

# General Conditions of Purchase

## 1 Validity

- 1.1 The following Conditions of Purchase shall apply to all orders placed by Wera, and to future orders placed by Wera with its contracting parties, even if they are not expressly agreed upon again.

## 2 Conclusion of contract

- 2.1 All Wera orders, ancillary agreements and assurances are only binding if they have been made in writing. Insofar as Wera employees make verbal collateral agreements or give assurances, these always require a written Wera confirmation.
- 2.2 Commercial letters of confirmation from a Wera contracting partner do not, even in the absence of an objection by Wera, have the effect of creating a contract with contents differing from the Wera order and other written Wera declarations.
- 2.3 Objections to contracts already concluded will only be considered if they are received by Wera within five working days.

## 3 Amendments to the delivery item

- 3.1 Insofar it is reasonable for the contracting partner Wera may request changes in the design and execution of the goods to be delivered or services to be rendered.
- 3.2 The effects of such changes, in particular with regard to additional and reduced costs as well as delivery dates, are to be settled by mutual agreement and in an appropriate manner.

## 4 Prices

- 4.1 All prices are fixed prices.
- 4.2 Unless an express price agreement has been made, the list price of the other contracting partner according to a price list submitted to Wera within the last 12 months prior to the order shall apply in the course of the ordinary course of business. If such a price list has not been submitted to Wera within the last 12 months, the price most recently charged by the other contracting partner for these or comparable services shall apply in the context of an ongoing business relationship. In all other cases average prices customary in the trade are deemed to be agreed.
- 4.3 If list prices have been agreed, the customer may only charge Wera the prices according to the price list last published to Wera, unless he 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.
- 4.5 In the case of orders from abroad Wera is to deliver goods duty paid at the agreed price. Wera does not agree to price adjustment or price increase clauses or to the agreement of a list price valid on the day of delivery.

## 5 Invoicing and payment

- 5.1 Invoices shall be sent to Wera preferably in digital form. They must bear Wera's business reference and Wera's order number and comply with the provisions of the Value Added Tax Act. Invoices which do not comply with the above conditions may be returned by Wera to the other partner for completion.
- 5.2 Wera will pay within 21 days after receipt of the complete invoice less 3% discount, within 30 days without deduction, unless otherwise agreed in the individual contract. 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 bank transfer, cheque or bill of exchange at its discretion.
- 5.3 Any costs incurred for international monetary transactions are to be borne by the other party. The date of payment shall be the date of Wera's performance. Wera does not agree to the payment of interest on arrears that is higher than the interest due by law.

## **6 Delivery and transfer of risk**

- 6.1 Risks as to performance and price shall in any event pass to Wera only upon arrival of the goods and services at Wera's premises or at the place of receipt indicated by Wera.
- 6.2 Wera must be notified of the dispatch of the goods at the latest at the time of their departure. Notices of dispatch and package addresses must state the Wera address for dispatch, the Wera order number as well as 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 designation as well as delivery quantity, name of the recipient as well as a note regarding the delivery quantity for each delivery item if this is a partial or replacement delivery.

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 contract 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 contracting partner or to take delivery of the goods at the expense of the other contracting partner, charging for any additional expenditure incurred.

## **7 Delivery dates**

- 7.1 The delivery dates stated in the Wera order are binding and shall be understood as the date of goods in at Wera.
- 7.2 The other party has to inform Wera without undue delay in writing of any impending delay in delivery, irrespective of the reason for such delay, stating the reasons and the expected duration of the delay.
- 7.3 If the contracting partner is in delay of delivery Wera is entitled to claim liquidated 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 actually incurred.
- 7.4 The other party is entitled to prove to Wera that no loss or a considerably smaller loss has been incurred as a result of the delay.

## **8 Goods check and notification of defects**

- 8.1 Deliveries involving larger quantities of identical parts will be inspected by Wera by statistical sampling. The other party to the contract acknowledges that Wera thereby complies with its duty to examine according to section 377 of the German Commercial Code (HGB). If such random checks reveal defective parts, Wera is entitled, at its option, either to reject the entire delivery without further investigation or to carry out a further investigation, for which the other party bears all the costs.
- 8.2 Wera is only obliged to give notice to its contracting partner without delay of obvious defects, defects which can be easily detected without examination, and of excess or short deliveries; 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 contracting 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 can be easily detected without an inspection as well as of any excess or shortfall in performance.

## **9 Quality, documentation and guarantee**

- 9.1 The contractual partner shall be liable for ensuring that the goods or services comply with the recognised rules of technology and the relevant technical standards. He assures that it also meets the requirements resulting from the intended purpose.
- 9.2 On request, the other party to the contract is obliged to make available to Wera a sample, a specimen and/or data sheets of the goods. The properties of the sample or the specimen as well as the information given in the data sheets or in works certificates are deemed to be warranted properties.
- 9.3 In derogation from sections 477 and 638 of the German Civil Code (BGB), the period of warranty for the contracting partner in respect of movable goods is one year, unless a longer period is stipulated in the following provisions.
- 9.4 The warranty period for the delivery of movable goods is two years,
  - if the goods are not intended for immediate processing, but are intended for storage for the purpose of stockpiling and this is known to the contracting party.
  - for defects which typically cannot be detected by a normal incoming goods inspection and which therefore only arise as a result of complaints by the user.
  - in the case of the delivery of technical equipment and installations, the freedom from defects of which can only be ascertained after a longer period of operation in accordance with the intended use.
  - if defects have been notified by means of a notice of defect, but the goods have been accepted with reservations because at the time of acceptance no exact statement can yet be made about consequential defects / impairments.

The contracting partner shall be liable for consequential damages which are notified subsequently by Wera.

- 9.5 In addition to its statutory rights under warranty, Wera is entitled in case of contracts of sale to require its contracting partner to repair the defective goods within a reasonable time, provided that, if the time limit expires without result, Wera is entitled, in addition to its statutory rights under warranty, to repair the defects itself or to have them repaired by third parties and to claim from its contracting partner the reimbursement of the costs incurred in repairing the defect, including the costs of dismantling and installation. However, the contractual partner shall have no claim to rectification of defects.
- 9.6 The warranty period for repaired items and items delivered as replacements shall again be one year in accordance with the above provisions, unless a longer period results from the following provisions.

## **10 Assignment**

- 10.1 The assignment of claims against Wera is only permitted with the express written consent of Wera.

## **11 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 to Wera by the contracting partner pursuant to sections 823 to 853 of the German Civil Code (BGB) or under the German Product Liability Act, the contracting 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 Wera contracting partner or are no longer justified only because the limitation period has expired in the meantime.
- 11.2 Subject to these conditions the customer has also to indemnify Wera against the costs of litigation brought against Wera because of such claims.
- 11.3 The contracting 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 of such product recall results from risks, defects or damages of the product for which according to sections 823 to 853 of the German Civil Code (BGB) or according to the German Product Liability Act the contracting partner is at least also responsible.
- 11.4 Wera will inform its contracting party, to the extent possible and reasonable, about the content and scope of intended recall measures and give its contracting partner the opportunity to comment.
- 11.5 The foregoing provisions shall not apply in case of intent or gross negligence on the part of Wera with regard to the defects or deficiencies of the product.
- 11.6 The contracting partner undertakes to take out and maintain product liability insurance in an amount appropriate to the scope of business and the possible risks.

## **12 Models, tools, specimens, drawings**

- 12.1 Models, matrices, templates, samples, tools, drawings or other documents or means of production which Wera makes available to its contracting partner remain the property of Wera. The other partner undertakes not to make such items available to third parties in any form, to reproduce them or to use them for any purpose other than the performance of the order placed by Wera without Wera's express consent and to insure the means made available to it adequately against destruction or damage.
- 12.2 The same applies to drawings or documents prepared by the other party to the contract according to Wera's instructions; it being agreed that title to these documents passes to Wera upon their preparation and that the documents are kept in safe custody by the other party to the contract on Wera's behalf.
- 12.3 For each breach of the afore mentioned obligations Wera is entitled to claim a contractual penalty of 10,000 Euro against the other party. 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. For each case of breach of the afore mentioned obligations Wera will claim a contractual penalty of 10,000 Euro against its counterparty.

## **13 Protected rights**

- 13.1 The contracting partner warrants that the goods to be manufactured or supplied by it do not infringe any domestic or foreign industrial property rights. The other party undertakes to indemnify Wera or Wera's customers for any damage resulting from an infringement of an IPR by the goods manufactured or delivered by it, to join Wera in any litigation brought against us for an infringement of IPR and to indemnify Wera against the costs of such litigation.
- 13.2 The foregoing provisions do not apply to the extent that the other party to the contract has manufactured the goods according to drawings, models or other descriptions or specifications by Wera, which are equivalent to these, does not know, and does not need to know that these violate any property rights.
- 13.3 If such a case exists, Wera undertakes to compensate the other party for any damage resulting from an infringement of an industrial property right by the goods manufactured or delivered by it, to intervene in any legal proceedings brought against it because of an infringement of industrial property rights and to indemnify it against the costs of such legal proceedings.
- 13.4 The contracting parties undertake to inform each other immediately of any risks of infringement of industrial property rights and alleged cases of infringement of industrial property rights which become known and to give each other the opportunity to counteract corresponding claims by mutual agreement.
- 13.5 The contracting partner shall inform Wera in case an own patent or utility model right exists for the goods to be manufactured or delivered or in case such a third party right is claimed.

## **14 Ownership reservations**

- 14.1 Unless otherwise agreed, the other party is entitled to deliver the goods subject to simple retention of title until full payment has been made. Wera does not agree to further-reaching retention of title provisions, in particular to so-called extended or prolonged retentions of title or group retentions.
- 14.2 In the case of processing or combination of Wera's property with goods, which are not Wera's property, Wera is entitled to a co-ownership share in the resulting new product in proportion to the value of Wera's property to the other processed goods or products. The same applies if items and goods are delivered directly to the contracting partner by third parties for processing on Wera's behalf and for Wera's account.

## **15 Confidentiality**

- 15.1 The contracting parties mutually undertake to treat all commercial and technical details of which they become aware because of the cooperation and which are not in the public domain as their own business secrets and to maintain absolute secrecy about them vis-à-vis third parties.
- 15.2 For each case of breach of the above agreements the contracting parties undertake to pay a contractual penalty in the amount of EUR 10,000. Any claims to which Wera may be entitled for compensation of a higher damage actually incurred shall remain unaffected, but the contractual penalty to be paid shall be set off against the claim for damages.

## **16 Place of fulfilment, place of jurisdiction, applicable law**

- 16.1 The place of fulfilment for all claims between the parties to the contract shall be the delivery address specified by us, or for lack of other specification, Wuppertal.
- 16.2 Place of jurisdiction for all disputes arising from contracts for supplies and performances shall be Wuppertal, insofar as Wera initiates the action and insofar as the contracting partner is a registered trader.
- 16.3 The relations between the parties to the contract shall be regulated exclusively by the law applying in the Federal Republic of Germany to the exclusion of international commercial law.

## **17 No transfer of employees, minimum salary**

- 17.1 Wera does not have supervisory authority over contracting partner's employees. The contracting partner must ensure that no persons employed by it in the performance of the service are integrated into Wera's operation. The above requirement applies in particular if persons employed by contracting partner perform the services in Wera's offices or on its property.
- 17.2 The contracting partner bears sole responsibility for the contractual, statutory, official and professional obligations toward the persons employed by it for the performance of the service. The contracting partner must hold Wera completely harmless from claims that may be brought against Wera resulting from infringement of the above obligations. This hold harmless obligation applies in particular to obligations for wage and/or salary payments and/or all other payment obligations that result from employment or service relationships (such as for Social Security contributions). It also applies for any and all claims arising from the hiring-out of employees.
- 17.3 As soon as the contracting partner sees indications that a third party commissioned 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 contracting partner shall inform Wera thereof without undue delay.
- 17.4 The contracting partner must ensure compliance with the respective applicable statutory provisions concerning the minimum wage. The above requirement applies in particular to statutory documentation obligations. Contracting partner shall also assume Wera's documentation obligations under the Minimum Wage Act with regard to Contracting partner's services performed for Wera. The above requirement also applies if and to the extent, that contracting partner engages a subcontractor for these services. In the event of a violation of the Minimum Wage Act by contracting partner or its subcontractors, Wera must be immediately informed in writing. The contracting partner shall hold Wera harmless from any claims in connection with the minimum wage.

## **18 Data privacy**

- 18.1 For purposes of the agreement, the definitions set forth in Art. 4 of the Regulation (EU) 2016/679 (General Data Protection Regulation, "GDPR") apply.
- 18.2 Each party must comply at all times with its respective obligations under the applicable data protection laws and regulations (including but not limited to the GDPR).
- 18.3 If, during and in connection with the performance of the Agreement, the contracting partner receives the transmission of (or gains access to) personal data or in any other manner processes personal data to which the data protection laws and regulations apply ("data protection relevance"), the parties hereby agree to negotiate in good faith all additional data protection agreements that may be necessary and that are described in greater detail below.
- 18.4 If at the time this agreement is entered into the parties are unable to determine in advance whether the performance of the event has any data protection relevance, the parties hereby agree to repeat an assessment of its data relevance whenever an existing or new obligation on the part of the contracting partner is amended in the framework of the Agreement (e.g. for purchase orders, individual orders). If – as the result of an assessment of this type – the parties determine that there is data protection relevance, they shall proceed as stipulated in Section 18.3.
- 18.5 In each case, the parties may not start to process any personal data until they have complied with the requirements set forth in this Section 18.

- 18.6 If, during the performance of this Agreement, the contracting partner is requested to process Wera's personal data and is therefore considered Wera's processor, the parties agree that they shall negotiate in good faith to enter into a corresponding agreement that defines the subject and duration of the processing, the type and purpose of the processing, the type of personal data and the categories of data subjects and the rights and obligations of the parties (Data Processing Agreement, "DPA").
- 18.7 If processing of the type described above on behalf of Wera is subject to the rules of the GDPR, the DPA must meet the mandatory requirements of Art. 28 of the GDPR.
- 18.8 The contracting partner must employ appropriate technical and organizational measures that meet the requirements of the applicable data protection laws and regulations and in all cases guarantee a level of security adequate to the risks, taking into consideration the state of the art, the implementation costs and the type, scope, conditions and purposes of processing as well as the varying probability of occurrence and severity of the risks to the rights and freedoms of individuals.
- 18.9 If the GDPR applies to the processing of personal data and if the parties, in the performance of this Agreement, jointly define the purposes and means for the processing of personal data within the meaning of Art. 26 GDPR, the parties shall in a transparent manner determine their respective responsibilities for compliance with the obligations under this regulation, in particular with regard to the exercising of the rights of the data subject and their respective duties to provide the information referred to in Articles 13 and 14 of the GDPR by means of an arrangement between them (unless, and in so far as, the respective responsibilities of the controllers are determined by Union or Member State law to which the controllers are subject).
- 18.10 The parties hereby agree that they will negotiate in good faith the conclusion of an agreement of the type described in Section 18.9 that reflects the roles and relationships of the parties with due respect to the data subjects and that establishes a central contact point for data subjects.
- 18.11 If the parties cannot agree on their respective responsibilities under Section 18.9, both parties agree to at least ensure that they will fully comply with their respective obligations as the parties responsible for the processing of personal data, including the obligation to provide all the information required under Articles 13 and 14 of the GDPR and to respond to all inquiries from data subjects.
- 18.12 If, during the performance of this agreement, the contracting partner or one of its associated companies or subcontractors receives or gains access to personal data transmitted from the European Economic Area ("EEA"), the contracting partner guarantees that the processing of personal data shall be performed exclusively in a member state of the European Union, in a convention state of the agreement on the European Economic Area or in a third country for which the European Commission has determined there exists a guarantee of an appropriate level of protection, or is carried out in compliance with the requirements of Sections 18.13 and 18.14 below.
- 18.13 Any transmission to a country other than the member states and countries ("third countries") listed above requires the prior consent of Wera in written or electronic form (e.g. email) and compliance with the requirements governing the transmission of personal data to third countries or to international organizations (Art. 44-50 GDPR).
- 18.14 If a transmission of personal data to a third country requires the application of adequate protection measures, the parties agree that the preferred protective measure is the conclusion of standard contractual data protection clauses within the meaning of Art. 46(2)(c) GDPR in accordance with the procedure enacted by the European Commission. The parties hereby agree to negotiate the conclusion of the current version of these standard contractual data protection clauses in good faith. The choice of other adequate protective measures is at the sole discretion of Wera.