

Terms and Conditions of Purchase

1. General

These Terms and Conditions of Purchase apply to all contracts for deliveries and services. This includes, in particular, contracts for the purchase and/or delivery of movable goods ("Goods"), regardless of whether the Supplier manufactures the Goods itself or purchases them from suppliers (§§ 433, 650 BGB [German Civil Code]). Upon initial delivery under these Terms and Conditions of Purchase, the supplier also accepts them as agreed for all future contracts. Any deviating terms and conditions of sale and delivery of the supplier are excluded and are expressly rejected by API Schmidt-Bretten GmbH & Co.KG (hereinafter referred to as "API"), unless API has agreed to their validity in writing.

Offers and cost estimates will not be remunerated by API.

Intra-Community triangular transactions pursuant to §25b UStG are excluded and will not be accepted by API.

2. Conclusion of the contract

Orders placed by API are only valid if they have been placed in writing. Orders placed in any other form require written confirmation from API to be valid. If API does not receive written order confirmation from the supplier within 2 days – calculated from the date stated in the written order – the order shall be deemed accepted, unless API revokes it beforehand. In the event of revocation, the supplier cannot derive any claims against API from this.

3. Contents of the contract

The content of the contract is determined exclusively by the content of the order placed by API. If the supplier's confirmation deviates from the order, the supplier is obliged to expressly point this out in the confirmation. A deviating confirmation constitutes a new offer by the supplier, the acceptance of which requires the express written consent of API.

API is entitled to demand changes to the delivery item even after conclusion of the contract if the changes are reasonable for the supplier, taking into account the interests of the supplier. The supplier may only execute the order placed with him himself.

The supplier is not entitled to have the service owed by it performed by third parties (e.g., subcontractors) without the prior written consent of API. The supplier bears the procurement risk for its services, unless otherwise agreed in individual cases (e.g., restriction to stock).

4. Delivery time

The agreed delivery dates and deadlines are binding. The decisive factor for compliance with the delivery dates or deadlines is the receipt of the delivery at the place of receipt or use specified by API in a condition that complies with the contract.

If the supplier realizes that an agreed date or deadline is unlikely to be met, API must immediately notify in writing, stating the reasons and the expected duration of the delay.

In the event of a delay in delivery, API's rights – in particular to withdrawal and compensation – shall be determined in accordance with the statutory provisions. If the supplier is unable to meet the agreed delivery dates and deadlines for reasons beyond its control, for example due to force majeure or industrial action, the contracting parties shall be obliged to adjust their obligations to the changed circumstances in good faith and within reasonable limits. However, API shall be released from its obligation to accept the ordered delivery and shall be entitled to withdraw from the contract to the extent that, as a result of the delay, the delivery is no longer usable for API at , taking into account economic and legal considerations.

The supplier may only invoke the absence of necessary documents to be supplied by API if it has requested the documents from API in writing and has not received them within a reasonable period of time.

In the event of earlier delivery than agreed, API is entitled to demand that the supplier take back the delivery until the agreed delivery date or return it at the supplier's expense. If API does not make use of this right, the delivery shall be stored at API at the supplier's expense and risk until the agreed delivery date. The due date for payment owed by API shall in any case be determined by the agreed delivery date.

Partial deliveries are only permitted with express written agreement. In the case of agreed partial deliveries, the supplier must specify the remaining quantity.

5. Prices, invoicing, and terms of payment

The prices stated in the order are binding. All prices include statutory sales tax, unless this is shown separately.

Unless otherwise agreed in individual cases, the prices are fixed prices that include all services and ancillary services provided by the supplier (e.g., assembly, installation), as well as all incidental costs (e.g., costs for packaging and transport, including any transport and liability insurance, as well as customs formalities and customs duties).

If no prices are specified in the order placed with API, API shall owe the supplier's list prices valid at the time of conclusion of the contract, less the customary trade discounts, or otherwise the usual remuneration.

The agreed prices are due for payment within 60 calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. Invoices must be made available to API in digital form with all associated data and supporting documents after delivery.

If it has been agreed that the supplier must provide API with material test certificates, these shall form an integral part of the delivery; they must be handed over at the latest upon delivery of the goods and are an additional prerequisite for the payment claim becoming due.

API is entitled to set-off and retention rights as well as the defense of non-performance of the contract to the extent permitted by law. In particular, API is entitled to withhold due payments as long as API still has claims against the supplier for incomplete or defective services. API is only obliged to make advance payments if this has been expressly agreed and the supplier provides API with security in the amount of the advance payment, e.g. through a performance bond from a domestic credit institution.

The supplier shall only have a right of set-off or retention on the basis of legally established or undisputed counterclaims.

6. Shipping and packaging

The delivery must be accompanied by a delivery note stating the date (issue and dispatch), the contents of the delivery (item number, quantity, and weight), and the order ID (date and number). If the delivery note is missing or incomplete, API shall not be responsible for any resulting delays in processing and payment.

Each delivery must be announced to API immediately after dispatch by a dispatch note with the aforementioned content. In all correspondence, waybills, and invoices, the order and item numbers must always be stated.

Shipping is at the supplier's risk. The risk of accidental deterioration and accidental loss remains with the supplier until proper and complete delivery to the receiving or usage location specified by API. If acceptance has been agreed, this shall be decisive for the transfer of risk. Delivery or acceptance shall be deemed to have taken place even if API is in default of acceptance.

The delivery must be packaged in such a way that it is protected against loss and damage. Packaging regulations provided by API must be observed.

Packaging materials may only be used in to the extent necessary to achieve the purposes specified in the preceding paragraph. Only environmentally friendly packaging materials may be used. If API is invoiced for packaging costs based on a separate contractual agreement, API is entitled to return packaging that is suitable for reuse to the supplier, freight prepaid, in exchange for a refund equal to the value stated on the invoice.

7. Warranty, conformity, RoHs, REACH

The supplier guarantees that all deliveries comply with the latest state of the art, all relevant legal and technical regulations, in particular the regulations and guidelines of authorities, professional associations, and trade associations. In particular, the products must meet the current API compliance requirements.

If the goods to be delivered fall within the scope of the EU Machinery Directive, the supplier is obliged to ensure that the goods delivered comply with the requirements of the aforementioned directive. In the case of "machinery" within the meaning of the directive, this means in particular that the goods must meet the safety and health requirements specified therein, that the applicable conformity assessment procedures have been carried out, that the declaration of conformity and the operating instructions for the goods are included, and that the machinery is delivered with the proper CE marking and other legally required markings. In the case of "incomplete machinery" within the meaning of the Directive, the supplier must at least enclose a risk analysis including assembly instructions and a declaration of incorporation with the goods.

If deviations from these provisions, regulations, and guidelines are necessary in individual cases, the supplier must obtain the written consent of API. Liability for material defects is not limited by such consent.

The supplier is obliged to apply to the API contact person as early as possible for any planned changes to the product, process, material, tool, or production location (relocation), including those affecting subcontractors. Changes are not permitted without the written approval of API.

If the supplier has concerns about the type of execution desired by API, they must notify API immediately in written form.

The supplier undertakes to use environmentally friendly products and processes in its deliveries and in the case of subcontracted deliveries or ancillary services provided by third parties, within the scope of what is economically and technically feasible. It assumes liability for the environmental compatibility of the products and packaging materials delivered; it is liable for all damages and expenses incurred as a result of a breach of its statutory disposal obligations. At the request of API, the supplier is obliged to issue a certificate of quality for the goods that are the subject of the delivery free of charge.

The supplier must comply with API's environmental and quality management standards (DIN ISO 14001 and DIN ISO 9001).

8. Defective deliveries and supplier recourse

In the event of material defects and defects of title in the goods (including incorrect and short deliveries as well as improper assembly/installation or defective instructions) and in the event of other breaches of duty by the supplier, API shall be entitled to all rights applicable under the statutory provisions, considering the following additions and deviations:

In accordance with the statutory provisions, the supplier is liable in particular for ensuring that the goods are of the agreed quality when the risk is transferred to API. In any case, the product descriptions that are the subject of the respective contract – in particular by designation or reference in API's order – or that have been included in the contract in the same way as these terms and conditions of delivery shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from API, the supplier, or the manufacturer.

The statutory provisions (§§ 377, 381 HGB) apply to the commercial obligation to inspect and give notice of defects, with the following proviso: API's obligation to inspect is limited to defects that are apparent during API's incoming goods inspection upon external examination, including the delivery documents (e.g., transport damage, incorrect or short delivery), or that are detectable during API's quality control by random sampling. If acceptance has been agreed, there is no obligation to inspect. In all other respects, it depends on the extent to which an inspection is feasible in the ordinary course of business, considering the circumstances of the individual case. API's obligation to give notice of defects discovered later remains unaffected. Notwithstanding the obligation to inspect, a complaint (notification of defects) by API shall in any case be deemed to have been made immediately and in good time if it is sent within 5 working days of discovery or, in case of obvious defects, of delivery.

The supplier's subsequent performance also includes the removal of the defective goods and their reinstallation, provided that the goods were installed in or attached to another item in accordance with their nature and intended use before the defect became apparent; API's statutory claim for reimbursement of corresponding expenses (removal and installation costs) remains unaffected.

In the event of an unjustified request for rectification of defects, API shall only be liable if API recognized or, through gross negligence, failed to recognize that no defect existed.

If the supplier fails to fulfill its obligation to remedy the defect – at API's discretion, either by remedying the defect (repair) or by delivering a defect-free item (replacement delivery) – within a reasonable period set by API, API shall be entitled to remedy the defect itself or have it remedied by third parties at the expense and risk of the supplier. The supplier's liability for material defects remains unaffected by this. If the subsequent performance by the supplier has failed or is unreasonable for API (e.g., due to particular urgency, endangerment of operational safety, or the threat of disproportionate damage), no deadline needs to be set.

API is entitled to the statutory claims for expenses and recourse within a supply chain (supplier recourse pursuant to Sections 445a, 445b of the German Civil Code (BGB)) without restriction, in addition to claims for defects.

API's claims arising from supplier recourse shall also apply if the defective goods have been connected to another product or further processed in any other way by API, its customers, or a third party, e.g., through installation, attachment, or assembly.

9. Limitation Periods

The mutual claims of the contracting parties shall become time-barred in accordance with the statutory provisions, unless otherwise specified below.

Notwithstanding § 438 (1) No. 3 BGB, the general limitation period for claims for defects is 3 years from the transfer of risk. If acceptance has been agreed, the limitation period shall commence upon acceptance. The 3-year limitation period shall also apply mutatis mutandis to claims arising from defects of title, whereby the statutory limitation period for third-party claims for surrender of property (§ 438 (1) No. 1 BGB) shall remain unaffected; Claims arising from defects of title shall not become time-barred in any case as long as the third party can still assert the right against API, in particular due to the absence of a limitation period.

The limitation periods of the law of sale, including the above extension, apply – to the extent permitted by law – to all contractual claims for defects. Insofar as API is also entitled to non-contractual claims for damages due to a defect, the regular statutory limitation period (§§ 195, 199 BGB) shall apply, unless the application of the limitation periods under sales law leads to a longer limitation period in individual cases.

10. Preferential provisions / export control

The country of origin of goods must be proven by a supplier based in the EU by means of a valid (long-term) supplier's declaration (in accordance with the currently applicable legal requirements) and by a supplier not based in the EU by means of proof of preference or certificate of origin. In addition to the legally required information, the (long-term) supplier's declaration must include the item number [from API], the exact country of origin, and the customs tariff number. If it is not possible to issue a (long-term) supplier's declaration, a certificate of origin must be enclosed with the delivery unsolicited and free of charge.

Any change in the country of origin of the goods must be communicated to API immediately and without request.

With the first delivery, API must be provided with the document of origin owed in accordance with paragraph 1 (in accordance with the currently applicable legal requirements) as well as all product information relevant to (inter)national goods traffic.

The supplier undertakes to enable the customs administration to verify proof of origin and to provide with the information necessary for and to provide any necessary confirmations and evidence.

The supplier indemnifies API against all costs and claims by third parties arising due to incomplete or incorrect documents of origin or insufficient evidence. Should API or its customers be charged additional customs duties by a customs authority due to incomplete or incorrect proof of origin, or

should API or its customers suffer any other financial disadvantage as a result, the supplier shall be liable for this.

If the supplier's declarations prove to be insufficiently informative or incorrect and API is therefore, or for other reasons required by the customs authorities, to submit an INF4 information sheet, the supplier shall be obliged, at API's request, to immediately provide API with correct, complete, and customs-approved INF4 information sheets on the origin of the goods.

The supplier must comply with all requirements of applicable national and international foreign trade law. The supplier assures that the goods are not listed in the export list (Annex AL) to the Regulation implementing the Foreign Trade Act (Foreign Trade Regulation), nor in Annex I and/or Annex IV of the Dual-Use Regulation (Regulation (EC) 2021/821).

If the supplier delivers API goods that are subject to export control, it undertakes to immediately provide API with all other documents and information necessary for applying for a license. This duty to provide information shall continue to apply to the supplier even after the end of the business relationship.

11. Corporate responsibility / compliance

The supplier is committed within the framework of its corporate responsibility to ensuring that human rights are respected, ILO core labor standards (International Labor Organization) are complied with, and discrimination, forced labor, and child labor are not tolerated in the manufacture of products or the provision of services. The supplier confirms that it will not tolerate any form of corruption or bribery or engage in such practices in any way. The order is to be executed exclusively with goods that have been sourced or manufactured in accordance with the minimum standards set out in the ILO core labor standards.

Please refer to the International Labor Organization website:
<https://www.ilo.org/de/resource/news/erklaerung-ueber-grundlegende-prinzipien-und-rechte-bei-der-arbeit-ilo>.

The supplier is obliged to comply with the applicable Minimum Wage Act (MiLoG) and to remunerate its employees in accordance with the law.

If the supplier is authorized to use subcontractors, they must be obligated to comply with this Section 11.

12. Product liability

If API is held liable under the provisions of domestic or foreign product liability laws or regulations due to a defect in one of its products that is attributable to the goods delivered by the supplier, API shall be entitled to demand indemnification from the supplier to the extent that the claim against API is attributable to the parts delivered by the supplier. As part of its indemnification obligation, the supplier shall reimburse expenses in accordance with Sections 683 and 670 of the German Civil Code (BGB) arising from or in connection with a claim by third parties, including recall campaigns carried out by API as a precautionary measure. To secure the indemnification obligation assumed, the supplier is obliged to label the goods delivered by him in such a way that they are permanently identifiable as his goods.

The supplier is obliged to implement quality assurance measures that comply with the latest technical and legal requirements and to provide API with evidence of this upon request. The supplier is also obligated to take out adequate insurance against all product liability risks, including the risk of recall, for the duration of the business relationship with API and to provide API with evidence of this insurance upon request.

13. Property Rights

The Supplier warrants that the goods delivered by it and the services provided by it are free from third-party rights and that the use of the goods delivered or services provided does not infringe any third-party rights (in particular intellectual property rights such as patents, trademarks, designs, copyrights, design rights, etc.) are infringed. In the event of such an infringement, the supplier shall be liable to API for damages, unless the supplier is not responsible for the infringement.

If API is held liable by a third party for an infringement for which the supplier is liable to API in accordance with paragraph 1 (sentence 2), the supplier shall be obliged to indemnify API against these claims upon first written request.

The supplier's obligation to indemnify under paragraph 2 shall cover all expenses necessarily incurred by API as a result of or in connection with the claim by a third party.

In the event of a claim by a third party in respect of third-party rights pursuant to paragraph 1, the supplier shall be obliged to support API in defending the claims to the best of its ability and at its own expense.

The supplier shall immediately notify API of any third-party intellectual property rights known to it and/or which become known to it that could be infringed by API through the use of the goods delivered by it or through the use of the services provided by it. Before providing its services or delivering its goods, the supplier undertakes to carry out property right searches for any risks of infringement of trademarks, design rights, and patents (utility models) in the Federal Republic of Germany and to forward these to API in writing upon request.

14. Data Protection

The supplier undertakes to comply with the requirements of the GDPR and the BDSG. The supplier shall process, use, and disclose personal data within the meaning of Art. 4 (1) No. 1 GDPR, which is made known to the supplier in the course of the performance of this contract and the orders placed under it, only to the extent and for as long as necessary for the purposes of contract fulfillment and in compliance with the provisions of the GDPR, the BDSG, and other applicable legal provisions. If personal data is passed on to subcontractors, they shall be obliged to comply accordingly. The supplier is aware that API stores personal data disclosed by him on data carriers to the extent and for as long as necessary for the purposes of fulfilling the contract.

15. Confidentiality

The supplier undertakes to treat the conclusion of the contract as confidential; it may only refer to the business connection with API if it has obtained the prior written consent of API. Further undertakes to use all non-public commercial and technical information and documents (e.g., illustrations, plans, drawings, calculations; product descriptions, materials, tools, and samples) that are handed over to it

or become known to it through its business relationship with API (confidential information) exclusively for the contractual performance and, in the event of handover, to return them to API after completion of the contract. The supplier further undertakes to treat confidential information as confidential, to protect it from access by third parties by means of appropriate security measures, and to impose corresponding obligations on any subcontractors.

16. API "Know-how"

The sale of API-specific parts, parts from API tools, parts from API molds, drawing parts from API, and parts co-developed and/or modified by API is only permitted to API.

17. Partial Invalidity

Should one or more provisions of the above terms and conditions be or become invalid in whole or in part, this shall not affect the validity of the contract and the remaining provisions. The supplier and API are obliged to replace the invalid provision with a provision that is equivalent in economic terms, provided that this does not result in a significant change to the content of the contract.

18. Choice of law, place of performance, place of jurisdiction

The contract is subject to the law of the Federal Republic of Germany, even in the case of foreign suppliers.

The place of performance for all mutual obligations arising from the contract is Bretten.

The place of jurisdiction for all disputes arising from this contract, including bill of exchange and check proceedings, is Bretten.