

# GENERAL TERMS AND CONDITIONS OF PURCHASE FOR SUPPLIES AND SERVICES

Incl. machines, machine equipment as well as assembly, commissioning and similar services

## I. Validity

1. These terms and conditions of purchase apply to all orders and contracts concluded by Westfalia Logistics Solutions Europe GmbH & Co. KG and Westfalia WST GmbH & Co. KG as well as all companies in which the aforementioned companies hold a direct or indirect 100% interest (Westfalia group, together hereinafter referred to as "Westfalia"). These terms and conditions of purchase only apply to contractual partners insofar as such partners act in their commercial and independent or professional capacity (entrepreneurs), as well as to legal entities under public law or special funds under public law.
2. Orders for supplies and/or works or services are made exclusively on the basis of these terms and conditions of purchase. This also applies to all future business with the supplier without the need for explicit reference in individual cases.
3. General terms and conditions of the supplier that contradict or deviate from these terms and conditions of purchase are not deemed to have been agreed to unless expressly confirmed in writing by Westfalia. These terms and conditions of purchase remain valid even if Westfalia unconditionally accepts the supply/service in the knowledge of conditions of the supplier which conflict with or differ from Westfalia's own conditions of purchase.
4. For the processing of personal data, the provisions of the GDPR of 25 May 2018 apply.

## II. Contract conclusion

1. Offers of the supplier are non-binding and free of charge for Westfalia.
2. Orders and their acceptance must be in writing. To meet the form requirements, however, correspondence or telegraphic or electronic transmission of an offer or acceptance is sufficient. A separate signature or electronic signature is not required to meet the requirement of written form. Westfalia shall be bound to orders for 5 working days. If the supplier does not accept the order, including a binding specification of the delivery time, in writing within this period, Westfalia is entitled to cancel the order.
3. The Supplier shall immediately check requests for offer and orders for obvious errors, ambiguities, incompleteness and inappropriateness of the specifications chosen by Westfalia for the intended use and shall inform Westfalia thereof. No remuneration for visits, for the preparation of offers and for other pre-contractual services is granted unless agreed in writing or mandatory by law.
4. If the supplier changes the characteristics of a product or a service in the context of an existing business relationship, the supplier is obliged to expressly point this out to Westfalia before the contract is concluded.
5. Subsequent changes to the contract, including the cancellation of the written form requirement, must be in writing. If changes in the scope of services prove to be necessary when executing the order, the supplier shall inform Westfalia immediately in writing. Changes to the scope of services always require written consent. For changes requested by Westfalia, the regulations of this section about ordering and contract conclusion apply accordingly.

### **III. Supply and service**

1. If the scope of delivery concerns machines or machine equipment, the supplier must deliver the machine and machine equipment in compliance with all quality features and other characteristics and values guaranteed by it together with all parts that are necessary for proper operation, including the associated documentation. Machine elements and parts must be designed and arranged in such a way that they can be serviced, inspected and replaced quickly and easily. The acceptance of requests from Westfalia does not release the supplier from its contractual responsibility.
2. A delivery note with details of the delivery items and the order number must be enclosed with each delivery. If this information is omitted by the supplier, the delivery is only deemed to have been made after it has been assigned to the relevant order by Westfalia.
3. Partial deliveries are only permitted if Westfalia has expressly agreed to them in writing. Partial deliveries are not to be regarded as independent transactions and must be marked as such in writing.
4. Incorrect deliveries and excess quantities can be rejected by Westfalia within the period of notice of defects even after unconditional acceptance.
5. Services owed by the supplier, including the corresponding documentation, must be carried out in full and in accordance with the order. The supplier shall carry out all services on its own responsibility, even if taking into consideration Westfalia's requests. Before carrying out the order, the supplier shall inform itself about the conditions at the installation/assembly site. More specifically, the supplier shall familiarize itself with the climatic and environmental conditions. The supplier shall take this into account when organizing the order processing so as to ensure timely execution. The supplier has a special duty of care when performing the services with regard to environmentally hazardous substances. If the supplier finds contaminants in the ground, within closed walls or in containers, or if such contaminants are suspected due to local conditions or in any other way, Westfalia must be informed immediately in writing to be given the opportunity to investigate and implement suitable measures.
6. Westfalia has the right to request changes or additional services. Westfalia is entitled to order such services that the supplier has to carry out even if no agreement has yet been reached on the change in the agreed price or additional pay. At Westfalia's request, the supplier shall submit a verifiable offer for the desired change or additional services.
7. If the supplier employs workers who do not originate from EU countries to carry out the contract, it must submit, unsolicited, the corresponding work permits prior to the commencement of the service.

### **IV. Works on site**

1. In the case of the delivery of machines or machine equipment or the performance of assembly, commissioning and similar services, the supplier shall check the assembly site with regard to the foundations, connections, staking-out and other relevant environmental conditions before starting its work in order to guarantee its performance to be free of defects.
2. The presence of Westfalia's installation management at the assembly site does not release the supplier from its responsibility for the work to be carried out by the supplier. The supplier must appoint a competent, experienced and German-speaking assembly manager for the assembly site and provide him/her with the necessary powers. Westfalia must be informed immediately before any replacement of personnel.
3. Westfalia is entitled to request the replacement of employees should they prove to be unskilled or endanger operational safety.
4. Direct understandings and agreements between the supplier, Westfalia customers and third parties in matters relating to the execution of the contract are not permitted and are invalid unless consented to by Westfalia.

5. The supplier is obliged to coordinate its service provision with other suppliers at the place of performance if the overall construction requires this or Westfalia requests this. It is important to ensure the safeguarding of mutual interests. Westfalia has the right to request the shared use of the supplier's scaffolding, equipment, etc. by Westfalia or third parties for a reasonable remuneration.

6. The execution of work in the Westfalia plant and construction site area must be coordinated in good time with the responsible technical processor at Westfalia. In addition, the supplier shall obtain information about any local hazards from Westfalia's specialist for occupational safety and shall coordinate the necessary safety measures with them. The supplier must ensure that its employees and those of its subcontractors behave in a safe manner and that they wear the prescribed personal protective equipment. A safety officer of the supplier must be employed during the assembly time.

7. The supplier is obliged to comply with all fire protection regulations applicable to the place of performance. The supplier shall report to the plant and construction site fire department and coordinate the necessary fire protection measures. If work on fire and/or explosion-prone systems such as oil tanks, cable systems etc. or in their vicinity cannot be avoided, this work may only be carried out with the consent of the plant and construction site fire department.

8. The supplier shall submit a list to Westfalia with the names of all persons who are employed in the plant and construction site area. The list must be kept up to date at all times. Upon request, the supplier shall provide Westfalia with proof that these persons have the statutory social insurance cover. The supplier is obliged to observe and comply with all legal regulations applicable at the time of performance of the service at the assembly site, in particular when employing foreign workers. Personnel deployed by the supplier must be instructed accordingly. The supplier shall indemnify and hold harmless Westfalia from and against any consequences, in particular claims, resulting from failure to comply with such regulations. The supplier may only use subcontractors for work on the plant and construction site area with the prior written consent of Westfalia (see also section XIX). Westfalia's consent may not be unreasonably refused. In cases where operational safety is endangered or for some other important reason, Westfalia has the right to deny the supplier or its subcontractors access to the plant and construction site area.

9. The supplier must ensure that its employees and those of its subcontractors follow Westfalia's instructions to maintain order and security and are subject to the usual control procedures at the place of performance.

10. All items brought onto the Westfalia plant and construction site are under the control of Westfalia. The supplier must clearly mark items that it wants to bring to the plant and construction site beforehand with its name or company logo. Before delivery and removal, a list of these items must be presented to the Westfalia assembly manager for signing off and keeping. Westfalia is not liable for theft and damage of items that the supplier has brought onto the plant and construction site. The supplier must not set up construction site signs unless Westfalia expressly requests this.

## **V. Dates and deadlines**

1. Delivery dates agreed between Westfalia and the supplier are binding. Upon expiration of the agreed delivery date, the supplier is in default without the need for a reminder.

2. The due date for deliveries refers to their receipt at the agreed receiving point; the due date for deliveries including installation or assembly, and/or for performance of work refers to the date of acceptance thereof. If documentation, test certificates or other documents, including electronically stored data, are included in the scope of services, the delivery/service is deemed to have been rendered only once such documentation, test certificates or other documents have been handed over in full and in accordance with the contract.

3. If the supplier has to assume that agreed delivery dates are unlikely to be met, it is obliged to notify Westfalia stating the expected duration of the delay in delivery.

4. If the deadline is exceeded, the supplier must be given a reasonable grace period. If the supplier does not deliver within the grace period set, Westfalia is entitled to either withdraw from the contract or to claim damages for non-performance. The supplier is also liable for all claims for consequential damage arising from the delay. This does not affect the right to payment of a contractual penalty of 0.2% of the order value per working day, up to a maximum of 5% of the total order value. The contractual penalty is to be offset against claims for damages due to the delay.

5. If Westfalia fails to provide necessary documents or supplies, the supplier may only claim non-delivery thereof if it has sent a reminder for such documents or supplies and has not received them within the grace period set forth in that reminder.

6. In the event of early delivery, Westfalia reserves the right to return the goods to the supplier at the supplier's expense. Should Westfalia accept early delivery, the goods will be stored at the supplier's cost and risk until the agreed delivery date. However, the supplier cannot demand payment before the contractually agreed due date.

## **VI. Dispatch**

1. Unless otherwise agreed between Westfalia and the supplier, the goods shall be delivered carriage paid to (CPT according to Incoterms 2010) the receiving point specified by Westfalia in the order.

2. The supplier is responsible for the proper packaging of the products. The supplier shall ensure, including without limitation, that only new and legally permissible packaging materials are used. Several articles of a consignment may be delivered in one transport container but must be packed and identified separately.

3. Any direct shipping to customers shall be made in a completely neutral manner and carried out on behalf of Westfalia. The required shipping documents must be requested from Westfalia in good time. Invoices and notifications may be sent to Westfalia only.

4. The supplier shall prove the origin of the delivered products or issue a long-term supplier declaration in accordance with Regulation (EU) 2015/2447.

## **VII. Fulfillment of supply/service**

1. If the delivery comprises machines or machine equipment and an acceptance is required or agreed by law, the acceptance date will be jointly agreed upon written request of the supplier, unless other acceptance terms are specified. Notional acceptance and tacit or implied acceptance are excluded. The result of the acceptance is documented in an acceptance report. The transfer of risk does not take place before the successful acceptance by Westfalia. Acceptance cannot take place in any other way, including without limitation through tests, intermediate tests, issuing of certificates or proof of work. Neither does putting into use result in acceptance if it serves to carry out acceptance tests and/or if it is necessary to carry out any other necessary work.

2. If Westfalia or the commissioning authority already identified significant defects before acceptance which have not yet been remedied, Westfalia may postpone an already agreed acceptance date until such time when the defects are remedied, without prejudice to other rights and remedies it may have. Commissioning of the work or parts thereof by Westfalia or its end customers does not constitute acceptance. Condition assessments performed jointly as a result of refusal of acceptance and condition assessments performed unilaterally by the supplier do not replace the required formal acceptance and do not have the legal effects of acceptance.

3. The supplier shall bear the material costs of acceptance. Westfalia and the supplier shall each bear the personnel-related acceptance costs that they incur.

### **VIII. Prices**

1. All agreed prices are fixed prices. Supplemental claims of any kind are excluded. If prices have not yet been finally determined at the time when the order is placed, they must be announced immediately after receipt of the order. In this case, the order becomes effective only upon confirmation of price.
2. Unless otherwise agreed, prices are free place of receipt and include packaging and shipping costs. The pricing method does not affect the agreed place of performance.

### **IX. Payment**

1. Payments are made on the due dates specified in the order. In the case of bank transfers, payment is deemed to have been made in good time if the transfer order is received by the bank before the expiry of the payment period. Payment terms start from the date of receipt of a verifiable and correct invoice but not before receipt of defect-free and complete delivery and, insofar as documentation and test certificates are included in the scope of performance, not before their delivery as agreed. If a payment cannot be made on time due to improper delivery documents or incomplete invoice information or if legally required information is missing, payment and discount periods start from the date of clarification and correction of the invoice by the supplier.
2. Any advance payments agreed are made by Westfalia against an invoice in accordance with value-added tax laws and provision of an advance payment security in the agreed amount. In the case of advance payments, the supplier shall list and invoice all services in a final invoice.
3. The supplier is prohibited from assigning claims against Westfalia unless Westfalia agrees to the assignment in writing.

### **X. Transfer of ownership and retention of title**

1. Title to the ordered goods shall pass to Westfalia upon notification of readiness for dispatch.
2. The supplier assures that there are no third party rights to the delivered goods. Westfalia does not recognize any provisions on the retention of title unless previously agreed in writing in an individual case. In the ordinary course of business, even before payment of the corresponding remuneration, Westfalia remains entitled to resell the goods with advance assignment of the resulting claim. However, if subcontractors should assert ownership rights, co-ownership rights or liens or have enforcement measures carried out, Westfalia is entitled to claim all resulting losses from the supplier.

### **XI. Quality**

1. The supplier shall provide all deliveries and services in accordance with state-of-the-art technology and in compliance with all relevant laws, regulations and official requirements as well as all applicable technical rules, standards and guidelines. The supplier shall also ensure the factual accuracy and completeness of the documents and calculations to be created.
2. The supplier undertakes to use environmentally friendly products and processes for its deliveries and/or services, including supplies and ancillary services from third parties, as far as this is feasible from an economic and technical perspective. Upon request, the supplier shall issue a certificate of quality for the delivered goods. The supplier is liable for the environmental compatibility of the delivered products and packaging materials as well as for all damages and consequential damages that result from the violation of its legal disposal obligations.

### **XII. Warranty rights**

1. The supplier shall deliver goods and services that are free from defects. Such goods and services must be of the agreed quality and have the agreed features as well as the properties and values guaranteed by the supplier.

2. Westfalia is entitled to demand supplementary performance by rectification or new delivery or replacement delivery as well as compensation for damages in accordance with the statutory provisions. The supplier shall also bear the expenses required for subsequent performance, especially dismantling and assembly costs. Westfalia is entitled to withdraw from the contract or reduce the remuneration if such supplementary performance does not take place within a reasonable grace period set by Westfalia. Westfalia also has the right to claim damages and reimbursement of futile expenses in accordance with the statutory provisions. Warranty claims that go beyond the statutory rights to defects remain unaffected.

3. Westfalia has the unrestricted legal right to assert recourse claims within a supply chain in addition to any claims for defects. In particular, Westfalia is entitled to demand the exact type of supplementary performance (rectification or replacement delivery) from the supplier that is owed to the end customer in an individual case. This does not restrict the statutory right of choice. Recourse claims also apply if the goods are sold by Westfalia or one of its customers and processed, e.g. by incorporation in another product.

4. If the supplier does not fulfill its obligation to remedy the defect within a reasonable period of time or if the remedy is unreasonable, e.g. for reasons of endangering operational safety, the threat of disproportionate damage or special urgency, Westfalia may initiate the necessary measures itself at the expense and risk of the supplier. The supplier will be informed of such circumstances immediately, if possible beforehand. This does not affect the obligation to finally remedy the defect.

5. Westfalia has the right to report defects within ten (10) calendar days after receipt of the goods, or in the case of hidden defects or defects that are not easily detected by visual inspection, within ten (10) calendar days after discovery.

6. The limitation period for claims for defects is 36 months, unless a longer statutory limitation period applies. If defects occur within the first twelve months after the start of the limitation period, it is assumed that they have already existed at the passage of risk. The limitation period begins with delivery or, if this is agreed or legally required, with acceptance. For parts replaced by the supplier as part of subsequent performance, the limitation period begins with replacement delivery. For parts of the installation that cannot be used as agreed due to a business interruption caused by defects, the limitation period is extended by the duration of the business interruption.

### **XIII. Intellectual property rights**

The supplier shall ensure that Westfalia does not violate copyrights, patents or intellectual property rights of third parties through the contractual use of the deliveries or services of the supplier. If claims are made against the supplier for violation of a domestic intellectual property right or, if it was aware of use abroad, also for violation of a foreign intellectual property right, the supplier shall indemnify and hold harmless Westfalia against all claims. The supplier shall bear license fees, expenses or costs incurred by Westfalia to avoid or remedy violations of intellectual property rights if they have arisen from the fact that the supplier has not obtained for Westfalia the rights necessary for contractual use.

### **XIV. Liability**

1. The supplier's liability is governed by the statutory provisions.

2. The supplier shall indemnify and hold harmless Westfalia from all claims arising from non-contractual product liability, which can be traced back to an error in the product the supplier has delivered, regardless of whether the supplier is the manufacturer of the product or an intermediary for a third-party product that is only resold. Subject to the same preconditions, the supplier shall also be liable for damages incurred through reasonable precautionary measures, such as public warnings, taken to avoid claims from non-contractual product liability. The right to make a claim for own damage against the supplier remains unaffected.

3. The supplier shall indemnify and hold harmless Westfalia from all public and private law claims of third parties in connection with the execution of the order by the supplier. The obligation to indemnify against third party claims also applies to damage caused by the supplier when carrying out work on public or private facilities (e.g. supply lines). If the supplier recognizes that a damage has occurred during the execution of the order, the supplier shall immediately inform the assembly manager of Westfalia.

4. If the supplier or its vicarious agents violate provisions of the Immission Control Act, the Water Resources Act, the Waste Oil Act, and the Waste Disposal Act as well as ordinances or other laws and regulations issued for this purpose, the supplier shall be liable for all damage that may occur to Westfalia or third parties. The supplier shall indemnify and hold harmless Westfalia against all claims by third parties that are directed against Westfalia in the event of such a violation.

5. The supplier is obliged to take out adequate insurance against all risks which its liability entails. Upon request, the supplier shall provide proof of its insurance cover.

## **XV. Rescission**

In addition to all other remedies it may have, Westfalia may, in whole or in part, withdraw from the contract

- > in the event of a significant deterioration of the supplier's assets,
- > and/or the supplier's cessation of payments,
- > and/or the supplier's own application for insolvency proceedings and/or opening of insolvency proceedings against the supplier's assets or failure to open insolvency proceedings due to lack of assets,
- > and in other cases if there is an important reason. In these cases, Westfalia is entitled to demand from the supplier the return of all Westfalia's items and documents. Westfalia is also entitled to demand from the supplier the return of deliveries in whole or in part, whether completed or not, for which the rescission has not been declared, against payment of a pro rata remuneration; the supplier is obliged to immediately hand over such deliveries to Westfalia and to transfer ownership. In these cases, the supplier is not entitled to any claims for compensation and for further remuneration.

## **XVI. Documents, supplies, means of production**

1. Westfalia reserves all exploitation rights under property law and copyright law to illustrations, drawings, calculations and other documents (hereinafter referred to as documents), which Westfalia makes available to the supplier. The documents may only be used for the execution of the order. They may only be made accessible to third parties with written consent. The documents are to be handed over to Westfalia at any time upon request or unsolicited after execution of the order, premature termination or failure of the contractual relationship.

2. The supplies made available to the supplier by Westfalia remain the property of Westfalia. The processing of supplies is carried out on behalf of Westfalia as the manufacturer. Should the property expire due to connection, mixing, processing or transformation, the supplier hereby transfers Westfalia in advance a co-ownership of the new item corresponding to the invoice value of the provided items. The supplies may only be used for the execution of the order. They must be kept by the supplier free of charge, insured against accidental loss or loss at its own expense and identified as the property of Westfalia. Westfalia can request the surrender of the supplies at any time upon request or unsolicited after execution of the order, premature termination or non-conclusion of the contract.

3. Production equipment purchased or manufactured by the supplier and paid for by Westfalia or amortized through the parts price becomes the property of Westfalia upon commissioning by the supplier. The provisions on accessory equipment apply accordingly.

**XVII. Spare parts**

1. The supplier is obliged to keep spare parts for the products delivered to Westfalia for a period of at least ten (10) years after delivery.
2. If the supplier intends to discontinue the production of spare parts for the products delivered to Westfalia, it shall notify Westfalia thereof immediately after the decision to discontinue. Subject to paragraph 1, this decision must be communicated at least six (6) months before production is discontinued.

**XVIII. Confidentiality**

1. All business and technical information that the supplier receives when carrying out the order must be treated confidentially without exception, even beyond the termination of the contract. This excludes information that was already known to the supplier or which it has otherwise legally obtained.
2. Products that are based on documents designed by Westfalia, such as drawings, models, etc. or that are made using tools from Westfalia may not be used by the supplier outside of the execution of the contract, nor may they be offered or delivered to third parties.
3. The contract is to be treated confidentially by the supplier. The supplier may refer to the business relationship in advertising materials with the written consent of Westfalia only.

**XIX. Subcontractor**

The supplier is only entitled to employ subcontractors if Westfalia has given its written consent. If a subcontractor is engaged, the supplier shall transfer to the subcontractor all relevant contractual obligations that the supplier has towards Westfalia. The supplier is liable for the fulfilment of these obligations by the subcontractor.

**XX. Access to manufacturing facilities**

Westfalia reserves the right to visit the manufacturing facilities of the supplier, subject to prior arrangement, in case of orders that are customized according to Westfalia's specifications. Westfalia will be assigned a contact person for processing-specific queries. The supplier undertakes to obtain approval from its own suppliers to exercise this right.

**XXI. Invalidity**

1. In the event that individual provisions of these conditions of purchase are invalid, the effectiveness of the remaining provisions remains unaffected.
2. The ineffective provision shall be replaced by an effective provision that comes closest to the ineffective provision.
3. If any provision of these terms and conditions of purchase is ineffective with regard to mandatory foreign law, the supplier shall, upon request, agree on those contractual supplements with Westfalia and make those declarations to third parties or authorities by which the effectiveness of the regulation concerned and, if this is not possible, its economic content remains guaranteed even under foreign law.

**XXII. Final provisions**

1. The place of performance for the supplier's delivery/service obligation is the receiving point designated by Westfalia.



2. For all legal relationships between the supplier and Westfalia, the law of the Federal Republic of Germany shall apply exclusively. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

3. Place of jurisdiction is the court responsible for the headquarters of Westfalia. However, Westfalia is entitled to file suit at the supplier's headquarters.

4. The contract language is German. If the contracting parties also use another language, the German wording has priority in case of doubt.

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