

General Terms and Conditions of Purchase of Nadella GmbH

Section 1

General – Sphere of validity

1. Only our terms and conditions of purchase shall apply. We shall not recognise terms of business of a supplier which are contradictory to, or differ from, our terms and conditions of purchase, unless we have expressly agreed that they shall apply. Our terms and conditions of purchase shall apply even in those cases in which we accept the Supplier's terms of business without reservation in the knowledge that they differ from our terms and conditions of purchase.
2. Our terms and conditions of purchase alone shall apply in business transactions with companies.
3. All agreements made between us and the Supplier for the purpose of carrying out this contract are to be entered in writing in this contract.
4. Our terms and conditions of purchase shall also apply for all future business transactions with the Supplier even if they are not expressly included.

Section 2

Offer – Offer documents

1. The Supplier is obliged to accept our offer within 14 days unless other binding periods have been agreed in a specific case.
2. We shall retain the title rights and copyrights to diagrams, drawings, and other documents. They must not be made accessible to third parties without our express consent. They are only to be used for production on the basis of our order. They are to be kept secret from third parties; given this the arrangement in Section 9 Para 4 shall also apply.

Section 3

Prices- Terms and Conditions of Payment

1. The price shown in the order is binding. In the absence of a written agreement to the contrary, the price shall include delivery franco domicile including packaging. The return of the packing shall be subject to separate agreement.
2. Value added tax is to be included in the price. It must be shown separately.
3. We can only process invoices if they – as stated in our orders – state the order number in the order to which they refer. The Supplier shall be responsible for all the consequences arising as a result of non-compliance with this obligation, unless he is able to prove that he is not responsible.
4. Unless agreed otherwise in writing, we shall pay the purchase price within 14 days counting from the delivery and receipt of invoice to qualify for a prompt payment discount of 3% or within 60 days from the receipt of invoice.
5. We shall be entitled to offsetting rights and retention rights as provided for by law.

Section 4

Delivery time

1. The delivery time stated in the order is binding.
2. The Supplier is obliged to notify us without undue delay in writing if circumstances arise or if circumstances become discernible to him indicating that he will be unable to comply with the agreed delivery period.
3. In the event of a default in delivery, we shall be entitled to demand a lump sum for default damages amounting to 1.5% of the value of the goods to be supplied per full week of delay. However, we shall not be able to demand a lump sum equal in value to more than 10%. In doing so the Supplier shall be entitled to prove to us that we have either sustained no loss or that the loss sustained is much less than that claimed by us. We shall reserve the right to assert additional statutory or contractual rights (in particular compensation for damages on account of breach of duty).

Section 5

Passing of risk - Documents

1. Unless agreed otherwise in writing, the goods to be supplied must be delivered free.
2. The Supplier is obliged to state our order number correctly on all shipping documentation and delivery notes; we cannot be held responsible for delays in processing should he fail to do so.

Section 6

Inspection of defects - Warranty

1. We shall not be obliged to notify defects in accordance with Section 377 of the German Commercial Code [HGB]. We shall undertake to conduct a minimum check on the basis of the delivery note and for transit damage.
2. The Supplier undertakes to check the goods before they leave his premises and shall enter into a quality control agreement with us.
3. We shall be entitled to all statutory warranty rights in full. In particular, in the event that there is a defect, we shall be entitled to demand that the defect is remedied or a fault-free part is supplied, as we choose. The costs incurred for this shall have to be borne in full by the Supplier. In addition to this, we shall be entitled to the statutory compensation claims for damages in full and without limitation.
4. The unabridged statutory warranty periods and periods of limitation shall apply.

Section 7

Product liability – Exemption – Liability insurance cover

1. In so far as the Supplier is responsible for product damage, and given this, he shall be obliged to exempt us from third party compensation claims for damages at first call, if the cause lies within his sphere of control and organisation and he is personally liable in legal relationships with third parties.

2. As part of his liability for damage events, the Supplier shall also be obliged to reimburse us any expenses which may have been incurred as a result of, or in connection with, a recall campaign, provided that the claim is not based upon Sections 830 and 840 of the German Civil Code [BGB] in conjunction with Sections 426 and 254 BGB.
3. If a claim is asserted against us otherwise on account of a defect in the thing supplied by the Supplier, we shall be entitled to a full right of recourse against the Supplier under Section 478 of the German Civil Code [BGB]. There shall only be an exception to the above in those cases in which we have already been granted compensation equivalent to the right of recourse.
4. The Supplier shall undertake to maintain a product liability insurance policy providing lump sum cover of EUR 5 million per personal injury / property damage; if we are entitled to additional compensation claims for damages, these shall consequently not be affected.

Section 8 Proprietary rights

1. The Supplier vouches that no third party rights within the Federal Republic of Germany will be breached in connection with his delivery.
2. If a claim is asserted against us on account of this, the Supplier shall be obliged to exempt us from such claims at first call. We shall not be entitled to enter into any agreements with third parties – without the Supplier’s consent – and in particular, to enter into a compromise settlement.
3. The Supplier’s duty to exempt us refers to all our expenditure incurred by necessity from, or in connection with, a claim being asserted against us by a third party.

Section 9 Reservation of title – Provision of parts – Tools – Non-disclosure

1. In so far as we furnish the Supplier with parts, we shall reserve the title to them. Processing or conversion by the Supplier shall be carried out for us. If our goods subject to reservation of title are processed together with other items not belonging to us, we shall consequently acquire co-ownership to the new item in proportion to the value of our item (purchase price plus value added tax) to the other processed items at the point in time of processing.
2. If the item furnished by us is indivisibly mixed with items not belonging to us, we shall consequently acquire co-ownership to the new item in proportion to the value of the item subject to reservation of title. (Purchase price plus value added tax) to the other mixed items at the point in time of mixing. If the mixing is conducted in such a way so that the Supplier’s item is to be regarded as the main item, it shall consequently be regarded as agreed that the Supplier shall transfer a proportion of the co-ownership to us; the Supplier shall keep the sole ownership or the co-ownership in safekeeping for us.

3. We shall reserve the title to tools. The Supplier is obliged to only use the tools furnished by us for manufacturing the goods ordered by us. The Supplier is obliged to insure the tools belonging to us to cover the cost of a new replacement in the event of fire and water damage and theft. At the same time the Supplier assigns to us here and now all compensation claims under this insurance policy. We hereby accept the assignment. The Supplier is obliged to conduct any servicing and inspection work which may possibly be necessary at his own expense and in good time. He must notify us immediately of any breakdowns. Should he be culpable for failing to do so, the compensation claims for damages shall not be affected as a result.
4. The Supplier is obliged to keep all the diagrams, drawings, calculations and other documents and information he receives strictly secret. He may only disclose them to third parties with our express consent. The non-disclosure obligation shall also apply after this contract has ended. It shall expire if, and provided that, the production knowledge contained in the diagrams, drawings, calculations and other documents handed over has entered the public domain.
5. In so far as the security rights to which we are entitled in accordance with Para 1 and / or Para 2 exceed the purchase price of all our goods subject to reservation of title not yet paid for by more than 20%, we shall, at the Supplier's demand, be obliged to release the excess security rights as we choose.

Section 10

Place of performance – Place of jurisdiction – Applicable law

1. The place of performance for our obligations (in particular our payments) is Stuttgart.
2. The place of jurisdiction for all disputes is Stuttgart. We are also entitled to take legal action at the courts having jurisdiction where the Supplier is based.
3. The legal relationships between the Parties shall be governed by German law. The applicability of the UN law on sales (CISG) is expressly excluded.