

Conditions of Purchase of Lorünser Austria GmbH

1. Area of Application

1.1. these general conditions of purchase apply to all orders (supplies and services) from Lorünser Austria GmbH.

2. Order and acknowledgement of order

2.1 The customer can revoke the order unless the supplier has accepted it in writing within three working days on receipt (acknowledgement of order).

2.2 If the acknowledgement of order deviates from the order, the customer will only be bound if the customer has agreed to the deviation in writing. Above all, the customer will only be bound to the supplier's General Terms and Conditions to the extent to which these conditions correspond to the customer's conditions or the customer has agreed to them in writing. If deliveries or services are accepted or payments are made, this does not signify any consent.

2.3 When making the offer or accepting the order, the supplier autonomously declares to have reviewed all the data or data handed over to them by the customer or third parties attributable to the supplier and guarantees their full compliance, correctness, completeness and integrity.

2.4 Amendments or supplements of or to the order will only be effective if they are acknowledged in writing by the supplier.

2.5 Oral orders or orders made on the phone as well as supplements and amendments to and of orders already placed will only become binding for the supplier if they are confirmed in writing by the customer and acknowledged in writing by the supplier.

2.6 Upon acceptance of the order, the supplier recognizes these conditions. This recognition will then also apply to future orders without this form having to be used.

3. Time of delivery, contractual penalty in case of default in performance

3.1 As for timeliness of deliveries or supplementary performance, receipt at the receiving point stated by the customer is decisive.

3.2 If delay of a delivery or service or supplementary performance is detected, the customer will have to be informed immediately and asked to take a decision.

3.3 If the supplier is in default, the customer shall be entitled to charge a contractual penalty to the amount of 0.3 % for each working day that has started, but no more than 5 % of the total order sum. Even if there is no confirmation at acceptance of the deliveries, services or supplementary performance, the contractual penalty can be claimed up to final payment.

3.4 The customer shall be entitled to pay a visit to the production site of the supplier and of the supplier's sub-suppliers and their suppliers after advising them, in order to obtain information on the state of the work ordered and quality or to accept the delivery in the supplier's works.

3.5 Providing a delivery or service before the agreed date shall only be permitted with the customer's consent. In any case, all the legal consequences depend upon the agreed date. Up to the agreed date, the customer will only assume the liability of a "guardian".

3.6 The supplier promises the customer to store the ordered item for at least three months at the supplier's risk and cost if the customer postpones the shipping date.

3.7 If it can already be foreseen within the supplier's time of delivery that the supplier cannot adequately provide the supplier's deliveries / services on the date agreed contractually, the customer shall be entitled to take all necessary measures averting an imminent delay in delivery at the supplier's risk, cost and expense. If it can be detected that the supplier has problems with payment, the customer shall be entitled to repudiate the contract without a notice period. In this case, the legal consequences will be the same as those for a delay for which the supplier is at fault.

4. Passing of the risk, shipment, place of performance

4.1 The risk will pass at the receipt of the delivery/service at the receiving point stated by the customer.

4.2 Partial deliveries, over deliveries and under deliveries shall only be allowed upon explicit approval given by the customer.

4.3 The goods shall be delivered to the Receiving Department of the respective delivery address at the times detailed below.

Myjava Mo – Do: 6:30 h – 14:00 h Weiz Mo – Do:
6:00 h – 14:30 h

Myjava Fr: 6:30 h – 14:00 h Weiz Fr: 6:00 h –
13:00 h

4.4 The customer shall be entitled to pass technical documentation of the supplier or the supplier's sub-suppliers or suppliers on to the customer or final customer as required.

4.5 Unless agreed differently, the shipping and packaging costs shall be borne by the supplier. In case of pricing ex works or ex sales store of the supplier, shipment shall be done at the lowest cost unless the customer has prescribed a certain way of transport. Additional costs accruing because a shipping procedure has not been followed shall be borne by the supplier. In case the price includes the transport costs, the customer can also define the way of transport. Additional costs accruing because accelerated transport may be necessary to keep a delivery date shall be borne by the supplier.

4.6 Each delivery shall be accompanied with a delivery note, which states the contents as well as the order number, order item, description and article number. Shipment shall immediately be communicated while stating the same data.

4.7 If are the use and servicing the delivery plans, drawings, operating instructions or manuals, storage regulations or similar explanations inevitably or commonly, thus form this one integrating component of the order and are in fourfold issue at the latest with delivery or completion in German, hand over if requested also into English language. Otherwise the contractor sticks for from unawareness of these regulations resulted damages.

4.8 With absence of the necessary dispatch documents the delivery is taken over not as an order fulfilment, but camps down on danger and costs of the contractor.

4.9 Before the delivery the contractor has to carry out all necessary check and tests on correspondence of the delivery with the contract contents. The goods takeover (decrease) as well as the check on completeness and, perhaps, visible defects occurs in adequate time and at adequate place after the receipt of goods.

5. Invoices

The order number, order item, description and article number shall be stated on invoices. If this information is missing, invoices shall not be payable. Copies of invoices shall be marked as duplicates.

6. Prices, payments

6.1 The prices refer to the agreed delivery items, including documentation, packaging and all the incidental expenses, but are exclusive of VAT and are regarded as being fixed prices.

6.2 Unless agreed differently, payments shall be payable net within 90 days.

6.3 The time for payment will start as soon as the delivery or service has been provided completely and perfectly and the invoice issued appropriately has been received.

If the customer is to provide material tests, inspection and test protocols, quality documents or other documents, completeness and integrity of the delivery and service also require the receipt of these documents.

6.4 Payments do not mean the deliveries or services are recognized as being in conformity with the contract.

6.5 If the supplier thinks to have a pecuniary claim going beyond the order value for whatever reason, this claim will have to be communicated to the customer in writing outlining the circumstances to substantiate the claim and stating the reason as well as the amount. Otherwise the claim will not be accepted.

7. Receiving inspections

7.1 Upon receipt of the deliveries, the customer will review whether they conform to the ordered quantity and the order type, whether there is obvious damage in transit that can be seen on the outside.

7.2 If the customer detects a defect during the inspections above, the customer will report this to the supplier. If the customer detects a defect later, e.g. when treating,

processing or using the product, the customer will also report this.
7.3 The customer has no further obligation to make any inspections and reports going beyond those mentioned above towards the supplier.

8. Liability for defects

8.1 If defects are identified before or at passing of the risk or if they occur during the period of limitation stated in 7.8 and 7.9, the supplier shall either eliminate the defects or provide a new delivery or service without defects at the supplier's cost and expense and as requested by the customer.

This shall also apply to deliveries at which the inspection has been limited to a sampling procedure. The sample selection is at the customer's full discretion.

8.2 If the supplier fails to conduct supplementary performance within a reasonable period to be set by the customer, the customer shall be entitled to fully or partially repudiate the contract or cancel the order, to demand the reduction of the price or to autonomously make corrections or re-deliveries at the supplier's cost and expense without compensation and to demand damages instead of the service.

8.3 Corrections can be made at the supplier's cost and expense without setting a deadline if delivery is made after delay has occurred.

8.4 The same shall apply if the customer has a special interest in immediate supplementary performance due to avoidance of the customer's own delay or a different urgency and if an invitation of the supplier to eliminate the failure within a reasonable period is not acceptable for the customer.

8.5 Claims going beyond this or other legal claims shall remain unaffected.

8.6 If the supplier makes a new delivery or correction due to their duty to eliminate the defect, the periods mentioned in Articles 7.8 and 7.9 will start from the date of the new delivery.

8.7 The supplier shall bear the risk, cost and expense for the re-delivery of defective items.

8.8 Claims relating to material defects will become statute-barred in three years unless the law specifies longer periods.

8.9 Claims relating to legal defects will become statute-barred in five years unless the law specifies longer periods.

8.10 The period of limitation will start upon the passing of risk.

9. Product liability

9.1 The supplier shall be liable according to the legal provisions.

9.2 The supplier shall be obliged to retain all the required documentation and exactly observe the product requirements of the customer. If necessary, the supplier shall also be obliged to immediately recall faulty goods at the supplier's cost and expense, to hand over manufacturing documentation and give any possible support for averting claims of any kind and to name the manufacturer or importer within 10 days.

10. Subcontracting to third parties

10.1 Subcontracting to third parties is inadmissible without the written consent of the customer and will entitle the customer to fully or partially repudiate the contract or demand damages. If the customer intends subcontracting to third parties, this must be communicated to the customer in writing.

10.2 The supplier shall be liable for third parties as if the supplier had autonomously acted or fully produced the delivery item.

11. Materials supplied by the customer

11.1 Materials supplied by the customer shall remain the customer's property and shall be stored, marked and administered separately free of charge. Using these materials shall only be admissible for the customer's orders. If the supplier is responsible for impairment in value or loss, the supplier shall compensate this, the supplier also having to answer for simple negligence. This shall also apply to recompense for the full cost of order specific material.

11.2 The material will be treated or transformed for the customer. The customer will immediately become the owner of the new or transformed object. If this is not possible for legal reasons, the customer and supplier agree that the customer will become the owner of the new object at any moment of treatment or transformation. The supplier shall retain the new object free of charge for the customer and prevent any deterioration of the object.

11.3 Materials supplied by the customer shall immediately be returned at any time upon request and, in any case, upon delivery/service provision or upon repudiation of contract.

12. Tools, moulds, patterns, public relations, secrecy

12.1 Tools, moulds, patterns, models, profiles, drawings, sheets relating to standards, templates and gauges as well as objects produced according to

these must neither be passed on to third parties nor used for purposes other than the contractual purposes without the customer's written consent. They shall be protected from being viewed or used in an unauthorized manner. Reserving additional rights the customer can demand their handing over if the supplier violates these obligations.

12.2 The supplier will not use information given by the customer unless they are generally known or lawfully known to the supplier in any other way. If the customer has agreed to sub-contracting to third parties, the third parties will have to be obliged in writing to comply also with this requirement.

12.3 If the supplier intends to use the customer's names or products for promotional purposes, the customer's written approval will have to be obtained in advance.

13. Training, documentation

At the delivery of technical facilities and devices, training of the customer's or customer's/final customer's operating and maintenance personnel shall be provided free of charge. Upon request, the supplier will also conduct later additional training against remuneration common on the market for up to 10 years after fulfilment of the contract. At the delivery of facilities and devices to be mounted by a third party or the customer, the required assembly plans (including all connections, any constructional necessities and the like), data sheets, installation instructions, processing hints, storage, operating and maintenance procedures, lists of spare and wearing parts, CE Declarations or hints at special features of the order item shall also be provided. Labelling shall be placed in German (even for deliveries from abroad). The operating procedures and instructions shall be made in two copies in German and, upon the customer's request, also in other languages.

14. Proprietary rights

The purchase price includes for the purchasing of patent claims, utility model claims, trade mark claims, model protection claims or copyright claims for free use and (repeated) re-sale of the order item by the customer. If third-party proprietary rights in connection with the ordered delivery/service are violated, the supplier shall hold the customer harmless.

15. The supplier's inability to pay/insolvency

If the supplier discontinues the payments, a provisional insolvency administrator is nominated or insolvency proceedings are instigated against the supplier's assets, the customer shall be entitled to fully or partly repudiate the contract or cancel the contract. In this case, the customer can claim the equipment necessary for continuing work or deliveries and services provided by the supplier against reasonable remuneration.

16. Severability clause/supplementary clauses

If one clause of these Conditions of Purchase is or becomes ineffective or if the contract is incomplete, the remaining contents will not be affected by this. The ineffective clause will have to be replaced by a clause that economically comes next to the ineffective one in a legally effective manner.

If these Conditions of Purchase do not include any relevant rule, the legal provisions shall be applicable.

17. Place of jurisdiction, applicable law

17.1 The place of jurisdiction for suppliers with registered offices within the EU is the technically and locally competent court of the customer (BG Feldkirch – District Court) or LG Feldkirch (Provincial Court for Civil Affairs)).

17.2 The place of jurisdiction for suppliers with registered offices outside the EU is the Arbitration Court of the International Chamber of Commerce in Paris.

17.3 These Conditions of Purchase are subject to Austrian law, the UN Purchase Law dated April 11, 1980, being excluded.