

STRICHPUNKT

Purchasing Terms and Conditions of Strichpunkt GmbH
(Published November 2018)

1. Scope, Protective Clause, Written Form

1.1. The following terms and conditions apply exclusively for the procurement of deliveries and services. However, reference to these terms and conditions is not required in all individual cases. Any deviating, conflicting or additional supplier terms and conditions only form part of this contract if we have expressly accepted their validity in writing.

1.2. Unless otherwise stipulated in these terms and conditions, the agreed requirement for the written form is also met by fax or email communications.

2. Conclusion of Contracts

2.1. Any orders we place orally or by telephone, or additions and amendments to orders, require our written confirmation. Unless otherwise stipulated in our orders, the order is binding for a period of two weeks from the order date. However, we may cancel the order prior to receipt of a written confirmation of our order from the supplier matching the content of our order.

3. Delivery Items, Quality Requirements

3.1. The supplier shall verify all order documents and other contractual documents for completeness, accuracy and fitness for purpose and inform us immediately in writing of any discrepancies or errors. This does not affect the supplier's own responsibility for executing the order.

3.2. Complete documentation (e.g. operation instructions, maintenance instructions) must be submitted with the deliveries and/or services (hereinafter referred to as "Delivery Items").

3.3. If Delivery Items are manufactured according to our requirements, an acceptance inspection is required, even if not expressly agreed. The acceptance inspection shall take place after a functional test has demonstrated that Delivery Items are free of defects or that any defects are insignificant.

3.4. If the supplier performs services on our premises, it shall adhere to relevant provisions (e.g. site regulations, safety provisions). Workstations must always be kept safe in terms of accident prevention and are to be left tidy and clean at the end of the work day.

3.5. The supplier may not have services owed by them performed by a third party (subcontractors, freelancers) without our prior written consent. The supplier bears the procurement risk for its Delivery Items, unless they are custom-made.

3.6. Subject to reasonable changes to Delivery Items in terms of manufacture and finishing, we may demand changes to prices and delivery deadlines accordingly.

4. Delivery Deadlines, Delivery, Transfer of Risk

4.1. The supplier shall inform us in writing without delay if it cannot meet delivery deadlines for any reason whatsoever. If delays occur, we are entitled to all legally-available claims and rights.

4.2. Delivery shall take place free of charge at the risk of the supplier to the location specified in the order. This also applies to returns. The supplier is legally responsible for complying with specified delivery requirements. If an acceptance inspection is carried out, transfer of risk does not occur until we issue a declaration of acceptance.

5. Prices, Invoicing, Payment

5.1. The agreed price is fixed and excludes statutory VAT and all additional services and costs (e.g. assembly, installation, packaging, transport, transport insurance and artists' social security contributions).

5.2. We shall issue payment within 45 days of invoice receipt.

6. Inspection, Defects

6.1. Our rights in terms of material defects and legal deficiencies in relation to goods – and other breaches of duty by the supplier – are governed by the law, unless stipulated otherwise.

6.2. In the ordinary course of business, we will undertake random inspections of Delivery Items upon receipt, thereby fulfilling our commercial inspection obligation.

6.3. If the supplier is late in rectifying defects or a delay in rectifying defects could lead to significant damages for us or our customers, we may rectify defects ourselves or commission a third party to do so without previously asking the supplier at its cost. We will inform the supplier as soon as possible if this is the case.

6.4. The limitation period for our claims for material defects is two years and for legal deficiencies four years, from the date of delivery/acceptance inspection. This does not affect longer limitation periods for other claims that do not relate to a defect of a Delivery Item itself. This also does not affect the legal limitation period for real claims for return (Section 438 Para. 1 No. 1 of the German Civil Code (Bürgerliches Gesetzbuch (BGB))).

7. Rights

7.1. Upon handover, we shall receive from the supplier the exclusive, transferable, irrevocable and temporally and geographically unrestricted right to use Delivery Items without charge, to reproduce, process and publically disclose them, and to transfer them, with or without charge, to third parties for a limited time or permanently, also in conjunction with other products. As such, we are entitled to unlimited usage and processing rights attached to the Delivery Items. All supplier claims for the granting of rights are settled by the agreed remuneration, thereby precluding any license payments either now or in future.

7.2. The supplier also grants us the exclusive usage rights, unrestricted in terms of time, geographical location and content, for applications that are unknown at the time the contract is concluded. If we make use of the unknown applications ourselves or via third parties, the supplier shall receive appropriate remuneration, which we shall agree with the supplier if any such use is planned. If an agreement is not reached within a month following notification of the intended start of use of the new application to the client at its last known address, we are entitled to determine the remuneration at our discretion. The supplier is entitled to have this reasonably exercised discretion (Section 315 of the German Civil Code) verified by the responsible regional court within six months from the specification of performance.

7.3. Express agreement is required if the supplier only wishes to or is only able to grant limited usage rights (e.g. image licenses). The supplier must detail the scope of usage rights in the quotation and invoice.

7.4. If the Delivery Item consists in whole or in part of software, we shall receive printable German documentation with the software. We may demand that the supplier conclude a maintenance agreement and deposit the source code with an escrow agent at our cost.

8. Provisions, Ownership Rights

8.1. Illustrations, plans, drawings, calculations, instructions, product descriptions, digital data and other documents that we make available to the supplier, that are otherwise provided or that are delivered to the supplier as part of our order remain our property.

8.2. We reject all forms of an expanded or extended retention of title.

9. Confidentiality

9.1. The supplier is obliged to treat all non-public commercial and technical information that it becomes aware of during the course of the business relationship with us as a trade secret, unless this information becomes generally known. This is particularly true for information that is classified as "secret" or "confidential", etc. The supplier's agents (incl. employees) must agree to these terms and conditions of confidentiality in writing and such documents must be presented to us upon request.

9.2. The supplier is aware of the legal situation regarding insider information in relation to our customers listed on a stock exchange. The supplier shall not buy or sell shares of our clients or commission a third party to do so in light of stock-market relevant information.

9.3. The supplier may only refer to an existing business relationship with us for marketing purposes with our prior written agreement.

9.4. The publication of Delivery Items in our order or made to our specifications for the purpose of the supplier's own marketing requires our prior written agreement.

10. Data Protection

10.1. The supplier shall ensure compliance with all relevant data protection provisions, including the compliance of all employees and agents.

11. Final Provisions

11.1. The place of performance is our registered office. The exclusive jurisdiction is the court responsible for our registered office. However, we may assert claims at the registered office of the supplier.

11.2. These terms and conditions are governed exclusively by German Law and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

11.3. If one or more of these terms and conditions is or becomes invalid, the validity of the remaining clauses is unaffected.