

Axtrocare GmbH General Terms of Purchasing

§ 1 General, applicability

1. Our „General Terms of Purchasing“ apply to all purchase contracts and to contracts having as their purpose the delivery of goods which are to be manufactured or produced. However, they do not apply to contracts which involve services we have commissioned.
2. Our Terms of Purchasing apply exclusively. We do not recognize contrary or deviating terms of the Supplier which are not contained in our Terms of Purchasing unless we have expressly consented to their application in writing. Our Terms of Purchasing apply even if we accept the Supplier's delivery without reservation although we are cognizant of contrary or deviating terms of the Supplier which are not contained in our Terms of Purchasing.
3. All covenants which are made between us and the Supplier for the purpose of performing this contract are to be committed to writing in this contract. This applies expressly to orders that are only binding if they are placed or confirmed by us in writing (e.g. by fax).
4. Our Terms of Purchasing apply only with respect to contractors within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch–BGB).
5. Our General Terms of Purchasing also apply to all future transactions with the Supplier even if they are not expressly agreed to again.

§ 2 Prices and payment terms

1. If the prices have not yet been determined at order placement, the Supplier shall quote them to us before delivery of the goods. In such case, we reserve the right to refuse to accept the delivered goods and, if a contract exists, to avail ourselves of any right we have to rescind the contract.
2. The agreed prices are binding. Absent a special agreement departing herefrom, they cover all services associated with delivery of the goods, particularly packaging and transportation to the destination („free delivery“), including customs duties, insurance, fees, taxes and other additional costs incurred.
3. Statutory value-added tax is included in the price unless it is specified as an additional component of the price.
4. We are only able to process invoices from the Supplier if they are submitted in duplicate and display the standard information (particularly order and/or article number and commission number, exact description of the goods, quantity supplied, dimensions, weight and packaging). The Supplier is responsible for all consequences which arise from the failure to comply with this obligation unless the Supplier proves that it is not responsible for them.
5. Unless otherwise specially agreed, payment shall be made within two weeks of receipt of the goods and the invoice, with a discount of 3% of the invoice amount for early payment or without discount within 30 days of receipt of the goods and the invoice. If payment in installments has been agreed to, the discount for early payment shall be allowed for each individual payment made within the two week period.
6. For timeliness of payment–also with respect to entitlement to the discount for early payment–it is sufficient if we render the respective performance at the place of performance within the agreed time. Unless otherwise separately regulated, the place of performance is considered to be Wiesenstr. 1, 78166 Donaueschingen, Germany.
7. We are entitled to the rights of offset and retention to the extent provided by statute. Offset is expressly permitted for contract penalty claims.

§ 3 Return of packaging

The return of packaging requires a separate agreement unless the Supplier is legally obligated to take back the packaging pursuant to the German packaging regulation (Verpackungsverordnung). In cases when packaging is returned, the Supplier shall pick it up from us at its expense. If the Supplier desires that the packaging being returned or taken back be shipped, it shall bear the shipping costs incurred.

§ 4 Delivery time

1. The delivery date specified in the order is binding.
2. Should circumstances after the order confirmation is issued prevent the Supplier from adhering to the agreed delivery date, the Supplier shall immediately inform us of the reason and anticipated duration of the delay as soon as the circumstances arise or become discernible.

3. In the event delivery does not take place as scheduled or is delayed, we are entitled to the rights provided by statute.
4. In the event delivery is delayed as the result of force majeure or labor disputes for which we are not at fault, without giving rise to Supplier rights we have the option either to withdraw entirely or partially from the contract after expiration of a reasonable period or to demand that the order be executed at a later time.
5. Advance, partial and excess deliveries are only allowed with our express consent and are to be noted in the delivery papers and invoices.

§ 5 Passage of risk, shipping documents and regulations

1. Transportation to the destination takes place at the risk of the Supplier. The destination specified in the order is the place of performance for all deliverables of the Supplier. Risk does not pass to us until an office authorized by us has confirmed receipt of the goods.
2. The Supplier shall indicate the standard information recited in Section 2 (4) of these „General Terms of Purchasing“ on all shipping documents, delivery notes and/or other papers accompanying the goods (e.g. bills of lading). Additional costs and losses which arise due to noncompliance are chargeable to the Supplier.
3. In shipping, the relevant terms and regulations of the selected means of transportation shall be followed and the most favorable shipping methods for us be chosen, provided that we have not expressly prescribed the shipping method. If no provision has been made in the individual contract, it is the responsibility of the Supplier at its expense to insure the goods to be delivered for the duration of the transportation. The Supplier shall obtain adequate transport insurance.
4. In the case of deliveries by rail or truck of goods which are invoiced based on weight, we are to receive official proof of weight or proof that the weighing is in conformity with the German Verification Act.
5. For the delivery of goods, particularly of raw materials, additives and fuel, the relevant legal regulations are to be observed with respect to grading, packaging and labeling requirements. Losses we incur from culpable violations of legal regulations shall be reimbursed by the Supplier.

§ 6 Notice of defects, liability for material defects, limitation of claims

1. The delivered goods must exhibit the contracted qualities, correspond precisely with the specifications in our order and reflect the state of the art. The Supplier warrants that its goods and services comply with the legal and official regulations applicable on the date of delivery, particularly the relevant environmental protection, accident prevention and occupational safety regulations.
2. The delivered goods shall be inspected by us for variations in quality and quantity within a two-week period calculated from receipt of the goods. A notice of defects may also be made on our behalf by the end customer of the goods. Notices of defects are timely if they are received by the Supplier within a period of two weeks calculated from receipt of the goods or, in the case of latent defects, from discovery. The Supplier waives the right to object for late notification of the defect under Section 377 of the German Commercial Code (Handelsgesetzbuch–HGB).
3. Statutory defect claims are available to us without curtailment. We are entitled in each case to demand, at our option, that the defect be removed or a new, defect-free article be delivered (cure). The expenditures necessary for the purpose of cure shall be borne by the Supplier even if such expenditures increase because the purchased article has been taken to another place after delivery, unless moving the article is inconsistent with its proper use. If the defectiveness of the purchased article becomes apparent only after installing it into an article manufactured by us, the Supplier shall, in the course of effecting the contractually required cure, also cover the necessary expense of curing the defect in the purchased article, particularly wage costs for installation and removal. The right to damages, particularly to damages in lieu of performance, remains expressly reserved.
4. In urgent matters, after giving prior notice to the Supplier, we are authorized to cure defects that have been established or damage occasioned therefrom at the expense of the Supplier or to arrange to have such performed by third parties at the expense of the Supplier. The same applies if the Supplier defaults in its obligations to cure defects.

5. The period for limitation of claims consists of 36 months and, in the case of building materials, 72 months calculated from the passage of risk. In the case of cure, a new period for limitation of claims of 36 months (72 months in the case of building materials) begins to run at completion of the remedial work or delivery of the new article. However, the new period for limitation of claims refers solely to the repaired or replaced part of a purchased article if only this (also dependent) part was replaced. Otherwise, the period for limitation of claims is extended by the time during which the purchased article cannot be used due to a defect or even due to its remediation. The limitation period is tolled beginning on the day on which the Supplier was notified of this defect and recommences when we are again able to use the purchased article.

§ 7 Product liability, indemnification, liability insurance protection

1. To the extent the Supplier is responsible for a product-related injury, it is obligated on the first demand to indemnify and hold us harmless from third party damages claims to the extent the cause lies within its area of control and responsibility and it has personal liability toward third parties.
2. In this area, the Supplier is also obligated to reimburse any necessary expenditure arising from a product recall conducted by us. To the extent possible and reasonable, we will inform the Supplier concerning the content and extent of the product recall measures to be conducted and give it opportunity to comment.
3. The Supplier is obligated to maintain product liability insurance with coverage commensurate with the risk during the term of this contract, i.e. up to the expiration of the respective limitation period for defect claims. Any additional damages claims to which we may be entitled remain unaffected.

§ 8 Industrial property rights

1. The Supplier warrants that it is not infringing on any third party rights within the Federal Republic of Germany with its delivery. The Supplier is obligated to inform us if a personal or third-party industrial property right (e.g. patent, utility model, trademark) exists for the goods to be delivered.
2. Should a third party take recourse against us for alleged infringement of industrial property rights, on the first written demand the Supplier is obligated to indemnify and hold us harmless from such claims. We are not authorized to enter into any kind of agreements, particularly settlements, with third parties without the consent of the Supplier.
3. The indemnification obligation of the Supplier relates to all expenses which we necessarily incur arising from or in connection with recourse by the third party.
4. The limitation period for such claims amounts to ten years beginning upon entry into the respective contract.

§ 9 Retention of title, provision of material, tooling, confidentiality

1. If we provide parts to the Supplier, we retain ownership thereof. Processing or alteration by the Supplier is undertaken on our behalf. If our goods which are subject to retention of title are processed with other goods which do not belong to us, we acquire co-ownership of the new article according to the relationship between the value of our article and the other processed goods at the time of processing.
2. If the article we provide is inseparably commingled with other goods which do not belong to us, we acquire co-ownership of the new article in the relationship between the value of the article which is subject to retention of title and the other commingled goods at the time of the commingling. If the commingling takes place in a way that the article of the Supplier is considered to be the primary article, it is agreed that the Supplier shall transfer prorated joint title to us and the Supplier shall hold in safekeeping sole title or joint title on our behalf.
3. We retain ownership of tooling. The Supplier is obligated to use the tooling exclusively for production of goods ordered by us. The Supplier is obligated to insure the tooling belonging to us at replacement value at its own expense against losses due to fire, water and theft. Simultaneously, the Supplier assigns forthwith all damages claims arising from such insurance. We hereby accept the assignment. It is obligated to seasonably perform any necessary maintenance and inspection work at its own expense. It shall immediately notify us of any breakdowns or failures; if it culpably fails to do so, damages claims remain unaffected.
4. We retain proprietary rights and copyrights in the production documents given to the Supplier (e.g. pictures, sketches, calculations, models, samples, formulas). The production documents may only be used for processing the proposal and executing the ordered shipment; they may not be made available to third parties without our consent. The Supplier is at the same time obligated to surrender any duplicates it has made of the documents; the same applies to any materials developed from the documents.

Semi-finished and finished products manufactured in accordance with our documents may only be supplied to us. Apart from that, the Supplier is obligated to maintain the confidentiality of our trade and business secrets even beyond the contract term. The duty of confidentiality does not refer to generally known facts and ends in each case when the facts become publicly known without being caused by a breach of contract by the Supplier.

§ 10 Prohibition of assignment

The Supplier is only permitted to make assignments to third parties with our express written consent. We will not withhold consent without just cause.

§ 11 Manufacture or production of goods under Section 651 BGB

To the extent the Supplier is manufacturing or producing and delivering goods, the following provisions apply in addition:

1. The Supplier promises to manufacture or produce and to deliver or make available to us the goods to be manufactured or produced exclusively in accordance with the description and specifications set forth in the individual contract and in accordance with our written instructions. Before commencing processing, if we request, it shall confirm in writing that it has taken note of all particulars of the description and specifications.
2. If in reviewing the description and specifications and our written instructions there are ambiguities or the Supplier has concerns about the specified manner of execution, the quality of the materials or parts we supply or the services of other companies we engage, it is incumbent on the Supplier to notify us thereof and to work with us to bring about mutual clarification. We will commit the clarification to writing, which shall be signed by both parties. The same shall apply if the ambiguities or concerns first develop in the course of executing the order. The Supplier shall interrupt manufacture or production until the ambiguities or concerns are completely resolved.
3. The Supplier is not to begin the manufacture or production until the description and specifications and our written instructions have been clarified in all particulars. The Supplier may require that we declare our approval (or also partial approval) of the manufacture or production in writing. Costs incurred by the Supplier without the necessary clarification of ambiguities shall be borne by it.
4. If the subject matter of the contract is subsequently amended or expanded, the Supplier is authorized to require that the price be adjusted for additional costs incurred by reason of the amendment if the Supplier communicated this to us before the amendment or expansion in the form of a proposal to amend the contract. The Supplier's right to increase the price comes into being when we expressly accept the proposal to amend the contract; we promise to accept the proposal if the Supplier proves that the additional costs which it has informed us of will be occasioned by the subsequent amendment of the subject matter of the contract.
5. If the Supplier commits to the manufacture or production of non-fungible goods, the following provisions additionally apply:
6. To the extent we are to perform services which are necessary for the manufacture or production of the goods, we will perform such in accordance with the description and specifications and the dates specified in the individual contract. In the event we fail to perform these services as contracted, the Supplier may demand reasonable damages from us, the calculation of which shall be indicated in the individual contract or the amount defined as a fixed sum. The Supplier must allow such damages to be offset by what it is able to save in consequence of our default or to earn by applying its work force in another manner. The Supplier has a mandatory duty of disclosure toward us concerning this. The Supplier can satisfy the duty of disclosure by allowing us to examine the business records (by means of an expert who is professionally obligated to maintain confidentiality). In such cases, the Supplier's right of termination is excluded unless the Supplier cannot reasonably be expected to continue to adhere to the individual contract in spite of the damages which are provided for here.

7. If the Supplier is responsible for providing the materials for manufacture or production of the goods, it must do so at its own cost and risk. The materials used by the Supplier must be consistent with the description and specifications set forth in the individual contract. If the Supplier would like to use other materials of equal value, such use shall be made only in accordance with contract if we have given our prior written consent. If we have prescribed specific sources of supply for procuring the materials, only the use of materials from such source of supply complies with the contract. Upon request, the Supplier is obligated to provide information on its Suppliers and the point of origin of the materials and the supply prices including the discounts and bonuses received. In the case of price computation according to the procurement prices of individual parts of the goods to be manufactured or produced, we will pay a percentage-based surcharge on the net procurement price paid by the Supplier, provided that the amount of the surcharge has been specified in the individual contract.

Until the manufacture or production of the goods, we are authorized to terminate the individual contract at any time with stating reasons. If we cancel the individual contract, the Supplier is entitled to charge us a prorated fee for the contracted partial performance which it has already rendered and for preparation of contracted future partial performances.

§ 12 Judicial venue and applicable law

1. If the Supplier is a merchant in terms of the German Commercial Code, a legal entity under public law or a fund under public law, the judicial venue for all rights and duties of the parties arising from transactions of any kind – including those arising from exchange and check disputes – is 78166 Axtrocare, Germany. The same applies when the Supplier has no general domestic judicial venue or when the Supplier's registered office or usual place of residence is relocated out of the country after the agreement has been concluded or when the Supplier's usual place of residence is unknown at the time legal proceedings are commenced. However, we are also entitled to institute proceedings against the Supplier at the latter's general judicial venue.
2. For our General Terms of Purchasing and all legal relations between the parties, the law of the Federal Republic of Germany applies with the exclusion of the UN Convention on Contracts for the International Sale of Goods.

§ 13 Severability Clause

Should one or more provisions of our General Terms of Purchasing be invalid, this shall not affect the validity of the remaining provisions. The parties commit to agree to a valid provision which comes as close as possible to the invalid provision.

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