

Terms and conditions: using T&Cs correctly in B2B procurement

Terms and conditions (T&Cs) are pre-formulated contract terms that one contracting party establishes for a large number of contracts and presents to the other party at the conclusion of the contract. In industrial procurement, they are the central instrument for regulating delivery, payment and liability issues uniformly and bindingly. Between buyer's T&Cs and supplier T&Cs there is typically a tension that must be resolved through the 'last shot' mechanism or explicit agreements. Those who actively manage their T&Cs reduce potential for disputes, process costs and legal risks along the entire supply chain.

Key facts

- Terms and conditions are pre-formulated contract clauses that can in principle be validly agreed in the B2B sector, provided they do not contain an unreasonable disadvantage.
- In procurement, buyer's T&Cs frequently compete with supplier T&Cs; what matters is which terms have actually become part of the contract.
- The so-called 'last shot' clause (final written-form clause) is regarded in practice as effective in B2B dealings, but is viewed critically by case law and legal literature.
- Core contents of industrial procurement T&Cs concern delivery times, acceptance processes, warranty, liability, prices, payment terms and force majeure.
- T&Cs have a direct impact on operational KPIs such as payment terms, urgent order rates or backorder rate, because they define the scope for action in these areas.
- Regular revision of T&Cs is necessary, as legislative changes, new supply chain requirements and market changes can render existing clauses outdated.

Definition: terms and conditions

Terms and conditions encompass all provisions pre-formulated for a contract that one contracting party presents to the other when the contract is formed. They are usually divided into general terms of purchase (buyer's side) and general terms of sale or delivery (supplier's side). Legally, different limits apply in the B2B sector than in consumer law; nevertheless, clauses must not nullify the essential nature of the contract or constitute an unreasonable disadvantage.

Buyer's T&Cs in procurement

Buyer's T&Cs typically secure rights of recourse, acceptance free of defects in the event of deficiencies, long warranty periods and the right to withdraw or demand replacement delivery in the event of default. They also define when a contract is formed – for example, only upon order confirmation or upon commencement of delivery. For technical supply relationships, drawing and specification references are also relevant so that intellectual property remains with the buyer.

Supplier T&Cs and the 'battle of forms'

If both parties submit their terms, the classic 'battle of forms' arises: each side declares its own T&Cs to be binding. In practice, details such as the chronological sequence of purchase order, order confirmation and delivery, as well as the forms used, are decisive. Clear internal instructions on which documents are sent when are therefore a simple but effective control measure.

Contract mechanics: how T&Cs become part of the contract

T&Cs only become effective if they are validly incorporated at the conclusion of the contract and it is reasonable for the other party to take note of them. In day-to-day procurement, this happens via order forms, framework agreements, quotation texts or online portals. If incorporation is not unambiguous, there is a risk in a dispute that the contract will be deemed incomplete – then costly gap-filling law applies.

Incorporation and counter-confirmation

A proven practice is express counter-confirmation: the buyer expressly confirms in the purchase order that only its terms apply and objects to supplier T&Cs in writing. For each individual transaction, it should be checked which terms were actually accepted. In particular, for urgent orders placed by telephone or messenger, supplier law often becomes applicable implicitly – an avoidable risk.

Resolving clause conflicts

If both sets of T&Cs conflict in substance (for example regarding liability limits or payment terms such as 2/10 net), in many legal systems either the specific clauses or the general statutory rules apply. To avoid this, a priority clause or a transparent clause matrix for strategic suppliers is recommended. For critical points – maximum liability amounts, retention of title, force majeure – negotiation is the clearer path than rash reliance on standard terms.

Contents of industrial procurement terms

Good procurement T&Cs reflect the operational reality of the supply chain: from the purchase order through delivery concepts to the handling of complaints. They should address the counterparty's entire order-to-cash process and align with internal processes such as the price deviation workflow or the invoice approval workflow logic.

Delivery, consignment and packaging

Clauses on delivery location, delivery date, delivery concepts and packaging standards prevent disputes over the transfer point and cost allocation. The reference to Incoterms DAP or other Incoterms variants regulates transfer of risk and transport costs uniformly. Additional requirements regarding labelling, accompanying documents and adherence to delivery dates, with consequence-graduated provisions in case of non-compliance, are also sensible.

Prices, payment and reimbursements

The T&Cs should regulate whether prices are fixed prices, how energy price surcharges or raw material indices are treated and under what conditions price changes are permissible. Payment terms and early payment discount models such as 2/10 net 30 should be anchored here and aligned with invoice verification practice. The treatment of partial deliveries and backorders also belongs in this block, so that the backorder rate remains measurable and manageable.

Quality, warranty and complaints

Central for manufacturing supplier relationships: inspection agreements, defect notification deadlines, immediate measures such as 8D containment for critical defects, and claims for replacement delivery and cost coverage. In addition, clauses on material compliance (e.g. RoHS/REACH) and documentation obligations should be anchored. Anyone planning material substitution (ESG) should regulate contract change mechanisms in advance.

Operational control: anchoring T&Cs in the procurement process

T&Cs only have effect if they are applied consistently in the ordering process. This requires systematic integration, clear responsibilities and regular coordination with legal and sales. Without this organisational framework, a patchwork of individual cases arises that increases rather than reduces risk.

System support and documentation

ERP and e-procurement systems should automatically deliver the T&Cs with every purchase order and document the version. Within a master data approach based on golden record principles, contract terms can also be maintained consistently as master data. Those who map material requirements planning (MRP) and procurement planning digitally can transfer T&C requirements such as fixed order windows directly into purchase order proposals.

Alignment with other T&C stacks

Procurement T&Cs rarely harmonise automatically with the terms of other contractual relationships, such as with factoring service providers or logistics providers with their own delivery concepts. A central contract register in which framework agreements and their governing terms are maintained is useful. The price deviation workflow exemplarily shows how deviations from standard terms are systematically reviewed and approved.

Risks and controls relating to terms and conditions

The greatest risks do not arise from hostile T&Cs, but from unclear interplay between multiple sets of terms, outdated clauses and a lack of control in day-to-day business. Procurement organisations should therefore regularly review which terms actually apply and where practice deviates from the clauses. Such controls reduce not only legal risks but also process costs.

Typical pitfalls

Common mistakes: T&Cs not updated after legislative changes, contradictory clauses between framework contract and individual order, double delivery of terms with competing last-shot clauses, or buyers handling urgent orders bypassing the T&Cs. Unclear force majeure clauses have also proven critical in recent years when supply chains are disrupted by natural events or geopolitical events. Such clauses should define specific notification obligations, duration limits and withdrawal rights.

Control mechanisms in procurement

Proven controls: version-controlled approval of T&Cs by the legal department, mandatory fields in the ordering system, sample audits of completed contracts and training of buyers on incorporation issues. Market observation provides indications of which clauses are customary in the industry – a realistic benchmark prevents unnecessarily aggressive positions that deter suppliers. The consistency of clause

and practice can be checked using simple KPIs, such as the proportion of purchase orders with express counter-confirmation.

Current developments in terms and conditions

T&Cs are not a static document: supply chain laws, sustainability reporting, digitalisation of procurement and volatile energy markets are constantly changing the requirements placed on clause sets.

Procurement organisations therefore often update their terms on an annual or biennial cycle. At the same time, pressure is growing to design T&Cs not only legally sound but also process-oriented and data-driven.

Sustainability and compliance

Many companies now anchor human rights, environmental and compliance obligations directly in the T&Cs, including information rights, audit rights and termination rights in the event of violations. Material compliance requirements are frequently integrated into the T&Cs by reference to technical standards. It is important to align with separate codes of conduct to avoid contradictions.

Digitalisation of T&C handling

In the context of e-sourcing and digital marketplaces, providers increasingly publish terms online; dynamic price comparisons with integrated T&C queries are becoming commonplace. Automated contract analysis and AI-supported clause review reduce the review effort but do not replace legal assessment of the individual case. Linking T&Cs with data-based KPIs such as backorder rate or invoice approval workflow lead times makes the actual effect of the clauses measurable.

Typical metrics

T&C coverage of purchase orders: typically > 95%

Proportion of purchase orders delivered with the valid, version-controlled procurement T&Cs

Clause compliance (sample checks): frequently > 90%

Proportion of reviewed contracts whose practice matches the agreed terms

T&C update interval: typically ≤ 24 months

Time since the last legally reviewed revision of the T&C set

Open clause deviations: in practice < 5% of active suppliers

Suppliers with deviating, un-negotiated terms – candidates for negotiations

Practical example

A mid-sized mechanical engineering company with around 250 active suppliers found that numerous urgent orders were handled by telephone and that, in the event of a dispute, supplier T&Cs applied. In addition, two T&C versions were running in parallel, which caused coordination problems when handling complaints. The company standardised its procurement T&Cs, integrated them into the ordering system and introduced a deviation workflow for special terms.

- Version-controlled T&Cs with automatic delivery with every purchase order
- Express counter-confirmation clause and prohibition of verbal urgent orders without a system record
- Alignment of payment terms including a 2/10 net early payment discount model with the invoice approval workflow

- Review of force majeure clauses and notification and withdrawal rights for critical suppliers

Conclusion

For industrial procurement, terms and conditions are far more than a legal form: they operationalise delivery, payment and quality arrangements in day-to-day business and have a direct impact on KPIs such as adherence to delivery dates and payment terms. What matters is not the most aggressive set of clauses, but a consistent, up-to-date and consistently applied set of T&Cs that is interlinked with internal processes and master data. Clarity on incorporation, priority and conflicts prevents costly disputes and unnecessary process costs. Those who regularly adapt their T&Cs to the legal situation, supply chain requirements and market practice gain negotiating leverage and planning certainty. A brief legal review of the individual case remains essential for critical clauses and cross-border transactions.

Frequently asked questions

What are terms and conditions in procurement?

Terms and conditions (T&Cs) are pre-formulated contract clauses that standardise rules on delivery, price, payment, warranty and liability. In procurement, a distinction is made between buyer's T&Cs (terms of purchase) and supplier T&Cs. They become effectively incorporated with the purchase order, order confirmation or framework agreement.

Which T&Cs apply if both buyer and supplier send their own terms?

In this case (battle of forms), the actual course of contract performance is decisive: the chronological sequence of documents, the wording of the 'last shot' clause and the actual conduct of the parties. Where clauses conflict, the more specific provisions or statutory rules often apply. The clean solution is an express agreement on which terms are binding.

What should procurement T&Cs contain?

Typical contents include delivery dates and delivery concepts, Incoterms references such as DAP, price and payment terms, early payment discount models, warranty and defect notification rules, 8D containment for complaints, material compliance and force majeure. In addition, clauses on intellectual property and audit and information rights are recommended. Every clause should be aligned with internal processes such as the invoice approval workflow.

How often should terms and conditions be updated?

In practice, an annual or biennial review has proven effective, supplemented by ad-hoc updates following legislative changes or new compliance requirements. Every change should be documented in a version-controlled manner so that it is clear which version applied at which point in time. For strategic suppliers, the update should be actively communicated and negotiated.

Are terms and conditions in B2B fully enforceable?

No. Even in the B2B sector, clauses must not constitute an unreasonably disadvantageous imbalance and must not nullify the essential nature of the contract. Their actual validity depends on the wording, the state of negotiations and the legal situation. For critical clauses, a legal review of the individual case is recommended.

How can compliance with T&Cs be ensured in day-to-day business?

Through systematic integration in e-procurement, mandatory fields and automated T&C delivery, clear

internal instructions for urgent orders, and regular sample audits. A central contract register containing all framework agreements creates transparency. KPIs on process compliance show where practice deviates from the clauses.