



Purchasing Terms and Conditions of W. Hamburger GmbH

1 . Scope of validity

- 1.1 These Purchasing Terms and Conditions (“PTC”) apply to all purchasing, work, and services contracts concluded with W. Hamburger GmbH (the “Purchaser”), regardless of what these may be called in a given case. The party contracting with the Purchaser is hereinafter called the “Supplier”.
- 1.2 Arrangements deviating from the Purchaser’s purchasing terms and conditions are applicable only insofar as the Purchaser has expressly stated so in writing. Deviating terms and conditions of the Supplier are not accepted, even without their being expressly rejected.
- 1.3 The PTC are also applicable if the Purchaser accepts the Supplier’s delivery without reservation and/or makes payment without objection despite being aware of terms or conditions of the Supplier that are in conflict herewith.
- 1.4 The Purchasing Terms and Conditions are applicable in their current version to future transactions with the Supplier.

2 . Offer

- 2.1 Offers are made by the Supplier at no charge. This also applies when they are prepared at the Purchaser’s request and/or no assignment is given or no order is placed thereafter.

3 . Order/Assignment

- 3.1 The Purchaser’s orders are binding only if placed in writing. Every order must be confirmed by the Supplier in writing. If the Purchaser does not receive such confirmation within 10 days of the order date, the Purchaser is no longer bound by the order.
- 3.2 Orders placed with Suppliers with which the Purchaser has an on-going business relationship are considered accepted unless a written rejection is received by the Purchaser within eight days.

4 . Delivery time

- 4.1 The delivery time stipulated in the order is binding, and the time period begins to run on the order date.
- 4.2 The supplier is obligated to give the Purchaser prompt written notice if circumstances arise, or become evident to it, that prevent the stipulated delivery time from being able to be complied with. Such notice must be given promptly and set forth the reasons for and expected duration of the delay. The Supplier is liable for the delay in accordance with statutory provisions.
- 4.3 In addition to liability in accordance with statutory provisions, the Purchaser is entitled in the event of default in delivery to invoice the following contractual penalty:

Unless agreed otherwise, for each full business day of the default in delivery, 0.5% of the gross total order value, however not to exceed 5% of the total gross order value. The assertion of greater damages remains expressly reserved.

- 4.4 The Supplier guarantees without limitation, including where it is not at fault, the procurement of the parts and services necessary for each delivery (full assumption of procurement risk). In any case, including where it is not at fault, the supplier must guarantee the parts and services procured by it in the same manner as for its own services. This applies in particular with respect to defects.
- 4.5 The Purchaser is entitled to change the delivery date eight days prior thereto, without it incurring any additional costs thereby.

5. Prices / Payment terms

- 5.1 Agreed prices are fixed prices. The goods are to be delivered DDP, pursuant to Incoterms 2010. Unless agreed otherwise in a given instance, packaging is returned at the Supplier's expense.
- 5.2 Invoices are to be sent in duplicate to the stipulated invoice address, with the copy to be designated as such. Invoices must contain the entire order number and all information required by statute, in particular the information needed to ensure a deduction for input tax and to satisfy customs provisions.
- 5.3 Unless agreed otherwise, payment for received goods is made within 14 days, provided a 3% discount for prompt payment is granted or otherwise within 60 days, net
- 5.4 Payment deadlines begin to run upon delivery of the goods or receipt of an original invoice. Deviations from the foregoing require special written agreement.
- 5.5 Rights of set-off and retention are exercisable to the extent permitted by statute.
- 5.6 The Supplier is entitled to reserve the right to increase its prices due to material, wage, or exchange-rate increases only if the Purchaser has accepted such reservations in writing. If the Supplier reduces its prices in general, a corresponding reduction is likewise deemed agreed to for the Purchaser.
- 5.7 Claims under assignments/orders issued by the Purchaser may not be assigned to third parties.

6. Place of performance

- 6.1 Unless agreed otherwise, the place of performance for a delivery is the location where it is to be received, as stipulated in the order.

7. Warranty

- 7.1 In all cases, including where title to the goods has vested earlier in the Purchaser or where the goods have been consigned to its shipping company, freight forwarder, or other agent, the obligation to investigate and to give notice of defects does not commence until the goods have arrived at the Purchaser's plant and the required shipping documents have been provided.
- 7.2 The statutory deadline for giving notice of defects is extended by one month, beginning on such aforementioned date.
- 7.3 In addition, the Supplier provides a full warranty that for the period of one year following initial use or operation, even without timely notice of defects, the delivered goods will be free of defects that interfere with use or operation and that they will have the characteristics indicated by the Supplier and conform with all relevant standards and statutory requirements.
- 7.4 In the event of liability, the Purchaser has the right, irrespective of its other statutory options and even if the defects are minor or can be eliminated, to demand, at its choice, free replacement delivery, rescission, free elimination of defects, or a reasonable price reduction or to have the ascertained defects eliminated at the Supplier's expense.
- 7.5 Same also applies for merely minor deviations from the agreed characteristics or for minor interference with fitness for use.
- 7.6 Where the Supplier eliminates the defects, the warranty period begins to run anew for the entire delivery/service affected by the defectiveness following inspection and acceptance of the repair by the Purchaser.
- 7.7 Longer statutory warranties obligations as well as obligations for damages remain unaffected.
- 7.8 Notice of defects can be made either in writing or verbally.

- 7.9 The delivered goods must conform with all safety provisions applicable to them. The Supplier must at its own initiative notify the Purchaser of any storage or operation provisions when making the delivery; otherwise, it is liable for the damages resulting from the lack of knowledge of such provisions.

8. Patents

- 8.1 The Supplier must indemnify the Purchaser and hold it harmless in the event patent disputes arise in relation to the delivery, and it must ensure that the Purchaser has unrestricted use of the delivered items.

9. Production documents / Proprietary rights / Confidentiality

- 9.1 Patterns, models, drawings, and other aids provided to the Supplier remain the substantive and intellectual property of the Purchaser, which may freely dispose of same. The aids made available may be used solely for carrying out assignments and may not be made accessible to or disclosed to non-company third parties. After the assignment has been carried out, such aids are to be returned at no charge.
- 9.2 The Supplier undertakes to keep confidential all operational and business secrets of which it becomes aware in the course of carrying out the assignment.

10. Product liability

- 10.1 If a claim is made against the Purchaser based on the provisions of product-liability law, the Supplier must indemnify the Purchaser and hold it harmless, regardless of whether the Supplier is at fault. In such case, the Supplier must bear all incurred costs, in particular, the costs involved with having to prosecute the matter or undertake a recall, as well as provide all relevant documents necessary for mitigating damages.
- 10.2 The Supplier must give prompt notice to manufacturers or importers in the event of product liability disputes.

11. Shipping / Acceptance of goods / Way bills

- 11.1 If the corresponding shipping documents are missing, the delivery is not accepted or processed in fulfilment of the order. Instead, it will be stored at the Supplier's expense and risk.
- 11.2 The delivery must be properly packaged and dispatched, in particular, in accordance with the Purchaser's shipping provisions. The Supplier is responsible for all damages resulting from failure to observe such instructions.
- 11.3 The times for acceptance of goods at a given location are printed on the orders and must be complied with; deliveries outside of these acceptance times will not be accepted and do not establish any default in acceptance on the part of the Purchaser. In addition, the Purchaser is entitled to stipulate specific delivery times and the use of specific routes in the communities of Pitten and Seebenstein, and the Supplier must comply with these.
- 11.4 The entire order number must be listed in the column of the way bill designated for remarks for the recipient.
- 11.5 Shipping notices or delivery certificates must be sent in such a way that the Purchaser has possession of them preferably prior to but in any case concurrent with delivery of the goods. The entire order number must be listed on the shipping notices and delivery certificates.
- 11.6 The Supplier is liable for damages and expenses incurred by the Purchaser due to improper delivery by the Supplier, in particular, demurrage and shunting charges and handling fees for improper addressing.
- 11.7 For payment by unit price, the weight or piece number determined by the Purchase is controlling.

12. Place of jurisdiction / Applicable law

- 12.1 Any legal disputes are to be settled equitably where possible. If an equitable settlement is unable to be reached, such disputes are to be litigated before the competent court in Wiener Neustadt.
- 12.2 Austrian law is applicable to this contract. The applicability of the United Nations Convention on Contracts for the International Sale of Goods is precluded.

13. Severability clause

- 13.1 If any one or more provisions of this contract should be ineffective, all other provisions remain in full force and effect. The ineffective provision is deemed replaced by one the most closely approximates the legal and economic purpose intended by the ineffective provision.

Pitten, 1 November 2011