

# General conditions of purchase and acceptance

(Version October 2020)

## 1. General:

- 1.1 Our purchase orders and orders of goods shall only be made on the basis of the following conditions, unless otherwise specified in special terms and conditions. Diverging agreements must be made in writing.
- 1.2 These conditions shall also apply correspondingly to services to be rendered by us.
- 1.3 We shall not accept conflicting supplier general terms and conditions.
- 1.4 No waiver of any rights can be derived from an act or omission on our part, unless such a waiver is expressly declared by us in writing. In any case, our silence must never be interpreted as approval of a contract or acceptance of performance.
- 1.5 If any of the terms herein are invalid, the remaining provisions shall continue in full force. Any invalid provision shall be deemed replaced by a provision that translates that ineffective provision as closely as possible into an effective form.

## 2. Ordering:

Orders shall be issued in writing or orally.

## 3. Order acceptance and reservation for terminating the contract:

All orders placed by us shall be deemed as accepted if they are not rejected immediately after receipt.

In case there is reasonable evidence that scheduling problems, delivery problems or a lack of cover of our liability or warranty claims are to be expected, we shall be entitled to withdraw at any time from orders placed. This is particularly the case if the supplier's financial situation deteriorates markedly or if insolvency proceedings are opened regarding the supplier's assets due to lack of assets.

## 4. Delivery conditions:

- 4.1. The delivered goods must be first choice, free of defects and errors and correspond to any submitted samples in all detail.
- 4.2 Production or packaging changes with logistical consequences must be disclosed to us in writing at least fourteen days in advance.

- 4.3 Unauthorised deviations shall entitle us to refuse acceptance of goods or demand a price reduction.
- 4.4 Upon delivery of the goods, the supplier shall guarantee that they comply with all relevant provisions in force in Austria they have facilities suitable for the characteristic storage life of the goods and the expected security. Goods with time restrictions, including those with expiry dates, must be delivered to us as fresh as product-specifically possible. The importer must prove the storage life of imported goods in writing.
- 4.5 Goods which must bear a test mark in accordance with provisions in force in Austria must bear this mark and comply with these provisions accordingly.
- 4.6 We shall be authorised by the suppliers to name and picture goods with their characteristic brand names or appearances for advertising purposes.
- 4.7 The supplier guarantees that no patent, trademark and design rights shall be violated, and otherwise agrees to fully indemnify the receiver against claims and actions.
- 4.8 The supplier shall release us from any product liability claims made against us by buyers or third parties due to faulty goods. The supplier shall provide us with the best possible support in the defence of such claims from the outset in an appropriate way and at its expense, particularly by providing information on proceedings initiated against us and through accession as intervener on our side.
- 4.9 The supplier must continually monitor the delivered goods and the goods to be delivered and immediately inform us in detail of any faults and defects, particularly design and manufacturing faults. The same applies to changes in the state of science and technology. If such changes to delivered goods prove defective or faulty, the supplier must notify us immediately and retrieve such defective or faulty products at his own expense. If the supplier does not comply with these duties and we therefore become liable for costs or damages to a goods purchaser or a third party according to product liability regulations in force in Austria, then the supplier shall be obligated to fully indemnify and hold us harmless.
- 4.10 The supplier must ensure that delivered goods are labelled in such a way that they can be assigned to a manufacturer or an importer headquartered in the EEA or the supplier.
- 4.11 The supplier shall be obligated to draw attention to any usage risks by attaching clear, permanent notices, provide us with the current versions of required safety data sheets and provide us with information material for the purpose of transferring to the purchaser (e.g. instruction manuals, maintenance instructions etc.). With regard to its contents, this information material must be created so that particularly the operation purpose, type of operation, the associated risks and the risks of using the goods improperly can be clearly deducted, thereby ensuring the safe and proper use of the goods.

## 5. Delivery time:

- 5.1 Deliveries must be made on the agreed dates and in due time. We shall not be obligated to grant a further grace period.
- 5.2 In the event of a delivery that is not on schedule or punctual, we shall be entitled to immediately withdraw from the contract; this is without prejudice to any claims for damages (item 10).
- 5.3 Agreed delivery times must also be observed, failing which we shall be entitled to reject the goods. The costs of such a futile delivery shall be borne by the supplier.

## 6. Force Majeure

- 6.1 Force majeure is an event which is beyond the control of the parties to the contract and could not have been foreseen and which either prevents, significantly hampers or makes uneconomical the performance of the contract or the mutually presupposed use of the subject matter of the contract, such as in particular strike, war, civil war, riot, terrorism, cybercrime, natural disasters or natural events such as e.g. low or high water, ice, storm, lack of energy, transport and customs clearance delays, official decrees, as well as all measures, effects or events in connection with epidemics, epidemics or pandemics (in particular COVID-19), or other comparable cases.
- 6.2 In the event of the occurrence of force majeure, we are entitled to extend the supplier's performance period by the duration of the force majeure and an additional reasonable grace period. Furthermore, we are entitled to withdraw from the contract with immediate effect for the duration of the force majeure, irrespective of the extension of the deadline.
- 6.3 The supplier cannot assert any rights against us from or in connection with this withdrawal from the contract or the extension of the performance period; in particular, claims for damages from any legal title whatsoever are excluded to the extent permitted by law. The supplier waives the assertion of a possible discontinuation of the basis of the business and related claims.
- 6.4 The aforementioned provisions shall also apply in the event that a force majeure event occurs at our customer or vicarious agent.

## 7. Transport and acceptance:

- 7.1 Deliveries must be made exclusively to the place of delivery as specified by us and at the risk of the supplier. Unless otherwise agreed, all deliveries shall be unloaded to ramp or warehouse.

- 7.2 If the delivery cannot be made to the agreed place of delivery for reasons we are responsible for, we must be contacted immediately. If this is not possible, the delivery must be made to our nearest business facility.
- 7.3 We reserve the right to reject partial deliveries that have not been agreed upon and cancel residual quantities.
- 7.4 The delivery note must always contain detailed information on quantities and goods and the exact total number of packages. The retail price or catalogue price and order data (order number, order date, name of purchaser, etc.) must only be shown on the delivery note upon our request.
- 7.5 Upon delivery to our business premises, the delivery note must be handed over with any shipping documents to the (goods receiving) office separately from the goods (except for agreed postal deliveries).
- 7.6 A separately issued delivery note is required for every delivery. Deliveries of several orders or agreed partial deliveries may not be combined on a single delivery note. Goods will not be accepted without shipping documents in accordance with orders.
- 7.7 The issued receipt shall apply to the accuracy of the number of packages only; the actual taking over by the piece will take place later. § 377 of the Austrian Commercial Code (*UGB*) shall not apply.
- 7.8 In case of the non-acceptance of goods by us, the supplier shall be obliged to collect within eight days of notification. If the supplier does not collect after our initial request, we shall be entitled to return delivery.
- 7.9 All returns, for whatever reason, shall be at the expense and risk of the supplier.
8. Invoices and payment terms:
- 8.1 The payment of the invoice shall only be made under the conditions described in our order or in existing framework agreements. Packaging compensation shall only be accepted by us in accordance with an express agreement.
- 8.2 The supplier shall immediately submit the invoice (duplicate) to us together with confirmed proof of delivery regarding goods supplied directly to our customers on our behalf.
- 8.3 The invoices must comply with the appropriate regulations in Austria, in particular in respect of value added tax. The supplier declares its consent to the issuing of a credit note pursuant to § 11 (8) Value Added Tax Act (*UStG*).
- 8.4 The time period of the payment terms begins on the invoice receipt date.
- 8.5 The supplier is not entitled to set off his claims against our counter-claims.

9. Packaging and palletising:

- 9.1 The packaging shall be designed materially and constructively so that adequate protection of the contents is assured.
- 9.2 Each shipping package must display the product name, the number of sales units contained and the legal test marks, symbols and instructions, in the appropriate places according to the appropriate regulations in Austria.
- 9.3 Shipments shall be delivered on pallets, unless otherwise agreed.
- 9.4 The pallet load shall be made transport safe and secured against sliding. The over-smoothing of the pallet loading area is not permitted.
- 9.5 If necessary, the supplier must provide sufficient transport protection for the waggon load by complying with the relevant rail authority loading regulations and by using storage aids.
- 9.6 The supplier shall be obligated to take back packaging and palletisation against full payment, provided a deposit has been charged.
- 9.7 In case of non-compliance with the above conditions, we reserve the right to charge for any resulting costs incurred by us or refuse to accept the goods.

10. Claims for compensation:

- 10.1 The supplier shall be liable to us for any damage resulting from improper delivery or rather defective or faulty goods. Insofar as we are held liable by third parties, the supplier must indemnify and hold us harmless. Accordingly, the supplier shall be liable to us at least to the extent and for the duration to and for which we are obliged to make payments to third parties - in particular as regards damages, warranty and product liability. The supplier must particularly bear all costs, which we accrue from the establishment of eligibility of claims made against us for product defects, including the process costs.
- 10.2 Unless longer statutory time limits apply, claims for recourse pursuant to 10.1 are duly levied if they are claimed by the supplier on our part within two months of the fulfilment of the liability obligation to third parties, at the latest within five years of the service provision.
- 10.3 If the supplier breaches his contractual obligations, thus even the provisions of these general conditions of purchase and acceptance, we shall be entitled to levy a contractual penalty of up to 10 % of the invoice amount for the goods concerned. Claims for damage exceeding this amount shall not be excluded by this clause.

11. Reservation of proprietary rights and assignments:

11.1 We shall not recognise supplier or third party reservation of proprietary rights.

11.2 If claims against us are assigned to third parties, we shall be entitled to charge the supplier for the costs resulting from the processing and execution of the assignment.

12. Data processing:

**The supplier undertakes to process the person-related data sent by us in accordance with the currently valid data protection laws, as amended, for the sole purpose of performing the contract and to delete these data promptly when there is no longer any reason justifying the processing.**

**Regarding our duties to provide information under data protection law according to Articles 13 and 14 of the General Data Protection Regulation (GDPR), please refer to the data protection statement on our website.**

**Upon request, the supplier will be provided with a copy of this data protection statement at no charge.**

13. Place of jurisdiction, choice of law:

The place of jurisdiction for all disputes arising directly or indirectly from the contract is exclusively the competent court in Vienna.

Austrian law shall apply exclusively under exclusion of the UN Convention on Contracts for the International Sale of Goods and international conflict of laws rules.

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