

1. Scope of Application / General

The following Terms and Conditions of Purchase apply to all orders, transactions and contracts. They also apply to all future terms and conditions of business, even if they have not been expressly agreed again. Any amendments or terms and conditions of sale which differ from the following Terms and Conditions of Purchase are unbinding, even if they have not been expressly opposed. They shall only apply if we have confirmed them in writing. The acceptance of deliveries or performances or their payment does not constitute consent to the terms and conditions of sale of the contractor. Only transactions or orders which have been placed in writing and signed are valid. Verbal agreements are only binding for us if they have been confirmed in writing.

2. Offer, order and order acknowledgement (OA)

2.1 Offers are at no cost to us and shall be submitted on a non-binding basis.

2.2 We reserve all ownership rights and copyrights to diagrams, drawings, calculations, files, software and other documents.

2.3 Our order applies exclusively to the content, type, volume and quality of deliveries and performances. Any amendments to materials, components, manufacturing processes, etc., are only permitted after obtaining express written consent.

2.4 Orders, transactions and delivery call-offs and any other legally relevant declarations or announcements which have to be submitted to the client by the Contractor after conclusion of the contract (e.g., fixing of time limits, reminders, declaration of withdrawal), must be in writing in order to be valid. A written contract or the client's written confirmation shall apply to any individual agreements reached with the contractor in individual cases (including collateral agreements, supplements and amendments).

2.5 adexco (client) may revoke the order within two weeks even if the contractor has already accepted it.

2.6 If the order acceptance (OA) differs from the order, the client shall only be bound if it has agreed to the deviation in writing. The client may waive the contractor's written OA if an agreement has been reached thereon. This only applies if the contractor does not deviate from the details contained in the order pertaining to price, delivery quantity or delivery date. In this case, the modified OA shall be effected by the contractor within three working days after receipt of the order. The details contained in the modified OA shall be deemed as acknowledged by the client if the client does not raise objection to them within five working days.

2.7 Unless another agreement has been reached in the order text, the contractor shall supply a complete item, system or machine that contains all the parts required for faultless operation in compliance with the guaranteed data, even if spare parts required therefor are not listed.

2.8 All details specified in the contractor's order, drawings or parts lists and all details specified in the contractor's offers, brochures, product descriptions and catalogues shall be deemed guaranteed. In particular, faithfulness to deadlines and compliance with delivery dates shall be deemed guaranteed.

3. Term of delivery

3.1 The punctuality of deliveries shall be determined by the date on which the goods reach the receiving station specified by the client; in cases where goods have to be installed or assembled or in the case of performances, punctuality of delivery shall be determined by their acceptance.

3.2 In the event of identifiable delays with regard to a delivery or performance, the client shall be notified without delay and the decision it reaches shall be heeded.

3.3 If the agreed dates cannot be adhered to due to circumstances for which the contractor is to blame, the client shall be entitled at its discretion, irrespective of any other legal claims, after setting a time limit, either to withdraw from the contract, purchase a replacement from a third party or demand compensation based on non-performance. Any additional costs caused by late deliveries or performances shall be refunded by the contractor. Acceptance of a late delivery or performance does not constitute a waiver of compensation claims.

3.4 If deadlines are repeatedly not met, the client shall be entitled to withdraw from the contract even if the contractor is not to blame for the delay. The same applies to any cases of industrial action or operational disruptions at the contractor's premises or suspension of payments by the contractor or insolvency proceedings with respect to the contractor.

3.5 The client shall be entitled to send back deliveries effected before the agreed delivery date, incomplete deliveries or non-approved part deliveries and charge the contractor for the additional costs incurred therefor.

4. Contractual penalty

If the agreed delivery dates are not complied with for reasons for which the contractor is to blame, the contractor shall pay a contractual penalty of 0.5%, but a maximum of 5% of the purchase price for each commenced week of delay. If the agreed date is deferred for reasons for which the client can be proven to be to blame, the cut-off date for the contractual penalty shall be postponed accordingly, if unavoidable, according to an agreement to be reached. In the event that the delivery delay for which the contractor is to blame lasts for more than ten weeks, the contractor shall pay interest at 1% above the base rate applicable at the time on payments furnished by the client until that point, in any case at least 5%.

5. Embargo list / Intrastat

5.1 The contractor shall state in the OA and the invoice whether the goods to be supplied are included in the current export list, Annex EL to the German Foreign Trade and Payments Ordinance, on the respective date.

5.2 The contractor shall specify the foreign trade number for Intrastat on the invoice.

6. Safety regulations / CE symbol, etc.

The contractor shall comply with the regulations applicable at the place of use of the delivery, especially with respect to accident prevention, the ordinance on hazardous substances, environmental protection, TÜV (German testing and certification organisation), fire protection regulations, machine safety and the relevant directives and standards of the authorities and trade associations. The contractor shall state whether the goods to be delivered by it require a manufacturer's declaration or declaration of conformity pursuant to the EC machinery directives and shall present this upon delivery if necessary. In addition, the contractor shall always include instructions relating to storage, assembly, maintenance and operation with the delivery free of charge - also for use by end customers.

7. Transfer of risk and dispatch

7.1 The transfer of risk shall be effected upon receipt of the goods at the receiving station to be specified exactly by the client. In the case of deliveries involving installation or assembly or in the case of performances the transfer of risk shall be effected upon acceptance.

7.2 The forwarding costs shall always be borne by the contractor. If prices are ex works or ex the contractor's sales depot, the goods shall be sent at the lowest cost in each case unless the client has stipulated a specific mode of transport. Additional costs caused by non-compliance with forwarding regulations shall be borne by the contractor. If prices are free recipient, the client may also determine the mode of transport. Additional costs for any accelerated transportation which is necessary to comply with the delivery date shall be borne by the contractor.

7.3 A packing note or delivery note stating the contents and the full order code (order number) shall be enclosed with each delivery. Differing articles shall be packed and labeled separately. Dispatch shall be notified immediately with the same details.

7.4 Deliveries arising from cross-border goods transportation shall be delivered to the client duty unpaid (as an authorised recipient in the joint forwarding process). The client shall be notified of these deliveries in good time for the purpose of proper customs clearance. In particular, all relevant transport data shall be communicated in good time before the goods arrive and the documents required for customers clearance, such as the consignment note, commercial invoice, packing list, etc., shall be made available in good time.

7.5 Should goods be supplied to customers of the client directly from the contractor's premises, the client must always be notified thereof prior to dispatch. All relevant transport data, such as mode of transport, type of packaging, marking, gross/net weight and the customs invoices, packing lists, etc., included with the consignment, shall be communicated by fax or E-Mail on the day of dispatch at the latest.

7.6 The German Packaging Ordinance shall apply.

7.7 In the case of deliveries of hazardous goods, the contractor shall be responsible for compliance with the appropriate legal provisions until the goods have been fully unloaded.

8. Invoices

The order code shall be specified in invoices. As long as these details are missing, invoices are not payable. Invoices shall always be sent in duplicate - the invoice copy shall be marked as the duplicate.

9. Payments

9.1 The price specified by the client is binding and applies franco domicile, including packaging, unless otherwise agreed between the parties.

9.2 Payments shall be furnished, subject to an inspection of the invoice, within 14 days minus 3% discount or after 45 days in full unless otherwise agreed.

9.3 The term of payment for the deduction of discount shall commence as soon as the delivery or performance has been rendered on time and in full and the properly issued invoice has been received. The deduction of discount is also admissible if the client offsets or withholds payments to a reasonable extent due to defects; the term of payments shall commence after any defects have remedied in full.

9.4 The client shall be entitled to rights of offset or retention and the plea of non-fulfilled contract to the extent stipulated by law. The client shall especially be entitled to withhold any due payments as long as it is still entitled to claims vis-à-vis the contractor arising from incomplete or defective performances. The contractor only has a right of offset or retention on account of counter claims which have been finally established in law or are undisputed.

10. Insolvency, suspension of payments

If it comes to our notice that an application has been filed for the institution of insolvency proceedings with respect to the contractor's assets or proceedings have already been instituted, the contract may be unilaterally terminated by the client. The same applies if the contractor suspends payments, encounters payment difficulties, tries to reach an out-of-court settlement or measures are implemented for voluntary or mandatory liquidation. The client shall also be entitled to the aforementioned right if the contract has been honoured by one or both of the contracting parties in whole or in part provided the contractor's warranty still applies.

11. Liability

11.1 The warranty period of 24 months shall commence upon the transfer of risk. In the case of deliveries to locations where the client carries out orders outside its works or workshops, it shall commence upon acceptance by the client's customer. It shall end at the latest 36 months after the transfer of risk.

11.2 If defects are detected prior to or upon the transfer of risk or occur during the warranty period, the contractor shall either remedy the defects or render a new delivery or performance which is free from defects at its expense and at the client's discretion. This also applies to deliveries where the inspection was restricted to spot checks. The client shall make a choice at its reasonable discretion.

11.3 If the contractor does not remedy the defects or supply a replacement delivery or service within a time period to be set by the client, the client shall be entitled to:

- withdraw from the contract without compensation in whole or in part; or
- demand a reduction of the purchase price; or
- remedy the defects or supply a replacement itself or have the defects remedied or a replacement supplied by third parties at the contractor's expense; or
- demand compensation based on non-performance.

The same applies if the contractor declares that it is unable to remedy the defects, supply a replacement delivery or service within an appropriate time period.

11.4 The limitation period for parts of the delivery serviced or repaired within the limitation period for the client's warranty claims shall restart from the date when the contractor has settled the claims to subsequent performance/replacement delivery in full,

11.5 If the client incurs costs due to the defective delivery of the contractual item, especially costs for transport, labour or materials or costs for a receiving inspection that is outside the norm, the contractor shall bear these costs.

11.6 Acceptance shall be carried out subject to accuracy and suitability. The contractor shall be liable for defects in the goods or performances, regardless of whether they are visible immediately or only become apparent later, for the duration of the warranty period. If defective goods are delivered or defective services are rendered repeatedly, the client shall be entitled to withdraw from the contract. If a general check becomes necessary that goes beyond the standard receiving inspection due to a defective delivery, the contractor shall bear the costs therefor.

11.7 The deliveries shall be inspected for defects within three weeks according to the client's standard practices and any defects shall be notified without delay.

11.8 The aforementioned claims shall become statute-barred one year from notification of the defect. The limitation of the client's claims shall be impeded as long as the contractor has not finally rejected the client's claims after the timely notification of defects.

11.9 Any other legal claims, especially concerning the reimbursement of processing or finishing costs expended to no avail shall not be affected.

11.10 The aforementioned provisions shall also apply to performances relating to the rectification of defects accordingly.

11.11 The contractor shall bear the costs and risk of sending back defective delivery items.

11.12 The contractor shall guarantee freedom from industrial property rights of third parties and shall release the client from any liability in the event of an infringement.

11.13 In the event of a claim being asserted by the end customer arising from the Product Liability Law due to a defective product of the contractor, the contractor shall release the client from liability in this respect.

12. Forwarding of orders to third parties

The forwarding of orders to third parties without the client's written consent is not admissible and shall entitle the client to withdraw from the contract in whole or in part and demand compensation.

13. Provision of materials

13.1 Materials or goods provided shall remain the client's property and shall be stored separately, labelled and managed free of charge. They may only be used for the client's orders. Compensation shall be paid by the contractor in the event of a reduction in value or damage. This also applies to the invoiced surrender of materials connected to an order.

13.2 The processing, transformation or finishing of the material shall be carried out for the client. The client shall become the direct owner of the new item. Should this not be possible for legal reasons, the client and the contractor are agreed that the client shall become the owner of the new item at the time of processing or finishing. The contractor shall hold the new item in sale custody for the client for free with the diligence of a prudent businessman.

14. Tools, samples, confidentiality, patents & industrial property rights

All manufacturing resources, documents, prototypes, samples and the manufacturing know-how disclosed to the contractor shall be kept secret and may neither be utilised, duplicated, forwarded, sold, pledged nor made accessible to third parties, apart from for agreed or contractual purposes. Any tools, samples, models, sections, semi-finished/finished goods, drawings, standard sheets, printed matter, templates or software surrendered by the client as well as any items produced thereafter may neither be forwarded to third parties nor used for purposes other than the contractual purpose without the client's written consent. They shall be protected against unauthorised inspection or use. Subject to other rights, the client may demand their surrender if the contractor breaches these obligations. The contractor shall not make any information it obtains from the client available to third parties unless it is generally known or has otherwise become known to it legitimately. The contractor shall be liable with respect to deliveries and performances for the infringement of patents and industrial property rights, in such a way that it shall support the client in an out-of-court or in-court dispute with the patent holder or holder of the industrial property right, reimburse it for all the costs incurred and release it from any awarded compensation claims of the patent holder or holder of the industrial property right.

15. Assignment of claims

This is only admissible with the client's written consent.

16. Additional provision

Should any of the provisions of the contract or this provision be or become invalid, the validity of the contract or the remainder of the provisions shall not be affected thereby. In this case, the parties shall be obliged to replace the invalid provision with a provision that is equivalent to it in terms of the economic result, if this is legally possible.

17. Execution of work / Insurance cover

When carrying out contractual work on the works premises or at the premises of third parties, the provisions of the respective company regulations shall be adhered to and the existing regulations for entering and leaving the factory facilities shall be observed. Liability for accidents on the works' premises is excluded unless intent or gross negligence is proven. The contractor shall provide sufficient insurance cover for the work to be carried out.

18. Acceptance

Industrial disputes, operation disruptions and cases of force majeure shall release the client from the obligation of acceptance if they result in a reduction in the client's requirements.

19. Place of performance, Place of jurisdiction, Applicable law

19.1 The place of performance for deliveries and performances is the receiving station specified by the client; in the case of payments it is the client's registered office.

19.2 The place of jurisdiction is Bielefeld / Germany.

19.3 German law shall apply with the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Good (CISG).