

General Conditions of Purchase of S&F GmbH

I. Scope and form

1. These general conditions of purchase (henceforth referred to as 'purchase conditions' for short) apply to all commercial relationships of S&F GmbH with its commercial partners in which the commercial partner is a business person pursuant to §14 of the German Civil Code (henceforth referred to as 'BGB' for short), a legal entity under public law or a special fund under public law and the commercial partner is acting as a seller and/or supplier.
2. These purchase conditions objectively apply to contracts concerning the purchase and/or the ordering of movable items (henceforth referred to as 'goods' for short), irrespective of whether the commercial partner as the seller produces the goods itself or purchases them from its suppliers; irrespective, in other words, of whether a purchase agreement pursuant to §433 of the BGB or a contract for services pursuant to §651 of the BGB is involved.
3. This purchase conditions apply exclusively. Any differing, contradictory or supplementary terms and conditions of the customer (e.g. conditions of purchase, delivery terms, etc.) shall only form part of this agreement if and based on the extent to which S&F GmbH has expressly consented in writing. This requirement for consent applies in all cases; and also, for example, if S&F GmbH accepts the seller's deliveries without reservation in the knowledge of its general terms and conditions.
4. Individual agreements made with the seller in certain cases (including oral agreements, additions and changes) have priority over these purchase conditions in all cases.
5. References to the validity of statutory regulations shall only have clarifying significance. Even without such a clarification, statutory regulations shall of course apply unless they are directly amended or explicitly excluded in these purchase conditions.

II. Delivery times and delays

1. The delivery deadline specified by S&F GmbH in the order is binding. The seller is obligated to inform S&F GmbH in writing without delay if it anticipates it will not be able to meet the agreed delivery deadline, irrespective of the reasons.
2. If the seller fails to fulfil its obligation, fails to do so by the agreed delivery deadline or falls into arrears, then the rights of S&F GmbH shall be determined – especially with regard to withdrawal and compensation for damages – based on statutory regulations. The regulations in Para. 3 below remain unaffected.
3. If the seller is in arrears, in addition to further legal claims, S&F GmbH may demand a flat rate of compensation for the default damage incurred by it amounting to 1% of the net price of the delayed goods for each full calendar week that lapses, but no more than 5% in total. S&F GmbH reserves the right to prove that a higher loss has arisen. The seller reserves the right to establish that either no loss has been incurred by S&F GmbH or that the loss incurred is significantly lower than the fixed amount.

III. Performance, delivery, transfer of risk and default of acceptance

1. The seller is not entitled to have services owed to it performed by third parties (e.g. subcontractors) without the prior consent of S&F GmbH. The seller bears the procurement risk for its services unless something else is agreed to in individual circumstances (e.g. stock restrictions).
2. Deliveries are made 'carriage paid' within Germany to the location specified in the order. If the destination is not specified and nothing else has been agreed, then the delivery must be made to the company headquarters at 88287 Grünkraut-Gullen, Germany. The destination in question is also the place of fulfilment of the delivery and any supplementary performance (debt to be discharged at creditor's domicile).
3. A delivery note specifying the date (of issue and dispatch), content of the delivery (article number and quantity) and our order ID (date and number) must be enclosed with the delivery. If the delivery note is missing, or is incomplete, then S&F GmbH shall not be responsible for any resulting delays in processing or payment. A corresponding shipping notification must be sent to S&F GmbH separately from the delivery note but with identical contents.
4. The risk of accidental loss or accidental worsening of the items shall be transferred to S&F GmbH when the goods are handed over. If acceptance has been agreed, this is decisive in terms of the transfer of risk. Notional acceptance is excluded; in particular, §640 Para. 2 of the German Civil Code in the version applicable from 01/01/2018 applies neither directly nor analogously.

IV. Prices and payment terms

1. The price specified in the order is binding. All prices are inclusive of statutory VAT if this is not shown separately.
2. Provided nothing else has been agreed to in individual cases, the price includes all services and supplementary services of the seller (e.g. assembly, installation, etc.) and all additional costs (e.g. proper packing, transport costs, including any transportation and liability insurance).
3. S&F GmbH will pay no interest on arrears. Statutory regulations apply to payment defaults.
4. S&F GmbH is entitled to offsetting and retention rights and pleas of non-performance of the contract to the extent the law permits. In particular, S&F GmbH is entitled to retain due payments if it is still entitled to claims against the seller resulting from incomplete or deficient deliveries.
5. The seller has offsetting and retention rights only where there are legally established or undisputed counter-claims.

V. Confidentiality and reservation of title

1. S&F GmbH reserves the rights of title and copyright to illustrations, diagrams, drawings, calculations, implementation instructions, product descriptions and other documents. Such documents are to be used exclusively for contractual performance and returned to S&F GmbH upon completion of the contract. Secrecy over such documentation must be maintained with respect to third parties– even after the contract has ended. This obligation of confidentiality shall only end if and when the knowledge contained within the documents handed over has become common knowledge.
2. The above term applies to substances and materials (e.g. software, finished and semi-finished products) as well as tools, templates, samples and other items which S&F GmbH supplies to the seller for production. Provided such items are not processed, they are to be stored away separately and insured against destruction and loss to an appropriate extent at the seller's cost.
3. Processing, mixing or binding (further processing) of supplied items by the seller is done for the benefit of S&F GmbH. The same applies in the case of further processing by S&F GmbH of the delivered goods, so that S&F GmbH is considered to be the manufacturer and acquires ownership of the product in accordance with statutory regulations by the time of further processing at the latest.
4. The transfer of ownership to S&F GmbH is mandatory and must occur irrespective of the payment of the price. However, if in certain cases S&F GmbH accepts an offer by the seller concerning transfer of ownership conditionally based on payment of the purchase price, the seller's reservation of title expires at the latest when the purchase price for the delivered good is paid. S&F GmbH remains authorised to sell on the goods within the ordinary course of business even before purchase price payment in the event of advance assignments of claims derived from them (alternatively, simple reservation of title extended to the re-sale is valid). In any case, all other forms of reservation of title are excluded; especially extended or transferred reservation of title, and that which is extended up to further processing.

VI. Defective deliveries

1. In terms of the rights of S&F GmbH, in the event of material defects and defects of title with respect to goods (including incorrect and short deliveries, as well as incorrect assembly and defective assembly/operating instructions) and other obligation violations by the seller, statutory regulations apply unless nothing else is determined below.
2. According to statutory regulations, the seller is liable in particular for ensuring goods have the agreed level of quality during transfer of risk to S&F GmbH. Those product descriptions which are the object of the respective contract or have been included in the contract in the same way as these purchase conditions – especially if they are named or referred to in our order – are considered to be an agreement on quality and condition in all cases. In this regard, it makes no difference if the product description originates from S&F GmbH, the seller or the manufacturer.
3. In deviation of §442 Para. 1 p. 2 of the BGB, S&F GmbH is also entitled to unrestricted claims for defects even if S&F GmbH remains unaware of the defect upon contract conclusion as a result of gross negligence.

4. Statutory regulations (§377 and §381 of the HGB [German Commercial Code]) apply to the commercial obligation of examination and notification of defects with the following conditions: the obligation of inspection on the part of S&F GmbH is restricted to defects which become perceptible and evident at our goods receiving inspection with external examination, including shipping documents.

If an acceptance is agreed, there is no obligation of inspection until acceptance. Otherwise, it depends on the extent to which an examination is feasible in consideration of the circumstances of the case in hand within the ordinary course of business. The obligation of S&F GmbH to give notice of defects concerning deficiencies discovered at a later date remains unaffected.

5. If S&F GmbH has installed the defective goods in another item or attached them to another item based on their nature and their purpose of use, as part of supplementary performance the seller is obligated to compensate S&F GmbH for the expenses necessary for removing the defective goods and the installation or attachment of the improved goods or goods delivered defect-free (cf. §439 Paragraph 3 of the BGB in the version applicable from 01/01/2018).
6. If the seller fails to meet its obligation for supplementary performance – based on the choice of S&F GmbH, through the rectification of the defect (subsequent improvement) or through the delivery of a defect-free item (replacement delivery) – within an appropriate time period set by S&F GmbH, then S&F GmbH can remedy the defect itself and demand compensation from the seller for the costs involved and/or commensurate advance payment. If the supplementary performance by the seller fails or is unacceptable to S&F GmbH (e.g. due to particular urgency, a threat being posed to operational safety or the imminent occurrence of disproportionate damage), no time limit shall be set. S&F GmbH will notify the seller of such circumstances without delay, possibly in advance.
7. In all other respects, S&F GmbH is entitled to reduce the purchase price or withdraw from the contract in the event of material defects and defects of title in line with statutory regulations. Furthermore, S&F GmbH has a claim to compensation for costs and damages according to statutory regulations.

VII. Supplier recourse

1. In addition to claims for defects, S&F GmbH is entitled to legally defined claims for recourse within a supply chain (supplier's recourse) without restriction. S&F GmbH is especially entitled to demand the exact type of supplementary performance (subsequent improvement or replacement delivery) from the seller which S&F GmbH owes to its customers in each individual case. The statutory right to choose (§439 Para. 1 of the BGB) is not restricted as a result.
2. Before S&F GmbH recognises or concedes to a claim for defects raised by its customers (including reimbursement for expenses as per §478 Para. 2 and §439 Para. 2 of the BGB), S&F GmbH will notify the seller and ask for a written statement with a brief outline of the facts. If the statement does not arrive within an appropriate time, and if an amicable solution cannot be found, then the claim for defects which S&F GmbH actually holds will instead be held by the customer of S&F GmbH. In such a case, the onus of proof lies with the seller.
3. The claims of S&F GmbH from supplier recourse also apply if the goods have been further processed prior to their resale to a consumer by S&F GmbH or one of its customers (e.g. through integration into another product).

VIII. Manufacturer's liability

1. If the manufacturer is responsible for an instance of product damage, it must indemnify S&F GmbH of claims from third parties to the extent that the source is within its field of control and organisation and it alone is liable in relation to third parties.
2. As part of its obligation for indemnification, the seller must reimburse expenses as per §683 and §670 of the BGB resulting from or in relation to the claims of third parties, including call-back measures taken by S&F GmbH. S&F GmbH will notify the seller of content and scope of call-back measures – provided this is reasonable and feasible – and provide it with the opportunity to state its position. Any further legal claims remain unaffected.

IX. Statute of limitations

1. The reciprocal claims of the contractual partners shall become time-barred in accordance with statutory regulations, provided nothing else is determined below.
2. In deviation of §438 Para. 1 No. 3 of the BGB, the general period of limitation for claims for defects is 3 years from the point of transfer of risk. If acceptance is agreed, the time period starts upon acceptance. The 3-year period of limitation also applies to claims based on defects of title, whereby the statutory period of limitation for claims in rem for the restitution of property of third parties (§438 Para. 1 No. 1 of the BGB) remains unaffected. Furthermore, claims based on defects of title are never time-barred if the third party can still enforce their claims – especially in the absence of the statute of limitations – against S&F GmbH.
3. Limitation periods under the law governing the sale of goods, including the aforementioned extension apply – to the statutory extent – for all contractual claims for defects. If S&F GmbH is also entitled to extra-contractual claims for compensation for damage due to a defect, the usual statutory period of limitation applies to this (§195 and §199 of the BGB) unless the application of the periods of limitation of the law governing the sale of goods leads to a longer period of limitation in certain cases.

X. Applicable law and place of jurisdiction

1. The law of the Federal Republic of Germany applies to these purchase conditions and the legal relationship between us and the seller under exclusion of international uniform law, especially the UN Convention on Contracts for the International Sale of Goods (CISG). The German version is decisive in the event of disputes arising from or in connection with these conditions, especially concerning their formulation.
2. If the seller is a merchant in the sense of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law, the sole place of jurisdiction responsible, even internationally, for all disputes arising from this contractual relationship is where our company headquarters are based, in 88287 Grünkraut-Gullen, Germany. However, S&F GmbH is also entitled to bring actions at the general place of jurisdiction of the seller. Overriding exclusive statutory regulations remain unaffected by the aforementioned conditions regarding the place of jurisdiction and take precedence over them.
3. These purchase conditions apply to all contracts pursuant to I. of these conditions which are concluded from 01/05/2017.

- End of the General Conditions of Purchase of S&F GmbH -