

BING-Terms and Conditions of Purchase 06/2023

I. Governing terms

1. The legal relationship between the Supplier and BING shall be governed by these Terms and Conditions and any other agreements.

2. All orders for goods or services ("Contractual Objects") placed by BING shall be subject exclusively to these Terms and Conditions of Purchase, unless expressly agreed otherwise in detail.

3. The Supplier's general terms and conditions (e.g. terms and conditions of sale) shall not become part of the contract even if BING does not expressly object to them in individual cases. The Supplier's general terms and conditions of business shall only become part of the contract if this is expressly agreed in writing between BING and the Supplier.

4. In addition, the following documents shall apply to all orders placed by BING in the version current at the time of conclusion of the contract (available at <https://www.bingpower.de/en/b2b-information/>): Suppliers:

- Confidentiality Agreement
- Terms and Conditions of Purchase
- Supplier manual
- Supplier self-disclosure
- Code of Ethics (Code of Conduct)
- Quality Assurance Agreement

5. On request of BING, the Supplier is obliged to complete and return to BING the "Self-disclosure Compliance/Sustainability" provided by BING.

6. Amendments and supplements must be made in writing. The unconditional acceptance of goods or services (hereinafter uniformly referred to as "goods" or "delivery item") by BING or the unreserved making of payments by BING shall in no case constitute acceptance of the Supplier's general terms and conditions.

II. Order

1. Supply contracts (order and acceptance) and delivery schedules as well as amendments and supplements must be made in writing. Call-offs may also be made by remote data transmission.

2. If the Supplier does not accept the order within two weeks of receipt, BING is entitled to revoke the order. Delivery call-offs become binding if the Supplier does not object in writing within two weeks of receipt at the latest.

3. BING may demand changes to the design and execution of the delivery item within the scope of reasonableness for the Supplier. In this case, the effects, in particular with regard to the additional and minimum costs as well as the delivery dates, are to be regulated in an appropriately mutually agreeable manner.

III. Payment/Prices

1. The agreed prices are fixed prices. They are always exclusive of the statutory value-added tax (if applicable). Payments shall be made in the uniform European currency (euro). Special arrangements in other currencies must be agreed in writing with the contractual partner.

All work, services and expenses of the Supplier in connection with an order, in particular the transfer of IP rights and the granting of rights of use or licences, are fully compensated with the agreed prices.

2. Unless otherwise agreed, the prices shall be DDP, agreed place of delivery, INCOTERMS 2020.

3. Payments shall be made by bank transfer.

4. Payments shall only be due after receipt of the goods in accordance with the contract and complete receipt of the proper, verifiable documents. Unless otherwise agreed, payments shall

be made 14 days after receipt of invoice and goods with a discount of 3% or net 30 days. In the event of acceptance of early delivery, the due date shall be based on the agreed delivery date.

5. The weights or quantities determined at the unloading point shall be decisive for the calculation and payment of the deliveries. In the event of defective delivery, BING shall be entitled to withhold payment pro rata until proper performance. Drafts, drawings and samples will only be paid for if a written agreement has been made in advance.

6. The Supplier is not entitled to assign its claims or have them collected by third parties without the prior written consent of BING, which may not be unreasonably withheld. In the event of extended retention of title, consent shall be deemed to have been granted. If, contrary to sentence 1, the Supplier assigns its claims against BING to a third party without the latter's consent, the assignment shall nevertheless be effective. BING may, however, at its own discretion make payment to the Supplier or the third party with discharging effect.

7. The Supplier shall only be entitled to set-off against claims by BING or to assert any right of retention if and to the extent that its claim is undisputed or its counterclaim has been legally established. BING is also entitled to set off claims by the Supplier against counterclaims.

IV. Notification of defects

BING must notify the Supplier immediately in writing of any defects in the delivery as soon as they are discovered in the ordinary course of business. In this respect, the Supplier waives the objection of late notification of defects.

V. Confidentiality, data protection

1. The contracting parties undertake to treat as business secrets all commercial and technical details which are not in the public domain and which become known to them through the business relationship.

2. Drawings, models, templates, samples, data carriers, tools, moulds, production equipment and similar objects may not be handed over or otherwise made accessible to unauthorised third parties. The reproduction of such items is only permitted within the scope of the operational requirements and the copyright provisions.

3. Sub-suppliers shall be obliged accordingly.

4. The contractual partners may only advertise their business relationship with prior written consent.

5. Information on data protection at BING can be found here: <https://www.bingpower.de/en/data-protection/>

VI. Inventions

If, within the framework of the legal relationship between the Supplier and BING, in particular in the case of development services, the Supplier makes inventions which are eligible for protection, the Supplier hereby grants BING a free of charge, transferable and unlimited right of use to these inventions.

VII. Delivery dates and deadlines

1. Agreed deadlines are FIXED DATES. Deadlines must be met accordingly. The receipt of the goods by BING shall be decisive for compliance with the delivery date or the delivery period. If delivery "free domicile" has not been agreed, the Supplier shall make the goods available in good time, taking into account the usual time for loading and dispatch.

2. The unconditional acceptance of a delayed delivery does not constitute a waiver of the assertion of claims for damages or contractual penalties.

3. In the event of delivery before the agreed date, BING reserves the right to return the goods at the Supplier's expense

and risk. If the Purchaser does not exercise their right to return the goods in the event of early delivery, the goods shall be stored at BING until the agreed delivery date at the Supplier's expense and risk. This shall also apply to excess goods delivered in the case of over-deliveries. BING shall not be obliged to accept the excess goods in the event of over-delivery. Partial deliveries are only accepted by BING after written agreement.

VIII. Delayed delivery

1. The Supplier is obliged to compensate BING for the damage caused by the delay. This also applies to loss of profit and damages from interruption of operations, such as downtime costs at BING and its customers.
2. In the event of slight negligence, the compensation for damages shall be limited to additional freight costs, retrofitting costs and, after the fruitless setting of a grace period or in the event of the loss of interest in the delivery, to the additional expenses for covering purchases.

IX. Force majeure

Force majeure, industrial disputes, riots, official measures and other unforeseeable, unavoidable and serious events shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected contractual partner is in default. The contractual partners are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.

X. Quality and documentation

1. The specifications, drawings, descriptions and other documents agreed between BING and the Supplier shall apply to the quality of the goods or the performance of services.
2. In addition, the goods or services must comply with all legal and official requirements.
3. The Supplier must inspect all goods and services for defects prior to dispatch and document this.
4. The Supplier shall provide its services using a quality management system customary in the automotive industry at least in accordance with the requirements of the respective current version of DIN EN ISO 9001, be in possession of a corresponding certification and continuously develop this system in accordance with the state of technology. The objective is the further development of the quality management system towards certification in accordance with the current version of IATF 16949. In addition, the "Quality Assurance Agreement (QAA)" agreed with the Supplier shall apply.
5. The Supplier shall keep quality records (in particular regarding production times/batches, outgoing goods inspection and documents relevant for traceability) as well as safety and development-relevant records and documents for a period of at least 15 years.
6. Compliance with the following items is mandatory:
 - REACH regulation (in case of SVHC substances above 0.1% in the product, information must be provided to BING as a customer; in addition, we expect the unsolicited forwarding of the dossier number(s) for the SCIP database of the European Chemicals Agency).
 - Substances listed in the GASDL may not be used.
 - Substances listed in any specific substance prohibition list of all OEMs must not be used.
 - If they deviate from the above points, this must be clearly stated in the offer and any order confirmation to BING.
7. Upon approval of the contract, the Supplier undertakes to provide the SCIP number in accordance with Art. 9, Para. 1(i) of the EU Waste Framework Directive (Directive (EU) 2018/851). In the case of Suppliers outside the EU, at least the SCIP-relevant information (SVHC substance incl. CAS number, TARIC code and material category) must be provided to BING for the products supplied.

XI. Warranty for defects

1. In the event of delivery of defective goods, BING may demand the following if the respective legal requirements and those listed below are met and unless otherwise agreed:
 - a) Before commencing production (processing or installation), BING must first give the Supplier the opportunity to sort out the defect and to rectify the defect or to make a subsequent (replacement) delivery, unless this is unreasonable for BING. If the Supplier is unable to do this or does not comply immediately, BING may withdraw from the contract without setting a further deadline and return the goods at the Supplier's risk. In urgent cases, after consultation with the Supplier, it may remedy the defect itself or have it remedied by a third party. The Supplier shall bear any costs arising in this connection. If the same goods are repeatedly delivered defectively, BING shall be entitled to withdraw from the contract after a written warning in the event of a repeat defective delivery also for the unfulfilled scope of delivery.
 - b) If the defect is only discovered after the start of production despite observance of the obligation in accordance with Section IV (Notification of Defects), then BING can
 - demand supplementary performance and reimbursement of the transport costs (excluding towing costs) and dismantling and installation costs (labour costs; material costs if agreed) necessary for the purpose of supplementary performance, or
 - reduce the purchase price.
 - c) In the event of a culpable breach of duty going beyond the delivery of defective goods (e.g. in the case of an obligation to provide information, advice or inspection), BING may demand compensation for the consequential damage resulting from the defect as well as the consequential damage reimbursed by BING to its Customer in accordance with the law pursuant to Section XII. Consequential damage is the damage which BING has suffered with regards to legal assets other than the goods themselves as a result of the delivery of defective goods. BING shall only be entitled to further claims for expenses and damages due to the delivery of defective goods under Section 437 of the German Civil Code (BGB) or directly under the provisions stated therein if this has been contractually agreed. In the case of new agreements to be concluded, Section XVIII Item 1 must be observed.
2. The parts to be replaced by the Supplier shall be made available to the Supplier by BING without delay upon request and at the Supplier's expense.
3. Claims arising from liability for defects shall become statute-barred 24 months after the goods have been handed over to the end user (warranty card with date of sale for each device) or after the installation of spare parts, but no later than 36 months after delivery to BING. Unless otherwise agreed, the statutory limitation period shall apply.
4. Claims for defects do not arise if the defect is attributable to the violation of operating, maintenance and installation instructions, unsuitable or improper use, incorrect or negligent handling and natural wear and tear as well as interventions in the delivery item carried out by BING or third parties.
5. In the case of defective deliveries, claims by BING under product liability law, tort and management without mandate remain unaffected by this Section XI. Guarantees of quality and durability must be expressly designated as such in detail in writing.

XII. Liability

Unless a different liability provision has been specified elsewhere in these Terms and Conditions, the Supplier shall only be obliged to compensate BING as follows for damage incurred directly or indirectly as a result of a defective delivery, due to a breach of official safety regulations or for any other legal reasons attributable to the Supplier.

1. The obligation to pay damages shall only apply if the Supplier is at fault for the damage caused by it.
2. If a claim is made against BING on the basis of strict liability in accordance with non-mandatory law vis-à-vis third parties,

the Supplier shall be liable to BING to the extent that it would also be directly liable. The principles of § 254 BGB (German Civil Code) shall apply accordingly to the compensation of damages between BING and the Supplier. This also applies in the event of a direct claim against the Supplier.

3. The obligation to pay compensation is excluded insofar as BING has effectively limited its liability towards its customer. In this respect, BING shall endeavour to agree liability limitations to a legally permissible extent also in favour of the Supplier.

4. Claims by BING are excluded to the extent that the damage is attributable to violations of operating, maintenance and installation instructions, unsuitable or improper use, faulty or negligent handling, natural wear and tear or faulty repair by BING.

5. The Supplier shall be liable for measures taken by BING to avert damage (e.g. recall action) insofar as it is legally obliged to do so.

6. BING shall inform the Supplier immediately and comprehensively if it wishes to make a claim against the Supplier in accordance with the above provisions and, if necessary, consult with the Supplier. It shall give the Supplier the opportunity to investigate the case of damage. The contracting parties shall agree on the measures to be taken, in particular in the case of settlement negotiations.

7. The principles set out in section VIII number 1 shall be applied accordingly if the Supplier has no or insufficient insurance.

XIII. Property rights

1. The Supplier shall be liable for claims arising from the infringement of industrial property rights and applications for industrial property rights (industrial property rights) when the delivery items are used in accordance with the contract, of which at least one from the family of industrial property rights has been published either in the Supplier's home country, by the European Patent Office or in one of the countries Germany, France, Great Britain, Austria or the USA.

2. The Supplier shall indemnify BING and its customers against any claims arising from the use of such industrial property rights.

3. This shall not apply if the Supplier has manufactured the delivery items in accordance with drawings, models or other equivalent descriptions or information provided by BING and they don't know or, in connection with the products developed by them, don't have to know that industrial property rights are thereby infringed.

4. To the extent that the Supplier is not liable pursuant to Clause 3, BING shall indemnify them against any claims by third parties.

5. The contracting parties undertake to inform each other without delay of any risks of infringement and alleged cases of infringement which become known and to give each other the opportunity to counteract any such claims by mutual agreement.

6. On request by BING, the Supplier shall inform BING of the use of published and unpublished proprietary and licensed intellectual property rights and applications for intellectual property rights relating to the delivery item.

7. The principles on the limitation of liability contained in Section VIII Item 1 shall be applied accordingly.

XIV. Use of production equipment and confidential information of the purchaser

Models, matrices, templates, samples, tools, moulds and other production equipment as well as confidential information made available to the Supplier by BING or paid for in full by the Supplier may only be used for deliveries to third parties with the prior written consent of BING.

XV. Moulds and tools

1. All moulds, tools and devices shall become the sole, unconditional property of BING upon payment of the agreed costs, irrespective of who manufactured the items.

2. BING merely grants possession to the Supplier, who is responsible for careful storage, care and maintenance. They shall be liable for any damage. The Supplier undertakes to bear the costs for wear and tear and repairs of the moulds and tools within the agreed output quantity.

3. The transfer of the items to the Supplier shall end upon expiry of the contracts or termination of the business relationship

between the Supplier and BING. Premature termination shall occur in the event of an application for the institution of bankruptcy or composition proceedings against the Supplier. BING may also demand the surrender of the goods for any other important reason. If the surrender is caused by the Supplier and if there is no other possibility of use for the tools, etc., BING may demand reimbursement of the tool costs paid, etc. instead of surrender, waiving its property rights.

4. In the event of surrender, BING shall not be obliged to make any additional payment. The Supplier has no right of retention. BING may take possession of the items itself or through agents without judicial assistance. The Supplier undertakes in advance not to refuse surrender for any reason and to guarantee the complete, faultless and usable condition of the items on delivery carriage paid. In the event of a breach, however, BING is entitled to claim compensation for the direct and indirect damages incurred by BING.

5. The agreed manufacturing date for moulds and tools is binding. The receipt of the samples with an initial sample test report, as stipulated in the order, is decisive for compliance with the delivery deadlines. The Supplier shall ensure at this time that both the moulds and tools and the parts themselves comply with the required quality.

XVI. Reservation of ownership

The Supplier retains title to all goods delivered by them until payment has been made in full; in this respect, all deliveries shall be deemed to be a single related delivery transaction. In the case of a current account, the retained title shall serve as security for its balance claim. If the goods are combined by BING with other items to form a uniform item and if the other item is to be regarded as the main item, BING shall be obliged to transfer co-ownership to the Supplier on a pro-rata basis insofar as it belongs to the Supplier as the main item. If BING resells the delivered goods as intended, BING hereby assigns to the Supplier the claims against its customers arising from the sale with all ancillary rights until all its claims have been settled in full. If there is a justified reason, BING is obliged, at the Supplier's request, to notify the third-party purchasers of the assignment and to provide the Supplier with the information and documents required to assert its rights. The Supplier shall release the securities held by them insofar as their value exceeds the claims to be secured by more than 20% in total. In the event of processing or mixing, BING shall acquire co-ownership of the new item in the ratio of the value of the items provided by the Purchaser to the other processed items at the time of processing.

XVII. Safety and environmental protection

When delivering hazardous substances, the local regulations on the labelling of hazardous substances and the transport of hazardous goods must be complied with, in particular the packaging, proper labelling and the provision of safety data sheets in advance.

Packaging must be designed in such a way that mixed containers are avoided, packaging is easily separable and recyclable, and materials made from naturally renewable raw materials are used. Appropriate product and material information must be provided. Contractual partners working on the company premises of BING must inform themselves about and comply with the statutory, internal safety and environmental regulations and only employ appropriately trained specialist personnel. Waste produced by the Supplier themselves must also be disposed of properly by the Supplier at their own expense. Construction sites shall be secured by the Supplier in such a way that any risk to others is excluded. Welding work may not be carried out without a welding permit. The Supplier shall only be present on the factory premises in the areas necessary for their activities. Evidence of specialist-company and personnel qualifications, as well as test certificates or activities carried out shall be provided and guaranteed by the Supplier. The Supplier undertakes to comply with the applicable statutory safety and environmental regulations of the country of manufacture and distribution for all materials used in the manufacture of parts which are supplied to BING.

XVIII. General terms

1. When determining the amount of the claims for compensation to be fulfilled by the Supplier in accordance with Sections VIII, XI, XII and XIII, the economic circumstances of the Supplier, the type, scope and duration of the business relationship, any contributions to causation and/or fault on the part of BING in accordance with Section 254 of the German Civil Code and a particularly unfavourable installation situation of the Supplier's part shall be taken into account appropriately in favour of the Supplier. In particular, the replacement services, costs and expenses to be borne by the Supplier must be in reasonable proportion to the value of the Supplier's part.
2. If one of the Contracting Parties suspends payment or if insolvency proceedings are instituted against their assets or out-of-court composition proceedings are applied for, the respective other party shall be entitled to withdraw from the contract for the unfulfilled part.
3. Should any provision of these Terms and Conditions and the other agreements made be or become invalid, this shall not affect the validity of the remainder of the Contract. The Contracting Parties shall be obliged to replace the invalid provision by any provision which comes as close as possible to the invalid provision in terms of its economic effect.
4. The law of the Federal Republic of Germany shall apply exclusively, unless otherwise agreed. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 is excluded.
5. The place of performance is the registered office of BING. A different agreement may be made for the delivery.
6. The place of jurisdiction shall be either BING's registered office or the Supplier's registered office, at BING's discretion.

XIX. Compliance und corporate responsibility

1 Compliance

1.1 The Supplier agrees to perform this Contract in accordance with applicable laws and regulations, including those relating to anti-bribery and anti-corruption (such as the U.S. Foreign Corrupt Practices Act or the UK Bribery Act). Local laws shall be complied with, but at least the following obligations.

1.2 The Supplier undertakes not to make any inducements of any kind (e.g. bribes, kickbacks, valuables or other benefits), either themselves or through third parties acting on behalf of the Supplier, for the benefit of any public official or mandate holder or any other third party (including BING employees) for the purpose of initiating or continuing business transactions, obtaining otherwise favourable business decisions or to obtain other unlawful advantages.

1.3 The Supplier confirms that they have taken note of the BING Code of Ethics.

2 Corporate Social Responsibility

The Supplier undertakes, as a material contractual obligation, to comply with the 10 principles of the UN Global Compact and the 4 fundamental principles of the International Labour Organisation (ILO).

BING expects the Supplier to demand the same from its business partners.