



Purchasing Terms of Mechatronic Systems GmbH

I. General

The legal relationship between the Supplier and the Mechatronic Systems GmbH, hereinafter referred to as the purchaser, is based exclusively on these Terms and Conditions of Purchase. These are valid for all sales contracts, purchase orders as well as delivery schedules.

Amendments and additions must be in writing. Other terms and conditions do not apply even if they were not explicitly contradicted in individual cases.

By accepting the purchase order, these terms and conditions of purchase become part of the contract. The conditions of the supplier apply only in case of a written consent of the customer.

In the case of no other individual contractual provision, the INCOTERMS 2020, in particular the delivery "DDP", are presumed to be agreed. In case of doubt, the customer's registered office at the address "Auf der Aue 11, 8551 Wies" is agreed as the stated destination.

II. Offer

Offers made to the customer and costs of estimates are free of charge, irrespective of the preparatory work performed.

The supplier must comply with the offer in terms of quantity, delivery time and execution. In case of a deviation, this should be explicitly stated in the offer.

III. Order(s) and blanket order

1. All purchase orders, orders and delivery schedules as well as their changes and additions are accepted only in written form.

The customer and the supplier communicate for demand information (forecasts, purchase orders, delivery schedules) via e-mail, EDI or fax.

2. An order can be revoked at any time before acceptance by the customer, without any liability to the supplier. An order does not constitute acceptance of an offer from the supplier, unless the acceptance is expressly declared in the order. Offer contents of the supplier become contractual content only and to the extent that they are referred to by the customer in his order and do not contradict other contents of his order.

3. The supplier may not exchange materials or change the place of manufacture, manufacturing process or specification or design of the goods without the prior written consent of the customer.

4. Each blanket order issued by the customer requires a settlement in the form of individual delivery schedules. The blanket order includes a demand preview on the basis of the information available from the customer and, unless otherwise agreed, the material procurement release for the period of 4 months is valid; nevertheless, this does not constitute a production release. The production release is made by the individual releases in which delivery dates and quantities are set. These order requests refer to the blanket order and include a production release for 2 months each. The last delivery schedule is binding and replaces previous versions. The supplier is obliged to set up a security stock for finished goods in the amount of one month's demand in accordance with the order releases. The customer reserves the right to carry out safety-warehouse inspections at the supplier at any time.

5. Within the scope of reasonableness for the supplier, the customer may demand changes in the delivery item in terms of design and execution. The effects, in particular with regard to the additional and reduced costs as well as the delivery dates, are to be regulated by mutual agreement.

6. The customer is not obliged to pay for goods, work in progress or material that exceeds a defined upper limit. The same applies to goods, work in progress or material that are in the supplier's ordinary stock or can be remarketed elsewhere. The upper limit for all payments by the customer is the amount which at most would have had to be paid by him if he had not terminated the delivery contract, but no more than an average monthly requirement of the three following months of goods, work in progress or material and the previously defined safety stock of material and finished products.

IV. Confirmation of the order

Orders and blanket orders must be confirmed in writing by the supplier within three working days from the receipt of the order stating the binding delivery date.

V. Delivery dates and deadlines

1. Agreed dates and deadlines are binding. Decisive for the observance of the delivery dates or the delivery periods is the receipt of the goods at the customer's place or at the place of destination specified by the customer.

2. The supplier must ensure the necessary capacities in order to be able to fulfil the quantities including preview quantities from purchase orders or delivery schedules. The delivery schedules received must be checked for plausibility and feasibility, in particular with regard to quantities, dates and master data (delivery address, unloading point,...). The delivery schedules will be deemed to have been confirmed if the supplier does not object in writing within three (3) working days. Deviations are to be agreed individually with the responsible dispatcher at the customer's premises.

3. Impending delays in delivery must be reported to the customer immediately after becoming known.

4. The customer may postpone delivery schedules for up to three months without the supplier being entitled to change the price of the goods, to pay costs or to pay damages.

VI. Delivery delay, partial delivery, short delivery or excess delivery, delivery before the agreed delivery date

1. Delivery and service delays shall be notified in writing by the supplier without delay, stating the reasons and the expected duration of the delay. In the event of late delivery, the customer is entitled to demand compensation for the damage caused by the delay, to make cover purchases from other suppliers or to withdraw from the contract. The acceptance of the delayed delivery by the customer does not constitute a waiver of the compensation claims.

2. Partial delivery as well as short delivery or excess delivery require prior agreement.

3. In the case of earlier delivery than agreed, the customer reserves the right to return the delivery at the expense of the supplier or to make the storage at the expense and risk of the supplier.

VII. Force majeure

(1) 'force majeure' means the occurrence of an event or circumstance ("Force Majeure Event") which prevents one of the parties from fulfilling one or more of its contractual obligations under the Contract if and to the extent that the party affected by the obstacle ("affected party") proves that: (a) this obstacle is beyond its reasonable control; and b) it could not reasonably have been foreseen at the time of conclusion of the contract; and (c) the effects of the obstacle could not reasonably have been avoided or overcome by the party concerned.



2. In case that a contracting party fails to fulfil one or more of its contractual obligations as a result of a failure of a third party whom it has entrusted with the performance of all or part of the contract, that party may invoke force majeure only to the extent that the requirements for the presumption of force majeure as defined in paragraph 1 of this clause apply not only to the contracting party but also to the third party.
3. Unless proven otherwise, the following events affecting a party shall be presumed to meet the conditions for the acceptance of force majeure point VII. 1 lit. (a) and lit. (b). In this case, the affected party only has to prove that the condition under paragraph 1 lit. (c) is actually met:
 - a) War (declared or not declared), hostilities, attacks, actions of foreign enemies, extensive military mobilization;
 - b) civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy;
 - c) currency and trade restrictions, embargo, sanctions;
 - d) Lawful or unlawful acts of office, compliance with laws or government orders, expropriation, confiscation of works, requisition, nationalization;
 - e) plague, epidemic/pandemic (but not epidemics or pandemics caused by the already known SARS-Covid-19 virus), natural disaster or extreme natural event;
 - f) explosion, fire, destruction of equipment, prolonged failure of means of transport, telecommunications, information systems or energy (e.g. blackout);
 - g) General labour unrest such as boycott, strike and lockout, strolling strike, occupation of factories and buildings
4. A contracting party is obliged to fulfil its contractual obligations, even if the events have made the fulfilment more difficult than could reasonably be expected at the time of conclusion of the contract.
5. Notification. The affected party must immediately notify the other party of the event.
6. Consequences of force majeure. A party who successfully invokes this clause shall be released from the obligation to fulfil its contractual obligations and from any obligation to pay damages or from any other contractual remedy for breach of contract; but only if it notifies immediately. However, if the notification is not made immediately, the exemption shall not take effect until the notification reaches the other party. The other party may suspend the performance of its obligations, if force majeure is actually to be assumed, from the date of this notification.
7. Temporary prevention. If the effect of the impediment or event invoked is temporary, the consequences set out in paragraph 5 shall apply only as long as the impediment invoked ensures compliance of the contractual obligations by the affected party. The affected party must notify the other party as soon as the obstacle no longer hinders the fulfilment of its contractual obligations.
8. The affected party is obliged to take all reasonable measures to limit the effects of the event invoked in the performance of the contract.
9. If, notwithstanding paragraph 1 of this clause, a contracting party proves that: a) the further performance of its contractual obligations due to an event beyond its reasonable control which could not reasonably be expected at the time of conclusion of the contract; and that (b) the contracting party could not reasonably have avoided or overcome the event or its consequences, the parties will be obliged to negotiate alternative contractual conditions that allow an appropriate overcoming of the consequences of the event within a reasonable period of time after the assertion of this clause.

VIII. Payment

1. Payment is made in accordance with the agreed terms of payment by bank transfer.
2. Unless otherwise agreed the prices are fixed and considered packaged, delivered for free at the receiving office and unloaded. Price increases must be approved by the customer in writing. Without the prior express and written consent of the customer, the supplier shall not be entitled to adjust prices and/or to demand additional costs of any kind.
3. The invoice must match the order and comply with the VAT regulations.
4. Invoices that are not issued properly do not trigger a due date and are considered to have been received by the customer from the time of rectification.
5. In case of faulty delivery, the customer is entitled to withhold the payment until the order is properly delivered.
6. For delivery before the agreed delivery date, the payment period begins on the agreed delivery date.

IX. Supplements provided by the customer to the supplier

Provision of samples, templates, tools and other materials by the customer to the supplier remains the property of the customer. They are to be marked as such and stored and managed separately by the supplier free of charge. Supplements from the customer may only be forwarded to third parties with the prior written consent of the customer. In case of depreciation or loss, the supplier has to provide compensation.

X. Defects

The customer has to report defects of the delivery to the supplier in writing, as soon as they are determined according to the circumstances of a proper course of business. The supplier waives the objection of the delayed notice of defects. Further examination obligations according to § 377 UGB do not exist.

XI. Liability for defects

In the case of delivery of defective goods, the customer may, subject to the legal requirements, demand the following (see also section XIII of these terms and conditions).

1. Defective goods are determined before the start of production:
In the case of delivery of faulty goods, the supplier can carry out a sorting out, a fault clearance or a replacement or subsequent delivery before the start of production (processing or installation), provided that this is reasonable for the customer. All additional costs incurred by these measures shall be borne by the supplier. In urgent cases, the customer can, after consultation with the contracting partner, carry out the error rectification himself or assign the order to a third party to rectify the defect. The resulting costs will be charged to the supplier. If the supplier is unable to find a satisfactory solution for the buyer, the buyer has the right to withdraw from the contract without setting a deadline and to return the goods at the expense and risk of the supplier. This also applies in the case of a repeated defective delivery.
2. Defective goods found during or after production:
If the defective goods despite deficiency notification in accordance with Section X found only after the start of production, the purchaser may demand the costs for the purpose of troubleshooting such as removal and installation costs, material costs, transport costs, etc. from the supplier or insist on a discount.
3. In the event of a culpable breach of duty beyond the delivery of defective goods (eg in the case of a duty to inform, advise or investigate), the customer may demand compensation for the consequential damage resulting from the defect as well as the consequential damage suffered by the customer in accordance with the law. Defective consequential damage is the damage suffered by the customer due to the delivery of defective goods to other legal assets than to the goods themselves.



XII. Liability

1. The supplier is obliged to pay compensation in full if the customer incurs direct or indirect damage due to faulty delivery due to violation of official safety regulations or other legal reasons attributable to the supplier.
2. The supplier shall be liable in the same way for the goods and components or services provided by him but not produced by himself.
3. If the customer is asserted against non-prescriptive rights owing to no-fault liability to third parties, the supplier shall cede to the customer insofar as he would be directly liable.
4. The supplier is liable for judicial and extra-judicial measures of the customer for damage assessment, damage prevention (for example, recall action) and compensation for damages as well as damages of the lost profit.
5. In order to cover its obligations under the supply contract, the supplier shall provide adequate insurance cover with an efficient insurer customary in the automotive industry and shall maintain the insurance cover throughout the term of the supply contract. Upon request, the supplier shall provide the customer with a corresponding certificate from its insurer.
6. The supplier shall be liable for its representatives or subcontractors to the same extent as for its own conduct.

XIII. Warranty

Supplier guarantees delivery of perfect goods, free from defects and in accordance with the highest standards of commercial availability. In case of defective goods supplier is obliged to comprehensive investigation of the goods in accordance with the verification guidelines of the customer (i.e. 8D-report). Furthermore, section XI. applies in case of delivery of defective goods.

Any payments made do not constitute acceptance of faulty goods.

Customer may request assertion of warranty from supplier either by replacement or rectification of defective goods (see also section XI of these Terms and Conditions). In the event of the correction not being carried out within a reasonable period of time (normally 14 days) and with a minimum of inconvenience for purchaser, reduction of costs or termination of the contract may be claimed. If supplier does not rectify any damage within a reasonable time period customer has the right to assign rectification being carried out by a third party.

Supplier is liable for any damages that occurred to the customer and are caused by failure of or defective goods delivered as well as any costs for customs duty, transport installation, disassembly, additional personnel costs, etc.

The warranty period is 2 (two) years starting from delivery of goods. Claims for damages not included in the warranty rights remain unaffected.

XIV. Quality

The supplier guarantees the careful and proper fulfilment of the order. He has to comply with the accepted rules of technology, the safety regulations and the agreed technical data and regulations of the customer for his deliveries. The supplier warrants that according to the state of the art and science at the time of marketing, no defects of the product were detected. The contracting party commits itself and its legal successors to the product observation. He has to inform the customer if dangerous properties of the product are found.

In the case of the claim of the customer section XI number 3 is to be considered.

Changes to the delivery item require the prior written consent of the customer. The serial delivery may only be started after written approval of the initial samples. Irrespective of this, the supplier must constantly check the quality of the delivery items.

XV. Intellectual property rights, patents

The supplier guarantees that the supplies to the customer and the use of the delivery items as well as the services rendered by the supplier do not infringe any industrial property rights and patents of third parties. The supplier is liable for claims arising from infringement of property rights and patents. The customer is entitled to effect the approval of the use of the relevant delivery items and services of authorized persons at the expense of the supplier.

XVI. Retention of title

The customer acquires unrestricted ownership of the object of delivery and service. This also applies to the documents and software supplied by the supplier. Ownership and copyright of documents of the customer, which were made available to the supplier, remain with the customer. The documents may only be used by the supplier for the purposes agreed within the framework of the contract and may only be passed on to third parties with the prior written consent of the customer. In the case of infringements, the supplier is liable for the resulting damage.



XVII. General provisions

1. The order may only be passed on to third parties with the prior written consent of the customer.
2. The customer has the right to terminate the contract for good cause with immediate effect. Important reasons may include bankruptcy or compensation procedures at the supplier, breach of essential contract terms and secrecy obligations, economic or legal reasons.
3. If a provision of these conditions and the further agreements made are or become ineffective, the validity of the rest of the contract shall not be affected. The contracting parties are obliged to replace the ineffective provision by a provision which is as similar as possible in economic success.
4. Amendments or additions to these Terms and Conditions are to be made in written form. This also applies to deviations from the written form requirement.
5. We specifically reserve the right to alter or amend these Terms and Conditions at any time. Alterations may be required due to change in legal situation, changes in jurisdiction, changes in commercial circumstances, or others. Amended or otherwise altered Terms and Conditions must be objected to in written form within 4 (four) weeks after these Terms and Conditions have been submitted in written form. If this period is not adhered to the new Terms and Conditions will automatically become applicable.
6. Austrian law applies. The application of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980, as amended, is definitely excluded.
7. Place of performance is the registered office of the customer.
8. Contract and procedural language is German.
9. The place of jurisdiction is the competent regional court for "ZRS" in Graz.