

General Conditions of Purchasing – Miba Austria

1. General:

The client (purchaser) shall be Miba AG or an Austrian-registered company affiliated with Miba AG (irrespective of the size of the participation), as named in the order and hereinafter referred to as "the Purchaser". The Supplier shall be the company that – within the scope of these General Conditions of Purchasing – enters into a contract with the Purchaser (hereinafter referred to as "the Supplier"). These General Conditions of Purchasing shall, irrespective of whether or not they are explicitly referred to, apply to all transactions conducted with the Supplier, including but not limited to the manufacture and supply of goods, the processing of semi-finished goods and the provision of services (hereinafter together referred to as "Goods and Services"). The Supplier accepts these General Conditions of Purchasing upon confirmation of the Purchaser's order at the latest. The contractual relationships between the Purchaser and the Supplier shall be exclusively governed by these General Conditions of Purchasing, unless agreed otherwise in writing in particular cases. This shall apply irrespective of any reference to the Supplier's own General Terms of Business, even where the Purchaser fails to explicitly object to the application thereof. Further, this shall apply if the Purchaser – being aware of the Supplier's different or conflicting terms of business – accepts the contractual Goods or Services without reservation. The Supplier shall only be entitled to engage subcontractors with the Purchaser's prior written consent, whereby the Purchaser shall not be obliged to substantiate a respective refusal. In any case, the Supplier may only use subcontractors that offer adequate guarantee for technically perfect and timely performance of contract. If the Supplier involves subcontractors, ancillary suppliers or any other third party in the performance of the contract or otherwise uses their goods or services, the Supplier shall be liable (also with respect to fault on the part of any subcontractor etc.) to the same extent as if it itself had undertaken to completely manufacture and/or provide the Goods or Services and all the necessary materials.

2. Quotations:

In its quotations, the Supplier shall strictly abide to the quantity and properties of the Goods and Services as specified in the Purchaser's request and shall expressly notify to the Purchaser respective discrepancies, if any. The Supplier's quotations and any cost estimates are made free of charge. If the Supplier's quotation does not stipulate a specific acceptance deadline, the Purchaser shall be entitled to accept the Supplier's quotation within two weeks of its receipt. All documentation enclosed with requests or orders (such as plans or diagrams) shall remain the Purchaser's property and shall automatically be returned to the Purchaser with the quotation or once the order has been completed. Copies of such documentation may only be made after the Purchaser's prior express consent.

3. Orders:

Only orders placed by the Purchaser in writing or electronically shall be legally binding. Orders placed verbally or over the telephone shall only be valid if expressly confirmed by the Purchaser in writing. The Supplier must confirm Purchaser's orders in writing within 3 working days (i.e. Monday to Friday, with the exception of Austrian public holidays) of the respective order's receipt. After expiry of this deadline (which shall be calculated from the date of receipt by the Purchaser), the Purchaser shall be entitled to revoke the order (without giving rise to any manner of claim on the part of the Supplier). If an order cannot be confirmed within the 3 day deadline, the Supplier shall, within the said 3 day deadline, notify the Purchaser of a binding deadline for the receipt of the written order-confirmation by the Purchaser. The Purchaser shall then be entitled to accept this new deadline or to cancel the order (without giving rise to any manner of claim on the part of the Supplier), at its complete discretion. If the Supplier's order confirmation differs even negligibly from the Purchaser's order, the Supplier shall make this clear to the Purchaser and shall obtain the Purchaser's express written consent to the discrepancy. Without such consent, the Purchaser shall, at any time, be entitled to reject Goods or Services that differ even negligibly from the order (without giving rise to any manner of claim on the part of the Supplier).

4. Prices:

The agreed prices (including agreed compensations for services rendered) shall be understood as guaranteed fixed prices for the contractual Goods or Services which include all costs incurred in relation to the provision of the Goods or Services. Price increases on any grounds whatsoever are hereby expressly excluded. Prices shall be understood to include packaging, carriage, delivery and unloading free to the place of acceptance (destination). If no prices are quoted in the order, they must be quoted in the corresponding confirmation, whereby the Purchaser retains the right not to accept the prices quoted by the Supplier and to refrain from entering into the contract.

5. Disposal:

The Supplier hereby states that it is prepared and hereby offers, if so instructed by the Purchaser, to take back the supplied goods for the purpose of disposing of them in a professional manner in accordance with the law. Against presentation of a respective invoice, the Purchaser shall remunerate the Supplier for the costs that it incurred for disposing of such goods in accordance with the law at standard market rates.

6. Delivery Dates, Late Delivery:

Agreed delivery dates and delivery deadlines shall be binding. Unless agreed otherwise, the delivery date shall be the date shown on the Purchaser's order. The delivery date or delivery deadline shall be met if the consignment or service is provided on such date or within such deadline at the delivery address quoted on the order. Goods or Services provided before the agreed delivery date are deemed to be provided as of the agreed delivery date. In the event of late delivery – also in the case of section 918 para 2 ABGB – the Purchaser shall be entitled either (i) to insist on the performance of the contract or (ii) to state that it withdraws from the contract if the Goods or Services are not provided within a 14-day period of grace and (iii) in addition to (i) or (ii) to request the compensation for all damages incurred. This notwithstanding, the Supplier shall, as soon as it realizes that it will be unable to provide all or some of the Goods or Services on time, immediately notify the Purchaser in writing of the reasons for and the expected duration of the delay. Upon receipt of such notification, the Purchaser shall be entitled to withdraw from the contract with immediate effect and to claim damages on the grounds of non-performance. If the provision of a Good or Service has been explicitly agreed for a certain date (fixed date transaction), the Purchaser shall, in the event of delay on the part of the Supplier, be entitled to withdraw from the contract without any period of grace and to claim compensation for all damages. If the Purchaser withdraws from the contract, no claims of whatever nature against the Purchaser shall accrue to the Supplier.

7. Supplied Materials:

Materials supplied by the Purchaser to the Supplier (hereinafter referred to as "Supplied Materials") shall remain the Purchaser's property, shall be stored by the Supplier separately from its own goods and free of charge and shall be clearly marked as the Purchaser's property and administered as such. The Supplier shall use Supplied Materials exclusively for the purpose of providing the Goods or Services to the Purchaser. If Supplied Materials are damaged or lost, the Purchaser shall compensate the Supplier in accordance with the law. The Supplier shall inform the Purchaser immediately in writing about any third party claims asserted with respect to Supplied Materials and shall take all measures to defend the Purchaser's rights of ownership at its own expense.

8. Insurance:

The Purchaser shall insure transport risks for all consignments under a general insurance policy. The Supplier shall only contract and pay for a respective transport insurance if demanded in writing by the Purchaser for particular cases. The Supplier shall however at its own cost contract insurances with reputable, solvent insurance companies covering any product liability claims for damage to property or personal injury and vehicle recall liability. The insurance policies shall provide cover commensurate with the value and use of the contractual Goods or Services. Upon the Purchaser's request, the Supplier shall present to the Purchaser respective insurance cover notes issued by the insurer. The inspection of or failure to request insurance cover notes on the part of the Purchaser shall not under any circumstances be construed as waiver of the Supplier's said insurance obligations, nor shall the fact that an insurance contract exists limit the Supplier's duties or liability pursuant to the respective contract on Goods or Services. If an insured event relating to the Goods or Services occurs, Purchaser and Supplier shall inform each other about all facts, circumstances and incidents pertaining to such insured event.

9. Warranties:

The Supplier hereby represents and warrants that the Goods and Services are suitable for their intended purpose, in accordance with the newest state-of-the-art, comply with the respective standards and regulations, with the relevant official and regulatory specifications and with all relevant requirements of specialist associations. The Supplier further represents and warrants that the Goods and Services are free from any third party rights and not manufactured, acquired or put in circulation in breach of any industrial or other property rights or fair trading regulations. The Supplier shall indemnify and hold the Purchaser harmless with respect to all claims asserted on such grounds (including all costs, especially legal costs relating to such claims). The statute of limitation (warranty period) for movable Goods and Services shall be two years upon acceptance of the respective Goods or Services. For Goods or Services that are provided on the grounds of a warranty claim, such warranty period shall start again. The Purchaser shall not have any duty to inspect the Goods or Services or to notify defects. Sections 377 and 378 UGB shall not apply with respect to contractual Goods or Services. In derogation from section 933 para 1 ABGB, warranty claims of Purchaser may be asserted not only by judicial action, but also by a written notice of defect to the Supplier. If such notice is made within the warranty period, such warranty period shall be stayed and current payment deadlines suspended until full remedy of the respective warranty claim by the Supplier. If Goods or Services are defective or insufficient, the Supplier shall, at the Purchaser's choice, either rectify or exchange the respective Goods or Services within an appropriate period of grace set by the Purchaser. If it turns out (e.g. due to a voluntary random examination conducted by the Purchaser) that certain parts of the Goods or Services are defective,

the Purchaser shall be entitled to reject the Goods or Services as a whole and to send them back to the Supplier at the Supplier's expense. In any case, the Supplier alone shall be in charge and responsible for the separating of defective from defect-free parts of Goods or Services. If the rectification or exchange of defective Goods or Services (i) is not possible, (ii) involves considerable inconvenience or is unreasonable for the Purchaser or (iii) is not carried out at all or incomplete, the Purchaser shall, at its choice, be entitled to withdraw from the contract or to demand price reduction. If the Purchaser withdraws from the contract, Goods and Services already delivered shall be returned to the Supplier at Supplier's expense and risk. In urgent cases, the Purchaser himself shall be entitled to undertake the necessary rectifications or repairs at the Supplier's expense and risk. The Supplier's warranty obligation shall also cover the cost of rectifying defects on site. Unless explicitly stipulated otherwise in these General Conditions of Purchasing, the statutory warranty regulations shall apply and may not be contractually excluded or modified to the Purchaser's detriment.

10. Compensation for Damages, Product Liability:

The Supplier shall be liable for any damage caused wilfully or negligently according to the statutory provisions. The Purchaser's claim for compensation shall cover all damages, including lost profits and all consequential damages incurred by the Purchaser, its contracting partners and/or end customers. The Supplier shall bear all costs for recall action (i.e. all measures to check Goods or Services provided to end customers for defects and, where necessary, to exchange or repair defective Goods or Services in order to avoid damage to property or personal injury) taken by the Purchaser or its customers, unless the Supplier can prove that the Goods or Services provided by it were not the cause of the recall or at least that the damages in question occurred without the Supplier's fault. The Supplier hereby guarantees that the construction and production of and instructions for Products and Services are defect-free within the meaning of the Austrian Product Liability Act (BGBL No 99/1988, as amended). In particular, the Supplier guarantees that at the time when the Product was put into circulation, no defect could be identified on the basis of the state of the art. The Supplier shall inform the Purchaser in writing about any intended changes to raw materials, production processes, parts supplied for the Goods or Services and all other modifications to the provision or composition of Goods or Services. The Supplier shall not proceed with such changes without the Purchaser's express written consent, whereby such consent shall not be unreasonably refused. The Supplier shall provide the Purchaser with any and all information that is expedient to the supply of defect-free products within the meaning of the Austrian Product Liability Act (e.g. operating instructions, storage instructions, admission regulations etc.). If the Supplier subsequently learns of circumstances that might substantiate a product-defect within the meaning of this Act, the Supplier shall immediately inform the Purchaser about these circumstances in writing and shall remunerate any costs for a recall of defective Products. Restriction of any kind on the Supplier's obligations under the Austrian Product Liability Act and restrictions of any kind of the Purchaser's claims for compensation under that Act or any other statutory regulations shall be null and void. The Supplier shall indemnify and hold harmless the Purchaser against and from any third party claims asserted against the Purchaser. The Supplier shall be obliged to name the manufacturer and/or upstream supplier of a defective Product at the Purchaser's request at any time.

11. Patent Infringement:

The Supplier shall be liable that no patents, trademarks, designs, copyrights or any other third party (industrial) property rights of whatever nature are violated by the provision of Products or Services. The Supplier shall be obliged to indemnify and hold the Purchaser harmless against and from any third party claims.

12. Invoicing, Payment, Prohibition concerning Set-off and Assignment:

Invoices shall be sent by post to the Purchaser following delivery of the Goods or Services and must not be enclosed or attached to the respective consignment. Invoices must quote the full order number and order date, show the despatch address and state if the consignment was despatched postage paid or unpaid. Invoices for work performed must quote the number and date of the corresponding proof of subcontract or assembly. End-of-month invoices for recurrent supplies of Goods or Services shall be sent to the Purchaser by no later than the 3rd month following the provision of the respective Goods or Services. Invoices shall only qualify as duly raised if they comply with the requirements of the Austrian Value Added Tax Act (UStG). Invoices containing factual, calculative or accounting deficiencies or errors shall not become due and may be objected by the Purchaser within the payment deadline. In such case the payment deadline shall only commence upon receipt of the correct invoice. The Supplier's warranty shall be independent and not in any way affected by the time of actual payment. Payment by the Purchaser shall not be construed as acknowledgement of the properness of the Goods or Services or as waiver of warranty claims or claims for damages. Advance payments shall keep their value in proportion to the overall value of the order. The Purchaser reserves the right to offset current accounts. Unless agreed otherwise in writing, the following terms of payment shall apply, at the Purchaser's discretion: 14 days with 5% discount, 30 days with 3% discount or 60 days without discount, to be calculated from receipt of a proper and correct invoice. The Purchaser shall be entitled to withhold payments due to warranty or other claims against the Supplier or to offset accounts receivable of the Supplier against such claims. Unless the Purchaser agrees otherwise in writing, the Supplier shall not be entitled to assign its accounts receivables against the Purchaser to third parties or to have them collected by third parties, nor shall the Supplier be entitled to offset its own accounts receivables against the Purchaser's accounts receivables.

13. Force Majeure:

In the event of force majeure, such as strike (including politically motivated strike), lockout, war, storm or other comparable fundamental events, the Purchaser shall be entitled to withdraw from the contract in whole or in part, or to demand the delivery of Goods or Services or the performance of an order at a later date, whereby this shall not give rise to any claims on the part of the Supplier.

14. Drawings, Models and Confidentiality:

No information, drawings or other technical documentation provided by the Purchaser to the Supplier in connection with the performance of the contract and no drawings, information or other technical documentation prepared by the Supplier on the basis of the Purchaser's specifications and information shall be used for other purposes than the performance of the contract, be reproduced or made accessible or disclosed to third parties. Upon the Purchaser's request, all such documentation, together with any extracts or reproductions, shall be immediately handed out to the Purchaser. The Purchaser shall be entitled to make unrestricted use of documentation prepared by the Supplier based on the Purchaser's specifications, in particular for the purpose of manufacture by third parties. If the Goods or Services are not provided for whatever reason, the Supplier shall automatically and immediately hand out to the Purchaser all documentation mentioned in the first sentence of this paragraph and destroy any copies thereof and delete any backups or records on electronic data carriers. Orders and all related work shall be considered as business secrets and shall therefore be kept strictly confidential (see paragraph 3 of this section). The Supplier shall be liable for all damages which it suffers as a result of its failure to honour these obligations. The Supplier shall keep strictly confidential any technical or business information relating to the Purchaser, that comes to the Supplier's attention in connection with the contract. The Supplier shall not disclose any confidential information without the Purchaser's prior written consent. This shall also apply to scientific publications. The Supplier shall secure any documents or material which might contain industrial or business secrets of the Purchaser against unauthorized access of third parties and shall keep all confidential information relating to the Purchaser in safe custody. The Supplier shall use confidential technical or business information provided to it by the Purchaser only for the purpose of the performance of the contract and shall not use such confidential information for its own purposes. Ownership to any plans, detailed drawings etc. based on such confidential information, especially ownership to jointly prepared requirement specifications, shall transfer to the Purchaser immediately after their preparation and shall be marked as the Purchaser's property. All means of production (especially tools, designs, technical devices etc.) provided by the Purchaser to the Supplier shall also be marked as the Purchaser's property. The Supplier shall not be entitled to divulge confidential information, documentation and materials, such as drawings, plans, detailed drawings, means of production or other technical documentation or the product manufactured from them to third parties or to use them for third parties, against or without consideration. Upon termination of the contract, the Supplier shall return to the Purchaser all documentation and materials which might contain confidential information, in particular business or industrial secrets, relating to the Purchaser, destroy all copies thereof and delete any backups or records on electronic data carriers. The Supplier shall not mention or refer to its business relationship with the Purchaser in advertisements or publications of any kind without the Purchaser's express written consent. This clause 14 shall survive any termination or lapse of the contract and shall apply for unlimited duration.

15. Despatch:

Goods and Services shall be properly packed for the means of transport used and sent for despatch in this manner. Unless otherwise agreed in writing for particular cases, the following despatch rules shall apply:

- a) despatch to the destination stipulated by the Purchaser shall be solely at and on the Supplier's account and risk. The Supplier shall also bear the risk of accidental destruction;
- b) despatch shall comply with the relevant regulations and standards of transport, using the cheapest means of despatch for the Purchaser;
- c) letters, delivery notes, despatch notes, invoices and suchlike must always quote the department, letter reference, order number and order date. In the overall correspondence, each order shall be handled separately;
- d) the Supplier's delivery notes shall contain the following information:
 - Purchaser's order number and order item;
 - Miba-material number (if quoted on the order);
 - manufacturer;
 - complete type designation (classification);
 - quantity and metric order unit;
 - quality documents, if any, pertaining to the Goods or Service;
 - supplier lot, batch or date code (where applicable);
 - country of origin and customs tariff number.
- e) the department, letter reference, order number and order date shall be stated on the back of the bill of lading or on the stub of the express delivery or the postal address label. The freight address stated by the Purchaser must be carefully observed. The Supplier shall be liable for damages or costs incurred by the Purchaser as a result of incorrect declaration and/or addressing;

- f) if the Goods or Services are handed over to a carrier, the Supplier shall notify the Purchaser thereof and of the date of such hand-over (despatch note); invoices shall not qualify as despatch notes;
- g) the Supplier shall be fully liable for any damages and costs (such as wagon demurrage charges, shunting costs, storage costs etc.) incurred by the Purchaser because the Supplier failed to comply with the above rules. Any consignments that cannot be accepted by the Purchaser due to such non-compliance shall be stored at the Supplier's costs and risk until the Purchaser receives the proper paperwork and can duly process the consignment. The Purchaser shall be entitled to assess and establish the contents and condition of any such consignments;
- h) any separate despatch instructions from the Purchaser shall be observed and complied with; the Supplier shall be liable for all damages incurred by the Purchaser as a result of Supplier's failure to comply with despatch regulations and specifications.

16. Termination of Contract:

Without prejudice to any other grounds for termination stipulated herein, the Purchaser shall be entitled to terminate any contract upon good cause with immediate effect. In particular, it shall be regarded as good cause if:

- a) bankruptcy proceedings are instituted against the Supplier or a respective petition is dismissed due to a lack of assets;
- b) circumstances prevail that render the provision of Goods or Services impossible;
- c) the Supplier itself or a person instructed by it to provide the Goods or Services violates essential terms of the contract or confidentiality obligations;
- d) the direct or indirect legal or financial control with respect to the Supplier changes (change of control).

17. Consent to Transfer of Contract:

The Supplier hereby agrees that the Purchaser may transfer the contract as a whole to another company affiliated with Miba AG (irrespective of the size of the participation). Upon the Purchaser's written notification the affiliated company specified by the Purchaser shall take over all rights and obligations concerning the contract and shall take over all rights which have a bearing on the privity of contract. The Purchaser shall, however, continue to be jointly and severally liable vis-à-vis the Supplier for the obligations that accrue from the contract, especially for the payment of the consideration.

18. Fees and Taxes:

Unless agreed otherwise in particular cases or unless stipulated otherwise by statutory regulations with mandatory character, all fees, dues, charges, levies and taxes triggered by the order shall be borne by the Supplier. This shall also apply if the Purchaser is required to furnish an international import certificate with respect to the import of certain Goods or Services.

19. Place of Venue:

Any dispute which arises in connection with contracts for Goods or Services or the proper conclusion, infringement, cancellation or invalidity of such contracts, shall be exclusively subject to the jurisdiction of the competent Commercial Court of Wels, although the Purchaser may alternatively institute proceedings against the Supplier at the court competent for the district of the Supplier's headquarter.

20. Applicable Law:

Privity of contract between the Purchaser and the Supplier shall be exclusively governed by Austrian law, to the exclusion of the choice of law rules of Austrian international private law, the choice of law rules of the European Convention on the law applicable to contractual obligations and the provisions of the UN Sales Convention.

21. Severability Clause:

If a provision in these General Conditions of Purchasing is invalid or inapplicable, this shall not affect the validity or applicability of the remaining provisions. If a provision is invalid or inapplicable, it shall be replaced by a provision that best matches the purpose of the invalid or inapplicable provision.

22. Written form:

Changes and modifications to these General Conditions of Purchasing and to all other contractual agreements between the Purchaser and the Supplier shall only be valid if made in writing. The same shall apply with respect to a deviation from this written form requirement.

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