

# General Conditions of Purchase

October 2022 version

## 1 Validity

- 1.1 The following Terms and Conditions of Purchase ('GTCP') apply to all orders placed by Wera with its contractual partners, even if they are not expressly agreed upon again. Deviating terms and conditions of business of the contractual partner or commercial letters of confirmation do not apply even if Wera unconditionally accepts delivery by the contractual partner knowing about these deviating terms and conditions or does not object to them. This also applies if Wera refers to a letter which contains or refers to terms and conditions of business of the other contractual partner or a third party.

## 2 Conclusion of the agreement

- 2.1 All Wera orders, ancillary agreements and assurances are only binding if they have been made in writing. Insofar as Wera's employees make oral collateral agreements or give assurances, these must always be confirmed in writing by Wera.

## 3 Modifications of the item to be delivered

- 3.1 To the extent that it is reasonable for the contractual partner, Wera is entitled to request changes in the design and execution of the goods to be delivered or the services to be rendered.
- 3.2 The effects of such changes, in particular regarding additional and reduced costs as well as delivery dates, shall be mutually agreed and shall be reasonable.

## 4 Prices

- 4.1 All prices are fixed prices.
- 4.2 Unless an express agreement on prices has been made, the list price of the other contractual partner according to a price list submitted to Wera within the last 12 months prior to the order shall apply in ongoing business relationships. If such a price list has not been submitted to Wera within the last 12 months, the price most recently charged by the other contractual partner for these or comparable goods or services shall apply in ongoing business relationships. In all other cases, average prices customary in the trade are deemed to be agreed.
- 4.3 If list prices have been agreed, the contractual partner may only charge Wera the prices according to the price list last notified to Wera, unless it has explicitly informed Wera in writing of a price change at the latest when placing the order. A binding order is only concluded if Wera agrees in writing to such a price change notice.
- 4.4 Unless otherwise agreed, the price includes the freight charges for delivery free domicile, for transport insurance and packaging iSd delivery duty paid (DDP) according to Incoterms 2020.
- 4.5 In the case of foreign orders, Wera shall deliver goods duty paid at the agreed price. Wera will not accept price adjustment or price increase clauses or the agreement of a list price valid on the day of delivery.

## 5 Invoicing and payment

- 5.1 Invoices must preferably be sent to Wera in digital form. They must bear Wera's business reference number and Wera's order number and comply with the provisions of the German Value Added Tax Act. Invoices which do not comply with the above conditions may be returned by Wera to the contractual partner for completion.
- 5.2 Wera shall pay with a 3% discount within 21 days after receipt of the complete invoice and within 30 days without deduction, unless otherwise agreed in the individual agreement. Wera is entitled to deduct a cash discount even if Wera offsets or makes justified retentions or withholdings. Wera is entitled to make all payments in cash, by transfer, cheque or bill of exchange.
- 5.3 Any costs incurred in connection with international money transactions shall be borne by the contractual partner, with the exception of the costs of the bank used by Wera (SHA fee conditions). The date of payment is deemed to be the date on which Wera has fulfilled its obligations.
- 5.4 In the event of late payment, Wera shall be liable to pay interest on arrears at a maximum rate of five percentage points above the base rate. All risks of exchange rate fluctuations shall be borne by the contractual partner.

## 6 Delivery and transfer of risk

- 6.1 Unless otherwise agreed, delivery is made 'delivery duty paid' (DDP) according to Incoterms 2020 to Wera or to the place of receipt designated by Wera. In any event, the risk of performance and the price risk shall only pass to Wera on arrival of the goods and services at Wera or the place of receipt designated by Wera.
- 6.2 Wera must be notified of the shipment at the latest when the goods are dispatched. The shipping notices and package addresses must state the Wera shipping address, the Wera order number and the order items awaiting delivery.
- 6.3 Each delivery must be accompanied by a duly completed delivery note containing the following information in full:  
order number as well as order item number, date of order, Wera part number (if available) + article description as well as delivery quantity, name of the recipient as well as a note regarding the delivery quantity for each delivery item if it is a partial or replacement delivery.
- 6.4 The required information on the delivery notes can be changed unilaterally by Wera at any time by written notice and will become part of the agreement with the notice of change. If such a delivery note is missing or does not contain the required information or does not contain it completely, Wera is entitled to return the goods at the expense of the other contractual partner or to take delivery of the goods at the expense of the other contractual partner, charging for any additional expenditure incurred.

## 7 Delivery dates

- 7.1 The delivery dates stated in Wera's orders are binding and shall be understood as the date of delivery to Wera.
- 7.2 The contractual partner must immediately notify Wera in writing of any impending delay in delivery, irrespective of the reason for the delay, stating the reasons and the expected duration of the delay.
- 7.3 If the contractual partner is in default of delivery, Wera is entitled to claim lump-sum damages for delay amounting to 0.2% of the value of the goods to be delivered for each completed day of delay, but not exceeding 5% of the value of the goods to be delivered. Wera reserves the right to claim higher damages that were actually incurred. The contractual partner is entitled to prove to Wera that no loss or a loss of a much smaller amount has been suffered as a result of the delay.

## 8 Control of goods and notice of defects

- 8.1 Deliveries involving large quantities of identical parts will be inspected by Wera by means of statistical random sampling. The contractual partner acknowledges that Wera thereby complies with its duty to examine the goods according to section 377 of the German Commercial Code (HGB). If such random checks reveal defective parts, Wera is entitled to either reject the entire delivery without further investigation or to carry out a further investigation at its own discretion, with the contractual partner bearing all the costs in either case.
- 8.2 Wera is only obliged to give immediate notice to its contractual partner of obvious defects which are readily detectable without examination, of excess deliveries or incomplete deliveries; in this respect, the contractual partner waives its objection to a late notice of defects. In all other respects, sections 377 and 378 of the German Commercial Code (HGB) do not apply.
- 8.3 To the extent that goods are not delivered to Wera but are delivered as agreed by the contractual partner directly to a processor appointed by Wera or to Wera's customers, sections 377, 378 HGB do not apply. However, Wera is obliged to inspect the product manufactured by the processor nominated by Wera in accordance with sections 377, 378 of the German Commercial Code (HGB) as soon as it is received by Wera and to notify Wera without undue delay of any obvious defects which are readily detectable without examination, as well as of any excess or shortfall in performance.
- 8.4 Upon notice of defect the contractual partner shall replace the product or, if repairable, otherwise remedy the defect or non-conformity within ten (10) working days, unless otherwise agreed by Wera.
- 8.5 The contractual partner shall grant Wera or a representative designated by Wera access to the places where the products are manufactured or stored, if so requested and agreed. The contractual partner undertakes to make the documents and information required for the inspection available at its own expense and to assist Wera in this as far as necessary.

## 9 Quality, documentation and warranty

- 9.1 The contractual partner shall render all deliveries and services in accordance with the latest acknowledged rules of technology as well as the relevant legal provisions, regulations and directives of public authorities and, moreover, with due care and attention. The contracting party warrants that the goods are free from defects and that they also meet the requirements resulting from the intended purpose and are free from third-party rights or other encumbrances.
- 9.2 If requested, the contractual partner is obliged to make a sample, a specimen and/or data sheets of the goods available to Wera. The properties of the sample or the specimen as well as the information in the data sheets or in works certificates are deemed to be warranted properties.
- 9.3 The warranty period for the contractual partner is determined by the statutory limitation period for claims based on material defects.
- 9.4 When it comes to purchase agreement, in addition to its statutory warranty claims, Wera has the right to require its contractual partner to repair defective goods within a reasonable time, provided that, if the deadline expires without result, Wera is entitled, in addition to its statutory warranty claims, to repair the defects itself or to have them repaired by third parties and to be reimbursed by its contractual partner for the costs incurred in repairing the defect, including costs of dismantling and installation. However, the contractual partner shall have no claim to rectification of defects.

## 10 Assignment, right of retention and set-off

- 10.1 The contractual partner's rights to refuse performance and its rights of retention are excluded, except where they are based on the same contractual relationship.
- 10.2 The assignment of claims against Wera is only permitted with the express written consent of Wera.

## 11 Producer and product liability

- 11.1 If claims are made against Wera by its customers or by third parties on account of defects in the goods or services supplied by the contractual partner to Wera pursuant to sections 823 to 853 of the German Civil Code (BGB) or pursuant to the German Product Liability Act, the contractual partner shall indemnify Wera against such claims, to the extent that such claims of the customer or third parties would also be justified against the contractual partner of Wera or are no longer justified only because the limitation period has expired in the meantime.
- 11.2 Subject to these conditions, the contractual partner shall also indemnify Wera against the costs of legal disputes, including lawyers' fees, brought against Wera on account of such claims.
- 11.3 The contractual partner is also obliged to reimburse Wera for any expenses resulting from or in connection with a product recall carried out by Wera, to the extent that the necessity for such product recall results from risks, defects or damages of the product for which the contractual partner is at least also liable pursuant to sections 823 to 853 of the German Civil Code (BGB) or pursuant to the German Product Liability Act.
- 11.4 Wera shall inform its contractual partner, to the extent possible and reasonable, of the content and extent of any intended recall measures and give its contractual partner the opportunity to respond.
- 11.5 The foregoing provisions do not apply in case of intent or gross negligence on the part of Wera with regard to the defects or faults of the product.
- 11.6 The contractual partner undertakes to take out and maintain liability insurance, including product liability insurance, of an amount appropriate to the scope of business and the possible risks.

## 12 Intellectual property of models, tools, samples etc.

- 12.1 Models, matrices, templates, samples, tools, drawings or other documents or means of production which Wera makes available to its contractual partner ('Wera Documents') remain the property of Wera. The contractual partner undertakes not to disclose the Wera Documents to any third party in any form whatsoever, to reproduce them or use them for any purpose other than the performance of the agreement placed by Wera and to insure the means made available to it adequately against loss or damage.
- 12.2 The same applies to drawings or documents which the contractual partner produces according to Wera's instructions; it being agreed that title to these documents passes to Wera upon their production and that the documents are kept in safe custody by the contractual partner for Wera.
- 12.3 In the case of a transfer within the meaning of this Clause 13, Wera grants the contractual partner a limited licence to use the Wera documents exclusively for the purpose of providing the products and/or services to Wera. This licence shall terminate immediately upon completion of the services or upon provision of the products or breach by the contractual partner of its obligations under these conditions or the main agreement, whichever comes first.
- 12.4 For each breach of the aforementioned obligations Wera shall be entitled to a penalty of 10,000 Euro from the contractual partner. This does not affect Wera's right to claim damages for any higher loss actually suffered, but the contractual penalty to be paid will be set off against the claim for damages.

## 13 Property rights; rights of use

- 13.1 The contractual partner guarantees that the goods to be manufactured or delivered by it do not violate any domestic or foreign property rights and in particular that the use of the goods delivered does not infringe any patents, licences, registered designs, software rights, copyrights or other industrial property rights of third parties. The contractual partner undertakes to compensate Wera or Wera's customers for any damage resulting from an infringement of a property right by the goods manufactured or supplied by it, to join Wera in any legal proceedings brought against Wera for infringement of industrial property rights and to indemnify Wera against all costs of such legal proceedings, including attorneys' fees.
- 13.2 The contracting parties undertake to immediately inform each other of any risks of infringement of industrial property rights and alleged cases of infringement of industrial property rights which become known to them and to give each other the opportunity to mutually counteract any such claims.
- 13.3 The contractual partner shall inform Wera if a patent or utility model right of its own exists for the goods to be manufactured or delivered or if such a third party right is claimed. In the event that a third party asserts a right within the meaning of Clause 13.1, the contractual partner shall procure the right to use or replace the products or services at its own cost with comparable products or services in consultation with Wera or modify them in such a way that they essentially correspond to the original product or service but do not infringe third party industrial property rights.
- 13.4 The contractual partner may not use Wera's name or logo in any form, whether online or in brochures, marketing or other materials or press releases, without Wera's express written permission.
- 13.5 If the contractual partner supplies software, images, texts and/or music, the contractual partner grants Wera, unless otherwise agreed in the main contract, the non-exclusive, territorially and locally unrestricted right of use for all known and unknown types of use.

## 14 Retention of title

- 14.1 Unless otherwise agreed, the contractual partner is entitled to deliver the goods subject to simple retention of title until full payment has been made. Wera does not agree to any broader retention of title, in particular to extended or prolonged retentions of title or group retentions of title.
- 14.2 If Wera's property is processed or combined with goods which are not Wera's property, Wera is entitled to a co-ownership share in the resulting new goods in proportion to the value of Wera's property in relation to the other processed goods or merchandise. The same applies if goods and merchandise are delivered directly to the contractual partner by third parties for processing on Wera's behalf and for Wera's account.

## 15 Code of conduct for business partners; Supply Chain Act (LkSG)

- 15.1 The contractual partner warrants that it will comply with and observe the obligations and guidelines set out in the Wera Code of Conduct for Business Partners (as amended from time to time at <https://www-de.wera.de/de/service-hilfe/verhaltenskodex-fuer-geschaeftspartner/>). The contractual partner further warrants that it will comply with the conventions listed in the annex to the Supply Chain Sourcing Obligations Act as well as with the prohibitions listed in Section 2 II of the Supply Chain Act (LkSG) from 1/1/2023 at the latest. Wera expressly reserves the right to conduct an audit of the contractual partner's operations, facilities or working conditions at its own expense to ensure that the services or products provided to Wera are aligned in accordance with the Supply Chain Act (LkSG). For this purpose, Wera shall be entitled to access the contractual partner's premises where the services are provided or the products are manufactured. Such inspections shall take place during normal working hours with minimal or no interruption of operations and with reasonable advance notice to the contractual partner.
- 15.2 The contractual partner undertakes not to enter into business relationships which are likely to bring Wera into disrepute, for instance by entering into business relationships with companies which violate recognised international standards relating to human rights, labour standards, environmental protection and corruption, or which are associated with companies and/or persons subject to financial sanctions by the EU or other authorities.

## 16 Non-disclosure

- 16.1 The contracting parties mutually undertake to treat all commercial and technical details of which they become aware as a result of the cooperation and which are not in the public domain as their own business secrets and to maintain absolute confidentiality in respect thereof vis-à-vis third parties.
- 16.2 The contractual partner undertakes to pay a contractual penalty of EUR 10,000 for each breach of the above agreements. This does not affect Wera's right to claim damages for any higher loss actually suffered, but the contractual penalty to be paid will be set off against the claim for damages.

## 17 Place of performance

- 17.1 The place of performance for all claims between the contracting parties shall be the delivery address specified by Wera, in the absence of any other specification, Wuppertal.

## 18 No hiring out of employees, minimum wage

- 18.1 Wera is not entitled to give instructions to employees of the contractual partner. The contractual partner undertakes to ensure that, in the course of the performance of its obligations, persons employed by it are not integrated into the business of Wera. This applies in particular to the extent that persons employed by the contractual partner perform the services on the premises or on the site of Wera.
- 18.2 The contractual partner is solely responsible for the fulfilment of its contractual, statutory, official and employers' liability insurance association obligations towards the persons employed by it for the performance of the services. If these obligations are breached, the contractual partner shall indemnify Wera in full against any corresponding claims asserted against Wera. This applies in particular to obligations to pay wages and/or salaries and/or all other payment obligations resulting from employment or service relationships (such as for social security contributions). The same applies to all possible claims based on hiring out employees.
- 18.3 As soon as the contractual partner sees indications that a third party engaged by it is a bogus self-employed person or that the provision of services by the third party could be qualified as an employee leasing service, the contractual partner shall immediately inform Wera thereof.
- 18.4 The contractual partner shall ensure that the respective applicable statutory provisions on minimum wages are complied with. This applies in particular to the statutory documentation obligations. The contractual partner also assumes any documentation obligations of Wera under the Minimum Wage Act with regard to its services to be rendered to Wera. This also applies if and to the extent that the contractual partner engages a subcontractor for these services. In the event of a breach of the Minimum Wage Act by the contractual partner or a subcontractor, the contractual partner shall immediately inform Wera thereof in writing. The contractual partner shall fully indemnify Wera against any claims in connection with the minimum wage.

## 19 Data protection

- 19.1 Wera and the contractual partner are entitled to record the data of the respective other contractual partner as well as of the individual contractual relationship in compliance with the respectively applicable provisions of data protection in business transactions.

- 19.2 Upon Wera's request the contractual partner shall oblige its employees engaged for the performance of the contract to observe data secrecy in accordance with Art. 32(4) of the German Data Protection Regulation (GDPR) and shall furnish proof thereof to Wera upon request.
- 19.3 To the extent that the contractual partner or any of its affiliates or subcontractors receives or obtains access to personal data from within the European Economic Area ('EEA') during the performance of this contract, the contractual partner warrants that the processing of personal data will only take place in a member state of the European Union, in a state party to the Agreement on the European Economic Area or in a third country for which the European Commission has determined that an adequate level of protection is ensured or in compliance with the provisions of Clauses 20.4 and 20.5 below.
- 19.4 Any transfer to a country other than the previously listed member states and countries ('third countries') requires the prior consent of Wera in written or electronic form (e.g. e-mail) and compliance with the regulations for the transfer of personal data to third countries or to international organisations (Art. 44 - 50 GDPR).
- 19.5 Where a transfer of personal data to a third country requires the provision of adequate safeguards, the parties agree that the preferred safeguard shall be the conclusion of standard contractual clauses within the meaning of Art. 46(2)(c) GDPR as adopted by the European Commission. The Parties hereby agree to negotiate the conclusion of the respective current version of these standard contractual clauses in good faith. The choice of other adequate safeguards is at the sole discretion of Wera.

## 20 Termination and amendment

- 20.1 Either party may terminate the Agreement with immediate effect by written notice if the other party commits a material breach of these GTCP and fails to remedy the breach within 30 days after receipt of a notice of default from the party alleging the breach, specifying the breach and demanding that it be remedied.
- 20.2 If Wera terminates the Agreement for any reason, all licences granted to the contractual partner by Wera or Wera's licensors under Clause 13.3 with respect to the Wera Materials will terminate immediately. Any licences granted to Wera by the contractual partner under Clause 14.5 are not affected by the termination of the Agreement. All Wera Materials, Wera Confidential Information and/or Wera Personal Data shall be returned to Wera or, at Wera's request, securely removed from the contractual partners' systems and destroyed.

## 21 Jurisdiction; applicable law

- 21.1 The place of jurisdiction for all disputes arising out of contracts for goods and services is Wuppertal, Germany, provided that Wera brings the action and provided that the contractual partner is a fully qualified merchant.
- 21.2 The relations between the contracting parties are governed exclusively by the laws in force in the Federal Republic of Germany to the exclusion of the international sales law.

## 22 Additional conditions for services and contracts for work and services

- 22.1 In the performance of contracts for services or contracts for work and services the personnel or agents of the contractual partner must meet the general requirements of professional competence and know-how of the respective branch of industry. Any special deviating requirements imposed by Wera shall have priority. If the personnel or agents are not sufficiently qualified for performing the contractual services, Wera is entitled to demand the withdrawal of such personnel. In this case, the contractual partner is obliged to provide a sufficiently qualified replacement without delay.
- 22.2 Services to be performed on Wera's premises must not impede its operation more than is unavoidable. The contractual partner shall ensure that an authorised person is available at all times to receive instructions and to make declarations.
- 22.3 The contractual partner is solely responsible for the remuneration of its personnel and its agents as well as for paying the taxes, social security contributions and value-added tax associated with the employment to the competent authorities. The contractual partner shall at all times indemnify Wera against any such claims by third parties due to non-payment or insufficient payment by the contractual partner of wages, taxes or other duties.
- 22.4 To the extent required, the contractual partner shall ensure that its personnel and agents have valid work and residence permits as well as any other necessary permits or licences when working on Wera's premises.