

**GENERAL TERMS AND CONDITIONS OF  
PURCHASE OF PEPPERL+FUCHS  
MANUFACTURING S.R.O**

**(Status as of April 2021)**

**1. AREA OF APPLICATION, SCOPE OF VALIDITY AND  
COLLISION**

- 1.1. These General Terms and Conditions of Purchase shall apply to all contracts for deliveries and services between us or our affiliated companies based in Germany, unless these have their own Terms and Conditions, and the supplier and/or service provider (hereinafter referred to as "Supplier"). If these General Terms and Conditions of Purchase have become part of a contract, they shall also apply to contracts concluded in the future.
- 1.2. We object to the Supplier's general terms and conditions of delivery. This shall apply irrespective of when and how the Supplier wishes to incorporate them, and also in the event that we accept the Supplier's delivery or service without once again objecting to the Supplier's Terms and Conditions. The Supplier's general terms and conditions shall only apply if expressly confirmed by us in writing with express reference to them.
- 1.3. Oral ancillary agreements, deviations from these General Terms and Conditions of Purchase as well as additions to or the exclusion of these Terms and Conditions must be made in writing in order to be effective. This shall also apply to any waiver of this written form requirement.
- 1.4. Should any provisions of these General Terms and Conditions of Purchase or other contractual provisions be held to be void, invalid or enforceable, this shall not affect the validity or enforceability of the other provisions. The parties are obliged to replace an invalid provision by a valid provision which comes as close as possible to the economic result of the invalid provision.

**2. INQUIRIES, OFFERS, ORDERS**

- 2.1. Our inquiries are non-binding. Our orders are binding for us only if and insofar as we have placed them in writing or confirmed them in writing. The Supplier shall accept our order by means of an order confirmation. If we do not receive an order confirmation or an objection to the order from the Supplier within 5 days of receipt of the order by the Supplier, this order shall be deemed to have been accepted.

- 2.2. If the Supplier receives delivery instructions from us at the beginning of the supply relationship, these are to be complied with and are a binding part of the order, even if they are not expressly referred to in the order.
- 2.3. The Supplier shall be bound by his offers for two weeks. The period begins with the submission of the offer and ends with the expiry of time.
- 2.4. If the supplier deviates from our inquiry in his offer, he must expressly point this out. The submission of offers shall be free of charge and non-binding for us; we shall not grant any remuneration for visits, the preparation of plans, drawings and the like without an express written agreement.
- 2.5. The Supplier is not entitled to assign the order or parts thereof to third parties and/or to use subcontractors without our prior written consent. Even in the event of consent, the Supplier shall remain responsible for the contractual performance and has to ensure that the third party has assumed and fulfils all obligations assumed by the Supplier.

**3. PRICES, INVOICES, PAYMENTS**

- 3.1. Agreed prices are binding. Unless otherwise agreed or the INCOTERMS ® 2020 provide for a different regulation, the prices shall include the costs for packaging, transport, insurance, customs duties, taxes and other charges.
- 3.2. If a separate e-invoicing agreement has been concluded with the Supplier, invoices/credit notes are to be provided in electronic form on the basis of the criteria and processes specified in the e-invoicing agreement. If an electronic exchange of invoices/credit notes is not possible, these must be submitted separately from the consignment of goods. All invoices/credit notes must include our article number, complete article designation, order number, order item and other markings and information required in the order. A separate invoice/credit note must be issued for each order; collective invoices for several orders will not be accepted. The invoices/credit notes submitted must meet all tax requirements, in particular specific VAT law. Invoices/credit notes that do not meet these requirements shall be regarded as not submitted.
- 3.3. Unless otherwise agreed, payments shall be due within 30 days after receipt of the invoice and receipt of the goods. If documentation, test certificates or similar documents are part of the scope of performance, the aforementioned payment periods shall not begin before the documents have been handed over to us in accordance with the contract. Payment shall be made subject to the determination of the contractual conformity and completeness of the delivery/service.

#### **4. DELIVERY**

- 4.1. The Supplier may only deliver new original products and may not replace them with the products of other manufacturers. Changes to the delivery or service item require our prior written approval.
- 4.2. The dates and deadlines specified in the order are binding.
- 4.3. Should circumstances arise that make a proper performance appear to be at risk at the agreed time, the Supplier shall notify us immediately in writing, indicating the reasons and the expected duration of the delay. The obligation to adhere to the agreed performance period shall not be annulled by this. The Supplier shall bear any additional costs for an accelerated mode of transport that is necessary due to exceeding the agreed delivery time.
- 4.4. In the event of delay, the Supplier must pay Liquidated Damages as a reasonable pre-estimate of our losses incurred in an amount of 0.2% of the order total for each working day of delay, but not more than 5% of the order total. The assertion of a claim for damages in excess thereof shall remain unaffected. In this case, the Liquidated Damages will be offset against the claim for damages exceeding this amount.
- 4.5. If the dates and deadlines specified in the order are exceeded, the Supplier shall be in default even without a reminder from us, unless the performance is prevented by a circumstance for which the Supplier is not responsible.
- 4.6. The unconditional acceptance of the delayed performance does not imply a waiver of any rights we may have due to the delay.
- 4.7. The Supplier may only refer to the absence of documents to be made available by us that are necessary for the execution of the delivery, if he has not received the documents despite a written reminder and the setting of a deadline.
- 4.8. Unless otherwise agreed, delivery shall be made in accordance with the clause DAP INCOTERMS® 2020 to our warehouse in Mannheim or to a different delivery location specified in the order.
- 4.9. The Supplier shall bear the risk until the goods are handed over at the place of destination. If a delivery with assembly/service has been agreed, the transfer of risk shall take place after proper execution of the assembly/service and handover. If acceptance is provided for by law or contractual agreement, the transfer of risk shall take place upon acceptance by us. If a formal acceptance has been agreed, the transfer of risk shall not take place before we have confirmed the successful acceptance in the acceptance report. The payment of invoice amounts does not replace the formal acceptance.
- 4.10. Payment shall be made according to the quantities, dimensions and weights determined at our plant.
- 4.11. Unless otherwise agreed, the Supplier shall, at his own expense, provide packaging that is suitable for transporting the goods and that prevents transport damage. Our right to give instructions regarding the packaging to be used remains unaffected. We are entitled, at our discretion, to return packaging material to the Supplier at the Supplier's expense and risk or to dispose of packaging material at the Supplier's expense; however, there is no obligation to return or dispose of packaging material. The provisions of the Packaging Act shall remain unaffected.
- 4.12. Shipping documents such as bills of lading, delivery notes, packing slips and other documents accompanying the goods as well as, if required in the order, prescribed by law or customary in the trade, factory certificates, product data sheets and safety data sheets, declarations of conformity and certificates of origin shall be enclosed with each shipment. The order numbers, the article numbers and the markings required in the order must be indicated in all documents. A dispatch note and a delivery note (in duplicate) must be sent to us for each individual consignment no later than on the day of dispatch. If we do not have proper shipping documents at the time of receipt of the goods or if our order numbers are not correctly indicated in the shipping documents, all additional costs incurred as a result shall be borne by the Supplier.
- 4.13. For third country deliveries (imports), Pepperl+Fuchs SE shall become importer of record and the Supplier shall support us with all documents and information necessary to prepare a complete and lodge a true import declaration to authorities responsible for customs, as required in the customs regulations of the country of import.
- 4.14. The Supplier is only entitled to partial performance with our prior written consent. Our right to demand partial performance from the Supplier remains unaffected.
- 4.15. The Supplier is not entitled to render his performance before the agreed delivery time. In the event of early delivery, we shall have the right to refuse to accept the goods or to return the goods to the Supplier - at the Supplier's expense and risk - or to store them until the agreed delivery time. When providing his services, the Supplier shall observe our opening hours.
- 4.16. We shall become the owner of the delivered goods upon delivery/handover of the goods. We object to an extended or prolonged retention of title by the Supplier.

#### **5. DECLARATIONS OF ORIGIN, EXPORT RESTRICTIONS**

- 5.1. The Supplier undertakes to provide correct information about the origin of goods and goods tariff numbers on the delivery documents/invoice. Furthermore, he undertakes to

provide customs-compliant proofs of origin; on the one hand, these are long-term Supplier declarations for the preferential origin of goods, otherwise IHK long-term supplier declarations for the non-preferential origin of goods or corresponding IHK certificates of origin. The Supplier shall be liable for any damage or loss resulting from the non-approval by the relevant authorities of the declared origin due to any defective certification or lack of verifiability.

- 5.2. The Supplier hereby represents and warrants that the products delivered by him are neither subject to EU export restrictions nor to US export or re-export control regulations. Otherwise, the Supplier undertakes to notify us separately in writing within two weeks of receipt of the order of any restrictions and shall provide us with all information required for to comply with all foreign trade regulations in cases of export and import as well as re-export, including without limitation all applicable export list numbers, including the relevant Dual-use list number and/or ECCN (Export Control Classification Number according to the U.S. Commerce Control List) together with the delivery of the products.

## **6. EXECUTION, CHANGE OF EXECUTION, ACTIVITIES ON OUR PREMISE**

- 6.1. Deliveries and services shall be carried out by the Supplier in such a way that they comply with the order, the law on technical equipment, the German Product Safety Act, the relevant occupational safety, environmental and accident prevention regulations, and all other regulations applicable in the Federal Republic of Germany and the European Union, the relevant technical standards as well as the generally recognised rules of technology as a whole at the latest state of the art. Otherwise we shall be entitled to reject the delivery.
- 6.2. The Supplier is obliged to inform us about special treatment and disposal requirements that are not generally known for each delivery.
- 6.3. We are entitled to request a modified execution even after the contract has been concluded, unless the modification requested by us is unreasonable for the Supplier in consideration of our interests.
- 6.4. Persons who work within our company to fulfil the Supplier's obligations are subject to our instructions and the provisions of our company regulations as well as the accident prevention, occupational safety, environmental and other regulations applicable at our company. Hazardous substances may only be used within our company after consultation with us and must be properly labelled.

## **7. EXECUTION DOCUMENTS**

- 7.1. The Supplier may not use, reproduce or make available to third parties for purposes outside of our business relationship any execution documents provided to him by us for the manufacture of the delivery item. The execution documents have to be returned to us upon request, otherwise at the latest upon termination of the delivery

relationship or after execution of the deliveries and services by the Supplier.

- 7.2. The Supplier shall provide us with copies of plans, execution drawings, technical calculations as well as other records and documents relating to the goods, unless otherwise agreed. Upon request, the Supplier shall also provide us with spare parts drawings together with sufficient information on the procurement of spare parts. Upon surrender or delivery of the records, documents and drawings, these shall become our property. Furthermore, the Supplier shall submit to us for inspection all documents and records relating to the goods - even before delivery of the goods - insofar as this is necessary for monitoring and checking the conformity of the goods with the contract; any approval of such records and documents by us shall not release the Supplier from his responsibility for the conformity of his contractual performance, unless we insist on the execution requested by us despite concerns expressed to us in writing by the Supplier.

- 7.3. Moulds, tools, printing templates etc. which are produced by the Supplier at our expense shall become our property upon payment; they shall be stored by the Supplier free of charge for us in a suitable manner with the care customary in the industry and shall be adequately insured against theft, destruction or damage. They shall be clearly marked as our property and may only be used for the execution of our orders and shall be returned to us upon request. Copies of the drawings of the moulds and tools are to be provided to us at the beginning without being requested before they are used.

## **8. PROVIDED MATERIAL**

Materials supplied by us shall remain our property. Any processing or transformation pursuant to § 950 BGB (German Civil Code) shall be carried out for us without any obligation on our part. Material provided shall be stored in a clear manner and separately from other items and shall be marked as our property; it shall be adequately insured against fire, natural hazards and theft at the Supplier's expense.

## **9. INSPECTION OF THE GOODS BEFORE DELIVERY AND OF THE SUPPLIER'S QUALITY ASSURANCE MEASURES**

- 9.1. We are entitled to enter the Supplier's premises at any reasonable time after prior notice and to inspect the goods and the production process - even before completion of production. The Supplier may deny access to business secrets. If the goods are on the premises of a third party, the Supplier shall take all measures to enable us to inspect the goods. Defects identified during the inspection of the goods and the production process are to be eliminated by the Supplier.
- 9.2. We shall also be entitled to inspect the Supplier's quality assurance measures and systems at any time we deem appropriate. For this purpose, the Supplier shall grant us access to his premises at any reasonable time after prior

notice and shall provide us with all information relevant for the assessment of the quality assurance measures and systems. The Supplier may deny access to business secrets. Any regulations in quality assurance agreements remain unaffected.

## **10. ACCEPTANCE**

If acceptance is required by applicable legal provisions or on the basis of an agreement, a formal acceptance shall be performed with a written acceptance record being prepared.

## **11. MATERIAL DEFECTS AND DEFECTS OF TITLE**

- 11.1. We shall only inspect the deliveries/services for obvious defects (type/identity, quantity, any transport damage, other externally visible damage). In all other respects we are exempt from the obligation to inspect and give notice of defects in accordance with § 377 HGB (German Commercial Code). Insofar as we are subject to an obligation to inspect and give notice of defects pursuant to § 377 HGB, the period for giving notice of a discovered defect shall be at least 10 working days from the discovery of the defect. If the Supplier does not receive the notice of defect despite sending it, the notice of defect shall be deemed timely if we notify the Supplier immediately after discovering that the Supplier did not receive it.
- 11.2. The Supplier warrants that the deliveries and services have the expressly agreed quality characteristics and, if no quality has been agreed, that they are suitable for use assumed to the contract and, otherwise for normal use, and that they have a quality which is customary for deliveries and services of this type and which we can expect for deliveries and services of this type. He also guarantees that the deliveries and services correspond to the state of the art, are performed by qualified personnel and comply with all relevant legal provisions at the place of destination.
- 11.3. The Supplier is obliged to provide us with the deliveries and services free of national and foreign industrial property rights and other rights of third parties so that no rights of third parties, in particular patents and licences, are infringed by the use of the deliveries and services. In the event of a culpable breach of the obligation to transfer the goods and services free of defects in title, the Supplier shall indemnify us and our customers upon first demand and at his own expense against any claims of third parties based on the infringement of industrial property rights. He shall immediately take every appropriate measure to enable us to use the delivered goods without infringement.
- 11.4. If the Supplier does not take action even after a written reminder, we may obtain permission to use the delivered goods from the rights holder at the Supplier's expense.
- 11.5. If the Supplier fails to meet a reasonable deadline set for him for subsequent performance expire without having rectified the defect or delivered defect-free goods, we may eliminate the defect ourselves or have it eliminated by a third party at the Supplier's expense. The statutory

provisions on the dispensability of setting a deadline as well as all statutory rights regarding defects, including recourse claims, shall remain unaffected.

- 11.6. Clause 11.5 shall also apply in the event that due to the special urgency it is no longer possible to notify the Supplier about the defect and the threatening high damage and to set a deadline for rectifying the defect.
- 11.7. The Supplier's warranty obligation shall not be affected by our approval of plans, execution drawings, technical calculations, etc. of the Supplier.
- 11.8. The limitation period for claims arising from defects, including recourse claims, is two years, unless the law provides for longer limitation periods. It shall commence with the handover of the delivery/service to us or the place of receipt specified by us. For devices, machines, plants and other deliveries and services for which acceptance is carried out, the limitation period shall commence on the acceptance date noted in our written acceptance declaration. The statutory provisions regarding the suspension of the limitation period of recourse claims remain unaffected.
- 11.9. The limitation period for claims for defects concerning items ordered as spare parts for goods purchased from the Supplier shall not commence until the spare parts have been installed; however, the limitation period shall end no later than five years after delivery of the spare parts to us.
- 11.10. If the delivery item is newly delivered, completely or partially repaired or replaced, the warranty period for the newly delivered/replaced or completely or partially repaired item shall begin anew.

## **12. SERIAL DEFECTS**

Serial defects are defects in which materials, components, sub-systems or systems have a defect frequency that is markedly outside the usually expected values, in particular if the number of defective products exceeds 1% of the respective delivery batch. In the event of a serial defect, we may require the Supplier to draw up a measure plan for the elimination of the defect at the Supplier's expense or to replace the entire series. If the Supplier's product is incorporated in our products, we are entitled to recall the product at the supplier's expense. Any further-reaching and other legal claims shall remain unaffected.

## **13. LIQUIDATED DAMAGES**

If liquidated damages has been agreed, we shall be entitled to claim payment of any payable liquidated damages even if we do not reserve the right to do so upon acceptance of the delivery/service; however, the liquidated damages must be asserted at the latest at the time of final payment.

## **14. PRODUCER'S LIABILITY AND PRODUCT LIABILITY, LIABILITY INSURANCE, INDEMNITY**

- 14.1. The Supplier shall, upon first demand, fully indemnify us from any liabilities, including expenses and costs of legal action against third parties arising from producer's liability or product liability, insofar as the Supplier is responsible for the product defect causing the liability.
- 14.2. In this case, the Supplier shall be obliged to reimburse us for expenses incurred by us due to a recall campaign resulting from the product defect. We shall inform the Supplier about the content and scope of the recall campaign and give him the opportunity to comment, except in the case of imminent danger.
- 14.3. The Supplier undertakes to procure and maintain a public and product liability insurance with an appropriate coverage amount for personal injury and property damage, including the recall risk. Further claims for damages remain unaffected. Upon our request, the Supplier shall provide evidence of the existence of the insurance coverage within 14 days.
- 14.4. Unless otherwise agreed, the Supplier is obliged to mark the products in individual cases in such a way that they are recognisable as his products even after installation, or to take other suitable measures to ensure that, if a defect occurs, it can be determined immediately whether the defect in the end product exists in the delivered item or can be traced back to it, and to instruct us on the marking in such a way that we can make these determinations ourselves to the extent necessary.

**15. Compliance with regulations for substances and material, in particular, but without limitation to EU Directive 2011/65/EU (ROHS2) and EC Regulation No 1907/2006 (REACH)**

- 15.1 The Supplier undertakes and warrants that the delivered products comply with all legal requirements, including but not limited to EU Directives 2011/65/EU (ROHS2) and EC Regulation No 1907/2006 (REACH) in their respective valid version; even if the Supplier is based outside the territorial scope of the aforementioned EU regulations.
- 15.2 The Supplier shall send to us upon our request for each delivered our standard declaration in respect of ROHS and REACH compliance fully and truthfully completed and to submit this declaration again without being requested to do so in the event of a change in the legal framework conditions or in the event of changes to the product.

**16. OFFSETTING, RETENTION, ASSIGNMENT**

- 16.1. The Supplier is entitled to set-off his claims against our claims only with regard to undisputed or legally established claims. The Supplier is only entitled to a right of retention with regard to such undisputed, legally established claims which originate from the same contractual relationship with us.

- 16.2. The assignment of claims of the supplier against us to third parties is excluded; § 354a of the German Commercial Code remains unaffected.

**17. LIABILITY**

- 17.1. We shall be liable without limitation in accordance with the statutory provisions for damage caused by intent or gross negligence as well as for negligent injury to life, limb or health. In the case of negligent breach of essential contractual obligations which are indispensable for achieving the purpose of the contract and on whose strict compliance the Supplier must therefore be able to rely, we shall be liable in accordance with the statutory provisions limited to such damages which were foreseeable for us in terms of type and scope at the time of conclusion of the contract; in the case of default in payment, the foreseeable damage shall include the statutory default interest. In all other respects, claims by the Supplier for compensation for direct or indirect damage - irrespective of the legal grounds - including any claims for compensation for breach of pre-contractual obligations and for unlawful acts are excluded.
- 17.2. The limitations of liability set out in clause 17.1 shall also apply to any liability of our legal representatives, executive employees and other vicarious agents towards the Supplier.

**18. CONFIDENTIALITY AND DATA PROTECTION**

- 18.1. The Supplier is obliged to keep confidential the confidential information received from us or brought to his knowledge, not to disclose it to third parties (subject to clause 18.2) and to use this confidential information only insofar as this is necessary for the proper execution of the contractual relations.
- 18.2. The Supplier may only disclose confidential information to employees, consultants and, if applicable, sub-suppliers to the extent that this is necessary for the proper execution of the contractual relationships. The Supplier is obliged to impose the confidentiality obligation mentioned in clause 18.1 on such persons and to confirm or prove this to us in writing at our request.
- 18.3. The confidentiality obligation shall not apply to any information that at the time of its disclosure to the Supplier was already in the public domain or which entered the public domain after its disclosure to the Supplier without the Supplier's involvement or which was provided by a third party without an obligation of confidentiality. The burden of proof for the existence of these exceptions lies with the Supplier.
- 18.4. The disclosure of confidential information and the possible transmission of corresponding documents shall not establish any rights of the Supplier to industrial property rights, know-how or copyrights of the disclosing or



transmitting party. The parties agree that the disclosure or transmission of confidential information does not constitute a prior publication or right of prior use in the sense of the Patent and Utility Model Law.

- 18.5. The parties shall adhere to the provisions of data protection law and shall ensure that the persons subordinate to them have been obligated to maintain the confidentiality and integrity of the personal data in accordance with the statutory requirements.

## **19. CODE OF CONDUCT**

We are consciously committed to the Code of Conduct of the German Electrical and Electronic Manufacturers' Association (ZVEI) and the social responsibility arising from it and have therefore adopted the ZVEI statements ([www.pepperl-fuchs.com/supplier-code-of-conduct](http://www.pepperl-fuchs.com/supplier-code-of-conduct)) in their original version. We also expect the Supplier to adhere to a comprehensive code of conduct, and with the execution of the contract, the Supplier agrees to make these rules of conduct the benchmark for his actions, too.

## **20. PUBLICATION / ADVERTISING**

An evaluation or disclosure of the existing business relationship with us by the Supplier, in particular in publications or for advertising purposes, is only permitted with our express prior written consent.

## **21. PLACE OF PERFORMANCE, PLACE OF JURISDICTION, APPLICABLE LAW**

- 21.1. The place of performance for the delivery of the goods is the destination specified by us. The place of performance for our payments is the location of our branch office that concluded the respective contract.
- 21.2. The exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Mannheim; however, instead of the aforementioned court, we are entitled to bring an action before any other court having jurisdiction in accordance with the statutory provisions.
- 21.3. The law of the Federal Republic of Germany shall apply, with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 ("CISG") and the conflict-of-law rules applicable in Germany.