

Allgemeine Einkaufsbedingungen

§ 1 General Provisions – Scope of Application

- These General Terms and Conditions of Purchase apply to all current and future legal relationships between MackSmaTec GmbH, hereinafter referred to as "Purchaser" or "MackSmaTec", on the one hand, and the Supplier on the other hand.
- The Purchaser's terms and conditions of purchase apply exclusively. Conflicting terms or terms of the Supplier that deviate from these terms and conditions of purchase are not recognized, unless the Purchaser has expressly agreed to their validity in writing. The Purchaser's terms and conditions of purchase also apply if the Purchaser accepts the delivery without reservation while being aware of conflicting or deviating terms of the Supplier.
- All agreements made between the Purchaser and the Supplier must be recorded in writing accordingly. There are no oral collateral agreements.
- Rights to which the Purchaser is entitled under statutory provisions beyond these terms and conditions of purchase remain unaffected.

§ 2 Order

- If the Supplier does not accept the order/delivery call-off in writing within 5 working days of receipt, the Purchaser is entitled to revoke it, without the Supplier being able to assert any claims against the Purchaser as a result.
- To the extent reasonable for the Supplier, the Purchaser may request changes to the design and execution of the delivery item. The effects of such changes, in particular with regard to additional or reduced costs and delivery dates, are to be settled appropriately by mutual agreement.
- The Purchaser reserves ownership and copyright in illustrations, drawings, calculations and other documents; these may not be made accessible to third parties without the Purchaser's express written consent. They are to be used exclusively for manufacturing based on the Purchaser's orders; after the order has been completed, they are to be returned to the Purchaser without being requested to do so. They are to be kept confidential from third parties; in this respect, the provisions of § 12 apply in addition.
- With regard to software that is part of the scope of delivery of the product, including its documentation, the Purchaser has, in addition to the right of use to the extent permitted by law, the right to use it with the agreed performance characteristics and to the extent required for the contractual use of the product. The Purchaser may make a backup copy even without an express agreement to do so.
- The Supplier shall inform MackSmaTec in good time if, and which, subcontractors it engages. It is liable for suppliers and subcontractors as for its own fault.

§ 3 Spare Parts

- For technical deliveries, the Supplier undertakes to supply spare parts at standard market prices and conditions for the duration of the normal service life, but for at least 10 years.

§ 4 Prices – Terms of Payment

- The price stated in the order is binding. Unless otherwise agreed in writing, the price includes delivery including packaging (INCOTERMS 2010: DAP MackSmaTec, Marksuhl). The return of packaging requires a separate agreement.
- Statutory value added tax is not included in the price. Other taxes, duties and other charges are to be borne exclusively by the Supplier.
- The Purchaser can only process invoices if they contain, among other things, the order number stated therein, in accordance with the specifications in the order; the Supplier is responsible for all consequences arising from non-compliance with this obligation, unless it proves that it is not responsible for such non-compliance.
- Unless otherwise agreed in writing, the Purchaser shall pay the purchase price net within 30 days, or within 21 days with a 3% cash discount, calculated from receipt of goods and invoice.
- In the case of acceptance of premature deliveries, the due date is based on the agreed delivery date.
- In the event of defective delivery, the Purchaser is entitled to withhold payment in proportion to the value of the defect until proper performance has been rendered. Bonuses, cash discounts and price reductions remain unaffected by this.
- The Purchaser is entitled to rights of set-off and retention to the statutory extent.

§ 5 Delivery Time

- Agreed dates and deadlines are binding. The receipt of the goods at the Purchaser's plant is decisive for compliance with the delivery date or delivery period.
- The Supplier is obliged to notify the Purchaser immediately in writing if circumstances arise, or become apparent to it, from which it follows that the agreed delivery time cannot be met.
- In the event of a delay in delivery, the Purchaser is entitled to demand a contractual penalty of 1% of the value of the delivery per completed week, but not more than 5% of the value of the delivery; further statutory claims (e.g. withdrawal or damages) remain reserved. In addition, the Supplier is liable for the damage incurred by the Purchaser as a result of the delay, due to production bottlenecks, order rejections, loss of wages, etc., to the extent that this exceeds the contractual penalty.
- If the Purchaser is unable, due to unforeseen events such as force majeure, industrial action, operational disruptions of any kind, reduced acceptance, etc., which result in a reduction in demand, to accept/take delivery of the delivery/service in accordance with the order, the Purchaser may, to the extent reasonable, amend and reduce the order accordingly. In such a case, the Supplier shall have no claims for reimbursement of expenses or damages, nor may it demand a higher price or assert any other claims.
- If, due to force majeure, the Supplier's performance obligations are suspended for a period of more than two weeks, the Purchaser is entitled to terminate the contractual relationship with immediate effect. In this case, the Supplier may claim reimbursement of its demonstrably incurred expenses, which it incurred in reliance on the continued existence of the contractual relationship up until the suspension of the contractual obligations.

§ 6 Quality Management

- The Purchaser expects 100% delivery reliability from the Supplier.
- The Supplier must comply with the state of the art in science and technology, the safety regulations and the agreed technical data for its deliveries. It shall only deploy qualified personnel for the respective order. If specific qualifications are required to perform the service, these will be indicated separately in the order. It should establish and maintain a quality management system based on DIN EN ISO 9001. The Purchaser reserves the right to review the effectiveness of the quality management system on site. The Supplier also grants this right to the Purchaser's customers. Changes to the delivery item require prior written consent. The Supplier must continuously check the quality of the delivery items. Individual quality assurance agreements may be concluded if necessary. The contracting parties will inform each other of any possibility of quality improvement.
- The Supplier must also record in its quality records, for all products, when, in what manner and by whom defect-free manufacture of the deliveries was ensured. The Supplier must, within the legal possibilities, impose the same obligations on its sub-suppliers to the same extent. All materials used for manufacturing must comply with the applicable statutory safety and environmental regulations of the respective country of manufacture or distribution. The Supplier warrants that, insofar as the delivered goods fall within the scope of the RoHS Directive, they comply with the respective current requirements of the RoHS Directive or the corresponding provision(s) of the German Electrical and Electronic Equipment Act (ElektroG).
- For materials (substances, preparations) and objects (e.g. goods, parts, technical equipment, uncleaned empties) which, due to their nature, properties or condition, may pose risks to human life and health, to the environment or to property, and which must therefore, under applicable regulations, be subject to special treatment with regard to packaging, transport, storage, handling and waste disposal, the Supplier shall provide the Purchaser, together with the offer, with a fully completed EC safety data sheet in accordance with Regulation (EC) No. 1272/2008 and an appropriate accident information sheet (transport). In the event of changes to the materials or the legal situation, the Supplier shall provide the Purchaser with updated data and information sheets.
- The Supplier therefore undertakes, among other things, to observe the requirements of EC Regulation 1907/2006/EC (hereinafter "REACH Regulation") and EC Directive 2011/65/EU (hereinafter "RoHS Directive") in the version applicable at the time of delivery, and to fulfil all obligations incumbent on a supplier under the REACH Regulation and the RoHS Directive. It warrants that all goods comply with the requirements of the RoHS Directive and will confirm RoHS conformity to MackSmaTec in writing in each case.
- Packaging and packaging components comply with the requirements of Regulation (EU) 2025/40 (PPWR) in its respective applicable version; the Supplier shall provide the EU declaration of conformity pursuant to Art. 39

PPWR without being requested to do so, at the latest upon delivery, and shall provide further evidence of conformity free of charge upon request.

§ 7 Inspection of Defects – Warranty

1. The acceptance of goods is subject to inspection for freedom from defects, in particular for accuracy, completeness and suitability. The Purchaser reserves a period of up to 20 working days from the arrival of the goods at its plant for the inspection of the delivered goods. The inspection may be limited to random samples. The Purchaser is not obliged, within this period, to carry out technical function tests or to check whether the goods are suitable for further processing by the Purchaser. Only defects that are immediately apparent upon visual inspection, including in the form of random sampling, must be reported by the Purchaser without delay after expiry of the 20-working-day period.

Defects discovered are to be reported by the Purchaser immediately upon discovery. For quantities, weights and dimensions, the values determined by the Purchaser during the incoming goods inspection are decisive, subject to proof to the contrary.

2. In urgent cases, the Purchaser may, after consultation with the Supplier, carry out the rectification itself or have it carried out by a third party. Costs incurred as a result shall be borne by the Supplier. If the same goods are repeatedly delivered defectively, the Purchaser is entitled, after a written warning and renewed defective delivery, to withdraw from the contract, including with regard to the unfulfilled scope of delivery.
3. The warranty period is 24 months, beginning from the passing of risk or, if a final acceptance has been agreed, after successful final acceptance.
4. Unless otherwise regulated above, the warranty is governed by statutory provisions.
5. In the event of a culpable breach of duty going beyond the delivery of defective goods (e.g. duty to inform, advise or inspect), the Purchaser may claim compensation for the resulting damage (including consequential damage caused by a defect).
6. For machines and systems, the agreed tests to determine performance and compliance with the contractually relevant properties are carried out. If the determined actual condition deviates from the contractually agreed condition, the Supplier shall be granted a reasonable period for rectification. If the relevant specifications are still not met after two attempts at subsequent performance, the Purchaser reserves the right to have the defect rectified, to demand replacement delivery, to withdraw from the contract or to reduce the price. If a contractual penalty has been agreed for the case of failure to achieve a performance parameter, this shall also become due even if the Purchaser does not demand it directly at the time of the failed acceptance.
7. If a defect in the delivery only becomes apparent after further processing, the Supplier shall also be liable for the resulting damage.
8. The Supplier's performance influences the supplier evaluation carried out by the Purchaser.
9. The Purchaser reserves the right, in the case of complaints made by it, to charge a processing fee of EUR 150.00 per individual case, in addition to asserting the damage incurred. The right to pass on larger damages (transport, service call-out, downtime) incurred by the Purchaser to the Supplier is likewise reserved.

§ 8 Product Liability – Indemnification – Liability Insurance Coverage

1. Insofar as the Supplier is responsible for a product defect, it is obliged to indemnify the Purchaser against third-party claims for damages upon first demand, to the extent that the cause lies within its sphere of control and organization and it is itself liable in the relationship with the third party.
2. Within the scope of its liability for damages within the meaning of paragraph 1, the Supplier is also obliged to reimburse any expenses in accordance with §§ 683, 670 of the German Civil Code (BGB) and §§ 830, 840, 426 BGB, arising from or in connection with a recall action carried out by the Purchaser. The Purchaser will inform the Supplier, to the extent possible and reasonable, of the content and scope of the recall measures to be carried out and will give it the opportunity to comment. Other statutory claims remain unaffected.
3. The Supplier undertakes to maintain product liability insurance with a coverage amount of EUR 5 million per personal injury/property damage, as a lump sum. If the Purchaser is entitled to further claims for damages, these remain unaffected.

§ 9 Industrial Property Rights

1. The Supplier warrants that the items delivered by it do not infringe any patent or other industrial property rights of third parties.
2. If the Purchaser is held liable by a third party as a result, the Supplier is obliged to indemnify the Purchaser against these claims upon first written demand. The Purchaser is not entitled to enter into any agreements with the third party, in particular a settlement, without the Supplier's consent.

3. The Supplier's indemnification obligation relates to all expenses necessarily incurred by the Purchaser arising from or in connection with the claim by a third party.

§ 10 Termination

1. The Purchaser is free to terminate a contract at any time. In such a case, saved expenses will not be paid. Further claims, in particular loss of profit, do not exist. Our property is to be handed over immediately. This also applies to the property of the Purchaser's customers, insofar as they assert corresponding claims. Services and products already produced are also to be handed over to the Purchaser upon request.

§ 11 Retention of Title – Materials Supplied – Tools

1. Retention of title rights of the Supplier are only recognized upon express written confirmation by the Purchaser. Title passes to the Purchaser upon payment of the invoice for the subject matter of the contract, even if the Purchaser has made justified deductions.
2. Insofar as the Purchaser supplies material to the Supplier, the Purchaser retains title to it. If goods subject to the Purchaser's retention of title are processed or mixed with other items not belonging to the Purchaser, the Purchaser acquires co-ownership of the new item in proportion to the value of the Purchaser's item (purchase price plus VAT) to the other processed/mixed items at the time of processing/mixing. If the mixing takes place in such a way that the Supplier's item is to be regarded as the main item, it is agreed that the Supplier transfers proportional co-ownership to the Purchaser; the Supplier holds sole ownership or co-ownership in safekeeping for the Purchaser.
3. The Purchaser retains title to tools. The Supplier is obliged to use the tools exclusively for the manufacture of the goods ordered by the Purchaser. It must notify the Purchaser immediately of any malfunctions. If it culpably fails to do so, claims for damages remain unaffected.
4. Title to the goods delivered from the orders passes to the Purchaser upon delivery and acceptance of the goods.

§ 12 Confidentiality

1. The Supplier is obliged to keep strictly confidential all non-obvious technical and commercial details received, such as illustrations, drawings, calculations and other documents and information. They may only be disclosed to third parties with the Purchaser's express consent. The confidentiality obligation also applies after this contract has been completed. It expires if and to the extent that the manufacturing knowledge contained in the illustrations, drawings, calculations and other documents provided has become generally known. Deviating provisions may be agreed in a separate confidentiality agreement.

§ 13 General Provisions

1. If a contracting party ceases its payments, or if insolvency proceedings or judicial or extrajudicial composition proceedings are opened over its assets, the other party is entitled to withdraw from the contract with regard to the unfulfilled part.
2. Should a provision of these terms and conditions and of the further agreements made be or become invalid, the validity of the remainder of the contract shall not be affected. In such a case, the parties undertake to reach an agreement that comes as close as possible to the economic purpose and content of the invalid provision.
3. The law of the Federal Republic of Germany shall apply exclusively, unless otherwise agreed, to the exclusion of the Hague Convention and the UN Convention on Contracts for the International Sale of Goods (CISG).
4. The data necessary for order processing and invoice verification may be stored electronically by the Purchaser.
5. The Supplier is obliged to notify the Purchaser separately of additional freight costs and to provide evidence of corrective measures.

§ 14 Place of Jurisdiction – Place of Performance

1. The place of jurisdiction is the Purchaser's registered office. The Purchaser reserves the right to bring legal action at any other place of jurisdiction.
2. The place of performance is the place to which the goods are to be delivered, or at which the service is to be rendered, in accordance with the order.

§ 15 Code of Conduct for Suppliers

1. The Supplier undertakes to comply with the respective statutory regulations on the treatment of employees, environmental protection and occupational safety, and to work towards reducing adverse effects on people and the environment in its activities.
2. The Supplier shall observe the principles of the UN Global Compact Initiative. These essentially concern the protection of international human rights, the right to collective bargaining, the abolition of forced labor and child labor, the elimination of discrimination in recruitment and employment, responsibility for

the environment, and the prevention of corruption. Further information on the UN Global Compact Initiative is available at www.unglobalcompact.org.

3. The Supplier must avoid the use of materials from conflict regions. Should the use of such materials be unavoidable, the Supplier must inform the Purchaser immediately.
4. Furthermore, to the extent of its capabilities, the Supplier will establish and further develop a management system in accordance with ISO 14001. The Purchaser wishes to reduce the environmental impact of packaging waste and recycles a large proportion of the packaging of purchased parts through reuse. The Supplier undertakes to avoid waste and to use environmentally friendly packaging materials.
5. The Supplier undertakes to implement effective methods and processes that ensure compliance with all applicable statutory regulations, international sanctions and embargoes, as well as internal and external compliance guidelines and codes of conduct. This includes, in particular, measures to prevent violations of export control regulations, anti-corruption laws and human rights due diligence obligations.
6. In the event that a Supplier repeatedly acts unlawfully, and/or continues to do so despite a corresponding notice, and does not demonstrate that the legal violation has been remedied as far as possible and that appropriate precautions have been taken to prevent future legal violations, the Purchaser reserves the right to withdraw from existing contracts or to terminate them without notice.

§ 16 Information Security/Cybersecurity

1. Insofar as the products, components, software or firmware components delivered by the Supplier are incorporated into, or themselves constitute, products of the Purchaser with digital elements, the Supplier warrants that these are designed, developed and manufactured in such a way that they do not impair the Purchaser's fulfillment of the essential requirements under Annex I of Regulation (EU) 2024/2847 (Cyber Resilience Act, hereinafter "CRA"), in particular that they are, upon delivery, free from known exploitable vulnerabilities (Annex I, Part I, No. 1 and 2 CRA).
2. The Supplier must take appropriate and industry-standard organizational and technical measures to ensure the confidentiality, authenticity, integrity and availability of the Supplier's operations as well as of its deliveries and services. These measures should include an appropriate information security management system in accordance with standards such as ISO/IEC 27001 (where applicable).
3. Insofar as deliveries or services include software or firmware:
 - the Supplier will implement appropriate, industry-standard standards, processes and methods in accordance with standards such as ISO/IEC 27001 or IEC 62443 (where applicable) to prevent, identify, assess and remedy any vulnerabilities, malicious code and security-relevant events in the deliveries and services;
 - the Supplier guarantees and warrants that the deliveries and services do not contain any malware or manipulated or counterfeit third-party components. The Supplier must verify this, and that no indications of non-conformity have been identified, in accordance with the state of the art, and confirm this in writing upon request.
4. The Supplier will inform the Purchaser without delay, and at the latest within 72 hours of becoming aware, of all security-relevant events that have occurred or are suspected and that affect or may affect the Supplier's operations or the deliveries or services. This applies in particular to cyberattacks, security breaches, vulnerabilities, supply gaps, manipulation, compromised components and other events that may impair the confidentiality, integrity, authenticity or availability of the deliveries or services.
5. The Supplier undertakes to notify the Purchaser without delay of all vulnerabilities, security gaps, actively exploited vulnerabilities, necessary security updates and other security-relevant findings that become known to it, insofar as these affect or may affect the delivered products, software, firmware or hardware components, or services. The notification must contain all information necessary to assess the risk and initiate appropriate measures, in particular a description of the facts, the affected products, components or versions, the possible effects, and measures already taken or recommended. The Supplier shall provide the Purchaser with appropriate support in analyzing, containing, remedying and communicating the effects. This includes, where necessary, the provision of corrective measures, updates, workarounds or other appropriate technical and organizational measures.
6. The Supplier will take appropriate measures to impose, within a reasonable period, obligations on its sub-suppliers and subcontractors that correspond to the obligations set out in this § 16. This applies in particular insofar as their deliveries or services may affect the information security or cybersecurity of the products, components, software, firmware or services delivered to the Purchaser. The Supplier remains responsible for fulfilling the obligations under this § 16.

7. The Supplier shall support the Purchaser to a reasonable extent in fulfilling its CRA obligations. This includes, in particular, the free provision of all information and evidence required for the technical documentation pursuant to Annex VII CRA, the conformity assessment and the CE marking, as well as the immediate notification of changes that may affect the conformity of the delivered products, components, software or firmware components.
8. The Supplier shall provide security updates free of charge for the software and firmware components delivered by it for a period of at least five years from delivery, or, if the expected service life of the Purchaser's end product is longer, for the duration of this service life, in each case to the extent that this is possible according to the state of the art and economically reasonable for the Supplier. If the Supplier intends to discontinue the provision of security updates before the expiry of this period, it shall inform the Purchaser of this at least six months in advance.
9. Upon request, the Supplier shall provide the Purchaser with a complete, up-to-date software bill of materials for delivered software and firmware components in a common machine-readable format (e.g. SPDX or CycloneDX) and shall update it without being requested to do so in the event of security-relevant changes.
10. Notwithstanding paragraph 3, a reporting deadline of 12 hours from the Supplier becoming aware applies to actively exploited vulnerabilities and to serious security incidents that may trigger a reporting obligation on the part of the Purchaser to the European Union Agency for Cybersecurity (ENISA) or another competent authority under Art. 14 CRA. The Supplier shall support the Purchaser, upon request, in the timely preparation of the early warning notification, the incident notification and the final report pursuant to Art. 14 CRA.
11. If the delivered products, components, software or firmware components themselves fall within the scope of the CRA, the Supplier shall provide the Purchaser, without being requested to do so, at the latest upon delivery, with a valid EU declaration of conformity and proof of proper CE marking; further evidence of conformity shall be provided free of charge upon request.
12. The Purchaser is entitled to verify compliance with the obligations under this § 16, including CRA-related evidence and documentation, at the Supplier's premises, after reasonable prior notice, during normal business hours, either itself or through a third party bound to confidentiality. Corresponding inspection and access rights are granted to the same extent to the competent market surveillance authorities, insofar as this is necessary for the Purchaser to fulfill its statutory obligations.
13. If the Supplier culpably breaches its obligations under this § 16, and fines, orders or other sanctions under the CRA are imposed on the Purchaser as a result, § 8 (Product Liability – Indemnification – Liability Insurance Coverage) shall apply accordingly; the Supplier shall indemnify the Purchaser upon first demand against all costs and expenses arising from this.
14. A violation of the obligations under this § 16, in particular of the requirements under Annex I CRA, at the same time constitutes a defect within the meaning of § 7; the Purchaser's warranty rights under that section remain unaffected alongside the rights under this § 16.

§ 17 Electronic Communication

1. For information on the procedures for electronic communication with the Purchaser, please refer to the document "Notes on Procedures for Electronic Communication with MackSmaTec GmbH Marksuhl". The current version can be found on our website at www.MackSmaTec.com → Terms and Conditions

MackSmaTec GmbH
Managing Director: Thomas Mack
Sonnenacker 2, 99834 Gerstungen, Germany