

# General Conditions of Purchasing

1. Applicability
- 1.1 Our Conditions of Purchasing shall apply exclusively to all orders and contracts concluded – hereinafter referred to as the “order” – pertaining to the supply of goods and the execution of factory services or other services – hereinafter referred to as the “delivery.” We expressly reject herewith any conditions or supplementary terms imposed by our suppliers which deviate from our purchasing terms; they are not binding upon us. Our purchasing terms are also applicable exclusively even if we do not object expressly and in the individual case to the inclusion of our supplier’s terms or, being aware of the supplier’s contradictory or complementary business conditions, if we accept delivery without reservation. Our Conditions of Purchasing shall also apply to all future transactions with the supplier. These Conditions of Purchasing also apply to all future business relations with the supplier, even if not explicitly and separately stipulated.
- 1.2 If any clause of these Conditions of Purchasing is or becomes invalid or unenforceable the validity of the remaining stipulations shall not be affected. In such a case the invalid or unenforceable provisions shall be replaced by lawful provisions coming as close as possible to the pursued by the invalid or unenforceable provisions.
2. Conclusion of the contract
- 2.1 All agreements between the supplier and ourselves and all orders are binding for us only if they are in writing. Every modification, addition or ancillary agreement made prior to or upon conclusion of the contract requires our written confirmation. The requirement for written documentation may be waived only in writing. Communications by telefax, e-mail or remote data transmission are deemed to be the equivalent of written documents.
- 2.2 If the supplier does not accept and confirm our order in writing within a period of two weeks following its receipt, then we are entitled to withdraw from the order. Delivery call-offs shall become binding if the supplier does not object to the same within three (3) working days after receipt. Deviations from our orders are effective only if expressly and separate mention is made of such deviation and if we expressly consent to the same.
3. Prices and terms of payment
- 3.1 The prices specified in the order are fixed prices. The prices include delivery free of charge to buyer’s address and all packing, shipping, insurance and all other miscellaneous costs associated with the delivery, unless other agreement has been reached expressly and in writing. Value added tax as prescribed by law shall be listed separately; otherwise it shall be considered to be included in the price.
- 3.2 If the supplier carries out erection or assembly work and if nothing else has been agreed upon in writing, then the supplier shall bear all necessary ancillary costs such as travel expenses, providing tools and field allowances.
- 3.3 We can process invoices only if they are submitted under separate cover. Each order shall be invoiced separately. Collective invoices may also be issued with our prior written consent. The invoice shall cite and highlight distinctively the order number given in our order, the order date, the supplier number and our item number. Unless otherwise specified in the order, the billing address shall be: nora systems GmbH, accounts department, 69469 Weinheim, Germany.
- 3.4 Invoices shall be in euros; payments shall be made exclusively in euros. Please indicate the correct IBAN and the appropriate BIC codes, as well as your turnover ID number, together with each of your banking connections respectively involved. Payments shall be made, at our discretion, by bank transfer or by check or by bill of exchange following acceptance of the delivery which is free of all defects, receipt of a properly prepared invoice and submission of all the documentation associated with the delivery. Accounts may also be settled by us in line with the credit note procedure, if agreed upon beforehand, as per §14 Section 2 Sentence 2 of Germany’s turnover Tax Law (abbreviated to UstG in German). Unless otherwise expressly agreed upon in writing, we will make payment, following the receipt of the goods and the invoice, less a 3% discount, or less a 2% discount within 30 days, or net within 90 days. In setting the invoice the buyer makes no acknowledgments in particular in regard to the nature, price, quantity or other properties of the goods.
- 3.5 The supplier is not entitled to assign his claims against us, either in part or in whole, or to dispose of them in any other fashion without our prior, written consent. We are entitled to offset and retain payment to the extent provided for by law.
4. Delivery dates and delivery terms
- 4.1 The dates specified in the order or otherwise agreed upon are binding and shall be adhered to exactly. The supplier shall notify us immediately and in writing of any impending delay or missing agreed dates and deadlines, indicating the reasons and the anticipated duration of the delay. Deliveries may be made only at the agreed times.
- 4.2 Partial deliveries and early deliveries are permissible only if we have expressly given our consent to the same. Claims to payment shall become due, however, at the earliest on the originally agreed delivery date.
- 4.3 Unless otherwise agreed upon, the delivery shall be accompanied not only by the delivery note but also by a factory certificate as per EN 10204 or an equivalent, internally recognized test certificate listing the key data agreed upon with the supplier. An initial sample inspection report shall be enclosed to initial deliveries.
- 4.4 On-site deliveries are only possible at previously arranged times.
- 4.4.1 All passengers in a vehicle must be registered at Industriepark Weinheim’s factory gates. Taking along children or animals is basically prohibited. Truck drivers must wear safety boots during loading operations on the spot. Any instructions from the safety staff must be complied with.
- 4.5 In case of a delay in delivery we are entitled to impose a penalty in the amount of 1% for each week in default or part thereof, to a maximum of 10% of the order value; the supplier is entitled to demonstrate to us that we have incurred either no damages at all or damages which are significantly less than that amount. The right to claim more extensive damages is not affected. We are obliged to announce the deduction of the penalty at the latest when paying the invoice which follows the delayed delivery.
- 4.6 Events resulting from *force majeure* which render impossible or considerably more difficult delivery by our suppliers or the acceptance or utilization of the delivery in our operations or at our customer’s operations shall postpone our obligation to accept the goods, in accordance with our actual needs, by a proportionate period of time; in the case of *force majeure* affecting us or one of our suppliers were we entitled, at our discretion, to withdraw from the contract, either in whole or in part.
5. Place of performance, shipping, transfer of risk, acquisition of ownership
- 5.1 The place of performance is the location, specified in the order, to which the goods are to be delivered or at which the factory services or other services are to be rendered. The place of performance for our payments is our company headquarters location.
- 5.2 The delivery shall be dispatched at the supplier’s account and risk, properly packed for shipment, at no charge, to the delivery location specified or the services shall be rendered there. If no other address is specified in the order, then the shipping address is: nora systems GmbH, 69469 Weinheim, Germany; in the case of railway express shipments: Weinheim/Bergstraße, Anschlussgleis; in the case of railway piece goods: 69469 Weinheim/Bergstraße. If no shipping rules are specified in the order, then the buyer’s general shipping rules, which the supplier can request as required, shall apply. A delivery note containing at least the following information shall be enclosed to every shipment: buyer’s order number, drawing data with change number, batch or lot number, and drop-off location. In the case of piece goods, railway express consignments and parcel post shipments the drop-off point shall be noted on every item dispatched, this in addition to the buyer’s address. Even in the event that we have agreed to bear the freight costs, the risk of accidental loss or accidental degradation of the shipment shall devolve to us only upon our receiving the shipment at the agreed delivery location or after accepting the delivery, whichever may be later. The supplier shall secure adequate shipping insurance.
- 5.3 We obtain ownership of the goods upon the transfer of risk at the place of performance or upon transfer to a forwarder hired especially by us, without any retention of any rights for the supplier.
- 5.4 The risks involved in the delivery of machinery and plants are passed only after the latter’s final acceptance on the spot.
6. Liability for defects and other liability
- 6.1 We inspect the goods delivered only for identity and quantity, based on the shipping papers, and for shipping damage apparent externally. We will inform the supplier of deficiencies in the delivery as soon as they are ascertained in the course of normal business operations and within a reasonable period of at least five work days after detection. Over and above that, the supplier waives the right of objection due to late notification of defects (Title 377 of the German Civil Code).
- 6.2 Unless otherwise provided for in this section, the supplier shall be liable for deficiencies in the delivery and otherwise in accordance with legal requirements, without this liability being limited or excluded in cause or in extent, and insofar shall indemnify and hold us harmless from and against any third party’s claims.
- 6.3 We are fundamentally entitled to select the type of remediation. The supplier may refuse the type of remediation which we select subject to the provisions of Title 439, Section 3, of the German Civil Code.
- 6.4 If the supplier fails to commence rectification of the defect immediately after our demand that the defect be rectified, then we are entitled in urgent cases and in particular to avert acute hazard or to avoid greater damages to rectify the ascertained deficiencies ourselves, at the supplier’s expense, or to have them rectified by third parties without any requirement for our specifying in advance a period for rectification.
- 6.5 Claims due to material deficiencies shall lapse, unless otherwise agreed or legal provisions mandate longer periods, 24 months following the sale of the final product to the consumer and at the latest, however, 30 months after the delivery is made to us, or in case of work performance 30 months after the written final acceptance unless otherwise agreed upon or governed by legal provisions that call for extended periods. If the delivery was employed, in accordance with its normal use, for construction work and if the delivery caused a deficiency in such work, then liability shall lapse only after five years. The rights deriving to us from Titles 478 and 479 of the German Civil Code are not affected by this regulation.
- 6.6 In case of legal deficiencies the supplier shall in addition hold us harmless of any claims to which third parties may be entitled. A liability period of ten years applies in regard to legal deficiencies.
- 6.7 If incoming goods inspections beyond the usual scope become necessary due to a defective delivery, then the supplier shall bear the costs for the same.
7. Product liability
- 7.1 In so far as the supplier is responsible for product damage he is obliged to hold us harmless of all claims for compensation of damages on the part of third parties. If the cause for the product damage lies within the supplier’s sphere of influence and organization and if he himself is liable himself in external relations in this context, then the supplier is also obliged to reimburse us for all expenditures pursuant to Titles 683 and 670 of the German Civil Code, which we incur from or in conjunction with a recall campaign which we carry out.
- 7.2 The supplier pledges to maintain extended product liability insurance and insurance for recall campaign costs with lump-sum coverage of EUR 2,500,000.00 (two million five hundred thousand euros) in each case for personal and property damage; our claims entitlements are, however, not limited to the amount of coverage.
8. Observing proprietary rights and regulations
- 8.1 The supplier declares that his delivery and its utilization neither infringe on commercial proprietary rights or other third-party rights nor violate legal or official regulations, regardless of type. The supplier further declares that the goods he delivers contain no CFCs, PCBs or asbestos and that he will include in deliveries the protective equipment provided for by the accident prevention regulations promulgated by the Workmen’s Disability Compensation Insurance Association. The supplier pledges to make available all information which the buyer needs in regard to potential use of the product at the workplace or for its transportation. Deliveries of hazardous goods require proper packing and careful selection of the transportation mode by the supplier.
- 8.2 The supplier is obliged to hold us harmless of all claims which third parties or our customers may lodge against us pursuant to or in conjunction with the delivery or its utilization.
- 8.3 The supplier’s obligation to hold us harmless applies to all expenditures which we of necessity incur pursuant to or in conjunction with the lodging of claims by a third party or by our customers.
- 8.4 The supplier undertakes to provide a so-called documentary evidence of origin for the contractual products, i.e. the supplier must give us the necessary details regarding to commercial and preferential law in due time, as well as indicate any change of origin immediately and without being asked to do so. The supplier may be requested, if necessary, to give evidence of the origin indicated for the contractual products by means of a note of information acknowledged by his customs office. If the supplier fails to fulfill this obligation, he shall be held responsible for any resulting damage.
9. Retention of title, tooling
- 9.1 We reserve ownership of the goods placed at our disposal. The retention of title also extends to the products which are created by processing, blending or joining our goods, up to their full value, wherein these procedures are carried out on our behalf, so that we are deemed to be the manufacturer. If third parties retain ownership rights pursuant to processing, blending or joining with third-party goods, then we acquire co-ownership in proportion to the objective values of these goods.
- 9.2 Tooling made available to the supplier and tooling fabricated by the supplier himself or ordered from third parties at our behest and to which we have made a contribution to the costs remain our property and/or become our property upon manufacture and/or procurement by the supplier and shall be clearly marked as our property and stored separately in a visible manner.
- 9.3 The supplier is obliged to store tooling for us at no cost to us, to obtain adequate insurance and to present proof of insurance coverage upon request. The supplier is obliged to use the tooling exclusively for the manufacture of parts destined for us unless otherwise agreed upon.
- 9.4 The supplier shall at his own costs repair and maintain the tooling placed at his disposal. When the tooling is returned it shall be in technically and optically perfect condition, in accordance with its previous utilization. The costs for repairs shall be borne by the supplier.
- 9.5 At the termination of the contract the supplier shall, upon our request, surrender the tooling to us immediately, without his enjoying any right of retention. In no case may the supplier scrap the tooling without our written consent.
10. Quality assurance
- 10.1 The supplier undertakes to maintain a quality management system throughout our business relations in line with standards DIN EN ISO 9001 and 14001, monitor the system by internal audits in regular intervals and promptly take action if any deviation has been detected, so as to ensure flawless quality of all items supplied to us. We shall have the right to inspect the supplier’s quality assurance system with prior notice. At our request the supplier shall permit us to examine certification and audit reports as well as inspection procedures including all test records and documents relevant to the delivery. nora systems is operating according to Energy Management System ISO 50001. Decisions in the Purchasing process are partially based on energy efficiency criteria.
11. Secrecy, documentation
- 11.1 All the information, recipes, drawings, models, tooling, technical drawings, process methods, software and other technical and commercial know-how as well as the results of work attained in conjunction therewith (hereinafter referred to as “confidential information”) which are disclosed by us or of which the supplier became aware through us shall be held confidential by the supplier vis à vis third parties and may be used in the supplier’s own operations exclusively for the execution of deliveries to us and shall be made accessible only to such persons who have to become familiar with the confidential information in the scope of the business relationship and who have been pledged to observe this secrecy regulation. This also applies beyond the term of the business relationship for as long as and to the extent that the supplier cannot demonstrate that the confidential information was already known to him at the time at which it was disclosed or that it was known publicly or that it became publicly known later, without culpability on his part.
- 11.2 All documentation (e.g. drawings, illustrations, test and inspection regulations), samples, models etc. which we make accessible to the supplier in the course of the business relationship remain our property and shall be surrendered to us upon our request at any time and at the latest upon the termination of the business relationship (to include any copies, facsimiles, extracts and reproductions) or, at our discretion, shall be destroyed at the supplier’s expense. To this extent the supplier has no entitlement to retention.
- 11.3 The disclosure of confidential information and any transfer or documentation, samples or models does not impart to the supplier any entitlements to commercial proprietary rights, know-how or copyrights and does not represent prior publication or right of prior utilization in the spirit of the patent and utility samples laws.
12. Applicable legislation and court of venue
- 12.1 The law of the Federal Republic of Germany, to the exclusion of its international private law, shall apply exclusively in so far as it refers to the applicability of another legal system. The application of the UN Uniform Law on the Sale of Goods (C.I.S.G.) and other bilateral and multilateral agreements serving to harmonize international transactions is excluded.
- 12.2 The court of venue for all disputes arising from the contract or in regard to its validity is, at our discretion, the place of performance (Clause 5.1) or Weinheim/Bergstraße, Germany. We are, however, entitled, at our discretion, to file suit against the supplier at any other general or special court.
- 12.3 If the supplier is domiciled outside the Federal Republic of Germany, then we are also entitled, at our discretion, to have any disputes arising from this contract or in regard to its validity, barring resort to the courts, decided in accordance with the Rules of Arbitration of the Chamber of Commerce at Zurich, by one or three arbitrators appointed in accordance with those Rules. The court of arbitration shall convene in Zurich, Switzerland. The arbitration process shall be argued in English. The arbitration decision is final and binding for the parties involved.