is entitled to an offset right or right of retention only based on legally final or undisputed counterclaims.

4. Assignment and factoring

The supplier may assign its claims against us to third parties only with our prior written consent. This also applies to factoring. Section 354a German Commercial Code remains unaffected thereby.

VII. Incoming goods inspection/defect complaints

1. Incoming goods inspection

- a. We limit the incoming goods inspection to a control of the correct type and a random check of the correct quantity of the delivered goods as well as to a visual inspection with regard to obvious damage to the delivered products, especially damage during transport.
- b. Our inspection of goods in the factory or warehouse of the supplier is considered neither a delivery nor an acceptance.

2. Defect complaints

- a. Defects determined in this framework will be reported to the supplier within ten (10) working days after receipt of the goods. Other defects will be reported to the supplier within ten (10) working days after they are discovered. For compliance with these deadlines, the supplier cannot and will not invoke a late defect complaint.
- b. In the event of a defect complaint that causes extraordinary expense (e.g. with regard to transport, reworking, sorting out) we reserve the right to charge the supplier a flat-rate fee of up to EUR 100.00 for each defect complaint. All other rights and duties remain unaffected by this flat-rate fee.
- c. The supplier is required to carry out cause analysis and to take corrective measures without delay in the event of a defect complaint. The supplier has to submit to us a written response concerning the defect complaint within a reasonable period of time (no later than five working days). The supplier has to communicate to us immediate actions by fax or email without delay. The supplier must also notify us within a reasonable period of time whether there are further products suspected of being defective in our possession or in transit to us.

VIII. Liability for defects

1. Warranty claims

- a. The supplier guarantees that the delivered goods meet the agreed specifications, that they do not have any defects impairing their value or usability, and that they do not lack any of the warranted properties. For material defects and defects in title, the following provisions take precedence over the legal provisions.
- b. If there is a material defect, we can request at our option rectification of the defect or delivery of a non-defective item. The supplier has to pay the expense necessary for subsequent performance, in particular transport, road, labour, material,

installation, and removal costs. This does not apply if it is discovered that there was in fact no defect, and we recognized this or did not recognize this by gross negligence.

- c. If with regard to a delivery batch for which individual defective contractual products were determined there is the substantiated suspicion that further contractual products are likewise defective, we are entitled to return the entire batch at the expense of the supplier and to demand replacement delivery. If this is possible and reasonable to expect of us, the supplier can instead sort out the delivery batch at our location within a reasonable period of time and replace defective parts.
- d. If the supplier is in default of required subsequent performance, if such performance has failed, is unreasonable to us (e.g. if there is acute risk or disproportionately high damage) or the supplier agrees, we are entitled at our option to carry out, reduce, or withdraw from the subsequent performance ourselves or to do so through third parties at the expense of the supplier and/or to demand compensation for damages or expenses.
- e. In the event of a defect in title, that is, if third parties can assert rights against us with regard to the contractual product, the subsequent performance will take place at our option either through subsequent procurement of the necessary rights or by replacement of the contractual products having the defect in title with an item that does not violate any third-party rights and that is equivalent at least technically and functionally.
- f. The supplier shall reimburse us for all expenses, costs, and damages that are incurred from delivery of defective contractual products or from the rendering of defective services. Extra-contractual claims, in particular tort claims, remain unaffected thereby.
- g. In so far as the supplier makes use of third parties when rendering performance, it is liable for them in the same way as it is for its vicarious agents.

2. Warranty period

- a. The warranty period for material defects and/or defects in title is three (3) years and starts upon delivery of the goods to us. This notwithstanding, a warranty period of five (5) years from delivery applies for goods that have been used according to their customary use. If a longer statute of limitations applies in the particular case, then this shall apply.
- b. The warranty period will be tolled by notification of defect. In the event of subsequent performance, the warranty period with regard to the subsequently remedied or subsequently delivered goods will start to run again unless the supplier has expressly and accurately reserved the right to render the subsequent performance only by goodwill or to avoid disputes, and not to do so when only a minor portion of the goods has been subsequently remedied.

IX. **Product liability, product safety**

1. Product liability

- a. The supplier warrants that the delivered goods are free of design, materials, and manufacturing defects and meet the latest technical standards. The supplier further warrants that all legal provisions, regulations, and other provisions associated with the delivery subject – e.g. EN 71, CE norm and all safety and environmental provisions – are complied with. This also includes agreements of freight forwarders and provisions on the shipment of hazardous materials.

- b. To the extent that third parties take action against us under product liability laws for defects of the goods or other causes blamed on the supplier, the supplier will release us from such claims to the extent that the supplier would be itself liable extra partes. This also includes release from reasonable and necessary costs of legal defence.
- c. To the extent that we must assume that due to defects of the goods or other causes for which the supplier is blamed, recall actions or other measures are necessary to prevent damage or this is officially ordered, the supplier will reimburse us for the necessary costs and expenses. We will notify the supplier, to the extent reasonable, about the content and scope before taking such actions. More extensive legal claims remain unaffected.

2. Product safety

- a. The supplier is required to guarantee and document compliance with all safety requirements for the goods to be delivered by undertaking ongoing inspections and taking other suitable actions, and to provide relevant proof to us upon request at any time. The documents necessary for this are to be stored for at least six (6) years from the last delivery of goods to us.
- b. To the extent that findings from direct product observation, comments by third parties or actions by officials indicate that contractual products might have defects relevant to safety, the supplier will notify us of this without delay and voluntarily in writing and in advance by phone.
- c. To the extent possible from the labelling of the contractual products, the supplier will take suitable actions to ensure that it will be possible to quickly specify and demonstrate which contractual products are assumed to have a safety defect and when they were delivered to us. These data are to be communicated to us upon request without delay. If the supplier does not meet its labelling duty or does not do so adequately, it has to reimburse us for all costs arising from the requisite inspection of the entire series for any defects.

X. **Indemnification**

- 1. The supplier agrees to release us from any and all other contractual or legally substantiated third-party claims that arise from a non-contractual delivery of the contractual products or non-contractual performance, from culpable breaches of contract, and from torts committed by the supplier or its agents. This also applies to any legal expenses to defend against such claims.
- 2. The indemnification also applies in the event that the goods delivered by the supplier violate third-party rights, specifically but not exclusively intellectual property rights like patents, utility models and design patents, trademarks, and/or in the event that the goods do not satisfy requirements set forth under competition law or public law. This refers in particular to any designations, descriptions, or promotional statements for the goods given or attached by the supplier.

XI. **Insurance policies**

- 1. The supplier shall take out liability insurance with expanded product liability coverage and recall cost insurance to cover the risk of product liability concerning the contractual products at its own expense, having coverage of at least EUR 5,000,000. The supplier has to furnish proof of the existence of the insurance coverage upon request.
- 2. Other insurance premiums paid by the supplier will be reimbursed only if we had expressly requested in the written order that insurance be taken out.

XII. Equipment for executing orders

1. Equipment provided to the supplier

- a. We retain title to all tools and other items that we provide to the supplier to execute the order. In addition, we are entitled to all intellectual property rights for illustrations, drawings, calculations, and any other documents that we provide to the supplier to execute the order.
- b. The provided items and documents are to be kept secret from third parties, may not be reproduced, and are used only to execute our orders. They are to be clearly labelled as our property. The supplier agrees to care for and carefully handle the provided items and documents. The supplier is required to give us the items and documents immediately upon execution of the order without express demand.

2. Equipment created by the supplier

- a. Tools, samples, drawings, and other equipment created by the supplier to execute orders and fully paid for by us will become our property at the time of production. The supplier will keep them for us free of charge as a substitute for handover; they may be used only to execute our orders and at our option are to be given to us after performance of the contract or in the event of delivery difficulties either immediately without further cost or they are to be stored for us further. The supplier has to clearly label the aforementioned items as our property and draw the attention of third parties that wish to establish claims thereto, to our ownership. The supplier will notify us immediately of any such event. The supplier will bear the cost of intervention.
- b. The supplier agrees to securely store, insure, maintain, and service the aforementioned items and to remedy normal wear and tear; the necessary cost of this is included in the purchase price of the items. We are entitled to enter the business premises of the supplier at any time during normal business hours in order to inspect the aforementioned items and to inspect the records of the supplier concerning these items.
- c. If the supplier with our consent commissions a sub-supplier to manufacture tools and samples for execution of our orders, the supplier will assign to us its claims against the sub-supplier for transfer of title of the tools and samples.

XIII. Owner-furnished equipment

1. Down payments or supplies (owner-furnished equipment) made or provided by us remain our property.
2. The supplier agrees to use the owner-furnished equipment exclusively to execute our orders. The supplier has to separately store our owner-furnished equipment and identify our ownership on the owner-furnished equipment directly and in its business records. The supplier has to confirm this to us in writing. In other respects, we are entitled at any time during normal business hours to check for separate storage and proper labelling of the goods or owner-furnished equipment on-site.
3. Goods produced based on our order for which we have made a down payment or provided owner-furnished equipment will become our property. The supplier will store the goods for us free of charge by exercising the due care of a proper business person as a substitute for the transfer of possession. The supplier may not acquire title by processing our owner-furnished equipment into a new item. Any processing shall take place for us through the supplier. If the supplier acquires shared title by a combination or mixture, it will transfer its shared title to us. The supplier will store the item for us free of charge as a substitute for the transfer of possession.

4. The supplier has to notify us without delay of any access by third parties to our goods and must assist us in every way in any intervention, the cost of which will be borne by the supplier. The notification duty applies accordingly for the initiation of settlement or bankruptcy proceedings. The supplier shall not have any right of retention in any case.

XIV. Nondisclosure, advertising

1. Nondisclosure

The supplier will use the knowledge, experience, manufacturing processes and work methods acquired while executing our orders exclusively to execute orders of Faber-Castell companies and will not use them, either directly or indirectly, for itself or for third parties outside of the contractual scope agreed with us. It is required to maintain absolute secrecy from third parties about the present contractual relationship and the operational matters coming to its attention while executing the order and of its produced results in the broadest sense, specifically but not exclusively data, provisions, samples, drawings, designs, and technical information. The supplier will share the confidential information with its own employees only if this is absolute necessary to perform the contract and the employees are likewise obligated to maintain secrecy. The confidentiality obligation shall also apply even after termination of the business relationship with us. The duty to maintain secrecy shall not apply for any of the aforementioned information that is obviously and recognizably intended for the general public or was accessible to the public without restriction, or for such information that was or is justifiably known to the supplier without any obligation to maintain secrecy. The supplier bears the burden of proof for this. To the extent that the supplier must disclose confidential information due to mandatory legal provisions, according to the enforceable judgment of a court, or according to the enforceable order of an authority, we are to be notified of this in writing without delay.

2. Advertising

The use of our orders, our name, our trademark, our logo, or our corporate design for advertising including the use as a reference is permitted only with our express prior written consent.

XV. Force majeure

1. In cases of force majeure, the parties are released from their performance duties in scope and for the duration of the disruption. Force majeure refers to all external circumstances that cannot be influenced by the contractual parties such as natural catastrophes, acts of war, unrest, official orders, or fire.
2. If the force majeure event lasts longer than three (3) months, we are entitled to withdraw from the agreement.

XVI. Compliance with the provisions of the Minimum Wage Act and declaration of release

1. The supplier agrees, in so far as it is subject to the scope of the Minimum Wage Act (MiLoG), to take all necessary actions to comply with the provisions of MiLoG and to comply with the provisions without limitation. In particular, it guarantees that it will pay all employees at least the legal minimum wage under Section 1 MiLoG.
2. To the extent that the supplier is entitled to use subcontractors to render its performance, it agrees to take all necessary actions to guarantee that the subcontractors used by it comply with the provisions of MiLoG in so far as they are subject to the applicable scope of MiLoG.

3. In compliance with all legal provisions, the supplier will grant us the right to check compliance with the provisions of MiLoG. We are entitled to demand from the employer and any subcontractors current records at any time (hourly records, anonymized wage statements, and list of employees).
4. The supplier agrees to release us from any and all third-party claims fully and upon first request that are asserted based on or in connection with violations of MiLoG by the supplier and or its subcontractors. This applies in particular to claims that are made against us under Section 13 MiLoG in conjunction with Section 14 German Employee Transfer Act and to possible late payments of social security contributions and any resulting fines.

XVII. Export provisions

1. The supplier has to satisfy all requirements of applicable national and international customs and export law and obtain the necessary permits unless under applicable export law it is not the supplier but rather we or a third party that is required to obtain the necessary permits.
2. At our request, which will include the specific markets to which the goods to be manufactured by the supplier are to be delivered by us, the supplier is required to notify us in writing of what raw materials, components, assemblies, devices, facilities, etc., are subject to export or re-export limitations under the export provisions of the Federal Republic of Germany or, if applicable, the US export regulation.

XVIII. Place of performance

The place of performance for all obligations arising under this contractual relationship, to the extent that the specific legal nature of the obligation is not necessarily opposed, is Stein near Nuremberg or the registered office of the ordering Faber-Castell company unless this registered office is in Stein near Nuremberg.

XIX. Applicable law and venue

1. The laws of the Federal Republic of Germany apply, to the exclusion of the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG) unless otherwise expressly agreed in writing.
2. Venue for all disputes arising directly or indirectly from the contractual relationship is Nuremberg. At our option, we can also invoke the court having jurisdiction over the registered office of the supplier or the court where the place of performance is located. Overriding legal provisions, specifically but not inclusively concerning exclusive jurisdiction, remain unaffected.

XX. Final provisions

1. Data protection

We collect from the supplier based on legal permission only data that are necessary to execute the order and to perform the contract and we also use these data only for purposes to which the supplier has consented.

2. Compliance with statutory provisions

The supplier shall comply with all statutory provisions including where they are not explicitly mentioned in the general purchasing terms and conditions as well as the recognized scientific and technological standards, in particular the relevant technical norms and applicable guidelines and regulations. The supplier will likewise obligate its subcontractors to comply with the statutory provisions.

3. Company rules

The supplier warrants that all persons it hires or consults to execute our orders will observe the rules applicable at our businesses and the associated instructions whenever they enter our businesses. It will notify the relevant individuals in a suitable form to secure compliance with these obligations.

4. Side agreements

Side agreements to these general purchasing terms and conditions must be made in written or textual form in order to be valid.

5. Changes to the general purchasing terms and conditions

For purchases from the supplier, these general purchasing terms and conditions also apply as a framework agreement to similar future contracts without our having to refer to them in each particular case.

We expressly reserve the right to modify and/or supplement these purchasing terms and conditions, whereby we agree to notify the supplier as soon as possible of the relevant modifications. Agreements already formed before communication of the change or addition will be based on the version of these purchasing terms and conditions valid at the time of contract formation.