

General Conditions of Purchase

Cotarko GmbH, valid as of 01/03/2012

§ 1 Applicable Conditions

- (1) Our General Conditions of Purchase apply exclusively. We do not recognise General Terms and Conditions of the Supplier that conflict or deviate from ours, unless we have expressly consented to their validity in writing. Our General Conditions of Purchase shall also apply if we unconditionally accept and/or pay for delivery and service knowing that the Supplier's terms and conditions conflict with or deviate from our General Conditions of Purchase.
- (2) Our General Conditions of Purchase also apply to all future transactions with the Supplier until our new General Conditions of Purchase take effect.
- (3) Our General Conditions of Purchase apply only to contractors. Contractors within the meaning of these General Conditions of Purchase are natural persons or legal entities or partnerships with whom we enter into business relations and who exercise a commercial or independent professional occupation.

§ 2 Offers / Orders / Documents

- (1) The preparation of offers, technical projects, preliminary studies, etc. by the Supplier is free of charge to us and, above all, does not obligate us to place an order.
- (2) The components of the delivery based on our order include the associated drawings, system and functional descriptions, operating instructions, circuit diagrams, general operating authorisations, test reports, test and acceptance certificates, spare parts lists and warranty conditions.
- (3) Our written contract is decisive for our order. Telephonic or verbal agreements require written confirmation. Correspondingly, to be effective, verbal agreements after conclusion of the contract in particular require written subsequent amendments and additions to the provisions of our General Conditions of Purchase as well as ancillary agreements of any kind. Verbal agreements are only legally effective for us if a legal representative acts on our behalf.
- (4) The Supplier must issue an order confirmation for each order and provide each delivery with a delivery note stating our order number.
- (5) The order is placed - also in terms of contents - with our order confirmation, insofar as this does not deviate from our order. The Supplier must expressly inform us of any deviations. Deviations from our orders are only permitted with prior approval.
- (6) We may cancel the order if it has not been confirmed in writing within two weeks of sending our order.

§ 3 Prices / Terms of payment

- (1) In principle, the prices underlying our order apply. If it is necessary to specify a price to the Supplier in the order confirmation in a certain case, this price shall require our explicit approval. All agreed prices are fixed prices and shall apply unless otherwise agreed, to the delivery location, free place of delivery, which is the place of receipt specified by us. The prices include packaging, unloading and other ancillary costs (insurance).
- (2) If it is agreed that we must bear the shipping costs, then the goods are to be transported in the most cost-effective manner, unless we stipulate a specific type of handling.
- (3) The Supplier shall bear any additional costs, which arise from an accelerated transport necessary to meet the delivery deadline.
- (4) If a delivery price (including packaging) has not been agreed, the Supplier may calculate the packaging among its own costs. If the return of the packaging is agreed, at least 3/5 of the calculated costs will be credited to us.
- (5) All damage caused by improper packaging must be borne by the Supplier, unless the packaging was specified by us.
- (6) We reserve the right to determine the shipping route and the shipping method as well as the means of transport and the type of packaging. Additional costs that result from non-observance of our shipping instructions will not be covered by us.
- (7) Unless otherwise agreed, we will either pay within 14 days with 3% discount or 30 days net after full delivery, acceptance and receipt of invoice.

§ 4 Delivery

- (1) The delivery must comply in design, type and scope with our order and be executed on time. The delivery time stated in our order is binding for the Supplier; if this information is missing, the delivery time begins with the date of the order confirmation.
- (2) The delivery period shall be extended appropriately in case of unforeseen obstacles, if these are beyond the control of the Supplier. The Supplier must communicate to us without delay the beginning and end of such obstacles pursuant to Clause 1. If this reporting obligation is breached, the damage we have to face as a result of it must be compensated.
- (3) After the expiration of the delivery period, regardless of whether this is due to the fault of or not attributable to the Supplier, we may determine a reasonable grace period as circumstances dictate, withdraw from the contract if the deadline has expired without results, and demand damages, or insist on fulfilment of the contract and demand reimbursement of any damages caused by exceeding the delivery deadline.
- (4) Decisive for the timeliness of the observance of a delivery date or the delivery period is our receipt of the goods. If, in individual cases, an on-work delivery has not been agreed, the Supplier must make the goods available in good time, allowing for time to be agreed with the carrier for loading and shipping.
- (5) The unconditional acceptance of a delayed delivery or service does not constitute a waiver of the claims for compensation due to us for the delayed delivery or service.
- (6) Partial deliveries are in principle inadmissible, unless we have expressly agreed to them or they are reasonable for us.
- (7) We are entitled to demand for each week of delivery delay a lump-sum damage caused by delay in the amount of 1% of the value of the goods (final invoice amount excluding VAT, packaging, insurance, etc.) per completed week, but not more than 10%. Further legal claims (rescission and damages due to non-performance) are reserved. If further claims for damages are asserted, the lump-sum damages caused by delay will not be deducted from this. The Supplier has the right to prove to us that no or less damage has occurred as a result of the delay.
- (8) The values for quantities, dimensions and weights determined by us at the receiving inspection are decisive. We are not obligated to accept partial or additional deliveries that have not been agreed.
- (9) When referring to standards, the Supplier shall ensure that the standard is delivered according to the latest revision status.
(10) If software is part of the delivery, including its documentation, we are entitled to the unlimited right to use to the extent permitted by law (§§69 a ff of the German Copyright Act (UrhG)), as well as the unlimited right to use with the agreed performance features and in the scope necessary for a contractual use of the goods. We may revise, reproduce, translate the software or convert it from the object code to the source code and make backup copies. We are also entitled to grant our own customers rights of use accordingly, insofar as this is necessary, so that the customer can use and handle the delivery item delivered by us.

§ 5 Set-off / Retention / Prohibition of assignment

- (1) The right of setting off and retention are available to us to the extent allowed under the law. The Supplier is not entitled to assign claims against us to third parties, unless there is a case of §354 a of the German Commercial Code (HGB).

§ 6 Passage of risk / Acceptance

- (1) The risk of accidental loss and accidental deterioration of the goods is only transferred to us for each type of shipment after it has been unloaded at our factory.
- (2) In the case of work performed by the Supplier, including installation services, etc., transfer of risk occurs only after formal acceptance by us by means of a protocol or other written declaration. The final acceptance takes place after complete and proper fulfillment of all contractual services, during construction of a facility with its retraction. The final acceptance must be requested in writing from the Supplier. In addition, the Supplier must send an authorised representative for the acceptance. A record of the final acceptance will be made or a certificate of acceptance will be issued. The final acceptance may be denied by us if substantial deficiencies affecting the function of the delivery object are proven. If such material defects exist, a final acceptance shall be made following the elimination of these defects.
- (3) If deficiencies in the delivered goods result during the official acceptance or inspection, the absence of which the Supplier has guaranteed, the Supplier shall undertake to remedy these defects within the period set by the authority.
- (4) Acceptance is subject to the examination based on the absence of defects and in particular the accuracy, completeness and suitability. We are entitled to inspect the goods insofar as and as soon as this is possible in the ordinary course of business. The Supplier waives the objection of the delayed notice of defects.
- (5) Insofar as the incoming goods inspection is carried out as agreed in the sampling procedure, we are entitled to reject the delivery outright if the agreed marginal quality value is exceeded or to review it thoroughly at the Supplier's expense.

§ 7 Warranty

- (1) The Supplier warrants that the goods are manufactured from a suitable and faultless material, that the processing is carried out carefully and properly in accordance with the recognised rules of technology, in particular according to the DIN and VDE regulations and other standard regulations applicable at the time of acceptance, and that goods are fully suitable for the contractually assumed use, possess the warranted properties and have reached the agreed performance levels. The Supplier further warrants that its scope of delivery, including the transport to us, complies with the requirements of the law on technical equipment (Equipment Safety Act), the test principles for occupational safety of the Federation of Professional Associations valid at the point of ordering, the requirements of applicable environmental regulations, in particular the relevant requirements of the Federal Emissions Act and the pertinent regulations and guidelines of authorities, trade associations and professional associations.
- (2) The warranty also applies to services for subcontractors and vicarious agents of the Supplier. It also applies to replacement, repair and removal of defects.
- (3) The Supplier's warranty is not limited or excluded by the fact that the scope of supply includes parts, systems, constructive solutions or procedures that have been proposed by us as the client. If the Supplier does not consider such recommendations suitable, it must inform us in good time.
- (4) The statutory provisions on defects of quality and title shall apply unless otherwise regulated below.
- (5) In principle, we have the right to choose the type of supplementary performance / rectification. The Supplier has the right to refuse the type of supplementary performance / repair we have chosen under the conditions of § 439 para. 3 of the German Civil Code (BGB).
- (6) If the Supplier does not immediately begin remedying the defect after our request for remediation, we are entitled, in urgent cases and/or to avert acute dangers or avoid major damage, to remedy the defect ourselves at the Supplier's expense or to have it done by a third party.
- (7) Claims for material defects shall lapse two years after the passing of risk.
- (8) The Supplier must release us from any legal claims of third parties. With regard to such legal defects, a limitation period of ten years from the passing of risk shall apply.
- (9) If parts of the delivery are refurbished, replaced or repaired during the limitation period of our warranty claims, the limitation period begins anew from the time at which the Supplier has completely fulfilled our claims for subsequent fulfilment/rectification and we have inspected and approved this subsequent fulfilment/rectification.
- (10) Insofar as we incur costs as a result of the defective goods, in particular transport, travel, labour, material or inspection costs, the Supplier must reimburse us for these costs.

- (11) If a product delivered by the Supplier is defective and we are therefore obligated to recall from our customers' products manufactured or sold by us or if the purchase price is reduced by our customers or if we are otherwise held liable because of the defectiveness, we reserve the recourse against the Supplier, whereby our claims do not require setting a deadline otherwise deemed necessary. In addition, we are entitled to demand compensation from the Supplier for any expenses we bear in relation to our customers, since we are then liable toward our customers for reimbursement of expenses, particularly transport, travel, labour, and material costs.
- (12) If a defect occurs within six months after the transfer of risk, it is assumed that the defect already existed at the time of the transfer of risk, unless this assumption is incompatible with the nature of the item or the defect.
- (13) The Supplier is obligated to notify us of any change in its manufacturing and testing conditions without being requested to do so and to deliver the production parts produced after the process change only as a series production part with our approval.

§ 8 Product liability / Indemnity / Liability insurance

- (1) If we are held liable on the basis of product liability, the Supplier is obligated to release us from such claims of third parties on first request, when the cause is set in its domain, organisation, and particularly if damage was caused by a defect of the goods delivered by the Supplier; however, in cases of liability based on fault, this only applies if the Supplier is at fault. If the cause of the damage is the responsibility of the Supplier, the burden of proof for the absence of fault in the occurrence of the defect is borne by the Supplier.
- (2) In this context, pursuant to §§683, 670 BGB as well as §§830, 840, 406 of the German Civil Code, the Supplier is also obligated to reimburse us for all costs and expenses arising out of or in connection with a recall campaign we have executed. We will inform the Supplier - if this is possible and reasonable - about the content and scope of a recall campaign and provide it with the opportunity for comment. The assertion of further legal claims remains unaffected.
- (3) The Supplier is obligated to conclude and maintain product liability insurance in a reasonable amount.

§ 9 Auditing rights

- (1) Documents and equipment of the Seller
If the Seller requests this, the Seller shall authorise the Buyer (and with respect to section 20 (1) and its authorised representatives) to the following:
(i) Review of all pertinent documentation, data and other information related to the supplies, tooling, the Seller's obligations in accordance with the contract, any payments to the Seller or any claims for damages asserted by the Seller.
(ii) Inspection of facilities or processes related to the deliveries or the contract, including those related to the quality of production; and
(iii) Auditing of facilities or processes to verify compliance with the requirements of the contract, including regulatory compliance requirements.
Audits according to this Section 9 (1) are performed during normal business hours and after prior written notification of the Seller.
- (2) Documents and facilities of subcontractors
If the Buyer requests these, the Seller will make all reasonable efforts to enable the Buyer to obtain the information and authorisations from its subcontractors and suppliers, which are needed to carry out the audits specified in Section 9 (1) independently of any other rights of the Buyer to this information or equipment.
- (3) Financial reports of the Seller
If the Buyer requests these, the Seller will provide the Buyer's Purchasing Controllers Office with the latest financial reports of the Seller, (i) for the Seller and (ii) for any affiliate of the Seller involved in the production, supply or financing of the supplies or component parts of the goods. Financial reports include profit and loss statements, financial statements, cash flow statements and substantiated data. The Buyer's Purchasing Controllers Office may only use the financial reports provided in accordance with Section 9 (3) to assess the Seller's continuing ability to fulfil its obligations under the contract, and for no other purpose, unless the Seller agrees in writing.
- (4) Disclosure period
If the Seller is a publicly traded company, the Seller will provide the Buyer with financial reports in accordance with section 20 (3) up to the time this is permitted under the applicable laws and regulations of the relevant stock exchanges.
- (5) Confidentiality
The Buyer is required to keep the information provided to its Purchasing Controllers Office confidential, pursuant to Section 20 (5).
- (6) Storage of documents
The Seller shall keep all relevant documents, data and other written information for at least two years after the last delivery of the supplies or the date of the last final payment to the Seller under the contract, whichever is later.

§ 10 Property rights

- (1) The Supplier guarantees that the delivery and use of the goods do not infringe the property rights of third parties.
- (2) If we are held liable by a third party in this respect, the Supplier is obligated to release us from these claims upon first written request. This indemnification obligation of the Supplier also applies to all expenses necessarily incurred by us in connection with a claim by a third party. Any legal disputes shall be concluded in accordance with our instructions, and agreements shall only be concluded with our approval.

§ 11 Retention of title

- (1) Retention of title of the Supplier is excluded, unless otherwise agreed.

§ 12 Non-Disclosure

- (1) We reserve all proprietary rights and copyrights over all materials provided to the Supplier: illustrations, drawings, documentation, samples, models, materials, parts, know-how, etc., hereinafter referred to by the generic term "information" (possibly also in the form of diskettes or CD-ROMs).
- (2) Pursuant to §11 Para. (1) the information disclosed by us to the Supplier must be kept confidential from third parties and may only be made available to such persons in the Supplier's own company, who must necessarily be consulted for the purpose of delivery to us and who are also obligated to maintain confidentiality. An obligation of confidentiality may be omitted insofar as the above-mentioned information is publicly known, for which the Supplier bears the burden of proof. All information provided must, upon our first request, be promptly and completely returned to us or destroyed at our request; this also applies to any copies or records made. The Supplier must return the provided information un solicited to us as soon as it is no longer needed to execute the order. For all information in this sense, we reserve all rights, including copyright and the right to apply for industrial property rights, such as patents, utility models, etc. Insofar as the relevant information, etc. has been made available to us by third parties, this reservation also applies in favour of these third parties.
- (3) Insofar as the Supplier produces goods according to the documents, drawings, models or the like designed by us or according to our confidential information or with our tools or copied tools or with information within the meaning of § 11 Para. (1), the supplier may neither use it itself nor offer or supply it to third parties.

§ 13 Place of fulfilment / Jurisdiction / Applicable law / Final provision

- (1) All legal relationships of the parties arising from or in this contractual relationship shall be governed exclusively by German substantive law to the exclusion of the IPR and the standard UN sales law.
- (2) The place of performance for the deliveries and services of the Supplier is Cologne.
- (3) If the Supplier is a merchant, the place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is Cologne. However, we are entitled to assert claims against the Supplier at any place of jurisdiction that is permissible under other statutory provisions.
- (4) Should individual provisions of these conditions and the other agreements be or become ineffective, this shall not affect the validity of the remaining conditions. The parties are obligated to replace the ineffective provision with a provision that comes as close as possible to the economic purpose desired by the parties. The same applies to contractual loopholes.

The German version of our Purchasing Terms and Conditions applies exclusively (Purchasing Terms and Conditions Cotarko GmbH, valid as of March 1, 2012) and is available for download on the Cotarko website. The English version of the Purchasing Terms and Conditions is for information purposes only.