

Terms and Conditions of Purchase of JO-BA GmbH Bremen

(as of September 2018)

I. General / Scope

All orders are subject exclusively to these Terms and Conditions of Purchase. We recognise general terms and conditions of the supplier which conflict with or deviate from our Terms and Conditions of Purchase only insofar as we have expressly agreed to these in writing. The acceptance or payment of goods or services of the supplier does not constitute approval.

II. Conclusion of Contract

1. Conclusions, delivery call-offs and orders, as well as any alterations to these, require the text form. The same applies to deviations in quality or quantity compared to the content of our order, as well as for subsequent changes to the contract. Order standards and drawings including tolerances specified by us in individual cases are binding. By accepting the order, the supplier acknowledges that he has familiarised himself with the type of execution and the scope of performance by inspecting the existing plans. In the case of obvious errors, typographical errors and miscalculations in the order itself or in documents, drawings and plans presented by us, these shall not be binding upon us. The supplier is obliged to inform us of such errors. The same applies in the case of missing documents or drawings.
2. Orders shall bind us only if they are confirmed in writing by the supplier within a period of 14 days of receipt and specifying a binding delivery date, unless otherwise agreed in a particular case.
3. Drawings, tools, samples, models, trademarks and designs or similar, as well as finished and semi-finished products provided by us or manufactured on our behalf, shall remain our property and may be delivered to third parties only with our explicit written consent. Unless otherwise agreed in individual cases, these are to be returned to us immediately upon completion of the order without request. Products manufactured using such means of production, trademarks and designs or labelled/ marked products, may be delivered to third parties only with our explicit written consent.

III. Delivery and Shipping

1. The agreed delivery periods and dates are binding and are to be understood as arrival at the place of performance. The supplier shall be in default if the agreed delivery date has not been met. In the case that there is no agreement, he shall be in default if he has not complied with the reasonable and usual delivery time according to the circumstances.
2. If agreed deadlines are not met, the statutory provisions shall apply. If delays are to be expected, the supplier must notify us immediately and obtain our decision on the maintenance of the order.
3. Part deliveries are generally inadmissible, unless we have specifically agreed to them.
4. The unconditional acceptance of a delayed delivery or service does not constitute a waiver of claims to which we are entitled for reason of late delivery/service.
5. We are entitled to refuse the acceptance of goods before the delivery date.
6. Our shipping instructions are to be followed. Any costs arising from non-compliance with our shipping instructions shall be borne by the supplier.
7. Delivery shall take place at the expense of the supplier, free of charge, to the place of receipt stipulated by us. If, exceptionally, we have to bear the freight costs, the supplier must choose the mode of transport prescribed by us, otherwise the mode of transport and delivery that is most favourable for us.
8. The risk passes to us with the acceptance by our receiving office.
9. Packaging is included in the price. If, as an exception, otherwise agreed, the packaging shall be calculated at cost price. The supplier is to select the packaging specified by us and to ensure that the packaging protects the goods against damage.

IV. Force Majeure

War, civil war, trade restriction due to political circumstance, as well as strikes, lockouts, breakdowns, operating restrictions and other unavoidable events that make the performance impossible or unreasonable for us, are considered force majeure and exempt us for the time of their existence from the obligation to timely acceptance. The contracting parties are obliged to seek information regarding this without delay and to adjust their obligations to the changed circumstances in good faith.

V. Quality and Acceptance

1. The supplier shall give an assurance that his deliveries comply with the technical data specifications required by us, the applicable accident prevention and VDE regulations, the applicable statutory provisions, as well as state-of-the-art technology.
2. In order to ensure the quality of his deliveries, the supplier must perform a quality inspection that is suitable for the nature and scope of the relevant delivery.
3. For dimensions, volume and quality, the values determined in our incoming goods inspection and quality control are decisive.
4. Acceptance of the goods is subject to an examination for freedom from defects, in particular also for correctness and completeness, insofar and as soon as this is feasible in the ordinary course of business.
5. The supplier shall waive objection to a delayed notification of complaint.
6. An essential element of the supply contracts is the obligation to submit supplier declarations in accordance with VO/EG 1207/01. If long-term supplier declarations are used, we are to be informed of any changes in the originating status with the respective order confirmation.
7. Should the supplier declaration prove to be insufficiently meaningful or erroneous and we are, for this or other reasons, obliged by the customs authorities to submit an INF4 information sheet or comparable documents, the supplier is obliged at our request to immediately provide us with INF4 information sheets that are accurate and complete and confirmed by the customs authorities, or to supply comparable documents with regard to the origin of the goods.
8. In the event that we or our customers are consequently debited by the customs authorities due to an erroneous declaration of origin on our part or that we or our customers thereby suffer some other financial disadvantage and the error is based on an incorrect declaration of origin by the supplier, the supplier shall be liable for this.
9. Insofar as the supplier supplies products within the meaning of Art. 3 Regulation (EC) No.1907/2006 for Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH Regulation), he shall ensure that he complies adequately with his obligation to disclose certain information in accordance with Art. 33 REACH Regulation.

VI. Terms of Payment

1. The agreed prices are understood to include packaging, freight and other expenses.
2. Unless otherwise agreed, the invoice is payable within 14 days with a 3% discount on the gross invoice amount or within 30 days net from the payment due date and receipt of the invoice at the Dettingen/Erms plant, as well as receipt of the goods or provision of the service.
3. The payment is subject to verification of the invoice and proper delivery.
4. In the event of prepayment, we are entitled to request a bank guarantee.
5. Claims against us may only be assigned with our written consent.

VII. Liability for Defects

1. The supplier shall ensure that the goods, including presentation and marking, comply with our specifications. Our order or commission is to be carried out professionally and appropriately according to the respective state-of-the-art.
2. The legal provisions regarding defects of quality and title shall apply, unless otherwise stated below.
3. Defects or poor performance of the delivery are to be notified by us to the supplier as soon as they have been detected in the ordinary course of business. In the case of delivery of defective goods, the supplier shall be given the opportunity of subsequent performance (subsequent rectification/subsequent delivery). The choice in this case is at our discretion. The supplier has the option under the conditions of § 439 Para. 2 BGB to refuse the type of subsequent performance chosen by us. In urgent cases, we are entitled to carry out the rectification ourselves or to have this carried out by a third party. An urgent case occurs in particular if it is no longer possible or reasonable in order to avert acute danger or avoid major damage by informing the supplier of the defect and setting him an - albeit short - deadline for remedy. The supplier shall be informed immediately about such a procedure. The supplier is obliged to reimburse us for all costs incurred.
4. In the case of damages, the supplier is obliged to compensate us for the damage caused directly and/ or indirectly as the result of a defect. This shall also include compensation for consequential damages.
5. In the case of assumption of a procurement risk and/or guarantee, the supplier shall be liable, regardless of culpability.
6. The warranty period is generally 3 years from delivery of the goods (transfer of risk). This shall be extended accordingly in the case that we are obliged by our customers to grant longer warranty periods. If we are claimed against on the basis of a recourse within the meaning of § 478 BGB /German Civil Code), the periods regulated therein apply.
7. In the event of defects in title for which he is responsible, the supplier shall indemnify us against any existing claims of third parties.
8. For parts delivered as replacement within the warranty period, the period of limitation shall commence anew from the point in time the replacement delivery was executed. In the case of parts that have been repaired within the warranty period, the re-commencement of the period of limitation applies only to the original defect and the consequences of the rectification. This shall not apply insofar as the supplier has explicitly and correctly reserved the right, when rectifying the defect, only to perform the repair as a gesture of goodwill, to avoid disputes, or in the interest of continuing the supply relationship.
9. Should we incur costs as the result of a defective delivery or other poor performance, in particular transport, material, labour and replacement costs and costs for incoming goods inspection exceeding the normal scope, the supplier shall reimburse us for these costs.

VIII. Product Liability

1. In the case that we are claimed against under foreign law due to product liability or similar strict liability and non-modifiable liability principles, the supplier shall indemnify us against such claims by third parties, insofar as the damage was caused by a defect in the goods delivered. The principles of § 254 BGB shall apply mutatis mutandis to the settlement of damages between us and the supplier. This shall also apply in the event of a claim made directly against the supplier. Inasmuch as the cause of the damage lies within the area of responsibility of the supplier, he must provide evidence that no fault is attributable to him. With regard to these claims, the supplier shall waive objection on the grounds of statutes of limitation, as long as we ourselves can be claimed against.
2. In the cases of VIII. 1, the supplier shall assume all associated costs and expenses. Otherwise, the statutory conditions apply.
3. In the case that we and/or the customer are obliged to recall and/or reimburse the costs of the product due to a defect of which the supplier's goods were the cause, the supplier is obliged to indemnify us or assume these costs. This shall apply only if a fault of the supplier exists; the principles of § 254 BGB apply accordingly. The supplier shall be informed immediately of any procedure or claim according to Sentence 1.

IX. Property Rights

The supplier assures that third party rights do not conflict with the intended use of the delivered goods, in particular that no patents or other property rights of third parties are infringed. He shall indemnify us and our customers against all claims arising from the use of such property rights

X. Services

Persons who carry out work on one of our works premises in fulfillment of a contract must observe the provisions of the respective company regulations. Liability for accident is excluded, insofar as this was not caused by intent or gross negligence on the part of our legal representatives or vicarious agents.

XI. Ownership of Information, Provision

1. All commercial and technical information provided and made available by us is, as long as it is not verifiably public knowledge, to be kept secret from third parties. We reserve all rights to such information.
2. Drawings, designs, samples, specifications, internal company data, tools, equipment, etc., which we have provided to the supplier for the purpose of submitting an offer or carrying out an order, shall remain our property. These are to be kept with the care of a prudent businessman and may be used only for our orders. The items that are manufactured with the materials provided by us or made according to our confidential information or with our tools or copied tools, may neither be used by the supplier himself, nor offered or delivered to third parties.

XII. Compliance

1. The supplier undertakes to comply with the relevant legal regulations for dealing with employees, environmental protection, data protection and occupational safety.
2. In the event that a supplier repeatedly, and/or in spite of an appropriate notice, behaves illegally and does not provide evidence that the violation of the law has been remedied as far as possible and that reasonable precautions have been taken to avoid future violations, we reserve the right to withdraw from existing contracts or to terminate them without notice.

XIII. Miscellaneous

1. Additional agreements are only valid if made in writing. Should one of the provisions be or become ineffective, the validity of the remaining provisions shall remain unaffected.
2. German law shall be exclusively applicable, to the exclusion of the conflict of laws and the UN Sales Convention.
3. The Place of Fulfillment is the place to which the goods are to be delivered or the service is to be rendered.
4. The Place of Jurisdiction for all disputes arising from the contractual relationship is Stuttgart. We are further entitled to sue the supplier at the court of his place of business or at the court of the place of performance.