

General Terms and Conditions

Business for Purchasing

June 2014 edition

1. General

- 1.1. The present "General Terms and Conditions of Business for Purchasing" and the Axpo "Code for Business Partners" ("Code") in the version valid on conclusion of the agreement are an integral part of the agreement.
- 1.2. To be valid, orders must be in written form. Orders, agreements, supplements and amendments which have been made verbally or by telephone are only binding if confirmed in writing.
- 1.3. The General Terms and Conditions of Business for Purchasing and the Code shall apply unless contradictory written terms and conditions are agreed in the specific instance. General Business Terms (delivery, assembly conditions etc.) and a Code for Business Partners of the Contractor shall apply only if this is expressly recognized as such in writing in the agreement.
- 1.4. If there are contradictions between the agreement, the present General Terms and Conditions of Business for Purchasing and the Code, the agreement shall take precedence and the regulations in the General Terms and Conditions of Business for Purchasing shall come second in order of precedence.
- 1.5. An order confirmation shall be sent to the Purchaser within 10 days after receipt of the order. If no order confirmation is sent, the order shall be deemed accepted under the terms and conditions contained in the order. The order confirmation shall be accompanied by the required technical documentation.
- 1.6. The sub-contracting of orders to others without the written consent of the Purchaser is prohibited.

2. Delivery

- 2.1. Delivery shall be made in a professional and appropriate manner using the best-suited materials. In particular, delivery must comply with the current official regulations and the relevant technical standards, codes and specifications.
- 2.2. All additional expenses which are incurred due to non-observance of instructions or non-conforming deliveries shall be borne by the Contractor.

3. Delivery date

- 3.1. The delivery date stipulated by the Purchaser is binding unless an objection is raised within 10 days.
- 3.2. The delivery date shall be deemed to have been met if delivery is made or the work is performed correctly by the scheduled date.

- 3.3. Non-adherence to the scheduled date entitles the Purchaser to forego belated performance and either to demand compensation for damage resulting from the non-fulfilment, or to withdraw from the contract.

4. Shipping

- 4.1. Shipping shall be at the risk of the Contractor. Costs for losses or damage incurred during transport shall be borne by the Contractor.
- 4.2. The arrival clause DDP of INCOTERMS 2010 shall apply.
- 4.3. Each consignment shall be accompanied by a delivery note, a copy of which is to be submitted to the Purchaser. Each consignment item must be furnished with a label or readily visible marking of another type.
- 4.4. All mechanical parts shall be adequately protected against mechanical damage and corrosion, and insulating parts shall additionally be protected against moisture.
- 4.5. Transfer of benefit and risk shall take place after arrival of the goods at the place of performance.

5. Acceptance, warranty period, warranties

- 5.1. The inspection of the goods by the Purchaser is not bound to a specified time limit. However, this inspection is to be carried out as quickly as possible after receipt. If the inspection of the goods reveals no substantial deficiencies, the consignment shall be regarded as having been accepted by the Purchaser.
- 5.2. The warranty period is two years from date of acceptance or commissioning, but at the most three years after receipt of the consignment.
- 5.3. Should repair work or replacement deliveries need to be made, the warranty period for the repaired parts or the replacement deliveries shall commence as from the date of acceptance, but in no case shall the warranty period last for more than three years after initial acceptance of the repaired or replacement parts.
- 5.4. During the warranty period the Contractor will, as quickly as possible and at his own cost, repair or replace (if necessary with parts of another suitable design) all parts and equipment which show defects in design, material, workmanship or assembly or which otherwise fail to meet the contractual stipulations.
- 5.5. Indirect advantages which ensue for the Purchaser as a result of rectification of deficiencies shall not be charged to the account of the Purchaser.

5.6. Raw materials and semi-finished products which prove to be deficient during processing shall be replaced free of charge, irrespective of the time that has elapsed between the time of delivery and detection of the deficiency.

6. Legal consequences of non-adherence to warranties, liability for damage

6.1. If the consignment shows substantial deficiencies or non-conformance with the agreement to the extent that the Purchaser cannot use the goods or reasonably be expected to accept them, the Purchaser may refuse to accept the consignment, withdraw from the agreement and demand compensation for damage.

6.2. Should the deficiencies or non-conformance with the agreement be less substantial, the Purchaser shall allow the Contractor a reasonable period of time in which to carry out the required improvements as warranty work. If, within this time period, the deficiencies are not rectified or rectification is unsuccessful, the Purchaser is entitled to perform the warranty work himself or have it performed by a third party at the cost of the Contractor. If, instead, the Purchaser forgoes rectification of the deficiencies, or if it is only possible to rectify part of the deficiencies, the Purchaser is entitled to deduct an appropriate amount from the price corresponding to the reduction in value.

6.3. The Contractor shall be liable for any damages inflicted on the Purchaser by the delivery, the Contractor or the Contractor's personnel, with the exception of consequential damages such as power failures, production stoppages, loss of profits and other indirect damages. Liability for material damage and pecuniary losses is limited to a maximum of CHF 10,000,000.00 per order. For orders with a value of over CHF 10,000,000.00, the cap on liability shall be agreed separately in each case.

7. Invoicing and payment

7.1. The invoices are to be issued immediately after shipment of the goods. Each order is to be invoiced separately and in detail.

7.2. Unless agreed otherwise, payment shall be made within 30 days net after receipt of the invoice.

8. Infringement of proprietary rights and patents

The Contractor is liable to the Purchaser for all proprietary rights and patents pertaining to the delivery and undertakes to conduct any legal proceedings on behalf of the Purchaser at his own cost and to hold the Purchaser harmless against all possible damages.

9. Applicable law, place of jurisdiction, disputes

9.1. This agreement shall be governed by Swiss law. The application of the United Nations Sales Convention on Contracts for the International Sale of Goods (UN Sales Convention, in force since 1 March 1991) is expressly excluded in full.

9.2. **The parties agree to Baden, Canton of Aargau, Switzerland, as the place of jurisdiction.**

9.3. If the parties cannot agree on an arbitration court, disputes arising between the Purchaser and the Contractor shall be handled by the regular courts; the right of appeal to the federal court is reserved.

9.4. Differences of opinion do not entitle the Contractor to interrupt the work or to refuse to perform any work or deliveries pursuant to the contract. Likewise, the Purchaser is not entitled to withhold payments which have become due.

10. Place of performance

10.1. The place of performance for delivery of the goods is the intended place of destination.

10.2. The place of performance for payments is Baden.