

General Terms and Conditions of Purchase - AriensCo GmbH

Version: May 2023

Applicable in business transactions with companies, legal entities under public law and special funds under public law

Article 1 Relevant Terms:

The legal relationships between Supplier and Purchaser shall depend on these Terms and any other agreements. Amendments or supplements shall be made in writing. Other general terms and conditions shall not apply, even if they have not been explicitly objected to on a case-by-case basis. The unconditional acceptance of goods or services (hereinafter referred to as „Goods“ or „Delivery Object“) by the Purchaser or the uncontradicted payment by the Purchaser shall under no circumstances constitute acknowledgement of the Supplier's general terms and conditions.

Article 2 Order:

1. Supply agreements (order and acceptance) and call-offs as well as any amendments or supplements shall be made in writing. Call-offs may also be effected by remote data transmission.
2. If the Supplier fails to accept the order within two weeks from receipt, the Purchaser shall be entitled to revoke. Call-offs shall become binding at the latest if the Supplier fails to object in writing within two weeks from receipt.
3. Within the scope of what is reasonable for the Supplier, the Purchaser may request amendments to construction and design of the Delivery Object. Any effects of such amendments, in particular, in respect of increased or reduced costs and changes to delivery deadlines, shall be regulated appropriately and by mutual agreement.

Article 3 Payment:

1. Unless stipulated otherwise, payment shall be made within 14 days with a 2% cash discount or 30 days net from the payment due date and receipt of the invoice and goods or provision of the services. In case of early deliveries, the due date shall be based on the stipulated delivery date.
2. Payment shall be made by way of bank transfer.
3. In case of faulty delivery, the Purchaser shall be entitled to withhold payment in proportion to the value until due performance.
4. Without the Purchaser's prior written consent, which may not be unreasonably refused, the Supplier shall not be entitled to assign its claims against the latter or to have them collected by third parties. In case of extended retention of title, such consent shall be deemed given.

If the Supplier assigns its claims against the Purchaser without its consent to a third party contrary to sentence 1, the assignment shall be effective nonetheless. However, the Purchaser may at its own option make performance to the Supplier or to the third party with discharging effect.

Article 4 Defect notification:

The Purchaser shall notify the Supplier without delay in writing about any defects in the delivery once they have been detected in the normal course of business. To this extent, the Supplier shall waive any plea for late notification of defects. The obligation to examine for defects and to notify defects shall be limited to examination of quantitative details on the relevant delivery note and to visually discernable shipping damage upon delivery (visual defects). Any further obligation to examine for defects and to notify defects shall not constitute part of these Conditions and the Supplier expressly waives its right to object to notification of defects carried out improperly according to Sec. 377 German Commercial Code (HGB). Payment by the Purchaser shall not represent recognition that the delivery is free from defects.

Article 5 Non-disclosure:

1. The Contracting Parties undertake to treat as trade secrets all business and technical details not in the public domain, which they become aware of in the course of their commercial relationship.
2. Drawings, models, templates, samples and other objects may not be provided nor otherwise made accessible to unauthorized third parties. Reproduction of such items shall be permissible only within the scope of operational requirements and copyright provisions.
3. Sub-suppliers shall be obligated accordingly.
4. The Contracting Partners may advertise their business ties only with prior, written permission.

Article 6 Delivery dates and deadlines:

1. Stipulated dates and deadlines shall be binding. Receipt of the Goods by the Purchaser shall be critical for compliance with the delivery date or deadline. Unless delivery „ex works“ has been agreed, the Supplier shall provide the Goods in due time, taking into account the time normally required for loading and shipment.
2. The unconditional acceptance of a late delivery shall not constitute a waiver of claims for damages or contractual penalties.
3. In case of delivery prior to the stipulated date, the Purchaser shall retain the right to return the Goods at the Supplier's expense and risk. If the Purchaser does not exercise its right to return in case of early delivery, the Goods shall be stored by the Purchaser until the stipulated delivery date, at the Supplier's expense and risk. The same shall also apply to any excess Goods in case of excess deliveries. The Supplier shall not be required to accept the excess Goods in case of excess delivery.

Article 7 Default in delivery:

Where agreed deadlines are not upheld, statutory provisions shall apply. Insofar as the Supplier experiences difficulties with respect to manufacturing, obtaining the primary materials, compliance with delivery deadlines or there are similar circumstances, which prevent the Supplier from delivering on time or with the level of quality agreed, the Supplier shall inform the Purchaser immediately.

Article 8 Force majeure:

Force majeure, industrial disputes, riots, official interventions and other unforeseeable, unavoidable and serious events shall release the Contracting Parties, for the duration of the disruption and in the scope of its effects, from their performance obligations. The same shall apply if such events occur at a point in time when the affected Contracting Party is in default. The Contracting Parties shall be obliged, as far as is reasonable, to provide the requisite information without delay and to adapt their obligations to the changed circumstances in good faith.

Article 9 Quality and documentation:

1. The Supplier shall ensure that its deliveries comply with the generally recognized rules of engineering, safety requirements, and the agreed technical data. Changes in the Delivery Object shall require the Purchaser's prior written consent. With regard to the first-sample test, reference is made to VDA publication „Sicherung der Qualität von Lieferungen –Lieferantenauswahl/Produktionsprozess– und Produktfreigabe/Qualitätsleistung in der Serie“ (Securing delivery quality - supplier selection/production process - and product approval/quality performance in series), Frankfurt am Main 1998. Notwithstanding the above, the Supplier shall continually inspect the quality of the Delivery Objects. The Contracting Parties shall mutually notify each other about quality improvement opportunities.
2. Unless type and scope of the inspections as well as means and methods of inspection have been firmly stipulated by Supplier and Purchaser, upon the Supplier's request, the Purchaser shall be ready within the scope of its knowledge, experience, and possibilities to discuss the inspections with it in order to determine the respective required state of inspection technology. Moreover, upon request, the Purchaser shall notify the Supplier about the relevant safety requirements.
3. In addition, in the technical documents or in parts which based on separate agreement are specially marked, e.g. „D“, the Supplier shall also note in special records when, how, and by whom the Delivery Objects have been inspected with regard to the features requiring documentation and the results of the required quality tests. The inspection records shall be retained for fifteen years and presented to the Purchaser as necessary. To the extent permitted by law, upstream suppliers shall be obligated by the Supplier to the same extent. Reference is made to VDA publication „Nachweisführung – Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen“ (Verification management - guideline for documentation and archiving of quality requirements), Frankfurt am Main 1998.

Article 10 Liability for defects:

1. Unless stipulated otherwise, if defective Goods are delivered, the Purchaser may request as follows if the respective statutory and following requirements are met:
 - a) Prior to the start of production (processing or installation), the Purchaser shall first of all give the Supplier an opportunity to sort out and to remove the defect or to make a subsequent (replacement) delivery, unless this would be unreasonable for the Purchaser. If the Supplier is unable to do so or if it fails to do so without delay, the Purchaser may to such extent rescind the Agreement without notice and return the Goods at the Supplier's risk. In urgent cases, upon consultation with the Supplier, the Purchaser may remove the defects itself or have them removed by a third party. Any incurred costs shall be borne by the Supplier. If the same defective Goods are delivered repeatedly, upon written warning notice, the Purchaser shall in case of another defective delivery be entitled to also rescind with regard to the remaining scope of delivery.

- b) If in spite of compliance with the obligation pursuant to section IV (defect notification), the defect is detected only after production has commenced, the Purchaser may - demand, according to Sec. 439 para. 1, 3 and 4 BGB, subsequent performance and reimbursement of the transport costs required for the purpose of subsequent performance (excluding towing costs) as well as dismantling and installation costs (costs of labour, material costs, if stipulated), or - reduce the purchase price.
 - c) In case of a culpably breach of duty beyond the delivery of defective Goods (e.g. regarding a duty to furnish information, give advice, or examine), the Purchaser may demand compensation of the resulting consequential damage as well as for the consequential damage, for which the Purchaser has compensated its customer, according to section XI. Consequential damage shall mean the damage which the Purchaser has sustained on protected interests other than the Goods as such because of the delivery of defective Goods. The Purchaser shall have any additional claims to expenses and damages because of the delivery of defective Goods under Sec. 437 BGB or directly under the provisions specified therein only if this has been contractually stipulated. In case of conclusion of new agreements, section XV no. 1 shall be observed.
2. Upon request, the parts requiring replacement shall be provided by the Purchaser to the Supplier without delay at the latter's expense.
 3. Warranty liability claims shall lapse upon expiry of 24 months from handing over the Goods to the final consumer (warranty care with date of sale for each device) or installation of the replacement part, but in any event upon expiry of 36 months from delivery to the Purchaser. Unless stipulated otherwise, the statutory limitation rules shall apply.
 4. Defect claims shall not arise if the defect is due to a violation of operating, maintenance, or installation requirements, unsuitable or improper user, faulty or negligent handling or normal wear and tear or interference with the Delivery Object by the Purchaser or third parties.
 5. Other claims on the part of the Purchaser as a result of breach of contract or violation of other obligations shall remain unaffected.

Article 11 Product liability:

1. In the event that the Purchaser is held liable on the basis of product liability, the Supplier shall be required to indemnify the Purchaser against such claims by third parties, if and to the extent that a fault is caused by the Delivery Object delivered by the Supplier. This shall apply only in cases of fault-based liability where the Supplier is at fault.
2. In the instances at no. 1, the Supplier shall cover all costs and expenses, including any costs of taking legal action.
3. Otherwise, the statutory provisions shall apply.
4. Prior to a recall campaign, which results, in whole or in part, from a defect in the Delivery Object delivered by the Supplier, the Purchaser shall notify the Supplier, providing it with the opportunity to collaborate and discuss how to effectively implement the campaign, unless notification of, or collaboration by, the Supplier is impossible on account of particular urgency. Insofar as a recall campaign results from a defect of the contractual object delivered by the Supplier, the Supplier shall bear the costs of the recall campaign.
5. The Supplier undertakes to take out business and product liability insurance to cover all risks arising in connection with the supply of the Delivery Objects, which shall also include recall measures with global coverage and a coverage amount of at least EUR 5 million per event of damage and shall maintain this insurance cover for the duration of the supply relationship and for five years following its expiry. Upon request, the Supplier shall issue the Purchaser with a corresponding certificate of insurance.

Article 12 Intellectual property rights:

1. The Supplier shall be liable for claims resulting from the infringement of intellectual property rights and applications for intellectual property rights (IPR) in case of contractual use of the Delivery Objects, where at least one of the IPR of an IPR family has been published either in the Supplier's home country, by the European Patent Office, or by either of the Federal Republic of Germany, France, Great Britain, Austria, or the USA.
2. It shall indemnify the Purchaser and its buyers for any claims due to the use of such IPR.
3. The above shall not apply if the Supplier has produced the Delivery Objects based on drawings, models, or other equivalent descriptions or indications provided by the Purchaser and does not know or is not required to know, in relation to the goods developed by the Supplier itself, that IPR are being thereby infringed.
4. To the extent that the Supplier is not liable according to no. 3, the Purchaser shall indemnify it for all third-party claims.
5. The Contracting Parties undertake to notify each other without delay about any infringement risks or alleged infringements they have become aware of and to provide each other with the opportunity to mutually counteract any such claims.
6. Upon the Purchaser's request, the Supplier shall report the use of published and unpublished own and licenses IPRs and IPR applications for the Delivery Object.
7. The principles contained in section VII no. 1 regarding the limitation of liability shall be applied accordingly.

Article 13 Use of the Purchaser's means of production and confidential information:

Models, templates, patterns, samples, tools, and other means of production, as well as confidential information provided to the Supplier by the Purchaser or fully paid by it may be used for delivery to third party only with the Purchaser's prior written approval.

Article 14 Retention of title:

The Supplier shall retain title to any and all Goods delivered by it until they have been paid in full; in this regard, all deliveries shall be deemed one connected supply transaction. In case of current accounts, the retained title shall be used as security for its balance claim. If the Purchaser combines the Goods with other objects into one unit, and if the other object is considered the main object, the Purchaser shall be required to transfer prorated co-ownership to the Supplier to the extent that the main object is its property. If the Purchaser resells the delivered Goods as intended, it herewith shall assign any resulting claims against its buyers under such disposal, including all ancillary rights, to the Supplier, until all of the latter's claims have been satisfied. For justified reasons, the Purchaser shall be required upon the Supplier's request to notify the third-party buyers about the assignment and to provide the Supplier with the information and documents required for asserting its rights. The Supplier shall release the securities held by it to the extent that their value exceeds the claims to be secured by more than 20% in total. If the Purchaser provides the Supplier with parts, the Purchaser shall retain title. Processing or remodelling by the Supplier shall always be effected on the Purchaser's behalf. In the event of processing or combination, the Purchaser shall acquire co-ownership of the new object in proportion to the value of the other processed objects provided by the Purchaser at the time of processing.

Article 15 Compliance:

1. The Supplier undertakes to comply with statutory regulations covering employment rights, environmental protection and health and safety and to strive to reduce the adverse effects of its activities on people and the environment. In this respect the Supplier shall make every feasible effort to establish and develop a management system in accordance with ISO 9001 and a management system in accordance with ISO 14001. Further, the Supplier shall observe the basic principles of the UN Global Compact Initiative. These relate primarily to the protection of international human rights, collective bargaining rights, the elimination of forced labour and child labour, the elimination of discrimination in employment and occupation, responsibility for the environment and anti-corruption.
2. In the event that the Supplier acts unlawfully on repeated occasions and/or in spite of a corresponding warning, and fails to provide evidence that the infringement of the law was remedied as quickly as possible and appropriate measures were taken to avoid future infringements of the law, the Purchaser reserves the right to withdraw from existing Contracts or to terminate these without notice.

Article 16 Other provisions:

1. The place of performance for payments shall be the Purchaser's business headquarters as recorded in the Commercial Register.
2. The laws of the Federal Republic of Germany shall apply to the exclusion of conflict-of-law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
3. Insofar as the Supplier is a merchant, a legal entity under public law or special fund under public law, the place of jurisdiction for all disputes arising from the contractual relationship shall be the Purchaser's business headquarters. The Purchaser shall also be entitled to take legal action at the Supplier's seat.