

# **Wahl GmbH, Roggenbachweg 9, D-78089 Unterkirnach, Germany**

## **General Terms and Conditions for Purchasing Abroad.**

*(Updated on 25.04.2002)*

### **I. General Points, Area of Validity**

1. All purchases and orders of Wahl GmbH concerned with suppliers designated in Paragraph 3 below, shall be expressly subject to these General Terms and Conditions for Purchasing Abroad. Contrary terms of business used by the supplier different from those used in, or not appearing in, our General Terms and Conditions for Purchasing Abroad, will not be recognised by Wahl GmbH. Our Terms and Conditions are also applicable, when we, conscious of contrary terms of business used by the supplier different from those used in, or not appearing in, our General Terms and Conditions, unconditionally accept a delivery from the supplier. Deviations from these General Terms and Conditions for Purchasing Abroad are only applicable when expressly confirmed in writing by Wahl GmbH.
2. Our General Terms and Conditions for Purchasing Abroad are also applicable to any future business transactions with the supplier, including instances when they are not repeatedly expressly agreed.
3. Our General Terms and Conditions for Purchasing Abroad shall apply only to contracting partners resident outside the Federal Republic of Germany exercising their professional or trading activities (enterprise) at the time the contract is concluded, and are based abroad (outside the Federal Republic of Germany).

### **II. Orders, Confirmation of Order**

1. Our orders are only binding, when issued or confirmed in writing by Wahl GmbH. Orders which can not be proven to hold a notice of validity can be cancelled by Wahl GmbH, until we receive a confirmation of order from the supplier.
2. Order-confirmations and order-alterations must be agreed in writing before they can become effective. As long as our orders contain a definite notice of validity, an order-confirmation from the supplier, which is received by Wahl GmbH after the end of this notice of validity, shall be deemed to be a new contractual offer.

### **III. Object of Purchase, Production Change**

1. The specification of the object of purchase ensues solely from our order. If our order refers to an offer made by the supplier, the supplier is obliged to check whether the designations in our order-form are correct, and whether the material is appropriate for the known purpose. Should the supplier doubt the applicability of the material, he is obliged to inform us immediately.
2. The supplier is obliged to supply all the accessories and directions (documents) necessary for the stated use of the object of purchase, as well as to present unsolicited certificates of origin for each object delivered, which must conform to the appropriate EU Agreement of Preference.
3. The supplier may only make production changes to the objects of delivery or to the tools and devices approved by Wahl GmbH with our previous written approval.
4. The supplier may not pass our orders and / or assignments on to a third party for the purpose of completion without our previous written approval

#### **IV. Price**

1. Prices ensue solely from our order and are arranged as fixed-prices. If the delivery is subject to sales tax under the appropriate statutory laws, sales tax is included in the price, unless otherwise stated as an additional part of the price.
2. The scope of service concerning arranged prices is based on the clauses of delivery as arranged between Wahl GmbH and the supplier, interpretable according to Incoterms 2000. Where no special arranged is made, the arranged prices are deemed as DDU (*delivered duty unpaid*) and include all services connected with the delivery of the objects, with special mention to packaging and despatch to the arranged destination point, inclusive of insurance's, charges, taxes and all other extra costs. Import costs (Customs) shall be reimbursed by Wahl GmbH upon presentation of proof, on top of the purchase price.

#### **V. Delivery Period**

1. Delivery is to be made within the delivery period stated in our order. If a date of delivery has been fixed, or circumstances otherwise clearly show the supplier that it is essential for Wahl GmbH that the delivery period be maintained, a transgression of the delivery period represents a fundamental breach of contract.
2. Should the supplier be hindered or prevented by any circumstances from delivering within the arranged delivery period after submitting a confirmation of order, he is obliged to inform Wahl GmbH immediately of the reason and expected duration of the delay. In cases of delay due to acts of God or labour-conflicts through no fault of the supplier, Wahl GmbH shall be entitled, without claims for the supplier resulting from this action, to either declare the contract partly or fully null and void after a reasonable period, or demand completion of the order by a later date.
3. Advance, part and repeat deliveries are only permitted with our consent.
4. Principally to ensure fulfilment of delivery commitments, the supplier is obliged to pay a penalty in the amount of 0.25% of the order-value for delays in delivery (maximum 10%) for every full work-day over the delivery period (not Saturday). If the delay concerns only a part of the order, the penalty shall be calculated according to the value of this part of the order. The value of the order includes sales tax. The supplier incurs no penalty if he is not responsible for the delay. The claim to high compensation remains unaffected, any penalty already paid shall be credited to the compensation-claim.
5. The penalty according to Paragraph 4 also applies if the supplier, committed to deliver a specific category of goods, transgresses the delivery period by delivering unsatisfactory goods, which shall be rejected, and rework or replacement demanded.

#### **VI. Delivery, Despatch, and Transfer of Risk**

1. The place of destination stated in our order is the destination for all services provided by the supplier. Unless otherwise stated in our order, despatch takes place DDU to the place of destination at the supplier's risk.
2. Every delivery must be accompanied by a delivery-note. This delivery-note must include all commercially customary details, especially order-number, exact designations of goods, quantity delivered, measurements, weight, and packaging. Where delivery is conducted by rail or carrier, the above details must also be registered in the way-bill and / or other accompanying papers. Should the supplier omit these details in part or in full, delays in processing are unavoidable; any costs / losses which occur through such instances are to be covered by the supplier.
3. Where no special arrangement is made, the supplier is obliged to obtain all the necessary export and import permits, and any other official permits needed. The supplier is also responsible for all customs-formalities necessary for exporting / importing the goods, and for passage through a third country where necessary.

4. In cases of delivery of hazardous or dangerous goods, all appropriate regulations are to be observed to the place of destination.
5. It is the supplier's responsibility to sufficiently insure deliveries for the duration of despatch at his own expense.
6. We reserve the right to return packaging to the supplier at his own risk and expense.
7. Subject to Sentence 2 the transfer of risk will not be effected by Wahl GmbH before we actually take possession of the goods, unless we fail to take possession of the contractually delivered goods within a reasonable period of time as laid down in writing by the supplier after expiry of the delivery period, thus committing a serious breach of contract. Transfer of risk will not occur, irrespective of Sentence 1, despite our actual taking possession of the goods, if the supplier previously commits a breach of contract.

#### **VII. Contractual Violation by Goods or Documents, Guarantee**

1. A violation of contract by goods and / or documents must only be reprimanded by Wahl GmbH if this violation is evident when we take possession of the goods and / or documents. If we do not inspect the goods and / or documents, or do not reprimand a noticed violation of contract, we do not forfeit the right to make claim to the violation of contract.
2. The supplier guarantees, for the duration of two years starting when we take possession of the goods, that the goods display qualities in accordance with the agreed specifications, and that the goods are unrestrictedly appropriate for the purpose made evident by our order. Delivered goods which fail to meet the contractually agreed specifications and / or the regulations, technically and otherwise valid, of the destination-country, represent a serious breach of contract.
3. In cases of violation of contract by the goods and / or documents, we can demand replacement instead of rework, even if the violation of contract is not serious. The exercise of additional legal protest remains unaffected. The supplier has no right to process the order again.

#### **VIII. Legal Liability**

1. If the supplier is responsible for damage to products, he is obliged to free us of compensation-claims by third parties, as the cause of the damage lies in his area of responsibility and control, and he himself must accept liability in external circumstances.
2. Within this framework the supplier is also obliged to repay any expenses demanded, connected to any recall activities undertaken by Wahl GmbH. We will inform, where possible and reasonable, the supplier as to the content and extent of any necessary recall measures, and give him the opportunity to take a stand.
3. The supplier is obliged to maintain a product legal-liability insurance policy with coverage fitting to the risk. Extensive compensation-claims on our part remain unaffected.

#### **IX. Patent-Rights**

3. The supplier vouches that no rights of third parties are violated in any way by his delivery. He shall not be entitled to claim that Wahl GmbH should be aware of any violations to rights of third parties in other destination-countries, unless our ignorance is based on culpable negligence.
4. In the event that we be held responsible for any alleged violation of patent-rights by a third party, or should a further defect of title relating to the goods be claimed, the supplier is obliged to free us of these claims. The supplier's release-obligation relates to all affairs affecting Wahl GmbH resulting from, or connected with, any consequent claims by third parties.
5. Our statutory and / or contractual rights of legal protest are not forfeited by our not notifying the supplier of any alleged violation of patent-rights or appropriate defects of title.

## **X. Prevention of Completion, Legal Liability**

1. In the event that Wahl GmbH is not responsible for non-completion of one of our contractual obligations, because non-completion is due to an obstruction lying outside our area of influence, the supplier shall be entitled to neither demand compensation nor exercise any other form of legal protest.
2. Our liability for compensation is excluded unless it is at least based on culpable negligence or intention.

## **XI. Billing, Terms of Payment, Supplier's Inability to Pay**

1. Invoices are to be submitted in the quantity mentioned in our order, after every delivery or service. Invoices are to include any order-numbers and / or article-numbers and picking-numbers, along with the same details mentioned in Section VI Paragraph 2. Invoices are to be presented in the currency mentioned in our order. The course of the period of payment and the prompt-payment discount period shall be interrupted if the processing of the invoice runs into difficulty, due to missing data mentioned in Sentence 2.
2. Where no specific arrangement has been reached, payment is to be made within 14 days after receipt of goods and invoices with 3% prompt-payment discount off the invoice amount, or within 30 days after receipt of goods and invoices with no discount. If prompt-payment discount payments have been arranged, prompt-payment discount is to be granted for each individual payment, as long as they follow within the two-week period.
3. Type of payment will be determined by Wahl GmbH. Our providing each service within the arranged time-period in the correct location suffices for punctual payment, also with regard to entitlement to prompt-payment discount. Our plant in D-78098 Unterkirnach, Germany counts as this location.
4. Assignments to third parties by the supplier are only permitted with our written consent. Permission will not be denied without significant cause. If the assignment of an outstanding debt is effective due to legal regulations, even without our permission, we shall be nevertheless entitled to act against the previous claimant with relieving effect.
5. Compensation or settlement for the supplier, or the execution of right of withholding by the supplier, is admissible only in cases of entitlement which are recognised, unchallenged or based on careful consideration by Wahl GmbH, or which are legally-binding.
6. In the event of the supplier cancelling or temporarily blocking his payment, or as a result of the opening of insolvency-proceedings or similar, in which appropriate laws are effective on the supplier, we are entitled to declare the contract partly or fully null and void. Execution of further legal protest remains unaffected.

## **XII. Cancellation of Contract**

1. If the legal or contractual requirements for the declaration of cancellation of contract are met, the execution of this right is bound to no period of notification. This applies especially when the supplier, in cases of violation of contract by the goods and / or documents, announces the elimination of a flaw by rework, or asks us to inform him whether we accept this rework, to which we do not respond.
2. If we declare cancellation of contract, we shall be entitled, irrespective of other rights, to demand at least the difference between the contractual price and the price of coverage, or the difference between the contractual price and the market-value at the time of cancellation of contract as compensation. We shall be entitled, without prejudice to any other legal recourse we may have, to charge interest at a rate 8 percentage points above the principal refinancing interest rate of the European Central Bank.

### **XIII. Confidentiality, Production Documents and Components**

1. We reserve all rights – ownership, production, and commercial patents – on all production documents and components provided to the supplier (eg. models, samples, illustrations, calculations, drawings). The production documents and components are submittals according to §18 UWG. The production documents and components are only to be used to process the offer and to accomplish the ordered delivery: they are not to be made available to third parties without our consent.
2. The supplier may grant third parties neither access nor disposal of objects made available to him by Wahl GmbH without our written consent. The same applies to goods manufactured under our instructions; these goods may be made accessible to third parties neither in material form, nor as partly or fully completed products.
3. Both parties are furthermore obliged to treat all operating and commercial information of the contractual partner as confidential, including time after duration of the contract. This confidentiality-obligation does not apply to commonly known matters, and terminates when matters become public knowledge, unless violation of contract on the part of the supplier is the cause thereof.
4. All production documents and components supplied by Wahl GmbH can be recalled from the supplier at any time, if the state of the order being processed makes this feasible. Additionally, the supplier is obliged to surrender any duplicates he makes of the production documents and components. The same applies to any documents or components developed from the production documents and components. After completion of the order all documents and components mentioned in Sentences 1 and 2 are to be returned unsolicited to Wahl GmbH.

### **XIV. Reservation of Ownership, Contracted Material, Tools**

1. A simple reservation of ownership on the part of the supplier over delivered goods shall be recognised by Wahl GmbH until full payment is made. We shall however be entitled to sell and / or process the goods in lawful business. The supplier shall not be entitled to claim the goods based on his reservation of ownership, or forbid their sale and / or processing, unless he exercises an applicable right of cancellation of contract. The declaration of cancellation of contract by the supplier shall only be effective in written form, and not before received by Wahl GmbH.
2. Any materials made available to the supplier by Wahl GmbH for the purpose of the contract remain property of Wahl GmbH. The supplier is obliged to take all necessary steps to maintain the reservation of ownership, or recognised equivalent security measures applicable in his country. He is in particular to store the provided materials, distinctly and separately as our property, sufficiently insured against fire, water, theft and catastrophe at his own cost, and to use them specifically and solely for their intended purpose. Violation of this obligation represents a serious breach of contract. We shall be entitled to demand the surrender of all provided materials, as soon as the materials are no longer required by the supplier for the completion of the contract.
3. All tools and devices provided with an order again become our possession on full payment, and are to be returned to us on demand after completion of the contract. The supplier is obliged to utilise these tools and devices solely for the manufacture of goods ordered by Wahl GmbH, and to insure them to full new-value against fire, water, theft and catastrophe at his own cost. The supplier is furthermore obliged to punctually carry out any necessary maintenance and inspections at his own cost. Any disturbances are to be reported to us immediately; should the supplier culpably fail to do this, compensation claims are unaffected.

**XV. Place of Jurisdiction and Applicable Law**

1. The place of jurisdiction for any disputes arising out of the contract shall be Villingen-Schwenningen (Federal Republic of Germany). However, we shall also be entitled to sue the contractual partner before the courts with jurisdiction over his place of residence.
2. This contract shall be governed by the law of the United Nations Convention of 11th April 1980 on the international sale of goods (CISG). Legal questions not covered by this Convention, or which cannot be settled on the basis of its principles, shall be subject to Swiss civil law.

**XVI. Concluding Provisions**

1. Should any individual provisions of these present General Terms and Conditions for Purchasing Abroad, or of any agreement based on them, prove to be invalid or unworkable, this shall be without impact on the validity of the other provisions or agreements. In any such event, the contractual parties shall use their best endeavours to replace the provisions with valid and workable provisions and agreements which come as close as is permissible to the commercial purpose of the invalid ones.
2. Both contractual partners are mutually obliged to take all reasonable steps necessary to achieve the contract's purpose, and to desist from everything which endangers the achievement and maintenance of the contract's purpose.

Wahl GmbH