

General terms and conditions of purchase of AKRO-PLASTIC GmbH and its branches AF-COLOR and BIO-FED

- 1. Scope**
- 1.1. These general terms and conditions of purchase ("GTCP") shall only apply for entrepreneurs in terms of § 14 German Civil Code (BGB). They apply for all contractual relationships with our suppliers and contractual partners ("Sellers") both goods being supplied to us (especially purchase, rent or loan) and services being ordered by us (especially service contracts, contracts of manufacture, business management contracts).
- 1.2. For all goods and/or services supplied to us, these GTCP shall apply exclusively; terms and conditions of Sellers which differ or are opposed to these GTCP do not apply unless we explicitly agree to those in writing. These GTCP also apply if we unconditionally accept or pay goods or services from the Seller while being notified of opposed or differing terms and conditions of the Seller regarding supplies and services.
- 1.3. All contractual agreements between us and the Seller are only deemed binding in writing. Oral subsidiary agreements are only deemed binding if they have been confirmed by us in writing.
- 1.4. The Seller acknowledges exclusive validity of these GTCP for all further contracts as of first delivery or service.
- 1.5. The trade terms used in these general conditions of purchase shall be governed by the Incoterms in the version valid at the time of conclusion of the contract.
- 2. Conclusion of contract**
- 2.1. Our purchase orders and requests are only deemed binding if they have been issued in writing or have been confirmed by us in writing. This also applies for changes or amendments of our orders and requests.
- 2.2. The Seller is required to confirm our order in writing within a period of two (2) weeks. Until we receive the confirmation, we can revoke our purchase orders and requests for free.
- 2.3. An acceptance after the expiry of the period specified in section 2.2 above or an acceptance with amendments shall be deemed to be a new offer and shall require our acceptance.
- 3. Terms of delivery, transportation insurance**
- 3.1. The agreed deadlines for the delivery of goods and/or services are binding. The timeliness of deliveries of goods shall be determined by the receipt of the goods by us, and the timeliness of deliveries with subsequent installation or assembly and of services shall be determined by their acceptance by us. If delays occur, have occurred or can be expected, we must be promptly informed by the Seller.
- 3.2. If the Seller fails to perform or fails to perform within the agreed upon delivery time or if he is in default, our rights – in particular our right to revocation and damages – shall be determined in accordance with the statutory provisions. The provisions of clause 3.3 below shall remain unaffected.
- 3.3. If the Seller is in default, we shall be entitled – in addition to further statutory claims – lump-sum compensation for our damages caused by the delay in the amount of 1% of the net price per completed calendar week, but in total not more than 5% of the net price of the delayed goods or services. We reserve the right to prove that higher damages have been incurred. The Seller reserves the right to prove that no damage at all or only a significantly lower damage has occurred.
- 3.4. Early deliveries of goods and/or services as well as partial deliveries or non-ordered additional deliveries of goods and/or services require our prior written approval. In case of non-ordered additional deliveries, we are authorized to refuse acceptance of such deliveries, to store the non-ordered additional goods received at the Sellers' expenses or send them back at his expenses.
- 3.5. A dispatch bill or delivery bill must be sent to us for each delivery on the day the goods are dispatched. All shipping documents must contain our purchase order number.
- 3.6. The Seller is obliged to insure the delivery at his expense.
- 4. Delivery, Passing of Risk, Default of Acceptance**
- 4.1. Unless otherwise agreed in writing, deliveries of goods shall be made "delivered duty paid" ("DDP" according to Incoterms).
- 4.2. If the place of destination is not specified and nothing else is agreed, the delivery shall be made to our place of business in Niederzissen. The respective place of destination shall also be the place of performance for the delivery and any subsequent performance (obligation to deliver).
- 4.3. In the case of delivery without installation or assembly, the risk shall pass to us upon receipt of the goods at the delivery address specified by us, in the case of delivery with subsequent installation or assembly and in the case of services upon our acceptance. Our use of the goods delivered to us does not replace a required acceptance.
- 4.4. The statutory provisions shall apply to the occurrence of default in acceptance. If a certain or determinable calendar time has been agreed for an action or collaboration on our part (e.g. provision of material), the Seller must also explicitly offer us his performance. If we are in default of acceptance, the Seller shall be entitled to demand compensation for his additional expenses in accordance with the statutory provisions (§ 304 German Civil Code (BGB)). If the contract relates to a fungible item to be manufactured by the Seller (custom-made item), the Seller shall only be entitled to further rights if we have undertaken to collaborate and are responsible for the failure to collaborate.
- 5. Import and export clauses, Customs**
- 5.1. The Seller is obliged to ensure that the applicable export and import regulations rules and all current EU sanctions are respected all the time, to make the declarations required by law, to obtain permits and to provide information, to permit inspections by the customs authorities and to provide the necessary official confirmations. Any arising expenses are being paid for by the Seller.
- 5.2. Goods ordered from a supplier located in the European Union shall be delivered as Union goods in accordance with Article 5 No. 23 of the Regulation (EU) 952/2013. This also applies to deliveries made under a delivery condition other than "DDP" (according to Incoterms) unless a different procedure has been expressly agreed in the individual case. Goods ordered under the delivery terms of "DDP" (according to Incoterms) are in principle to be delivered as Union goods in accordance with Article 5 No. 23 of the Regulation (EU) 952/2013, even if they were ordered from a supplier located outside the territory of the European Union, unless a different procedure has been expressly agreed in the individual case.
- 6. Prices, invoices and terms of payment**
- 6.1. Prices indicated in our orders and requests are binding. Unless otherwise agreed in the individual case, the price shall include all performances and ancillary performances of the Seller (e.g. assembly, installation) as well as all additional costs (e.g. proper packaging, transport costs including any transport and possible transport and liability insurance).
- 6.2. Invoices shall state the purchase order or request number and must be separately sent to us by mail or email as stated on the respective order or request. We are authorized to return invoices, which do not contain such references without any further processing. For invoices from the European Union (outside Germany), both VAT identification numbers (our VAT-ID number and the Seller's VAT-ID number) must be stated.
- 6.3. If applicable, VAT must be separately declared in invoices. In case of tax-exempt deliveries or services, a reference to the tax exemption shall be indicated on the invoice.
- 6.4. The agreed price is due for payment within thirty (30) calendar days of complete delivery and performance (including any agreed acceptance) and receipt of a proper invoice. If we make payment within 14 calendar days, the Seller shall grant us a 3% discount on the net amount of the invoice. In the case of payment by bank transfer, our payment obligation shall be deemed to have been fulfilled in due time if our transfer order has been forwarded to our bank within the specified period, in the case of payment by check, if the check has been sent to the post office within the specified period.
- 6.5. We do not owe any default interest. In the event of payment default, the statutory provisions shall apply.
- 6.6. Payment effected by us does not signify acceptance of deliveries of goods and/or services as according to contract. In case of delayed, defective or incomplete delivery of goods and/or services, we are irrevocably authorized not withstanding other applying rights to reserve payments on claims resulting from business relationships in adequate extent till correct compliance with the contract has been conducted.
- 6.7. If a contractual penalty has been agreed upon, we shall be entitled to claim it until the invoice for the delayed or defective deliveries or services has been settled, even if we do not reserve the right to enforce upon the acceptance of the deliveries or the services.
- 6.8. Set-off rights as well as rights of retention are entitled to us to legal extent. The Seller shall have a right of set-off or retention only in respect of counterclaims which have been adjudicated in court with legal effect or which are undisputed.
- 7. Non-assignability**
- Assignment of claims made against us is not allowed.
- 8. Rights in case of defect and examination of defects**
- 8.1. In the event of material defects and defects of title, we shall be entitled to the statutory warranty rights in full.
- 8.2. In accordance with the statutory provisions, the Seller shall be liable in particular for ensuring that the goods have the agreed quality at the time of transfer of risk to us. In any case, those product descriptions which - in particular by designation or reference in our order - are the subject matter of the respective contract or were included in the contract in the same way as these GTCP shall be deemed to be an agreement on the quality. It makes no difference whether the product description originates from us, from the Seller or from the manufacturer.
- 8.3. Insofar as the commercial obligation to inspect and give notice of defects applies and insofar as this is feasible in the ordinary course of business, our obligation to inspect the goods shall be limited to their quantity and identity, externally visible transport or packaging damage and the random inspection of the goods for their essential characteristics. In cases of doubt about quantities, weights and dimensions, the values determined by us in the incoming goods inspection shall be decisive.
- 8.4. Our notice of defects for damage that can be detected without inspection shall be deemed to be in due time if we send it within a period of two (2) working days, calculated from receipt of the goods by us, in the case of hidden defects within a period of eight (8) working days, calculated from discovery of the defect by us, to the Seller. If a defect is discovered in the course of the inspection, our contractual partner Seller shall bear the costs of the inspection of the goods, without prejudice to the assertion of our other claims.
- 8.5. Within the scope of subsequent performance, the Seller shall also owe the removal of the defective goods and the reinstallation, provided that the goods were installed in another item or attached to another item in accordance with their type and intended use before the defect became apparent; our statutory claim to reimbursement of corresponding expenses (removal and installation costs) shall remain unaffected. The expenses necessary for the purpose of

- inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, shall be borne by the Seller even if it turns out that there was actually no defect. Our liability for damages in the event of an unjustified request for remedy of defects shall remain unaffected; in this respect, however, we shall only be liable if we recognized or were grossly negligent in not recognizing that there was no defect.
- 8.6. If the Seller fails to meet its obligation to provide subsequent performance - at our option by remedying the defect (repair) or by delivering an item free of defects (replacement) - within a reasonable period of time set by us, we may remedy the defect ourselves and demand reimbursement from the Seller of the expenses required for this purpose or a corresponding advance payment. If the subsequent performance by the Seller has failed or is unreasonable for us (e.g. due to particular urgency, risk to operational safety or imminent occurrence of disproportionate damage), no deadline needs to be set; we shall inform the Seller of such circumstances without undue delay.
- 8.7. Should the Seller supply conform or congenerous goods or services again in inadequate quality or behind schedule, after a reminder has been carried out in writing, we are authorized to immediately withdraw from the contract. In this case, our right of withdrawal shall also include such deliveries and services which the Seller has to provide to us in the future under this or any other contractual relationship.
- 9. Limitation period**
Claims entitled to us become time-barred within the obligatory legal period.
- 10. Spare part guarantee**
If the Seller delivers machines or other technical equipment to us, he shall be obliged to supply us with spare parts for the delivered goods for a period of seven (7) years from the last delivery.
- 11. Confidentiality**
- 11.1. If we provide the Seller with illustrations, plans, drawings, calculations, execution instructions, product descriptions or other documents, they shall remain our property. Existing copyrights and rights of use shall remain with us. Copies of documents which have been made available by us can only be made by the Seller with our prior written approval. The documents as well as copies being made available by us must be returned to us directly after execution of our order or upon our request; insofar the Seller is not authorized to assert his right of retention.
- 11.2. The documents being made available to the Seller shall exclusively be used with regard to execution of orders and may not be handed over or made available to third parties.
- 11.3. The Seller is obliged to treat non-public information, being made available to him with regard to the order, as strictly confidential and to keep it confidential from third parties. This obligation of confidentiality also applies after termination of the contract. It expires, if and as far as information being made available by us has become public without involvement of the Seller. Special non-disclosure agreements and statutory regulations on the protection of secrets shall remain unaffected.
- 11.4. The Seller is obliged to sign a separate non-disclosure agreement, if we ask him to do so.
- 12. Rights of third parties, product liability, recall action, supplier regress**
- 12.1. The Seller shall be obliged to indemnify us upon first request against all claims of third parties asserted against us in connection with the delivery or the performance of the Seller, irrespective of the legal grounds (in particular due to a material or legal defect, due to any other defect of the goods delivered by the Seller or due to the infringement of industrial property rights). This indemnification obligation shall include all expenses incurred by us in connection with the claim by a third party.
- 12.2. If we are obliged to carry out a recall action towards third parties due to a defect in the goods delivered by the Seller, the Seller shall bear all costs and expenses associated with the recall action.
- 12.3. Our statutory claims for expenses and recourse within a supply chain shall accrue to us without restriction in addition to the claims for defects and shall also apply if the defective goods have been combined with another product or further processed in any other way by us, our customer or a third party, e.g. by installation, attachment or installation.
- 13. Retention of title**
- 13.1. We reserve ownership rights to our tools, templates, samples and other items which we provide to the Seller for production. Such items shall - as long as they are not processed - be stored separately at the Seller's expense and insured to a reasonable extent against destruction and loss. Any processing, mixing or combination (further processing) of provided items by the Seller shall be carried out on our behalf. The same shall apply in the event of further processing of the supplied goods by us, so that we shall be deemed to be the manufacturer and shall acquire ownership of the product in accordance with the statutory provisions at the latest upon further processing.
- 13.2. The transfer of ownership of the goods to us shall be unconditional and without regard to the payment of the price. If, however, in an individual case we accept an offer of transfer of title by the Seller conditional on payment of the purchase price, the Seller's retention of title shall expire at the latest upon payment of the purchase price for the goods delivered. We shall remain authorized to resell the goods in the ordinary course of business even before payment of the purchase price with advance assignment of the claim arising therefrom (alternatively, the simple retention of title and the retention of title extended to the resale shall apply). All other forms of retention of title, in particular the extended retention of title, the passed-on retention of title and the retention of title extended to further processing, are excluded.
- 14. Leasing of technical equipment**
If we lease machines or technical equipment, the Seller guarantees that such rental unit is subject to current DIN-standards, EU-machine regulations as well as current occupational health and safety regulations and carries a valid CE mark.
- 15. Services performed at our premises**
- 15.1. If the Seller operates within our building and/or on our premises for the purpose of execution of contract, he has to ensure compliance to all appropriate regulations, especially Directives 2006/42/EC, 93/86/EEC and 2014/30/EU, law concerning technical work equipment, applicable accident prevention regulations, generally accepted safety-related and occupational health regulations as well as applicable EN-standards.
- 15.2. If use of forklifts, cranes or hydraulic hoists is necessary for performance to contract, the verifications being necessary for operating these machines must be unsolicited made available by the Seller.
- 16. Other clauses**
- 16.1. For entrepreneurs, merchants, entities of public law and public separate the exclusive place of jurisdiction shall be Koblenz. This also applies for claims resulting from checks and payment by bill of exchange. However, we shall also be entitled in all cases to bring an action at the place of performance of the delivery obligation pursuant to these GTCP or a prior individual agreement or at the general place of jurisdiction of the Seller.
- 16.2. Our failure to assert claims arising from a contract in whole or in part, shall not constitute a waiver of any of our rights.
- 16.3. The contractual relationship shall be governed exclusively by German law, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- 16.4. Should any provision or part thereof be or become invalid or unenforceable, the remaining provisions shall continue to be valid. The contracting parties shall be obliged to replace the invalid provision with a provision that comes as close as possible to it in terms of economic success.
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