

# **maxingvest GmbH & Co. KgaA General Purchasing Terms and Conditions**

## **1. Scope of application**

- 1.1 These General Purchasing Terms and Conditions (“Purchasing T&Cs”) shall apply to all current and future business relationships between maxingvest GmbH & Co. KGaA (“maxingvest”) and the supplier (the “Supplier”, or together with maxingvest the “Parties”) for the procurement of goods and/or services by maxingvest.
- 1.2 By accepting and performing an order, the Supplier accepts these Purchasing T&Cs in the version applicable at the time of the order. The Purchasing T&Cs can be accessed at any time on maxingvest’s website ([www.maxingvest.de](http://www.maxingvest.de), the “website”).
- 1.3 Any conflicting and/or differing Supplier general terms and conditions of business shall not be recognized and shall not form part of the contract unless maxingvest consents to their application in writing when the contract is formed; in this case and if special terms and conditions are agreed separately for specific orders, the Purchasing T&Cs shall serve as subordinate and supplementary terms and conditions. The Purchasing T&Cs shall also apply if the contract is performed by the Supplier without reservation in the knowledge of Supplier terms and conditions that conflict with or differ from the Purchasing T&Cs. The fact that maxingvest takes delivery of goods or services from the Supplier shall not signify consent to the Supplier’s general terms and conditions. Equally, any failure to respond to an order confirmation by the Supplier containing contradictory declarations by the Supplier shall not represent any such consent.
- 1.4 Where nothing to the contrary is agreed, these Purchasing T&Cs, as amended, shall also apply as a master agreement to all future orders, regardless of whether maxingvest expressly draws the Supplier’s attention to this individually in future orders or not.
- 1.5 The Supplier is obliged to comply with the “Due Diligence Obligations for maxingvest ag’s Business Partners”, which can be accessed on the website. These due diligence obligations, as amended, form part of these Purchasing T&Cs.

## **2. Formation of the contract**

- 2.1 The contract shall be formed in writing, and all agreements regarding the performance of the contract entered into by the Parties shall also be made in writing.
- 2.2 An order by maxingvest shall be taken to be binding at the earliest when it is made or confirmed in writing.
- 2.3 The Supplier shall check the order including the order documentation for obvious errors and omissions, and for discrepancies compared to the solicitation documentation; where such errors, omissions and discrepancies are found to exist, the Supplier shall draw maxingvest’s attention to these before acceptance. Otherwise, the contract shall be deemed not to have been formed.
- 2.4 The Supplier shall confirm an order made by maxingvest within 5 days in writing, or shall perform it without reservation within this time, in particular by dispatching the goods.

- 2.5 Delayed acceptance by the Supplier shall be deemed to be a new offer and shall require acceptance by maxingvest.
- 2.6 Where maxingvest makes an offer to form the contract, it shall be bound by such offer for 14 days as from the date of the offer.

### **3. Supplier's performance obligations and duties**

- 3.1 The goods and services to be provided under the contract are specified in the individual orders concerned. Documents, reports, ideas, drafts, models, samples and all other results arising during performance shall form part of performance.
- 3.2 The Supplier shall perform its obligations with the utmost care and in keeping with the state of the art, the safety regulations published by public authorities and industry associations, and the insights and experience already at its disposal or that it gained during performance of the order. The Supplier shall guarantee compliance with the statutory regulations, the agreed technical specifications and other requirements.
- 3.3 The Supplier is obliged to inform maxingvest in writing without undue delay of any reservations that it has concerning the manner of performing the service or making the delivery desired by maxingvest, and shall suggest to maxingvest amendments that it considers necessary in order to meet the agreed specifications or statutory requirements.
- 3.4 Where nothing to the contrary has been agreed in individual cases, the Supplier shall bear the procurement risk. Part performance is not permitted unless it has been expressly agreed in advance. Inasmuch as it takes place, maxingvest is entitled to cancel the remaining quantities due under the contract.
- 3.5 The order for goods and services that has been placed may only be performed by third parties if maxingvest has consented to this in writing in advance.
- 3.6 To the extent that the Supplier must provide sample materials, test reports, quality documentation or other contractually agreed documents, full delivery of the goods and services shall also require maxingvest to have access to these documents.
- 3.7 At maxingvest's request, the Supplier shall provide information on the composition of the item to be delivered, to the extent that this is necessary for compliance with statutory or other official rules and requirements within Germany and abroad.
- 3.8 In the case of goods involving digital components or digital products, the Supplier shall ensure that the digital components or digital products are provided and updated in accordance with sections 327a ff. of the *Bürgerliches Gesetzbuch* (BGB – German Civil Code), with the necessary modifications, and in particular of sections 327b and 327f of the BGB.
- 3.9 The Supplier is obliged to deliver replacement parts, at appropriate terms and conditions, for the period of regular technical use, but at least for 10 years after the last delivery. If the Supplier intends to discontinue delivery of the replacement parts 10 years after the last delivery, or to discontinue delivery of the item concerned within this 10-year period, the Supplier shall be obliged to inform maxingvest of this and to give it the opportunity to place a last order before such discontinuation.

#### **4. Prices and payment terms**

- 4.1 The price stated in the order shall be binding. All prices shall include statutory VAT, where this is not shown separately.
- 4.2 The prices set out in the order are fixed prices. In particular, the prices are carriage paid and include the cost of insurance, customs duties, packaging and materials testing procedures. Claims based on additional deliveries and/or goods or services provided can only be asserted between the Parties following prior written agreement and after the additional deliveries and/or goods or services have been commissioned in writing. Otherwise, no additional claims going above and beyond the total fixed price may be brought.
- 4.3 No remuneration is due for presentations, demonstrations, negotiations and/or for the preparation of quotations and projects unless this was agreed up front in writing.
- 4.4 maxingvest can only process any invoices due if these comply with the statutory requirements, and in particular with the *Umsatzsteuergesetz* (UStG – German Value Added Tax Act), and if they specify the order number quoted in the order and contain the information and/or documents agreed in the order. The Supplier shall be responsible for all consequences resulting from failure to comply with this obligation. The Supplier shall not be entitled to assert a claim for payment of the concrete debt against maxingvest if the abovementioned information and/or documents are missing.
- 4.5 Where nothing to the contrary has been agreed in writing, payment of the price or the remuneration shall be due 30 days after the handover of and acquisition of title in the goods delivered or final performance of the service, receipt of an auditable invoice and the receipt of all contractually required documentation. Payment shall be made electronically to the Supplier's business account. The Supplier shall communicate the requisite bank account details for this. This also applies in cases in which the said bank account details change. If part performance has been agreed, payment shall only be due when the final delivery is made. This shall not apply to contracts for successive delivery or in cases in which a partial delivery is canceled in accordance with section 3.4 of these Purchasing T&Cs.
- 4.6 maxingvest shall have the statutory rights of offsetting and retention. In particular, maxingvest shall be entitled to deduct the value of lawfully returned goods and of existing claims for expenses and damages from the invoiced amounts. Supplier claims for set-off and retention shall only be valid to the extent that these are uncontested or have become final and absolute.

#### **5. Delivery and place of performance**

- 5.1 To the extent that no other place of performance has been agreed in writing in the contract, deliveries shall be made to maxingvest's registered office (obligation to be performed at the creditor's place of business) and shall be insured by the Supplier at its expense against transport damage, incorrect loading or unloading and theft. maxingvest's registered office shall also be the place of performance for any subsequent curing of defects under the contract.

- 5.2 Goods shall be packaged in such a way that damage during transport and loading are avoided. Packaging materials shall only be used to the extent necessary to achieve the purpose. The Supplier's take-back obligations, including in relation to transport packaging and product packaging, shall be in line with the statutory requirements. The Supplier warrants that all packaging has been licensed at, and reported to, a system supplier in line with the statutory requirements, and that the fees for this shall be paid in full and in an orderly manner.
- 5.3 The Supplier shall transfer title in the goods to maxingvest unconditionally and irrespective of the payment of the price. However, should maxingvest in individual cases accept an offer from the Supplier regarding the transfer of title that is conditional on payment of the purchase price, the Supplier's retention of title shall be extinguished at the latest on payment of the purchase price for the goods delivered. maxingvest shall remain authorized, in the normal course of business, to sell on the goods even before payment of the purchase price while assigning in advance the resulting future claim for payment (alternatively, a simple retention of title extended to the resale shall apply). All other forms of retention of title, and in particular any extended, forwarded or enlarged retention of title, shall therefore be excluded at all events.

## **6. Delivery date and default**

- 6.1 The delivery date specified in the order shall be binding. The actual date of delivery shall be deemed to be the date on which the goods or services are received by maxingvest at maxingvest's registered office. If delivery takes place before the agreed delivery date, maxingvest reserves the right not to accept the delivery and to send it back at the Supplier's cost and risk.
- 6.2 The Supplier is obliged to inform maxingvest without undue delay in writing if circumstances resulting in the inability to deliver at the agreed time occur or become foreseeable to the Supplier. If the Supplier fails to do this, it cannot subsequently rely on such circumstances.
- 6.3 In the case of any culpable default in delivery on the part of the Supplier, maxingvest is entitled to demand a contractual penalty of 0.1% of the value of the delivery as stated in the final invoice per day or part of a day for which the Supplier is in default, but no more than 5% of the value of the delivery as stated in the final invoice. maxingvest reserves the right to pursue additional legal claims; in this case, however, the contractual penalty shall be set off against any claims for damages. Acceptance of a late delivery or performance does not represent a waiver of claims for compensation.
- 6.4 maxingvest shall not be liable to pay any interest on arrears.
- 6.5 The statutory provisions shall apply when determining whether any failure to accept timely delivery has occurred. However, the Supplier shall expressly offer maxingvest performance even if a defined or definable calendar date has been agreed for an act or for cooperation by maxingvest. Should maxingvest fail to accept timely delivery, the Supplier shall be entitled to demand compensation for its additional expenses in line with the statutory provisions. Should the contract relate to a non-substitutable item to be produced by the Supplier, the Supplier shall only have more

far-reaching rights if maxingvest undertook to cooperate and is responsible for the failure to cooperate.

## **7. Transfer of risk and documents**

- 7.1 The transfer of risk shall occur on acceptance of the delivery by maxingvest at its registered office. To the extent that an acceptance procedure has been agreed, this shall be decisive for the transfer of risk. Handover or acceptance shall be deemed to have taken place if maxingvest has failed to accept timely delivery.
- 7.2 The Supplier is obliged to state the order number on all shipping documents and delivery notes. Where the Supplier fails to do this, maxingvest shall not be responsible for any resulting delays in processing.
- 7.3 Any documents, reports, ideas, drafts, models, samples, etc. that maxingvest has provided to the Supplier shall remain maxingvest's property. The Supplier shall return these to maxingvest without undue delay and without having been requested to do so after performing the contract. The Supplier may only use these documents to perform the contract.

## **8. Warranty claims and guarantees**

- 8.1 Any warranty claims by maxingvest against the Supplier in the case of defects in materials, workmanship and title shall be governed by the statutory provisions, subject to the following stipulations.
- 8.2 In particular, the Supplier shall be liable for the goods having the agreed quality when the risk is transferred. The product descriptions that form the subject of, or were included in, the contract in question shall be taken at all events as agreeing the quality. The question of whether the product description originated with the Supplier or the manufacturer shall be irrelevant in this context. The warranty period shall be 24 months as from the transfer of risk.
- 8.3 Where, due to their nature and purpose, goods were incorporated into or affixed to another item before a defect became apparent, curing of the defect shall also include the deinstallation of the defective goods and their renewed installation. This shall not affect maxingvest's statutory claim to compensation for any related expenses (deinstallation and installation costs). The Supplier shall be liable for the expenses required for inspection and for curing defects, and in particular for transport, travel, labor and materials costs, plus any deinstallation and installation costs, even if it transpires that no defects in fact existed. maxingvest's liability to pay damages for unjustified requests to rectify defects shall remain unaffected by this; however, maxingvest shall only be liability if maxingvest recognized or was grossly negligent in failing to recognize that no defects existed.
- 8.4 The Supplier guarantees that the goods and services delivered comply with the statutory regulations, and in particular that the requirements of the German Packaging Act, as amended, the RoHS Directive, the German Electrical and Electronic Equipment Act (*Gesetz über das Inverkehrbringen, die Rücknahme und die umweltverträgliche Entsorgung von Elektro- und Elektronikgeräten – ElektroG*), the Batteries Regulation and the REACH Regulation have been met and implemented. Furthermore, the Supplier guarantees that any copyright fees due have been remitted to

the relevant collection societies. The Supplier's invoices must draw attention to the copyright fees they contain as required by section 54d of the *Urheberrechtsgesetz* (German Copyright Act – UrhG). The "Due diligence obligations for maxingvest ag's business partners", which are available on the website, shall apply as a supplement.

- 8.5 Sections 377 and 381 of the *Handelsgesetzbuch* (HGB – German Commercial Code) shall apply with respect to the commercial duties of inspection and the notification of deficiencies, subject to the proviso that maxingvest's duty to provide notification of deficiencies is limited to those deficiencies that are evident during a visual inspection of the incoming goods, including the delivery documentation (e.g. transport damage, incorrect deliveries and short deliveries), or that become evident during random sampling as part of quality control. There shall be no duty to inspect the deliveries where an acceptance procedure has been agreed. Otherwise, the decisive factor shall be the extent to which an inspection is feasible in the normal course of business, taking the circumstances of the individual case into account. maxingvest's duty to provide notification of deficiencies in the case that such deficiencies are discovered later shall not be affected by this. Regardless of any duty to provide notification of deficiencies, such a notification on the part of maxingvest shall be deemed to have been made without undue delay and in good time if it is dispatched within 5 working days of discovery or, in the case of evident deficiencies, of delivery.

## **9. Liability and indemnification**

- 9.1 In the absence of any special requirements set out in these Purchasing T&Cs, the Supplier's liability shall be governed by the statutory provisions.
- 9.2 The Supplier is obliged to indemnify maxingvest at first request against claims for damages brought by third parties to the extent that the cause is to be found in its sphere of control and organization, that maxingvest itself is liable in relation to third parties, and that a claim is brought against maxingvest by a third party for the infringement of property rights. This shall not apply in cases in which the Supplier is not responsible. The duty of indemnification shall also apply to all expenditure that necessarily results for maxingvest from or in connection with a third party bringing a claim against it, including the costs of legal representation. The Supplier shall insure itself against these risks in an appropriate and customary amount. Any further statutory claims shall not be affected by this.

## **10. Ownership, and provision and commingling of materials**

- 10.1 Where maxingvest supplies substances or materials in whole or in part, these shall remain the property of maxingvest.
- 10.2 Any processing or transformations performed by the Supplier shall be made on maxingvest's behalf. If the substances or materials supplied by maxingvest are processed together with other items that do not belong to it, maxingvest shall acquire co-ownership in the new item in the ratio of the value of its items to the other processed items at the time of processing.
- 10.3 If the items (substances or materials) supplied by maxingvest are inseparably commingled with other items that do not belong to it, maxingvest shall acquire co-ownership in the new item in the ratio of the value of the goods in which title was retained

to the other commingled items at the time of commingling. If the commingling takes place in such a way that the Supplier's item is to be considered the main item, it is agreed that the Supplier shall assign maxingvest a proportionate ownership claim; the Supplier shall manage the solely owned or co-owned property free of charge for maxingvest.

## **11. Non-disclosure**

11.1 The Supplier is obliged to preserve the confidentiality of all documents and information received from maxingvest. These may only be disclosed to third parties with maxingvest's express consent, and only on a need-to-know basis. The Supplier shall protect their confidentiality in the same way as it protects the confidentiality of its own confidential information (and shall take at a minimum appropriate measures to protect the confidential information at all times). The duty of confidentiality shall also extend to personal data relating to maxingvest's employees, governing body members, and direct and indirect shareholders. The duty of confidentiality shall remain in force even after this contract has been wound up or has failed; it shall cease to apply if and to the extent that the information contained in the documents provided has become generally known. Third parties used by the Supplier to perform the obligations arising under this contract shall be required to comply with the same obligations. If these obligations are not complied with, maxingvest shall be entitled to demand the immediate surrender of the documents and information, and to assert claims for damages.

11.2 The Parties shall treat the fact that they have entered into this contract as confidential. The Supplier may only make reference to the transaction with maxingvest in its advertising materials if it has obtained the latter's written consent. The Parties undertake to treat all business and technical details that are not in the public domain and that become known to them as a result of the business relationship as trade secrets. The Supplier shall require third parties that it uses to perform the obligations arising under the contract to comply with the same obligations.

## **12. Concluding provisions**

12.1 These Purchasing T&Cs shall be governed by the laws of the Federal Republic of Germany. The provisions of the United Nations Convention on Contracts for the International Sale of Goods, and legislation making reference to different jurisdictions, shall not apply.

12.2 If copies of these Purchasing T&Cs are available in languages other than German, the German version shall be the sole binding version for maxingvest and the Supplier.

12.3 Side agreements, amendments and supplements shall be made in writing to be valid; this shall also apply to any revocation of the need for written form. Legally relevant declarations and notifications by the Supplier in relation to the contract (such as the setting of deadlines, the issuance of reminders and withdrawal) shall also be made in writing. For the purposes of these Purchasing T&Cs, written form shall also be deemed to include e-mail and fax communications.

12.4 The place of performance is Hamburg. The place of jurisdiction for disputes arising under or in relation to the contractual relationship between maxingvest and the Supplier shall be Hamburg in those cases in which the Party to the contract is a merchant, a legal entity under public law or a special fund under public law.

12.5 Should one of the provisions of these Purchasing T&Cs be or become invalid, this shall not affect the validity of the remaining provisions.