

# Terms and Conditions of Purchase



## Terms and Conditions of Purchase of MAFELL AG, Oberndorf a.N.

These Terms and Conditions of Purchase shall solely apply. MAFELL shall not recognise terms of the supplier contradicting the Terms and Conditions of Purchase of MAFELL or those deviating therefrom, unless MAFELL has expressly consented to their validity in writing. These Terms and Conditions of Purchase shall also apply if MAFELL accepts delivery without reservation in the knowledge of contradicting or deviating terms of the supplier. These Terms and Conditions of Purchase shall also apply to all future business with the supplier. Individual agreements made in certain cases with the supplier, for example, general agreements and quality assurance agreements, as well as ancillary agreements, supplements, and amendments thereto shall take precedence over these General Terms and Conditions of Purchase in all events.

### 1. Offers and Orders

The supplier shall draw up offers and estimates for MAFELL free of charge and without obligation for MAFELL. Orders as well as changes to orders are only binding for MAFELL if they are placed on MAFELL forms. Deliveries for which there are no written orders will not be accepted. The integral part or the basis for individual orders are the details in the order submitted by MAFELL along with supporting documents such as drawings, technical terms of supply, building regulations, material regulations, etc. as well as the pertinent environmental protection, dangerous substance, dangerous material and accident protection regulations. MAFELL is not bound by obvious mistakes, typos and miscalculations in the documents, drawings and plans presented by MAFELL. The supplier is obliged to inform MAFELL of such mistakes so that the order by MAFELL can be corrected and updated by MAFELL. This shall also apply if documents or drawings are missing. The supplier must check the MAFELL drawings already presented by comparing with the current drawing index. All orders must be confirmed within 8 days of receipt specifying the binding delivery date. If the supplier does not disagree to the order within 8 days of receipt, it shall be regarded as accepted by the supplier without the need for a confirmation of order.

Materials provided by MAFELL shall remain their property. It must thus be labelled as such, stored separately and may only be used for orders from MAFELL. The supplier shall be liable for depreciation or loss, even if it is no fault of theirs. The goods manufactured with the material provided by MAFELL are the property of MAFELL at the respective status of production. The supplier shall store these goods for MAFELL; the purchase price includes the costs for the storage of the goods and materials stored for MAFELL.

### 2. Information Obligation

The supplier is obliged to inform MAFELL in good time before changing production processes, materials or bought-in parts for products or changing services, moving production sites, further before changing methods or equipment for testing the parts or changing other quality assurance measures, so that MAFELL can consider whether the changes can have a negative impact on the product. The changes may not be made until approval has been given.

### 3. Obligation to Confidentiality

All documents provided by MAFELL including drawings, sketches as well as samples are solely the property of MAFELL. The supplier is obliged to not make them accessible to third parties, to use the documents and samples solely for the fulfilment of this order, to not duplicate the documents, to treat and store the documents and samples carefully and to return them to MAFELL in full directly after completion. Sub-suppliers must be obligated accordingly. In particular, after completion of this order, the supplier shall keep confidential the production methods gained from MAFELL in this correlation and shall not use them for their own production or for supplies to competitors of MAFELL. MAFELL shall retain the rights to all new features that originate from MAFELL, in particular in the event of obtaining a patent or registering utility patents. Manufactures produced according to documents such as drawings, models and similar created by MAFELL or according to details stated by MAFELL in confidence may not be used by the supplier themselves nor offered nor supplied to third parties. This business relationship may only be advertised upon prior written permission by MAFELL.

### 4. Transfer of Risk, Place of Fulfilment

The supplier shall bear the risk until the goods have arrived at the place of receipt defined by MAFELL in all cases. The transfer of risk to MAFELL shall fundamentally be upon handing over the goods to the place of receipt defined by MAFELL. Delivery shall be to the place stated in the order. The respective place of destination is also the place of fulfilment. If no place of fulfilment has been expressly agreed upon, Oberndorf a.N. (Lindenhof) shall be regarded as the place of fulfilment.

### 5. Retention of Title

Upon handing over the goods to MAFELL, the title to the goods is transferred directly to MAFELL. MAFELL does not recognise any retention of title.

### 6. Pricing

The price stated in the order is binding. Unless otherwise agreed in certain cases, the price includes all services and ancillary services rendered by the supplier as well as all ancillary costs (e.g. suitable packaging, transportation costs including any necessary transportation and liability insurance). The supplier must take back packaging material upon our request. The supplier must announce in writing any price demands at least 3 months prior to the commencement of a new quarter. This announcement does not automatically represent the acceptance of the demand.

### 7. Partial Deliveries, Short-and Excess deliveries, Packaging

Partial deliveries do not represent fulfilment unless permitted by MAFELL. The acceptance of a partial delivery does not justify such permission. MAFELL shall reserve the right to return excess deliveries to the supplier at the supplier's cost. Shipping documents including MAFELL's order number, quantity and quantity unit as well as article description and number must be enclosed in every shipment. The goods must be properly packed and labelled.

### 8. Delivery Date, Penalty Clause

The delivery period stated by MAFELL in the order is binding. The supplier is obliged to observe the agreed delivery date. The arrival of the goods at the place of unloading defined by MAFELL shall be decisive. As soon as delays become obvious at the supplier's, they must inform MAFELL of this stating the reasons and the estimated duration of the exceedance of the deadline.

If the agreed dates cannot be observed by the supplier, irrespective of the reason, MAFELL shall reserve the right to either withdraw from the contract and acquire replacement from a third party and/or demand compensation for non-fulfilment, without prejudice to further statutory claims, at MAFELL's choice. It is not necessary to grant a grace period under the threat of refusal. All additional costs arising from late deliveries and services must be reimbursed by the supplier. The acceptance of a late delivery or service does not embody a waiver of compensation claims. In the event of repeated late deliveries, MAFELL shall even be entitled to withdraw from the contract if the delay was not caused by the supplier. If the supplier delays the delivery culpably, the supplier is then obliged to pay a contractual penalty amounting to 1% per week for every article in backlog to MAFELL under the waiver of the defence of the continuance of an offence. MAFELL can also assert the contractual penalty until the final settlement even if MAFELL has not expressly reserved the right to do so upon accepting the delayed delivery. The assertion of further damage shall remain unaffected. It shall remain the right of the supplier to prove that MAFELL did not suffer any loss or only a significantly lower loss. Deliveries prior to the agreed date are only permitted upon MAFELL's consent. MAFELL reserves the right to return goods delivered prematurely or to settle the invoice at the set date.

### 9. Payment

Payments shall be effected on the 25<sup>th</sup> of the month following the delivery and performance as well as the receipt of a proper invoice, minus a 3% cash discount or 90 days net. All payments shall be effected subject to verification of the facts and figures of the invoice as well as the rights of MAFELL arising from defective delivery, even if this not expressly stated in the payment by MAFELL. To the extent that notices of defects are already known upon maturity, MAFELL shall reserve the right to hold back payments or to offset them in subsequent invoices.

### 10. Origin of Goods

The supplier is obliged to present a long-term supplier's declaration for all goods they supply to MAFELL.

### 11. Guarantee

For defects and lack of title to the goods (including wrong delivery or short delivery as well as improper installation, poor assembly, operating instructions and manual of use) and for other breaches of duties by the supplier, statutory regulations shall apply unless otherwise stipulated in the following. According to the statutory regulations, the supplier is liable in particular for the goods having the properties and condition agreed upon when the risk is transferred to MAFELL.

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In all cases, those product descriptions that – in particular by way of stating or referring to them in the order – are the subject matter of the respective contract or that were included in the contract in the same way as these Terms, shall be regarded as the agreement upon the properties and condition. It shall make no difference whether the MAFELL product description originates from the supplier or the manufacturer. Notwithstanding Article 442 Section 1 Sentence 2 German Civil Code, MAFELL is entitled to claims without restrictions even if MAFELL was not aware of the defect upon conclusion of the contract as a result of gross negligence. For the commercial duty to examine and notify, statutory regulations (Articles 377, 381 German Commercial Code) shall apply with the following requirement: MAFELL's duty to examine is limited to defects that become evident upon visual inspection during the incoming goods inspection including the shipment papers as well as during our quality control performed by way of random sampling (e.g. damages in transit, wrong deliveries or short deliveries). Insofar as an acceptance is agreed upon, there shall be no duty to examine. For the rest, it depends on the extent to which an inspection under due consideration of the circumstances of each individual case can be performed during the course of normal business. The duty to notify of defects discovered later shall remain unaffected. In the event of hidden defects the complaint period is calculated from the date of discovery. The supplier shall waive the right to object to late notices of defects in this respect. In all cases, MAFELL shall regard a complaint (notice of defects) as immediate and in time if it is received within two weeks of discovery at the supplier's.

The supplier shall bear the costs incurred by the supplier for the purpose of inspection and rectification even if it turns out that there was no actual defect. The liability for damages by MAFELL for unjustified requests for rectification shall remain unaffected. In this respect, however, MAFELL shall only be liable if MAFELL recognised or grossly negligently did not recognise that there was no defect.

If the supplier does not meet their obligation to supplementary performance – by removing the defect (rectification) or by supplying a flawless item (replacement delivery) as chosen by MAFELL – within a reasonable period defined by MAFELL, MAFELL can remove the defect themselves and demand the expenses incurred for doing so or an appropriate advance payment. If the supplementary performance by the supplier fails or is unreasonable for MAFELL (e.g. due to particular urgency, threat to operational safety or impending occurrence of disproportionate damages), there is no requirement for a term to be set. The supplier must be informed without delay and, where possible, in advance. For the rest, in the event of a defect or lack of title, MAFELL is entitled to reduce the purchase price or withdraw from the contract according to statutory regulations. Furthermore, according to statutory regulations, MAFELL is entitled to claim for compensation and expenses. The supplier respects the accepted codes of practice and the respectively valid statutory and official regulations (in particular: DIN, VDE, VDI, DVGW).

On the day of delivery, the goods must meet all effective statutory and official regulations including those of the Equipment Safety Act and of environmental protection (in particular RoHS, REACH, PAK) and satisfy accident protection regulations. If hazardous substances as defined by the Ordinance on Hazardous Substance or products that, when used, the release of such substances cannot be eliminated, are delivered, the supplier must provide MAFELL or MAFELL's service provider with the data necessary for drawing up the EC Safety Data Sheet (Article 14 Ordinance on Hazardous Substances) without being requested to do so. The period of guarantee is 36 months from receipt of the goods unless otherwise agreed upon in writing.

## 12. Supplier's Redress

MAFELL is entitled by law to claims to redress within a supplier chain defined (supplier's redress as defined by Articles 478, 479 German Civil Code) in addition to warranty claims without restrictions. MAFELL is especially entitled to demand the exact type of supplementary performance (rectification or replacement delivery) that MAFELL owes their purchaser in each case. The statutory right to choose (Article 439 Section 1 German Civil Code) is not restricted by this. Before MAFELL recognises or fulfils a warranty claim asserted by their customer (including Articles 478 Section 3, 439 Section 2 German Civil Code), they shall inform the supplier and, upon briefly outlining the facts, request a written statement. If the statement does not arrive within a reasonable period and if no amicable solution is found, the warranty claim actually granted by MAFELL shall apply as that owed by MAFELL to the customer. In this case, it is the supplier's duty to prove the opposite. The claims by MAFELL from supplier's redress shall also apply if the goods have already been delivered to a consumer before being sold by MAFELL or by one of our customers e.g. by being assembled into another product.

## 13. Product Liability

The supplier shall hold MAFELL harmless from all claims from non-contractual product liability that result from a defect in the product supplied by them. In addition, the supplier shall be liable for damage arising from reasonable provisions against an assertion from non-contractual liability that can be attributed to the supplier (for example public advertising efforts). The supplier must obtain adequate insurance against claims they may be subject to in the event of an assertion from product liability. They must provide evidence of this by presenting an insurance policy at MAFELL's request.

## 14. Use of MAFELL Brand Names

Insofar as MAFELL goods are returned or not accepted and are labelled with a MAFELL brand name or the MAFELL logo, they must not be sold to third parties. For every case of non-compliance, a contractual penalty amounting to twice the value of the goods, a minimum, however, of 15,000.00 EUR shall be regarded as agreed.

## 15. Act of God

Strikes, lockouts, breakdowns, official orders and other events that MAFELL is not responsible for, which result in the reduction of consumption, are regarded as acts of God and entitle MAFELL to amend the contract or withdraw from the contract.

## 16. Property Rights

In the event of a culpable breach of industrial property rights, the supplier shall hold MAFELL and their purchasers harmless of claims by third parties from breaches of copyrights, property rights and patents insofar as the draft of a delivery item does not originate from MAFELL.

## 17. Contractual Language, Applicable Law and Jurisdiction

The contractual language is English. The contract is subject to German law under the exclusion of the CISG. Jurisdiction for all disputes arising from this contract is Oberndorf am Neckar, Germany, if the supplier is a registered trader, a corporate body under public law or a special fund under public law. MAFELL is also entitled to file a suit at the supplier's domicile.

## 18. Severability Clause

Should one of the clauses agreed above be invalid in part or entirely, the validity of the rest of the Terms and Conditions of Purchase shall remain unaffected thereby. The parties agree to replace such an invalid clause by a valid one which comes as close as possible to the spirit of the invalid clause.

As of: June 2013