

Terms and Conditions of Purchase and Supply for suppliers of WESTTECH Maschinenbau GmbH

2023-04-14

Section 1. General

Orders and contracts that WESTTECH Maschinenbau GmbH places and enters into are subject exclusively to the following Terms and Conditions of Purchase. If these Terms and Conditions of Purchase are found to be lacking any provisions, the statutory provisions apply exclusively. Any differing Terms and Conditions of sale or supply or general Terms and Conditions on the Supplier's part only apply if they have been expressly acknowledged in writing. By accepting an order/a contract, the Supplier acknowledges that these Terms and Conditions of Purchase and Supply apply.

Section 2. Ordering

Contracts are always formed with the content of the order placed in writing or by email by WESTTECH Maschinenbau GmbH, regardless of any offers made. Orders placed verbally or by telephone and additions, amendments or changes of any kind are only binding on WESTTECH Maschinenbau GmbH if they are confirmed in writing or by email. The date of WESTTECH's order applies as the order date; in the case of verbal or telephone orders, the date of confirmation by WESTTECH applies as the order date.

Section 3. Order confirmation

The Supplier must confirm orders placed by WESTTECH in writing or by email, stating the order number provided, by the date stated on the order or, if no such date is stated, within 14 days of receipt of the order. If the Supplier wishes to deviate from these order terms, such deviations must be clearly indicated and are only valid if they have been expressly acknowledged in writing or by email. Approval of deviation from these Terms and Conditions of Purchase and Supply is not considered to have been given, simply because an objection is not made or goods are unconditionally accepted. If an order confirmation is not received on time but the Supplier delivers the goods ordered by the deadline (based on the date on which WESTTECH receives the goods), the contract is formed, subject exclusively to these Terms and Conditions of Purchase and Supply.

For clarity it is stated that an order confirmation that is consistent with the order is also imperative for orders that are sent to the Supplier by email subject to the exception above (delivery by the deadline).

In any case, even if the order confirmation is not received on time, by accepting the order or providing the order confirmation the Supplier guarantees that the order will be fulfilled as required with delivery by the deadline (based on receipt by WESTTECH).

Section 4. Lead time

The lead times for delivery or performance stated in an order begin on the order date. If a deadline is not stated or has not been agreed, the Supplier must make the delivery or provide the service immediately. In the event of an impending delay in delivery or performance, the Supplier is obliged to immediately inform WESTTECH, providing the reasons for and the anticipated length of the delay. Deliveries or services before the date stated in the order or the agreed date are subject to agreement by WESTTECH. Even if WESTTECH gives its agreement, early delivery must not result in any disadvantages for WESTTECH; in particular, the agreed payment period must not begin before the originally agreed delivery date.

Section 5. Delivery, dispatch, acceptance and insurance

Supplies, services and dispatch must always correspond to the delivery terms stated in the order. If no delivery terms have been stipulated, deliveries are always made DDP in accordance with the current version of INCOTERMS to the place of performance stated in the order; if a place of performance is not provided, deliveries are made to the registered office of WESTTECH. Every consignment must contain shipping documents, a packing slip and a separate delivery note for each order number/order. WESTTECH is not obliged to accept consignments that are sent cash on delivery, unless this has been expressly agreed.

The goods must be handed over to the authorised WESTTECH employee at the delivery address. The goods are accepted and inspected on the basis of quantity; if possible, upon arrival at the delivery address, they are only accepted and inspected on the basis of quality at the time of processing/use.

Section 377 of the Austrian Commercial Code (Unternehmensgesetzbuch, UGB) is excluded by mutual agreement and does not apply. In order to exercise the rights to which WESTTECH is entitled on the grounds of defective and / or faulty deliveries, it is sufficient if they are asserted within the aforementioned period; in the case of an objection, it is sufficient to simply give notice of the defect within this period. If the Supplier itself purchases supplies from third parties, it shall ensure the quality of such supplies either by its own means, particularly by performing its own quality inspections, or by placing its own suppliers under contractual obligation to comply with these terms. Such suppliers are also considered to be agents of the Supplier.

The Supplier must properly insure deliveries against damage of all kinds at its own cost.

If products / deliveries are subject to special product regulations such as the Austrian Chemicals Act (Österreichische Chemikalienvorordnung), they must be categorised, packaged and labelled in compliance with such regulations.

When delivering technical equipment and devices, the Supplier is obliged to provide WESTTECH's operating personnel with introductory training free of charge. If equipment or devices are supplied that must be fitted by a third party, the Supplier must attach all necessary installation documents, plans (including all connections), any basic training and similar as well as maintenance instructions and the like to the order confirmation, or at the latest provide them upon delivery of the goods. All of these documents must be provided in German.

Operating requirements and operating instructions must be provided in German and a copy in the Supplier's local language must also be enclosed.

Section 6. Packaging, problematic substances

In principle, the costs of packaging, risk and similar are included in the price of the goods. If it is expressly agreed that WESTTECH will also bear the costs of packaging, WESTTECH must only be charged the cost price, and this must be stated separately on the invoice. Even in this case, the Supplier shall bear the risk of the consequences of inadequate packaging. WESTTECH also has the right to return the packaging materials and request a credit note for these, unless the packaging materials are not pre-licensed in accordance with the Austrian Packaging Act (Verpackungsverordnung) or a legal standard which replaces it. If they are not pre-licensed, the Supplier is obliged to indicate the packaging weight per packaging material. The Supplier does not have the right to charge a deposit for the packaging materials.

Packaging materials, materials used for shipment and similar, as well as items and residues of such items that are classed as 'special waste' ('Sondermüll') must be disposed of by the Supplier at its own risk and cost or sent to an appropriate disposal facility. If it does not fulfil this obligation, WESTTECH has the right to arrange disposal by a third party at the Supplier's risk and cost.

Section 7. Default, withdrawal and contractual penalties

In the event of performance default and therefore in the event of non-contractual delivery, WESTTECH has the right to withdraw from the contract, immediately or after setting an appropriate grace period, or to demand the fulfilment of the contract, without prejudice to any other claims. WESTTECH is granted the same rights if insolvency or settlement proceedings are commenced in relation to the Supplier's assets or if an application to commence insolvency proceedings is rejected due to insufficient assets to cover costs. The Supplier must immediately inform WESTTECH of the commencement of insolvency or settlement proceedings.

In the event of performance default, WESTTECH has the right to withdraw from the contract and charge a contractual penalty of 10% of the total order value. In the event of delayed performance, WESTTECH has the right to charge a contractual penalty of 1% of the total order value for each week commenced. Even if WESTTECH accepts a delayed delivery or service, it is entitled to charge a contractual penalty and the Supplier is also obliged to reimburse WESTTECH for any further damage incurred.

WESTTECH is also granted the aforementioned rights even if the Supplier is not to blame for the performance default. It is only in the event that default is due to force majeure (whereby strikes and the fact that materials, tools and finished goods are rejected is not considered force majeure) that the Supplier is released from its obligation to pay a contractual penalty and damages for the duration of such force majeure; however, this only applies if it immediately notifies WESTTECH of the circumstances giving rise to default as a result of force majeure.

Section 8. Transfer of risk

Risk is only transferred to WESTTECH when the Supplier has handed over the delivery / service to the authorised WESTTECH employee, they have inspected the delivery / service and accepted it, and the Customer has properly fulfilled all its additional obligations, such as providing the necessary proof, specifications and similar.

Section 9. Warranty

The Supplier guarantees that the supplies and services contain the features that have been stipulated and that are usually present, that they correspond to their specifications, samples or models, and that they can be used based on the nature of the business or the agreement made. Public statements made by the Supplier or the manufacturer of the goods in marketing materials or in the information provided with supplies or services, for example, should be included in the assessment of this standard, and this also applies for public statements made by those who have imported the products or services into the European Economic Area or are identified as the manufacturer through the inclusion of their name, brand or another distinguishing mark on the goods. Such statements are only considered to not be binding on the Supplier if it neither knew nor could have known about them or if they had already been amended at the time of entry into the contract.

Supplies and services must comply with all general and specific standards that apply in Austria, such as CE marking and declarations of conformity and the like, as well as standards for the protection of workers, in the field of safety technology and similar, and the state of the art.

Section 10. Damages

The Supplier must rectify any defects at its own cost at the registered office of WESTTECH or, if it is not possible to rectify a defect in this way, it must supply a defect-free replacement. In any case, WESTTECH has the right to claim reimbursement from the Supplier for all damages, including in particular consequential damage, pecuniary damage, futile expenses or other handling fees. If costs are incurred as a result of inspections, the Supplier must then reimburse these if such an inspection uncovers defects. In the event of particular urgency to avoid default on its own part or if the Supplier is delayed in rectifying a defect, for example, WESTTECH has the right to procure replacement goods elsewhere at the Supplier's cost or to have the defects rectified at the Supplier's expense. The Supplier must reimburse these costs even if they are higher than those that would have been incurred if the Supplier had rectified the defects itself.

Section 11. Product liability

We are entitled to make claims under the applicable version of the Austrian Product Liability Act (Produkthaftungsgesetz, PHG) under all circumstances without restriction. In the event that the goods supplied contain faults as defined in the Austrian Product Liability Act and claims are therefore made against us, the Supplier shall indemnify us. For 11 years from the date of the last delivery, the Supplier is obliged to immediately upon request provide us with the names of the relevant manufacturers, importers or suppliers in respect of the goods the Supplier has supplied, as well as with useful evidence, particularly manufacturing documentation and documents indicating production and supply batches and / or job sheets and delivery notes, in order to defend third-party product liability claims. The Supplier is obliged to hold sufficient insurance to cover the aforementioned risk of a claim and to provide us with suitable proof of this on request.

Section 12. Fire safety, environmental protection, occupational safety

In the event that the Supplier has to carry out work or make deliveries within WESTTECH's business premises, it must immediately request the applicable laws and regulations and the general installation conditions stipulated by WESTTECH, if it does not already have them, and also ensure that its personnel comply with such regulations precisely.

Section 13. Prices and payment terms

The agreed price includes the acquisition of legal intellectual property rights, particularly patents, where they are required in order for WESTTECH to freely use and resell the goods supplied. If licences are required, the Supplier is obliged to acquire these. Inventions created by the Supplier while carrying out a WESTTECH contract can be used by WESTTECH free of charge. In the event of the infringement of third-party proprietary rights in connection with supplies or services, the Supplier is obliged to indemnify WESTTECH.

Section 14. Invoicing

The agreed prices are fixed prices and do not include VAT. Notwithstanding any previously agreed rights, the payment period begins upon receipt of an invoice in accordance with these Terms of Purchase and Supply. In the event that risk is only transferred to WESTTECH at a later date, however, this is calculated from the date of transfer of risk. If compliant invoices are not issued, the agreed payment periods or those stipulated in these Terms of Purchase and Supply do not commence.

In the event of partial invoicing, WESTTECH is entitled to a discount even if the conditions for the discount do not apply for other partial invoices for the same order.

WESTTECH has the right to fulfil its payment obligation by way of payment via telebanking, bank transfer, cash or bill of exchange, whereby payment is deemed to have been made on time if the payment order or bill of exchange is posted or sent electronically to the bank by the payment deadline.

Section 15. Contract transfer, assignment and offsetting

Orders cannot be transferred to other companies for fulfilment without written or emailed consent, either in part or in full. The Supplier is only entitled to assign its claims against WESTTECH to third parties with written or emailed consent. In any case, WESTTECH is entitled to offset the claims to which it is entitled against the Supplier's counterclaims.

Section 16. Confidentiality, data protection

The Supplier is obliged to keep the information it obtains in connection with a contract or the object of a contract confidential, unless it is public knowledge; this also applies to results or parts of results attained by the Customer.

The same also applies for personal data concerning WESTTECH or a third party which the Supplier obtains in connection with the contract. The Supplier is obliged to protect all information and results against unauthorised access and to instruct its employees accordingly.

Section 17 Place of performance, place of jurisdiction and applicable law

The place of performance is the delivery address specified by WESTTECH or the place where performance is to be rendered. In the event of legal disputes arising from the contract, Austrian substantive law applies but the UN Convention on the Sale of Goods does not.

The exclusive place of jurisdiction is Wels, Austria. However, WESTTECH has the right to lodge claims arising from a contract with any court that has jurisdiction *ratione materiae* and *ratione loci* over it in accordance with the applicable legal regulations in the state in which the Supplier's place of business and residence are located.

Section 18 Severability clause

If one or more of the provisions of these Terms and Conditions of Sale and Supply are or become invalid, this does not affect the validity of the remaining provisions. Invalid provisions must be replaced by valid provisions that most closely reflect the meaning and purpose of the invalid provisions.

These Terms of Sale and Supply form an integral part of each of the purchase agreements, supply contracts and contracts for work and services into which WESTTECH enters. Terms and Conditions of any kind, particularly terms and conditions of sale and supply, that conflict with these Terms and Conditions of Purchase and Supply are deemed invalid in their entirety.

WESTTECH's order number must always be stated on all documents intended for WESTTECH, such as consignment notes, wagon labels, railway crate documents, parcel documents, dispatch notes, delivery notes, invoices, notices of amendment and similar and in all correspondence with WESTTECH, and the Supplier must ensure that this is done. The Supplier is liable for disadvantages suffered by WESTTECH as a result of failure to comply with these obligations.