

Version: September 2019

**GENERAL TERMS AND CONDITIONS OF PURCHASE  
of WERMA Signaltechnik GmbH + Co. KG, hereinafter referred to as the Purchaser**

**1. Scope**

- 1.1. These General Terms and Conditions of Purchase shall apply to all contracts for deliveries and services provided to WERMA Signaltechnik GmbH + Co KG.  
WERMA Signaltechnik GmbH + Co KG's General Terms and Conditions of Purchase shall apply exclusively and shall constitute an integral part of all contracts for the purchase of goods or services, both in present and future business relations, without the need to specifically agree upon them again in a separate contract.
- 1.2. Unless expressly agreed upon in writing, WERMA Signaltechnik GmbH + Co KG does not recognise any deviating or contradictory conditions of the Supplier, even if said conditions are included in the Supplier's general terms and conditions.
- 1.3. These General Terms and Conditions of Purchase shall also apply if WERMA Signaltechnik GmbH + Co KG, in knowledge of conflicting or deviating terms and conditions of the Supplier, accepts delivery from the Supplier without reservation.

**2. Offers**

- 2.1. Offers submitted to the Purchaser at the Purchaser's request shall always be free of charge.
- 2.2. Any discrepancies pertaining to the Purchaser's request or inquiry are to be specifically highlighted by the Supplier and brought to the notice of the Purchaser.
- 2.3. By submitting an offer, the Supplier agrees to the Purchaser's General Terms and Conditions of Purchase.

**3. Placement, acceptance period and confirmation of orders**

- 3.1. In order to be legally binding, all arrangements made between WERMA Signaltechnik GmbH + Co KG and the Supplier must be in writing (for instance, in written correspondence or by e-mail).
- 3.2. Likewise, verbal and/or telephone orders shall require the Purchaser's written confirmation in order to be legally binding.
- 3.3. The Supplier undertakes to confirm all orders within a period of seven (7) days from the date of the order. Unless WERMA Signaltechnik GmbH + Co KG expressly extends the acceptance period, the order shall no longer be legally binding if the order confirmation is not received within the said period of seven (7) days.
- 3.4. Confirmation of orders that deviate from the Purchaser's order shall only be valid with the Purchaser's prior written consent.

#### **4. Technical changes and modifications**

- 4.1. Unless approved by WERMA Signaltechnik GmbH + Co KG in writing, the Supplier may not implement any technical changes and/or modifications and may not deviate from the specifications agreed upon in the contract.
- 4.2. WERMA Signaltechnik GmbH + Co KG undertakes to inform the Supplier immediately about any technical changes pertaining to the delivery item that it considers relevant or necessary. In such cases, both parties shall be required to make the necessary amendments pertaining to the contents and execution of the agreement.
- 4.3. The Supplier undertakes to check technical documents, drawings or specifications which constitute an integral part of the Purchaser's order, notify the Purchaser of any discrepancies and request clarification.
- 4.4. WERMA Signaltechnik GmbH + Co KG's approval of technical documents, drawings and specifications prepared by the Supplier shall not imply that the Supplier is released from their responsibility for the proper performance of the contract.
- 4.5. The Supplier shall be responsible for independently examining the feasibility of suggestions and requests for changes made by the Purchaser and for notifying the Purchaser about any reservations and concerns.

#### **5. Prices**

- 5.1. The agreed prices are fixed prices and shall include free delivery to the address specified by WERMA Signaltechnik GmbH + Co KG, including packaging, insurance, import duties and other expenses.
- 5.2. WERMA Signaltechnik GmbH + Co KG arranges for the pickup of general cargo. Delivery by road transport shall only be accepted free of freight charges.
- 5.3. The applicable value-added tax must be listed by the Supplier in both the offer and the invoice.
- 5.4. In the event of any reductions pertaining to the prices specified by WERMA Signaltechnik GmbH + Co KG, for instance due to general discounts, lower daily notations, exchange rate fluctuations among other reasons, only the reduced daily price valid at the time of invoicing shall be charged.
- 5.5. Subsequent price increases or surcharges shall require the prior written consent of WERMA Signaltechnik GmbH + Co KG.

#### **6. Scope of delivery**

- 6.1. Orders placed by WERMA Signaltechnik GmbH + Co KG specify the scope of delivery, i.e. the contents, nature and scope of the delivery item.
- 6.2. Partial deliveries, advance deliveries and/or the delivery of excess or lower quantities shall require the prior written consent of WERMA Signaltechnik GmbH + Co KG.
- 6.3. Irrespective of the agreed requirements, the delivery item must comply with all relevant statutory provisions and the state of the art, in particular the applicable VDE, ISO/DIN and UL regulations in the Federal Republic of Germany.
- 6.4. Furthermore, the Supplier shall also be responsible for compliance with the applicable accident prevention regulations and shall comply with the specifications for protective devices and safety instructions set forth under these regulations.
- 6.5. The Supplier shall also ensure compliance with the applicable environmental protection regulations, in particular the ordinance on hazardous substances.

## **7. Delivery**

- 7.1. The delivery periods/dates and address of receipt specified by WERMA Signaltechnik GmbH + Co KG in the order shall be binding. The Supplier undertakes to adhere strictly to the delivery dates.
- 7.2. WERMA Signaltechnik GmbH + Co KG shall be entitled to change the time and place of delivery as well as the type of packaging at any time by notifying the Supplier in writing at least seven (7) calendar days prior to the agreed delivery date.
- 7.3. The Supplier undertakes to promptly notify WERMA Signaltechnik GmbH + Co KG upon becoming aware of any circumstances that may be expected to jeopardise compliance with a specific delivery date.
- 7.4. In the event of a delay in delivery and without prejudice to any other rights, WERMA Signaltechnik GmbH + Co KG shall be entitled to impose a contractual penalty of 0.5% of the order value affected by the delay per commenced week of delay, but no more than 5% of the respective order value. The contractual penalty shall be offset against any compensation claims for delayed delivery by the Supplier.
- 7.5. The use of partial deliveries or parts of a complete delivery by WERMA Signaltechnik GmbH + Co KG shall not imply the recognition of an entire delivery in accordance with the contract.

## **8. Shipment, transfer of risk and ownership**

- 8.1. Delivery items are to be packed by the Supplier such that there is absolutely no risk of damage during transport and proper storage. This applies, in particular, to chemicals and other hazardous substances.
- 8.2. The shipping documents must include the order date, the order number, the description of the delivery items, in particular the article number/s specified by WERMA Signaltechnik GmbH + Co KG, the number of packages, the total gross weight of the consignment and, where required, a classification of dangerous goods.
- 8.3. At the request of the Purchaser, the Supplier shall be obliged to take back (collect) and dispose the packaging at Supplier's own expense.
- 8.4. Any costs and damages arising from non-compliance with statutory regulations or from the shipping, packaging or marking/labelling requirements specified by the Purchaser shall be borne by the Supplier.
- 8.5. The risk shall be transferred to the Purchaser following delivery and unloading of the relevant consignment at the delivery address specified by the Purchaser in the order.
- 8.6. The right of ownership shall be transferred to the Purchaser upon receipt of the delivery items either directly by the Purchaser or their representatives or commissioned agents.
- 8.7. WERMA Signaltechnik GmbH + Co KG does not grant its consent to the implementation of an extended or prolonged retention of title provision.

## **9. Production and goods inspection**

- 9.1. WERMA Signaltechnik GmbH + Co KG's obligation to inspect consignments (receipt of goods) shall be limited to an incoming goods inspection involving a visual and external examination of the consignment and checking of the delivery documents (for instance, checks to ascertain transport damage, wrong deliveries, incorrect volume/quantity).

- 9.2. The Purchaser shall be entitled to carry out random tests and inspections for larger quantities of incoming goods or, insofar as this is feasible depending on the nature of the delivery items, in appropriate test procedures which, if required, may extend over a longer period of time.
- 9.3. Insofar as a formal acceptance procedure has been agreed or is provided for by law, the Purchaser shall only be obliged to perform a visual inspection for transport damage.
- 9.4. The Purchaser shall notify the Supplier of defects immediately upon discovery.
- 9.5. Payments made by WERMA Signaltechnik GmbH + Co KG shall not imply acknowledgement of a delivery as being in accordance with the contract and free of defects.

## **10. Guarantee**

- 10.1. In the event of non-compliance with agreed minimum quality specifications or other complaints, WERMA Signaltechnik GmbH + Co KG shall be entitled, without prejudice to other claims, either to reject the delivered goods completely or to sort out the defective components of the delivery at the Supplier's expense.
- 10.2. The Purchaser shall be entitled to return the rejected goods to the Supplier at the Supplier's expense and risk and demand the immediate delivery of a replacement.
- 10.3. Furthermore, the Purchaser reserves the right to demand reimbursement from the Supplier for expenses incurred as a result of the defective delivery.
- 10.4. In particular, the Supplier shall be liable for ensuring that the delivery items possess the agreed properties and condition, comply with the state of the art and comply with the technical documents, drawings and other specifications that constitute an integral part of the order.
- 10.5. In the event of a defective delivery, the Purchaser, at Purchaser's discretion, may either demand immediate remedy of the defect free of charge or a replacement or an appropriate reduction of the agreed purchase price or may cancel the respective contract.
- 10.6. Where the Supplier fails to comply with the Purchaser's demand and remedy the defect, WERMA Signaltechnik GmbH + Co KG may, after issuing a prior notification to the Supplier, commission a third-party company to remedy the defect at the Supplier's expense and risk, or remedy the defect itself and claim compensation from the Supplier for the expenses incurred. Furthermore, this does not affect the Purchaser's right to claim compensation for damages and costs in accordance with the Supplier's warranty obligations.
- 10.7. In the event of a claim, the Purchaser shall be entitled to withhold payments due according to the respective contractual relationship or related commercial transactions to an amount corresponding to the costs and damages associated with the defect.

## **11. Statutory warranty period**

- 11.1. Unless otherwise agreed upon in writing and without prejudice to longer statutory and contractually agreed limitation periods, the Purchaser's limitation period for claims and damages shall commence with the transfer of risk and shall expire no earlier than 36 months after delivery of the goods.
- 11.2. The limitation period for warranty claims is interrupted once the Purchaser issues a written notification of a defect to the Supplier.

11.3. The warranty period shall resume for repair work carried out within the scope of the warranty, installed replacement parts or repaired parts.

## **12. Manufacturer's liability**

12.1. Where an action is brought against the Purchaser owing to a defective delivery by the Supplier and the Supplier is responsible for product damage, the Supplier shall indemnify the Purchaser in this regard against third-party claims to the extent that the cause lies within the Supplier's managerial and organisational sphere of control and the Supplier itself is liable vis-à-vis third parties. Insofar as the Purchaser has substantially contributed to the damage, the compensation amount shall be divided among and borne by both the Supplier and the Purchaser on a pro rata basis.

In accordance with its obligation to indemnify, the Supplier shall, in compliance with the principles of negotiorum gestio, reimburse the expenses incurred by the Purchaser as a result of or in connection with a third-party claim including product recalls undertaken by the Purchaser. Insofar as it is possible and reasonable to do so, the Purchaser shall inform the Supplier of the content and extent of recall measures and allow the Supplier the opportunity to state their position. This shall be without prejudice to other legal claims and statutory rights.

12.2. The Supplier shall conclude and maintain at Supplier's own expense a product liability insurance with an insured sum of at least EUR 1 million, which, unless otherwise agreed for specific cases, does not necessarily have to cover the risk of recall or punitive or other similar damages. At the Purchaser's request, the Supplier shall provide appropriate documentary evidence and a copy of the aforementioned insurance policy.

## **13. Invoicing**

Invoices for each individual order must state the order number, the order date and the supplier number and are to be sent in writing (for instance, by regular post or by e-mail) to the respective invoice address of the Purchaser. Invoices in PDF format may be sent to the following e-mail address: [erechnung@werma.com](mailto:erechnung@werma.com).

## **14. Payment**

Payment is generally settled by the Purchaser within 30 days net following receipt of the invoice or following receipt and, if applicable, acceptance of the entire delivery, whichever is later.

## **15. Withdrawal**

If the Purchaser has expressly reserved the right to withdraw from the contract, or if the Purchaser has a statutory right to rescind the contract, the Supplier may, after receipt of the Purchaser's declaration of withdrawal, only carry out deliveries at the Purchaser's express request.

## **16. Operating equipment, resources and work product**

16.1. Any tooling costs incurred by the Supplier shall only be reimbursed if they are indicated separately in the offer.

16.2. Technical documents, drawings or other operating equipment, materials and resources produced by the Supplier shall become the property of the Purchaser upon delivery, at the latest upon settlement of payment.

16.3. All rights to and resulting from the work and development product (final and intermediate product, hardware and/or software as well as image and text material including recording media), including any inventions and improvements, shall become the property of the Purchaser upon their creation or processing, at the latest upon delivery or acceptance.

### **17. Ownership and property rights of WERMA Signaltechnik GmbH + Co KG**

17.1. The Purchaser reserves all proprietary rights and copyrights of design documents, technical drawings, tools, materials, etc. (hereinafter referred to as "Materials") provided by the Purchaser to the Supplier.

17.2. Any Materials provided must be identified as the property of the Purchaser, used exclusively for the purpose specified in the Purchaser's order and must, after completion of the order, be returned to the Purchaser without a special request.

17.3. Without the prior written consent of the Purchaser, the Supplier shall not be entitled to reproduce Materials provided by the Purchaser or make them accessible in any form or available for use to third parties.

### **18. Property rights of third parties**

18.1. In connection with the delivery and the contractual use of the contract product, the Supplier shall be responsible for ensuring that they shall not infringe any domestic or international property rights of third parties, in particular industrial property rights such as patents, trademarks, copyrights, designs or utility models. This provision shall not apply, insofar as the Supplier is in no way responsible or insofar as such an infringement is exclusively due to the specifications of the Purchaser.

18.2. If the Supplier possesses property rights which relate to the application of the contract product delivered, the Supplier shall grant the Purchaser, free of charge, the right of joint use of Supplier's property rights pertaining to the contract product delivered, insofar as this is necessary to achieve the purpose of the contract.

18.3. In the context of Clause 18.1 above and upon notification by the Purchaser of the assertion of an alleged infringement of property rights, the Supplier shall without delay defend the Purchaser against the claim of the third party at Supplier's own expense and indemnify the Purchaser against all costs and claims which arise as a result of the infringement. Without the Supplier's consent, the Purchaser shall not enter into any agreements or settlements with the third party.

18.4. Given an infringement of property rights, the Supplier shall, upon request and free of charge, grant the Purchaser the right to continue using the delivery items or to replace or modify them such that an infringement of property rights no longer exists, even though the items continue to fulfil the contractual specifications.

### **19. Advertising and marketing**

Only with the prior express consent of the Purchaser may the Supplier advertise their business relations with the Purchaser for purposes of advertising and marketing.

### **20. Official and regulatory requirements, export regulations**

WERMA Signaltechnik GmbH + Co KG reserves the right to withdraw from its contractual obligations, in particular the acceptance of and payment for delivery items, or to terminate the contractual relationship with immediate effect, as soon as it is established that further performance of a contract or fulfilment of individual obligations arising therefrom would violate German or US export regulations.

## **21. Code of conduct for Suppliers**

- 21.1. The Supplier shall be obliged to comply with the laws, standards, norms and regulations of the relevant applicable legal system(s). In particular, the Supplier agrees to comply with the Purchaser's Business Partner Code of Conduct ([https://www.werma.com/gfx/file/leitlinien/2019\\_06\\_Verhaltenskodex\\_EN.pdf](https://www.werma.com/gfx/file/leitlinien/2019_06_Verhaltenskodex_EN.pdf)).
- 21.2. Without prejudice to other claims, the Purchaser shall be entitled to exercise their right to withdraw from or terminate the contract, in the event that the Supplier violates the provisions set forth under Clause 21.1 and the Purchaser's Business Partner Code of Conduct. Given that the Supplier's breach of obligations is capable of remedy, this right may only be exercised if the Supplier fails to remedy the breach within a reasonable grace period set by the Purchaser.

## **22. Miscellaneous provisions**

- 22.1. The Supplier may not commission or appoint any subcontractors without obtaining the express written consent of the Purchaser.
- 22.2. The Supplier may not assign claims against the Purchaser to third parties without obtaining the prior written consent of the Purchaser. The Supplier agrees that all data required for the performance of the contract, including data pertaining to quotes and offers, may be stored by the Purchaser in a central storage system and, if required, processed by other affiliated companies. To the extent required for the performance of the contract, storage of personal data shall only take place in compliance with the applicable data protection and privacy regulations.

## **23. Governing law and jurisdiction**

- 23.1. These General Terms and Conditions of Purchase and any dispute or claim arising out of or in connection with this agreement or its subject matter, shall be governed by and construed in accordance with the laws of the Federal Republic of Germany. The contracting parties specifically disclaim the UN Convention on Contracts for the International Sale of Goods (CISG).
- 23.2. For all disputes arising out of and in connection with contracts subject to these Terms and Conditions of Purchase, the contracting parties agree to submit to the exclusive jurisdiction of the courts of Tuttlingen, Germany. WERMA Signaltechnik GmbH + Co KG shall, however, also be entitled to bring a claim against the Supplier before a court at the Supplier's principal place of business.

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