

General Terms and Conditions of Purchase 05/2021
JW Froehlich Maschinenfabrik GmbH (“JWF”)

A. Order placement

1. The legal relationship between the Supplier and JWF shall be governed exclusively by the following Terms and Conditions of Purchase; they shall also govern any follow-on orders, even where no express reference is made to these Conditions. Changes to these Conditions, including any contrary or supplementary terms and conditions of the Supplier, are hereby expressly excluded. Even if we not respond to an order confirmation making reference to such contrary or supplementary terms and conditions, we shall not be deemed to have accepted these terms and conditions. Fulfilment of the order shall not render such conditions binding on us. Such fulfilment shall however constitute the acceptance by the Supplier of our Terms and Conditions of Purchase.
2. All agreements with the Supplier concerning the performance of this contract shall be in writing.

B. Prices, scope of delivery/services

1. The agreed prices are fixed net prices applicable until completion of the services. These prices are to the specified destination DDP (as per Incoterms 2020) including packaging, acceptance of returned packaging material and all additional costs. Except where otherwise agreed, the receiving site/destination in each case is the JWF factory having placed the order.
2. Payment for changed or additional services is only provided to the Supplier if the additional payment claim was notified and agreed upon in writing before the service was provided. Additional payment shall be determined based on the additional or reduced costs in accordance with the pricing for the contractual service.
3. If, in the course of work, materials required by the Supplier to perform services are delivered or provided by us, the Supplier’s services shall include unloading delivery trucks and transporting parts from the storage area to the assembly site. For installation, maintenance and assembly work, the scope of service shall include the normal technical documentation.
4. If the contract is for research, construction and development work, the Supplier must provide the textual and graphical documentation required for the use of the service results for our applications and intended purposes (in particular, construction and manufacturing drawings, assembly plans and user manuals, all digitised in accordance with our specifications and on paper). For software development, the scope of service includes the source and object programs in particular, as well as the documentation for program development and application. These regulations also apply to later updates due to a maintenance contract.

C. Delivery deadlines, contractual penalties

1. The deadlines stated on our orders are binding deadlines for delivery/service performance. Partial deliveries/services shall not be made without our consent.
2. In the event of a delivery delay, we are legally entitled to withdraw from a contract and claim compensation for damages. Without prejudice to these legal rights, we can demand in addition to the delivery a contractual penalty of 0.5% of the delivery value for each week of delay started, up to a maximum of 5% of the delivery value. The contractual penalty need not be notified upon receipt or acceptance of the delivery, and can be imposed up to the final payment.
3. If the Supplier notifies us before the delivery date of a risk of late delivery, or if this becomes clear in any other way, we can demand that the Supplier provide within a reasonable time confirmation of its readiness to perform the contract together with proof of its capability or a performance security. If the deadline passes without a result, we can withdraw from the delivery contract and demand compensation in accordance with sections 280 and 281 of the German Civil Code (BGB).

D. Delivery and transfer of risk, compliance with accident prevention and factory regulations, force majeure, code of conduct

1. A delivery note shall be included with deliveries. For direct shipments to our customers, a JWF delivery note shall be used, and a dispatch note signed by the carrier shall be sent to us for the purpose of invoice control.
2. With purchase contracts, transfer of risk shall to us shall always occur only on handover of the goods at our specified receiving site; with contracts for services, transfer of risk shall always occur only after acceptance.
3. During installation and assembly work on one of our customers' sites or on JWF premises, the Supplier is responsible for compliance with all accident prevention, data protection, trade secrets protection and other factory regulations and instructions.
4. Industrial disputes, official actions, operational disruptions, material procurement or energy supply difficulties or other unforeseeable, extraordinary, unavoidable and involuntary circumstances, regardless of whether these circumstances affect us or third parties (e.g. our customer), discharge us for their duration from any obligation to accept deliveries/services. We must notify the Supplier immediately about the occurrence and likely duration of such circumstances. If as a result of these circumstances, the fulfilment of the contract is impossible for us or commercially no longer reasonable, we may extraordinarily terminate the contract. In respect of services performed up to the notice of termination, the Supplier shall have the claims provided for in section 645, para. 1(1) of the BGB; all other claims are excluded. This is without prejudice to our statutory rights.
5. The Supplier is obliged to observe the laws and regulations of all countries in which it is active. In particular it undertakes to neither actively nor passively, directly or indirectly participate in bribery or the infringement of human rights. It accepts responsibility for the health and safety of its employees and the protection of the environment. The Supplier will also, to the best of its ability, assist and require its own suppliers to comply with this code of conduct.

E. Invoicing, terms of payment

1. After shipping or completion of service, the Supplier's invoice shall be sent as a PDF document to us at the following email address: rechnung@jwf.com
Invoices must not be included with goods deliveries. All information required to create the PDF invoice and send the email correctly is included in the Instructions for Electronic Invoicing. These are available from our website: <https://www.jwf.com/downloads/>.
Partial invoicing is possible only when corresponding partial deliveries have been ordered.
2. Except where otherwise agreed, payment shall be made with a 3% discount 14 days from invoice or net 90 days from invoice. The payment term shall start on the date we receive the invoice, provided that the goods/services have been accepted and any agreed security has already been received.
3. In the event of a defect claim, we have the right to withhold payment of a reasonable portion of the invoice amount until the matter is resolved, and to apply a discount to the withheld amount even after this time in accordance with no. 2 above.
4. Advance payment and payment in instalments require a special agreement and security from the Supplier in the form of an absolute bank guarantee/surety with no time limit. The guarantee/surety must be enforceable under German law and specify Stuttgart as the exclusive place of jurisdiction. Otherwise section 239 of the BGB shall apply.

F. Defects, remedy, security deposit

1. The Supplier shall comply with recognised technical rules, existing safety regulations and the agreed technical data, dimensions, weights and other characteristics for its deliveries and services. Productions on the basis of drawings or approved models must comply with the specifications. If no other requirements are placed on the order, the deliveries and services are to be performed in accordance with standard qualities and if CE - conformity, DIN, VDE, VDI, MRL or other equivalent national or EC norms exist, in compliance with these. In particular, the deliveries and services are to be performed so that they comply with the statutory provisions at the receiving site specified by us for delivery/services to the customer, in particular those relating to technical equipment, accident prevention, workplace protection, hazardous materials, emissions control, water protection and waste disposal legislation.
2. The Supplier shall examine our plans, drawings and other information for performance of the service, or the materials and components supplied by us or performances by other suppliers, insofar as they concern the Supplier, for completeness, correctness and suitability for the intended purpose. If there are reservations in this regard, the Supplier shall immediately inform us thereof in writing. If it neglects to do so, then it is liable for any defects.
3. If we are entitled to a remedy, we can at our discretion demand defect rectification, re-manufacturing or replacement delivery of a defect-free item. In urgent cases where there is a risk to operational safety or a significant risk of damage, we are entitled to self-remedy the defect without even setting the supplier a deadline in advance.

4. The period of limitation for our defect claims is 36 months, unless a longer period of limitation is legally prescribed, in which case this longer period of limitation shall apply. The period of limitation is suspended by a written notice of complaint until the Supplier finally rejects liability for defects or refuses to continue negotiations concerning them. The period of limitation takes effect three months after the end of the suspension at the earliest.
5. The inspection and complaint period (sections 377 and 381, para. 2 of the German Commercial Code (HGB)) is 10 days from delivery at the receiving site, or, in the case of defects not identifiable at inspection, three weeks from discovery of the defect.
6. We are entitled to inspect the production of the Supplier, and we may be accompanied by our customer (for checking the status of our orders etc.) when doing so. With prior notice and agreement, we may conduct supplier audits for the purposes of supplier evaluation and information security.
7. To secure claims for defects, we may demand from the Supplier a security of 5% of the payment owed. Security may be provided by retention or by an absolute bank guarantee with no time limit. With respect to the guarantee, section E no. 4 shall apply. If the security is not used, it shall be returned on expiry of the period of limitation for defect claims that governs the contractual relationship. If, however, our asserted claims for defects have not yet been satisfied by this date or the periods for claims for defects for parts of the delivery or performance have not yet lapsed, a corresponding proportion of the security may be withheld.

G. Manufacturer's liability, insurance

1. If we are subject to litigation arising from manufacturer's liability under German or foreign law, the Supplier must indemnify us against claims for damages by third parties insofar as it is responsible for the defect that gave rise to liability. In this case, the Supplier must also compensate us for any expenses incurred through or in connection with a recall or other damage control or prevention measures implemented by us. The Supplier renounces the benefit of any limitation period; we, however, may plead a limitation period vis-à-vis the claimant.
2. The supplier must take out business liability insurance with extended product liability coverage and appropriate cover for personal, material and financial losses, and must hold this policy for the duration of this contract, including the period of limitation for defect claims. Proof of appropriate insurance for product liability risk must be submitted to us upon request.

H. Assignment of claims, subcontractors

1. Claims arising from deliveries and services may not be assigned to third parties without our consent.
2. As a general rule, the Supplier shall use its own company and employees to fulfil its obligations under contracts with us. Subcontractors shall not be used without our consent.

K. Provision of materials

1. Any materials/parts provided shall remain our property. They shall be stored separately and used only to fulfil our order. The Supplier shall be responsible for any loss or damage, regardless of fault.
2. Processing or transformation of items provided by us shall be performed on our behalf. If an item provided by us is processed together with other goods that do not belong to us, we shall acquire a proprietary share in the new item corresponding to the ratio of the value of our item to the value of the other goods processed at the time processing was carried out.
3. If an item provided by us is connected to other goods that do not belong to us, we shall acquire a proprietary share in the new item corresponding to the ratio of the value of our item to the value of the other goods connected at the time the connection was made. If items are connected such that the Supplier's item should be considered the main item, the Supplier shall be deemed to consent to the transfer of a proportionate proprietary share in the new item to us and shall keep the joint property safely. The above provisions shall also apply insofar as appropriate if the Supplier mixes or combines the item provided by us with other items.
4. The Supplier shall insure any item in which we have sole or joint ownership, including any new item created through processing, against material damage, loss etc.

L. Non-disclosure, proprietary rights, rights of use

1. The Supplier must treat the information provided to it and any knowledge that it acquires while engaged in fulfilling an order as strictly confidential and not use such information or knowledge for its own purposes; the same shall continue to apply after fulfilment of the order.
2. All objects, in particular models, tools, patterns, drawings, plans and documents of any kind that are entrusted to the Supplier, remain our property. The Supplier shall not disclose such objects and shall return them to us at its own expense at any time on our request. The Supplier shall not allow third parties to view such objects or make them accessible in any other way, nor replicate them, nor use them for its own purposes.
3. The same applies for moulds, tools and similar devices or aids used for the production of the delivery item, which were created using such documents or produced wholly or partially at our expense. Modifications to the above may only be made with our consent. It is agreed that the above objects shall pass into our ownership (if a payment is agreed, when the payment is made) and that these objects shall be kept carefully at no charge to us. If we have paid for the above objects before their completion, then we acquire according to the previous rule ownership of the semi-finished product.
4. The Supplier undertakes to insure the objects mentioned in paragraphs 2 and 3 above that are our property against material damage, loss etc.

5. Unless agreed otherwise, if the contract is for research, construction or development work, we shall acquire a temporally and geographically unlimited usage right, valid for all known types of use, in the service result, together with the right of intellectual property registration domestically and internationally. If standard software is required in order to use and evaluate the service result, the Supplier must procure for us the required rights and licenses, including the right of transfer to our customers.
6. If, in connection with the order, the Supplier introduces any improvement, we shall have a free, non-exclusive right to use the improvement for commercial purposes in addition to any intellectual property rights in it.

M. Intellectual property rights of third parties

1. The supplier is responsible for ensuring that the supply and proper use of the delivery item or service result does not infringe any rights of third parties.
2. Upon our first request, the supplier shall indemnify us against all claims and cover all damage, charges and costs incurred by us through infringement of the intellectual property rights of third parties arising from the delivery and its use. The period of limitation for these claims is 10 years from the date of contract completion.

N. Termination, insolvency

1. Our right of termination under section 649 of the BGB also applies to sales contracts. We can also limit a termination as per § 649 BGB (similarly for sales contracts) to parts of the contract.
2. We may extraordinarily terminate the contract if the Supplier is in financial difficulties, in particular if an application to open insolvency proceedings has been made. Payment to the Supplier shall be calculated as per section 645, para. 1(1) of the BGB. In the event of extraordinary termination, we may demand compensation for damages instead of performance.

O. Foreign trade legislation, materials prohibitions, declarations

1. In its offers and in connection with the confirmation as per section A, no. 2, the Supplier shall provide the following information: (1) any export permit requirement for the delivery item, (2) list item number as per German export legislation, (3) registration of the delivery item as per US legislation, with list item number, (4) any export permit requirement for the delivery item as per the current EC Dual-Use Regulation, with list item number, (5) commodity code/customs tariff number and (6) country of provenance/country of origin of the goods. In the event that the required export permit is not granted, we reserve the right to withdraw from the contract, without prejudice to any further claims.
2. The Supplier must document the provenance/origin of the delivery item in accordance with the relevant regulations, for example with a supplier's declaration, declaration of origin or EUR.1. In the supplier's declaration, the Supplier must state the origin of the deliverable, as per the destination country's current rules of origin.
3. Current materials prohibitions under German regulations or the regulations of the country specified as the destination to the Supplier shall be complied with.

4. The supplier must declare the materials contained in the delivery item (providing their CAS numbers and proportions by weight in a homogeneous material composed of them) if these materials are listed in one of the following regulations: (1) Chemicals Prohibition Ordinance (transposing Directive 76/779/EEC and accompanying amendments), (2) End-of-life Vehicle Ordinance (transposing Directive 2000/53/EC), (3) Electrical and Electronic Equipment Act (transposing Directive 2002/95/EC and Directive 2002/96/EC), (4) Halon Prohibition Ordinance (transposing ordinance (EC) 2037/2000) and (5) Ceramic Fibre Ordinance (EC 1272/2008).
5. Please include the required test certificate as per ADR 2.291.7 with all deliveries of lithium cells, batteries or combinations of these.

P. Place of fulfilment, place of jurisdiction and applicable law

1. The place of fulfilment is the place to which an item is to be delivered as per the order or at which work is to be performed as per the order. If not otherwise agreed, the place of fulfilment is the head office of the respective JWF company.
2. In accordance with section 38, para. 1 of the German Code of Civil Procedure, the court with jurisdiction over our registered office is agreed to be the place of jurisdiction for all disputes arising from or in connection with this contract. However, we are also entitled to sue the Supplier at its place of general jurisdiction or at the place of fulfilment.
3. The contractual relationship is governed by the laws of the Federal Republic of Germany. The application of the UN sales convention is excluded.

Q. Partial ineffectiveness

Even if individual provisions in the delivery contract and these terms and conditions of purchase are legally ineffective, all other parts remain binding. The ineffective provision must be replaced by a regulation that comes as close as possible to the technical and economic aim of the ineffective condition.

Supplementary provisions for the loan of cranes, lifting equipment or other technical aids

Where the Supplier also provides the operating personnel, it undertakes to ensure that the objects and goods to be lifted or transported are properly conveyed by its agents to the place specified by us and to supervise this work. In this case, a work contract shall be formed. A work contract also exists if, when and insofar as the Supplier has only undertaken to erect or dismantle the equipment.

The Supplier shall in all cases take out a crane liability insurance policy with a set minimum of €1 million of cover and – if the operating personnel are also provided – a hook load insurance policy with a minimum of €250,000.00 of cover for any personal injury or material damage and any financial loss consequent on such injury or damage. Special payment for this shall be made only if already agreed with us. We are entitled at any time to require proof of the insurance cover and to inspect the insurance contracts.