

Purchasing Conditions

As of 15 October 2023

I. General Information

1. These Purchasing Conditions shall apply to the purchase and procurement of goods and/or services by d&b audiotechnik GmbH & Co. KG ("we", "our", or "d&b") from its suppliers and contractors ("supplier").
2. Our Purchasing Conditions shall apply exclusively; we shall not accept any conditions of the supplier that are contrary to or differ from our Purchasing Conditions, unless we have expressly approved their validity in writing. Our Purchasing Conditions shall apply even if we unconditionally accept goods or services in the knowledge of conditions of the supplier that are contrary to or differ from our Purchasing Conditions.
3. The supplier may furnish the services through his own personnel or subcontract individual components of a service to an affiliated company or a suitable third party. In this case the supplier shall also bear full responsibility for the fulfilment of his obligations towards d&b.

II. Quotation – Conclusion of a Contract – Amendments

1. Conclusion of a contract with a quotation from the supplier
 - 1.1 Our request to a supplier to submit a quotation "Request for Quotation" or our acquisition or receipt of a quotation from a supplier in another way shall not be binding upon us and shall not obligate us to accept a quotation.
 - 1.2 If a quotation is received from a supplier, a contract shall come about when we accept the quotation by placing an order with the supplier either in writing, in text form by e-mail or by means of a message from our order system.
2. Conclusion of a contract with a quotation from d&b
 - 2.1 If no quotation is received from the supplier, a contract shall come about when our binding order is accepted by the supplier. However, the order shall only then be binding if it is sent to the supplier in writing, in text form by e-mail or by means of a message from our order system.
 - 2.2 Acceptance by the supplier shall take place through confirmation within 5 (five) working days after receipt of our binding order.
 - 2.3 Late acceptance of an unchanged quotation by the supplier shall be deemed to have been accepted by us, unless we reject or object to this quotation within 7 (seven) working days after receipt of the notice of acceptance.
 - 2.4 Prior to acceptance, the supplier shall inform us about any obvious mistakes in orders or any incompleteness of orders for the purpose of correction or completion.
3. Amendments to accepted quotations or orders, i.e. concluded contracts, shall only be possible by mutual consent and normally only in writing. By way of exception, an amendment by e-mail shall be permitted if (i) the relevant communication takes place between d&b's personnel from the "Purchasing" and/or "Material Planning" Departments and the supplier, (ii) it is clearly stated in this communication that a concluded order is to be amended and (iii) reference is made in this communication to the order to be amended with specification of the order number.

III. Prices – Payment Terms – Invoice Information

1. The agreed price shall be binding.
2. Unless otherwise expressly agreed, the price shall include costs for correct delivery and proper packaging. At our request, the supplier shall take back packaging at his own expense.
3. The agreed price shall become due for payment within 60 (sixty) calendar days from the date of full delivery of the goods and/or services (including any agreed acceptance test) by the supplier and after receipt of a correct invoice which satisfies, in particular, the requirements in Section III. 4. of these Purchasing Conditions. If we pay within 30 (thirty) calendar days from the relevant date stipulated in the previous sentence, the supplier shall grant us 3% (three per cent) discount on the net invoice amount. If we pay the price by means of bank transfer, payment shall be deemed to have been made on time if the transfer order is received by our bank before the end of the payment period; delays caused through payment processing by the participating banks shall have no relevance to the above-mentioned periods and shall not be our responsibility.
4. We shall only process invoices if they – in accordance with the provisions in our order – show the order number stipulated therein; the supplier shall be responsible for all consequences arising in connection with non-observance of this obligation, unless he proves that he was not responsible.
5. Offsetting and retention rights shall accrue to us to the extent permitted by law. The supplier shall not be entitled to offset our claims, unless his counterclaims are legally binding or we do not dispute them.

IV. Delivery (Delivery Time, Late Delivery, Delivery Location, Delivery Note, Transfer of Risk)

1. The delivery time stated in the order shall be binding. If no delivery time is agreed in the order or elsewhere, a normal delivery time shall be observed from the date of conclusion of the contract.
2. The supplier shall be obliged to inform us immediately in writing if circumstances occur or become known to him indicating that the delivery time cannot be observed.

3. In the event of a delay in delivery caused by the supplier, we shall be entitled to demand flat-rate default damage amounting to 0.25% (quarter of one per cent) of the net price of the affected goods/services for each full calendar day in which the supplier is in default, but a maximum of 5% (five per cent) of the net price of the affected goods/services; we shall reserve the right to enforce other statutory claims (especially withdrawal from the contract and compensation). We shall also reserve the right to produce documentary evidence showing that higher damage was incurred. The supplier shall reserve the right to produce documentary evidence showing that no damage or only significantly lower damage was incurred.
4. Unless otherwise expressly agreed, delivery shall be made in the case of national, non-cross-border shipments according to Incoterms 2020 DAP (Delivered At Place) to the delivery location shown in the order. If no delivery location is shown in the order, delivery shall be made to our head office in Backnang, Germany. In the case of international, cross-border shipments, delivery shall be made according to Incoterms 2020 DDP (Delivery Duty Paid) to the delivery location shown in the order. If no delivery location is shown in the order, delivery shall be made to our head office in Backnang, Germany.
5. The supplier shall include with the delivery a delivery note which shows at least the date of issue, the date of dispatch, the order number and information about the contents of the delivery (article name/article number and quantity). We shall not be responsible for any delays in processing or payment that are due to the absence or incompleteness of a delivery note.
6. If the transfer of risk was not otherwise stipulated via an Incoterm or another expressly agreed regulation, the risk of accidental loss and accidental deterioration of the goods shall pass to us at the time of handover at the place of performance. Risk shall also pass to us if we are in default of acceptance.

V. Specifications

1. In specific cases the goods or services to be supplied shall be subject to certain specifications which define the requirements of d&b relating to the goods/services and form an integral part of the contract.
2. The supplier shall be obliged to comply with the specifications at all times and shall not change them without our prior written approval.
3. We shall reserve the right to change specifications at any time if and insofar this becomes necessary on account of an amendment to valid legal regulations. If we notify the supplier about such a change, the latter shall inform us immediately in writing about any additional costs and shall produce documentary evidence to this effect. We shall reimburse the supplier each time for the documented and appropriate additional costs that are incurred as a result of the change in the specifications.
4. Goods or services that are or will be produced according to our specifications or otherwise based on our or our produced documents, information, drawings, models or the like or with our tools may not be personally produced, used or sold by the supplier without our prior, express written permission, nor may they be offered, delivered or made available by the supplier to third parties in any other way.

VI. Confidentiality – Intellectual Property of d&b

1. The supplier shall be obliged to maintain confidentiality regarding all information which he receives from d&b, especially the conditions of our orders and the information provided to him to fulfil his obligations, for example specifications within the meaning of Section V, documents, diagrams, drawings, models, calculations, data, configurations, know-how or parameters (with the exception of publicly accessible information), for a period of 5 (five) years after completion of the order.
2. In response to our request, the supplier shall immediately return to us the information stipulated in Section VI. 1. or shall delete it fully and finally. Statutory retention obligations or storage obligations relating to this information shall not be affected.
3. The information shown in Section VI. 1. may only be disclosed to third parties with our express permission.
4. d&b shall retain all proprietary/ownership rights and all claims to the information shown in Section VI. 1., as well as all other intellectual property rights to this information. The supplier may only use the information or the intellectual property of d&b to the extent that is necessary to fulfil his performance obligations towards d&b.

VII. Defect Liability – Acceptance – Defect Inspection

1. The statutory regulations together with the deviations shown in this Section VII shall apply to the rights of d&b in regard to material and legal defects in performance and in the case of other infringements of obligations by the supplier.
2. d&b shall have no general obligation to inspect goods/services or give notice of defects. This provision shall not take effect if the statutory regulations relating to the obligation to inspect goods/services or give notice of defects according to the German Commercial Code apply. In this case the obligation to inspect goods/services shall be limited to defects which come to light after an external examination during our incoming goods inspection, including the delivery documents (for example transport damage, incorrect delivery and short delivery), or during our quality control by way of random sample tests. If acceptance has been agreed, there shall be no obligation to inspect the goods. It shall also depend on the extent to which an inspection is feasible after taking account of the circumstances of the individual case in the ordinary course of business. Our obligation to notify defects discovered at a later date shall not be affected.

3. If acceptance of services has been agreed, this shall be based on the different regulations according to § 640 of the German Civil Code (BGB). Payment of the services to be accepted by d&b shall not be regarded as acceptance.
4. If the supplier fails to comply with his obligation to effect supplementary performance within a reasonable time limit set by us, we shall be entitled to personally remedy the defect and request the supplier to pay any necessary expenses and/or a corresponding advance. If supplementary performance by the supplier fails or is unreasonable for our company (e.g. on account of special urgency, risk to operational safety or imminent occurrence of disproportionate damage), no period of grace shall be granted; we shall inform the supplier immediately, if possible in advance, about such circumstances.

VIII. Product Liability – Indemnity – Liability Insurance

1. If third parties enforce claims on the grounds of physical injury or material damage, the supplier shall be obliged to release us from the resulting liability if the claims are due to a defective product that he delivered. This provision shall not apply if the supplier proves that he is not responsible for the infringement of the obligation or that he should have known about the defect at the time of the delivery if he had exercised the due care of a diligent businessman.
2. Within the scope of his liability according to Section VIII. 1., the supplier shall also be obliged to reimburse us for any expenses which arise from or in connection with a recall action which we are obliged to implement. We shall inform the supplier – where possible and reasonable – about the content and extent of the recall measures to be implemented, and shall give him an opportunity to make a statement.
3. Any other statutory claims shall not be affected.
4. The supplier shall be obliged to take out at his own expense product liability insurance with a cover sum of at least €10 million per damage case. At the request of d&b, the supplier shall be obliged to send us suitable documentary evidence relating to the conclusion and maintenance of the product liability insurance cover, for example a copy of the liability insurance policy.

IX. Third-Party Property Rights – Indemnity

1. In accordance with this Section IX. 1., the supplier shall ensure that the products which he delivers do not infringe any third-party property rights. The supplier shall be obliged to release us from all claims which third parties enforce against us due to such an infringement of industrial property rights and to reimburse us for all necessary expenses in connection with this claim. This provision shall not apply if the supplier proves that he not responsible for the infringement of the obligation or that he should have known about the defect at the time of the delivery if he had exercised the due care of diligent businessman.
2. Our further statutory claims due to legal defects in services provided to us shall not be affected.

X. Reservation of Title – Supplies – Tools – Identification

1. If we supply parts, goods or other products to the supplier, we shall reserve title thereto; they shall be regarded in this case as reserved goods. Processing or transformation of the reserved goods by the supplier shall be carried out on our behalf. If the reserved goods are processed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the reserved goods supplied by us to the other processed items at the time of processing.
2. If we supply tools to the supplier, we shall reserve title thereto; the supplier shall be obliged to use the tools solely to comply with his contractual obligations towards us, especially to produce the goods and services which we ordered. The supplier shall be obliged to insure at his own expense the tools belonging to us at their new value against fire, water damage and theft. At the request of d&b, the supplier shall provide suitable documentary evidence relating to the conclusion and maintenance of the insurance cover.
3. The supplier shall identify as the property of d&b tools that we own, but are in the possession of the supplier. The supplier shall also not remove any correspondingly affixed labels on the tools. d&b shall provide the supplier with corresponding materials, for example stickers/signs and information such as inventory numbers for the purpose of identification.
4. The supplier shall be obliged to promptly perform any necessary maintenance and inspection work on tools which are our property, but are in the possession of the supplier. d&b shall reimburse the supplier for any costs which are incurred through the performance of necessary maintenance and inspection work if this was notified beforehand to d&b and d&b approved it. If d&b refuses to pay costs for the performance of certain maintenance and inspection work after notification by the supplier, the latter shall not be obliged to perform the maintenance and inspection work in question. The supplier shall inform us immediately about any problems. If the supplier culpably fails to inform us about problems, our compensation claims shall not be affected.

XI. Choice of Law – Place of Jurisdiction – Miscellaneous

1. German law shall apply to the contracts between us and the supplier to the exclusion of the UN Convention on the International Sale of Goods (CISG).
2. The sole place of jurisdiction for all disputes arising from or in connection with the contract shall be the head office of d&b in Backnang, Germany. Irrespective of this, we shall be entitled but not obliged to take legal action against the supplier at his general place of jurisdiction.