

**GENERAL TERMS AND CONDITIONS OF PURCHASE**  
of ABC Service & Produktion Integrativer Betrieb GmbH, FN: 98969v



**1. AREA OF APPLICATION, GENERAL**

The latest versions of these terms and conditions of purchase underlie all of our enquiries, orders and potential follow-up orders, even if no explicit reference has been made to this fact or, as the case may be, even if this fact has not been mentioned over the course of negotiations orally or by phone. The general business terms of the suppliers that contradict these terms and conditions of purchase are void, inasmuch as the said terms have not been declared to be valid in writing. Contractual terms that contradict these general terms and conditions of purchase are invalid, even if they appear in the contractual partner's documents.

Telefax messages and e-mails are considered to be messages that have been put down in writing.

**2. AWARDING OF CONTRACTS**

We only consider orders to be legally binding if they have been written out on our ordering forms. Changes made to the order, items that have been added to the order, or oral agreements are only considered to be valid in a legally binding manner after we have confirmed them in writing.

Our orders may only be completely or partially handed over to an external party if we have granted explicit and written consent for such a course of action in advance. In any event, the supplier is responsible for ensuring that his sub-contractors adhere to these terms and conditions of purchase.

**3. ORDER ACKNOWLEDGEMENTS, CHANGES IN THE ORDER**

Within a period of two working days (Monday to Friday from 8:00 a.m. to 5 p.m.) our order is to be confirmed with a binding quotation of price and a binding specification of the delivery date. We shall be entitled to modify or revoke the order until such time as we receive a proper order acknowledgement. We can also reject delayed order acknowledgements. Any and all consequences of the delay must be borne by the supplier.

If the order acknowledgement deviates from the order, a clear reference must be made to this fact. We shall only be obligated to adhere to a deviation if we had already explicitly approved of the deviation in writing.

**4. DELIVERY DEADLINE, CONTRACTUAL PENALTY**

The goods must be delivered to the specified delivery address in the correct delivery quantity and at the agreed-upon level of quality no later than the agreed-upon delivery date; in case of a delivery whose scope covers the assembly and/or installation, or in case of situations that involve the execution of certain tasks, the said tasks must be certified by us, on the agreed-upon delivery date, to be free of defects. Otherwise, we shall be entitled to issue a written notice of withdrawal within 48 hours without setting a period of grace. In such a case, the supplier shall be obligated to pay compensation for all the damages related to non-fulfilment that were caused by his delay, including all the financial losses that had a causal relationship with the event in question.

The supplier has to promptly inform us in writing of any delays in delivery as soon as he can detect the said delays. Furthermore, he has to specify a new and binding delivery date. We reserve the right to either accept the delay in the delivery (which is equivalent to a one-sided modification of the contract) or withdraw from the agreement on the grounds of non-fulfilment of the contract.

It is understood that if the delayed delivery is accepted, we shall charge a contractual penalty of 1% per each working day of the delay in delivery maximum 15% of the total order value without being obliged to provide evidence for the actual damage. Furthermore, we shall reserve the right to raise claims for damages that extend beyond this figure, including financial losses. This applies even if we had unconditionally accepted a previous partial delivery.

In case of an early delivery, we reserve the right to either refuse to accept the delivery (in which case the supplier is obligated to bear the associated costs and risk factor) or, if the delivery is accepted, to bill him (the supplier) for the resultant additional expenses (especially the storage costs) and prolong the payment process to match the agreed-upon delivery date.

**5. DISPATCH, DELIVERY, ACCEPTANCE, TRANSFER OF RISK**

Unless otherwise agreed, the delivery must be made at the agreed-upon delivery address and at the expense and risk of the supplier, in a manner that is free of any and all overheads. The DDP provision applies, as per Incoterms 2010.

The packaging costs and the costs associated with transportation insurance, which should also cover the unloading process, are to be borne by the supplier.

If the agreed-upon pricing term was the factory price or the warehouse price, the products should be dispatched at the lowest possible cost, unless we had explicitly mandated a particular mode of transportation. Additional expenses associated with accelerated transportation that is necessary in order to adhere to the delivery date or minimise the delay in the delivery are to be borne by the supplier. The supplier cedes to us all claims arising from the transportation insurance that relate to damages suffered by the goods during transport and which are directed towards the insurance company that provided the said transportation insurance. He also cedes similar claims that are directed towards the liable party, to us.

All deliveries must be furnished with a delivery note containing a precise summary, complete order data (especially the order number and ABC item numbers), all the necessary data regarding export licence regulations (e.g. export control commodity number) and a statement indicating that the goods are not subject to preferential treatment (e.g. movement certificate, declaration of origin).

In principle, the delivery quantity should perfectly match the quantities/numbers of pieces that were specified in the contract. Under-deliveries or over-deliveries must be authorised by us in writing in advance. Otherwise, in case of an under-delivery, the contract shall be considered not to have been fulfilled, and in case of an over-delivery, we shall be entitled to return the excess quantity at the expense and risk of the supplier.

The items that are delivered to us must not be subject to retention of title. Such retentions are considered to be invalid, even if we do not raise any objections against them.

The supplier shall be liable for all damages that arise as a result of improper packaging.

If the shipping documents are missing or incomplete, and especially if the order data that needs to be reported is missing, we shall reserve the right to reject the delivery at the expense and risk of the supplier.

In case of deliveries of merchandise, the risk factor is transferred to us when the incoming goods are inspected. However, the transfer of the risk factor takes place no later than two working days after the point in time at which the said merchandise was delivered to the delivery address that we specified. In case of deliveries whose scope covers assembly and/or installation and deliveries whose scope covers the execution of certain tasks, the risk factor is transferred to us when we accept the service in question. In case of partial deliveries, the risk factor is only transferred to us when the contractual provisions have been fulfilled entirely.

**6. BILLING, CESSION**

The bill (which should cite all the order data) is to be sent to us immediately after the delivery has been made or, as the case may be, immediately after the service in question has been provided in its entirety.

We reserve the right to send back bills that do not correspond to our specifications (especially our order data) without processing them. In such a case, the account shall be considered to not have been rendered. Time sheets that have been validated by us are to be attached to bills that relate to job performances or work performances.

Cessions are only valid if we had approved them in writing in advance.

## 7. PAYMENT

The term of payment is considered to begin as soon as the defect-free delivery or work performance has been accepted by us in its entirety and the properly-issued bill has been received. Insofar as the agreement obligates the supplier to submit material test documents, test reports, certificates, inspection records, quality documents or other documents, the delivery is only considered to have been made in full when the said documents have been received.

Unless otherwise agreed, we shall be entitled to make payment at our discretion, either within a period of 14 days with a 3% discount or within a period of 30 days net. The payments shall be withheld until the defects have been rectified, since no settlement date exists. Even if payment is made without reservation, it shall not equate to either an acknowledgement of the correctness of the delivery or service or a waiver of any of our rights.

## 8. WARRANTY, PRODUCT LIABILITY, COMPENSATION FOR DAMAGES

§ 377 UGB (Austrian Commercial Code) is not used (immediate notice of defects). The warranty-related provisions of the ABGB (General Civil Code) are applicable, along with the following modifications:

The acquisition of the goods (acceptance) and the inspection that is supposed to examine the quantity and the status and check for visible defects take place within a period of 14 days after the receipt of the goods. If sampling-operations indicate that parts of the contents of the delivery do not correspond to our order, the entire delivery can be rejected. Receipts of delivery that certify that we have received the goods in question do not qualify as declarations regarding the condition and the quantity of the delivered goods. Furthermore, they do not amount to a confirmation that the delivery conformed to the contract and was free of defects.

In case of moving parts, we can claim that defects exist within the legal time limits of 24 months after the receipt of the goods.

In case of a defect that emerged after the hand-over, it shall be assumed, over the course of the entire legally-mandated warranty period, that the defect in question existed at the time of the handover.

If we do not receive any written communication from the supplier regarding a future course of action within a period of two working days (Monday to Friday - from 8:00 a.m. to 5:00 p.m.) after the point in time at which the defect-related information was sent to the supplier, we shall be entitled to return the faulty goods to the supplier's address at the expense and risk of the supplier. An acceptance that is issued at the supplier's facility does not release him from his warranty-related obligation that relates to defects that emerge after the goods in question are handed over to us.

The supplier has to either rectify any potential defects at his own expense within the time-limit that has been set by us or deliver new goods that are free of defects. In any event, we shall be entitled to demand that the supplier compensate us for all the damages that arose as a result of either the defective delivery or the untimely nature of the rectification of the defects.

In cases involving an especially high degree of urgency, such as cases dealing with the prevention of a delay or cases where the supplier is behind schedule vis-à-vis the rectification of defects, we shall reserve the right to implement an executive fiat or reacquisition at the expense of the supplier without prior notification and without prejudice to our other rights. These costs must be reimbursed in their entirety, even if they are higher than the costs associated with a defect-rectification operation carried out by the supplier.

Regardless of whether or not he is culpable and whether or not his subcontractor is culpable, the supplier shall be completely liable, in an unrestricted manner, for all the damages that result from the defectiveness of the delivered product and which affect either us or our customers. His liability shall also extend to causal financial losses. Retention as per § 2 Z 1 PHG (general partner) does not apply.

## 9. PROVISION OF MATERIALS

Material that has been provided by us remains our property and is to be stored separately, labelled and managed free of charge. Receipt of the said material is to be confirmed at our request. It may only be used for our orders. The client shall have to pay compensation if the material is damaged or lost. Under no circumstances can the supplier claim compensation for an untimely provision of the said material.

## 10. DRAWINGS, TOOLS, AUXILIARY MEANS

If drawings and technical computations are necessary, they are to be supplied free of charge by the supplier. Tools, moulds, models, drawings, lithographs, gauges and the like that we have provided to the supplier in order to facilitate the order-execution process remain our property. Neither these items nor new objects that were produced with their help can be transferred to external parties or used for any purpose other than the pursuit of the contractual objectives, unless we have approved such a course of action in writing. Tools, moulds etc. that are either completely or partially manufactured at our expense become our property as soon as they are produced. In the broader sense, all of these objects and contrivances which belong to us are to be stored safely in an appropriate manner and protected from unauthorised access or utilisation. If necessary, they should be repaired or rebuilt. They are to be returned with the delivery or, as the case may be, if the order is cancelled. Subject to our other rights, we can also demand that the said items be returned if the supplier violates these obligations or if production-related difficulties arise.

Under no circumstances can the supplier enjoy a right of retention.

## 11. NON-DISCLOSURE, DATA PROTECTION

The supplier is obligated to maintain the confidentiality of the information that he receives from us that relates to our order, or the confidentiality of any information that relates to the subject-matter of the order, insofar as the said information was not generally known or legitimately known to him. He is also obligated to maintain confidentiality with regard to the results or partial results that he developed. In particular, the supplier has to protect this information and these results from third-party access and demonstrably prompt any employees of his who work with the said information and results to maintain the confidentiality of the said items.

Any violation of this provision results in a contractual penalty whose magnitude is 10 times the contract value. Any potential right of the court to reduce or abate the fines or punitive measures shall be waived.

## 12. PLACE OF FULFILMENT, LAW, JURISDICTION

The place of fulfilment is 9020 Klagenfurt, Austria or, as the case may be, the point of delivery that has been specified by us.

Irrespective of the place of fulfilment of the main service, the suppliers always have to rectify the defects at one of our locations.

It is understood that all disputes arising from our orders shall be subject to the local jurisdiction of the court in 9020 Klagenfurt, Austria that has the relevant subject-matter jurisdiction. Such issues shall be subject to the sole jurisdiction of Austrian law. The UN Convention on Contracts for the International Sale of Goods does not apply.

## 13. SALVATORIUS CLAUSE

If individual provisions of our terms and conditions of purchase are or become invalid or unenforceable, it shall have no effect on the other provisions contained in our terms and conditions of purchase. The invalid or unenforceable provision is to be replaced by a valid and enforceable provision that fulfils, as closely as possible and especially from an economic point of view, the intended objective of the provision that is to be replaced.

**As of January 2013**