

## General Terms and Conditions of Purchase

General Terms and Conditions of Purchase of the Winkelmann Group GmbH & Co. KG  
especially of

- Winkelmann Group GmbH & Co. KG, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- Winkelmann Powertrain Components GmbH & Co. KG, Schmalbachstr. 2, 59227 Ahlen
- Winkelmann Motortechnik Beteiligungsgesellschaft mbH, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- Winkelmann MSR Technology GmbH & Co. KG, Gersteinstr. 11-15, 59227 Ahlen
- Winkelmann MSR Technology Beteiligungs GmbH, Gersteinstr. 15, 59227 Ahlen
- Winkelmann Water Storage GmbH, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- Winkelmann Flat Vessels GmbH & Co. KG, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- Winkelmann Flat Vessels Beteiligungs GmbH, Gersteinstr. 11, 59227 Ahlen
- Winkelmann Metal Solutions, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- Winkelmann Beteiligungs- und Verwaltungs GmbH, Schmalbachstr. 2, 59227 Ahlen
- Winkelmann Land und Forst GmbH & Co. KG, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- Reflex Winkelmann GmbH, Gersteinstr. 19, 59227 Ahlen
- Reflex Winkelmann Beteiligungs GmbH, Gersteinstr. 19, 59227 Ahlen
- Reflex Polska Sp.z.o.o., ul. Mikolaja z Rynska 36-40, PL 87-200 Wabrzezno
- Reflex Polska Sp.z.o.o., ul. Unii Lubelskiej 3, PL 61-249 Poznan
- Reflex CZ, s.r.o., Sezemická 27/52/2, CZ 139 00 Prag 9
- Reflex SK. s.r.o., Rakovo, SK 038 42 Pribovce
- Reflex Austria GmbH, Hirschstettner Straße 19-21, BT.I/IS301, A 1220 Wien
- Reflex Nederland B.V., Kerkstraat 2a, NL 2971 AL Bleskensgraaf CA
- Reflex Schweiz GmbH, Hohenrainstraße 10, CH 4133 Pratteln
- Reflex Hellas A.E., Vouliagmenis Av. 165, GR 17237 Dafni
- Reflex (Shanghai) Heating & Energy Equipment Co. Ltd., Ding Xi Road, 200052 Shanghai
- Winkelmann Sp.z.o.o., ul. Jaworzynska 277, PL 59-220 Legnica
- Shanghai Winkelmann Longchuan SWL Motorcomponents Co. Ltd., No.96 Jiangchao Rd.Pujiang Town, 201112 Shanghai
- Winkelmann Powertrain Components Langfang Co. Ltd., B07-1, Acuto Industry Parc, No. 58 of Lotus Road, Langfang Economic and Technical Development Zone, 065001 Langfang City, Hebei Province
- Winkelmann Otomotiv Parcalari Ltd., Avrupa Serbest Bölgesi 110Ada, 59860 Corlu Tekirdag
- Winkelmann Beteiligungs GmbH Stahl-Behälter-Technik, Gersteinstr. 11, 59227 Ahlen
- Winkelmann Renewables International GmbH, Heinrich-Winkelmann-Platz 1, 59227 Ahlen
- nema Winkelmann Isitma Ve. Su. Teknolojileri San. Ve. Tic. Sti., Yakabaşı Mah. Kocaalan Mevki, Gümüşova, Düzce
- Dukla Trutnov s.r.o., Elektrárenská 322, Trutnov 541 03
- Reflex Moskau OOO, Prospekt Andropova 18, bld. 6, office 507, 115432 Moskau

(Stand November 2013)

## I. General conditions – Scope of application

1. We exclusively place orders according to our general terms and conditions of purchase. We do not accept any other conditions of the supplier unless we have explicitly agreed to do so in written form. If we accept a delivery or performance without expressly filing an objection, it cannot be deduced under any circumstances that we have accepted the supplier's conditions of supply.
2. Our conditions of purchase do only apply to merchants.
3. Our conditions of purchase shall also apply to all further business with the supplier.
4. Additionally our Quality Assurance and Environment Provisions and our Safety Rules for Suppliers which can be downloaded under [www.winkelmann-group.de](http://www.winkelmann-group.de) apply.

## II. Conclusion of a contract, changes

1. Only orders placed in writing shall be legally binding. Orders given orally or by telephone have to be confirmed in written form by us to be legally valid.
2. In case of first orders: if the supplier does not accept the order within 2 weeks after receipt we are entitled to cancel the order legitimately.
3. In case of ongoing business relationships: if the supplier does not contradict in case of recurring orders immediately - within seven working days from receipt of the written order at the latest - the order shall be regarded as accepted by the supplier.
4. In case of ongoing business relationships we are entitled to adapt our delivery schedules according to the delivery schedules of our customer if this acceptable to the supplier, if we inform him immediately and if an adequate delivery period remains. Section II.3 applies accordingly for the right of contradiction of the supplier.
5. The supplier has to inform immediately in writing if he has objections against the manner of execution demanded by us. Without our written consent the supplier shall not change the products or the underlying processes, designs and materials or accept respective changes by its sub-suppliers. Additional costs for validation of products by us or our customers caused by changes of the supplier, unless demanded by us, shall be borne by the supplier. In such case we will determine the adequate amount of validation costs together with the supplier.
6. We can demand changes of the products at any time. In such case the changes will be implemented together with the supplier and the effects of the changes will be determined. In case of material changes the contract shall be amended. The supplier declares to try to implement any changes and to work together with us proactively. The especially applies to changes caused by public law or by demands of our customers.
7. No remunerations or compensations for visits or the preparation of offers, projects etc. shall be paid by us.

### III. Prices, terms of payment

1. The prices indicated in the order are binding and include the legally stipulated value added tax. If not otherwise agreed explicitly, the price includes a delivery DDP place of delivery indicated by us, if not indicated our place of business (Incoterms 2010); freight, forwarding expenses and packaging are included in the price. Should the case arise deviant from sentence no. 2 of this paragraph that we shall pay the freight and/or shipping costs, the supplier shall be obliged to select the cheapest possible forwarding possibility if we do not prescribe a special means of transport. If a consignment has to be dispatched by a means of transport which is more expensive for us (e.g. express freight instead of normal freight) because of the non-compliance of a delivery date by the supplier, the supplier shall bear the additional expenses.
2. If no prices are stated, the supplier's list prices valid at the time of ordering shall apply with the customary trade discounts according to article III.3.
3. If not agreed otherwise payment is due by the 25th of the month following the receipt of the goods and the invoice less a discount of 3 %.
4. Invoices shall be sent to us as one single original at the moment of dispatch of the goods, but separately from them.
5. At our demand the supplier shall disclose his price calculation to us for the purpose of mutual cost decreases and competitiveness and inform us about any costs for raw material, manufacturing, direct and indirect labour and overhead costs, amortization of investment, indirect distribution costs and earnings by way of open-book calculation. Possible miscalculation shall be attributed to the supplier.

### IV. Packaging, dispatch

1. The products shall be packed professionally taking into account the packaging and conservation provisions and the specifications mentioned on the packaging data sheet and shall be protected against damage. The given packaging units have to be met. If products are not packed as demanded by us, delivery is only deemed to be fulfilled if we have consented in writing to the changed packaging. Acceptance can be refused if such consent is not mentioned on the bill of delivery.
2. The supplier delivers the products in suitable means of transport, accepted by us if this has been agreed before, to avoid damage and quality deterioration (e.g. pollution, corrosion, chemical reaction).
3. The supplier is obliged to indicate our exact order number on all shipping documents, delivery notes and all other written communication and invoices; we are only able to process especially invoices if they - according to the indications in our order - state the order number mentioned there. The supplier is responsible for all consequences arising from not complying with this condition. This includes the compensation for damages or expenses which may occur at our recipients by taking over and/or further process goods with a wrong or missing order number.
4. If packaging is invoiced to us exceptionally, we shall be entitled to return packaging which is in

good condition to the supplier and charge the supplier a fee of 2/3 of the amount shown on the supplier's invoice. The reshipment shall be executed at the expenses of the supplier. A special written agreement shall be required to substantiate the obligation of a return.

5. If not otherwise agreed in writing, the delivery shall be executed DDP (Incoterms 2010). Shipping is made at the supplier's risk. The risk of any deterioration including accidental damage remains with the supplier until delivery has been carried out to the shipping or forwarding address indicated by us.

## V. Conditions of delivery, default of delivery

1. The delivery dates specified in the order are binding. The receipt of the goods at the place of the recipient or the user indicated by us is decisive in view to the observance of the delivery date or delivery period.
2. The supplier ensures sufficient production and storage capacity to produce and deliver on time the amount of products determined as targeted capacity per year plus 15%.
3. The supplier shall keep on store on its own costs a certain to be agreed amount of products to cover an additional immediate demand. If no phase-out disposition has been made, we are obliged to take off such products at termination of the supply relationship, as long as they conform to the contractual specifications and the supplier cannot commercialize them otherwise. Upon demand the supplier shall deliver the products to a consignment stock. In such case a consignment stock agreement is concluded.
4. If delivery is made earlier than agreed, we reserve the right to return the goods at the supplier's expense. If no return is made despite early delivery, we store the goods until the delivery date at the supplier's costs and risk, the transfer of risk comes into force on the delivery date. We shall then be entitled to fix the value date for the invoice according to the agreed date of delivery.
5. Partial deliveries will only be accepted by us if expressly agreed. If such an agreement exists, the remaining residual quantities are to be listed.
6. Excess or short deliveries are only permissible with our express written approval.
7. If the supplier notices that an agreed delivery date cannot be kept to for whatever reasons, he is obliged to inform us immediately in writing indicating the reasons and the probable duration of the delay. Also such reasons for delays he is not responsible for can only be referred to if the supplier met his duty to give notice.
8. The supplier is bound to compensate all direct and indirect damages caused by delayed performance. The acceptance of delayed deliveries does not mean the relinquishment of claims in view to damages. In case of a delay in delivery we are entitled to demand a contract penalty of 0.5 % for each commencing week of the delay, but not more than 5 % of the total value of the order at most. We reserve the right to assert further claims. We pledge ourselves to assert a reservation of a claim by payment of the goods delivered too late.
9. If the agreed delivery dates are not kept due to conditions the supplier is responsible for, we have

- after an appropriate period of grace set by us - the right to claim damages at our own choice instead of demanding the completion of the performance or to procure replacement supplies from a third party at the supplier's expense or to withdraw from the contract with the supplier at our own discretion.

10. Events of force majeure release the contractual partners from their duty to perform for the duration of the disturbance and to the scope of its effects on the performance and acceptance duties. The contractual partners shall be bound to pass on the necessary information to each other immediately as equitable and to adapt their duties subject to the changed conditions according to bona fide.
11. If the supplier is affected by one of the mentioned incidents, he shall do his utmost to support us concerning the maintenance of our supply by delocating the production of the article(s) to us or to a third party including a licensing of industrial property rights necessary for the production at appropriate conditions.
12. In case of supply bottlenecks the supplier shall treat our order with priority as much as this is possible in an appropriate way regarding his other outstanding delivery duties.
13. If the delivery or performance is no longer useable for us due to the delays caused by force majeure or industrial conflicts, we are taking economic factors into account exonerated from the duty to accept the ordered goods/performance either partially or fully and shall then be entitled to withdraw from the contract.
14. The supplier ensures that his deliveries conform with Regulation EG No. 1907/2006 concerning the Registration, Evaluation, Authorization and Restriction of Chemicals (REACH-Regulation). If necessary according to REACH-Regulation materials contained in the products of supplier have been pre-registered or registered after a transition period, unless the material is excluded from registration. The supplier shall provide safety data sheets according to REACH-Regulation respectively the necessary information according to Art. 32 REACH-Regulation. Upon demand the supplier shall provide the information according to Art. 33 REACH-Regulation.
15. The supplier is obliged to become acquainted with the "Safety rules for employees" which can be downloaded from our homepage. The supplier shall demand from its employees and sub-suppliers that they follow the "Safety rules for employees" and shall control the compliance. Before commencement of the work the supplier shall confirm that he took notice of the "Safety rules for employees" by handing out to us the signed "Confirmation of notice" (last page).

## VI. Guarantee

1. The supplier guarantees that all items supplied by him and all work carried out by him are state-of-the-art and correspond to the relevant legal regulations and the prescriptions and guidelines of authorities, insurance and trade associations.
2. All dimensions indicated in technical drawings agreed with us are guaranteed by the supplier. This also applies to other technical agreements. If in individual cases deviations from these rules may become necessary, the supplier has to obtain our written permission. The supplier's guarantee duties shall not be affected by this approval.

3. We restrict our inspection of incoming goods to externally visible defects caused by transport and to the amount and identity of the ordered goods indicated in the transport documents. Defects detected by such inspection will be indicated to the supplier without undue delay. We do not have other inspection duties. Further non apparent defects shall be indicated to the supplier after their detection without undue delay.
4. After being informed about a defect the supplier shall perform an analysis of the defect without undue delay. If necessary we will support the supplier by adequate means to detect the defect. To achieve this, an agreed amount of defective products will be handed out to the supplier. The supplier shall analyze any deviation of the products from the requirements and specifications and shall do any necessary examinations to identify the source of the defect. Subsequently the supplier shall inform us in short term in writing about the cause of the deviation and/or defects and about the commenced measures to stop and to prevent the defects and their effects.
5. After our request the supplier has to remedy all punctually claimed and evident faults in the delivery/performance as well as other faults in the delivery/performance including missing guaranteed features at our choice by repairing/exchanging faulty parts or by delivering fault-free items without delay and free of charge including all possible additional expenses. We reserve the right to assert additional claims, especially entitlements to damages, rescission or reduction.
6. If the supplier does not meet his guarantee duties within a period set by us or if the supplementary performance fails once, we shall be entitled to carry out the necessary measures ourselves at his expense and danger notwithstanding the supplier's duty of guarantee or have them carried out by a third party without being obliged to set a period of time for supplementary performance.
7. In compliance with our duty to minimize losses we may remedy small faults ourselves without prior notice and charge these expenses to the supplier without this having an influence on the supplier's guarantee. The same shall apply if the safety in operation is endangered or if we may face extraordinarily high damages and the supplier could not be informed before our remedy of the defects.
8. If there is the risk of a shutdown of production caused by the delivery of defective products, the supplier shall cure this situation after consulting with us by immediate measures (e.g. substitutive delivery, sorting, rework, extra shifts, express delivery).
9. The guarantee claims become time barred after 36 months. The period commences with the delivery of the products to us or to the third party named by us at the place of receipt or use stipulated by us. In cases according to section V.4 the period starts on the agreed delivery date. Our claims according to §§ 478, 479 BGB (German Civil Code) due to deliveries to consumers remain unaffected. At the earliest claims become time barred two months after the claims of the consumer have been fulfilled. This suspension of the limitation period terminates five years after delivery to us at the latest.
10. The warranty period for devices, machines and systems begins on the approval date which is indicated in the written declaration of approval of our purchasing department.
11. In case of a supplementary performance this limitation period is extended by the time the goods cannot be used as stipulated in the contract. For the supplementary performance the same

time limits shall apply provided that the supplier has made the supplementary performance in acknowledgement of his legal responsibility.

12. If a claim is made on us by our customer according to § 478 BGB (German Civil Code) due to a fault in our product and if the product was already faulty when delivered to us we shall hold the supplier liable for all expenses charged to us by our customer.

## VII. Product liability

1. If we are held liable for a breach of official safety rules or because of domestic or foreign product liability regulations or laws due to a defective condition of our product which can be attributed to a product from the supplier, we shall be entitled to demand compensation for this damage from the supplier in as far as the damages are caused by products supplied by him and we have not contributed to the cause according to §§ 830, 840 BGB together with §§ 426, 254 BGB. Within this scope the supplier is also obliged to compensate any expenses in relation to a possible product recall which we have to undertake; as far as possible and reasonable we shall inform the supplier of the content and extent of the recall actions to be carried out and give him the opportunity to make a statement.
2. Within the scope of his liability for damages the supplier has to indemnify us from any claims for damages by third parties upon first request.
3. The supplier shall mark the supplied items in a manner that they can permanently be recognized as his products.
4. The supplier is bound to carry out appropriate quality assurance measures according to the state-of-the-art and our Quality Assurance and Environment Provisions (section I.4) and submit a proof of this upon request. He shall conclude a corresponding quality assurance agreement with us if we consider this to be necessary.
5. The supplier is obliged to sign a product liability insurance with a limit of indemnity not lower than 5 million euros (in words five million euros) per person and loss/damage/damage to property and has to prove the fulfilment of this duty upon our request. If we are entitled to further damage claims, these remain unaffected.

## VIII. Industrial property rights

1. The supplier takes on the responsibility not to injure any rights of third parties within the Federal Republic of Germany in connection with a delivery unless he can prove not to be responsible for the breach of duty.
2. If we are held liable by a third party for this reason, the supplier is obliged to indemnify us from these claims upon our first written request; only for the purpose of reducing damages we are entitled - without the supplier's approval - to make agreements with the third party, especially to come to a mutual agreement or to obtain the permission to use the products and services as stipulated in the contract.



3. The supplier's indemnification duty is related to all adequate expenses which accrue for us from or in connection with the claims of a third party.
4. If the products are intended to be used in countries outside the Federal Republic of Germany according to the contract, the above-mentioned rules VIII.1.- 3. apply to alleged breaches of rights of third parties in the countries of destination accordingly.

## **IX. Reservation of ownership, provision of materials and tools**

1. If we provide parts to the supplier, we reserve our ownership in these. Processing and reworking are carried out by the supplier for us. If these parts are processed with other items not belonging to us, we become the joint owners of the new object in the ratio of the value of the parts to the other processed items at the moment of processing.
2. If the part provided by us is permanently joined to or mixed with items not belonging to us, we become joint owners of the new object in the ratio of the value of the conditional item to the other joined or mixed items at the moment of joining or mixing. If joining or mixing takes place in a way that the supplier's object has to be seen as the major object, it is agreed that the supplier transfers joint ownership to us; the supplier holds the sole ownership or joint ownership in safe custody for us.
3. We reserve ownership in the tools we provide. The supplier can use them by way of lease. The supplier is bound to insure the tools provided by us against damages by fire, water and theft at their replacement value at his own expense. He is obliged to carry out necessary servicing and maintenance work at his own expense in good time. Any malfunctions are to be communicated in writing without delay by the supplier; should he fail to do this culpably, he shall be bound to replace the damages occurring by the missing or late notification. If we sign a tooling lease agreement with the supplier its provisions take precedence.
4. Without prejudice to other agreements we obtain sole or joint ownership to the extent we share the evidenced costs for tools of the supplier for the manufacturing of contractual products. The ownership in the tools is herewith transferred to us subject to the condition precedent of their completion including all industrial property rights and copy rights arising from this completion, including all documents, drawings, models/samples related to this. The amount of the tooling costs does already contain an appropriate consideration for the transfer of ownership of the industrial property and copy rights. The handover is replaced by the supplier's obligation to treat the goods with the carefulness of a prudent businessman and to keep them for us free of charge. The costs for servicing and maintenance are at the supplier's expense.

## **X. Shipping documents, customs, export control**

1. The country of origin has to be documented by a supplier domiciled in the EU by a valid long term supplier's declaration (according to the latest version) and by a supplier domiciled outside the EU by a preference certificate or a certificate of origin. Our item number, the exact country of origin and the customs tariff number are necessarily to be named in the long term supplier's



declaration.

2. A change of the country of origin has to be indicated to us immediately and unquestioned.
3. If a long term supplier's declaration cannot be generated the supplier shall add cost free and unquestioned a certificate of origin to the delivery.
4. The supplier indemnifies us from any and all costs and claims of third parties which are caused by inapplicable, incomplete or wrong documents of origin or declarations of origin.
5. Upon first delivery the valid supplier's declaration (according to the latest version) and any information required for the (inter-)national trade in goods must be available to us. In case the supplier delivers to us goods underlying an export control the supplier obliges to hand out to us all documents and information necessary for obtaining clearance. This obligation to inform continues even after termination of the supply relationship.
6. The supplier declares to be an Authorized Economic Operator or to have established at least comparable security standards according to Art. 14k EC Regulation No. 1875/2006.

## **XI. General provisions**

1. Should individual provisions of these General Conditions of Purchase prove to be or become legally ineffective in part or as a whole, the effectiveness of the other provisions shall remain unaffected.
2. The supplier is bound to treat all non-evident mercantile and technical details he is let in on by the business relationship as confidential and not to make them available to any third party. He is to oblige his sub-contractors/sub-suppliers, employees and staff accordingly. The supplier has in particular the duty to keep all diagrams, charts, drawings, calculations and other documents at his disposal strictly confidential. They may only be shown to third parties with our explicit permission. The confidentiality obligation is still valid after completion of the contract; it expires if and when the manufacturing knowledge included in the diagrams, charts, drawings, calculations and other documents put to the supplier's disposal has become generally known.
3. The supplier is not allowed to pass the job on to third parties without prior written approval by us, which will not be withheld unreasonably.
4. The supplier is not allowed to assign claims against us or to have them assigned by third parties without prior written permission by us, which shall not be refused unfairly. § 354a of the HGB (German Commercial Code) remains unaffected by this.
5. We shall treat person-related data of the supplier according to the Federal Data Protection Act.
6. Unless agreed differently, the place of fulfillment for the delivery commitment shall be the delivery address respectively the application site indicated by us; unless stated differently in the acknowledgement the place of fulfillment for all other duties of all contract parties is our business headquarters. The agreement concerning the place of fulfillment is not influenced by the kind of pricing.

7. Exclusive place of jurisdiction is Münster, Westfalia, Germany; however we are entitled to sue the supplier also before the courts competent for his main place of business.
8. German law, excluding the UN Convention on International Sale of Goods (CISG) from the 11th April 1980 and excluding any provisions of its law of conflicts of laws that might come to the application of a foreign law shall apply.