

General Terms & Terms & Conditions of Purchase

I. General Scope of Application

1. The Purchaser's Terms & Terms & Conditions of Purchase shall be applicable exclusively. Any terms & conditions of sales of the Supplier inconsistent with or deviating from these Terms & Terms & Conditions of Purchase shall form a part of the contract only if expressly accepted by the Purchaser in writing. If the Purchaser accepts goods or services without reservation, this shall not signify that the Supplier's sales conditions were accepted by the Purchaser – even if the Supplier's conditions inconsistent with or deviating from these Terms & Terms & Conditions of Purchase were known to the Purchaser.

The Supplier's confirmation of order shall constitute its acceptance of these Terms & Terms & Conditions of Purchase. By executing the order, the Supplier acknowledges the exclusive applicability of these Terms & Conditions of Purchase.

2. These Terms & Conditions of Purchase shall apply also to any future business with the Supplier in the course of an on-going business relationship.

3. All agreements made for the purpose of performing the contract between the Purchaser and the Supplier must be set out in writing.

4. These Terms & Conditions of Purchase shall be applicable only in relation to entrepreneurs within the meaning of sec. 310 (4) BGB (German Civil Code).

II. Offers – Offering Documents – Declarations of Will

1. The Purchaser's silence in response to the Supplier's proposals or requests shall not constitute any consent or approval.

2. The Purchaser's orders shall be non-binding unless a commitment period is expressly stated on the Purchaser's orders.

3. The Supplier shall be bound by its offers for two weeks. The Supplier is obliged to accept the Purchaser's order within 2 weeks (date of receipt of acceptance at the Purchaser).

4. The Supplier may subcontract any work to a third party only with the Purchaser's prior consent.

III. Changes in Performance – Documents – Packaging

1. The Supplier must provide all proof and evidence required by the Purchaser to examine the goods/services or to use them in Germany or abroad (e.g. test certificates, factory certifications, certificates of origin, Supplier's declarations) free of cost to the Purchaser.

2. The Supplier must inform the Purchaser in writing before accepting the Purchaser's order if the composition of the material being processed or the design-engineering has changed compared to earlier work of the same kind for the Purchaser. Such changes shall be inadmissible after the conclusion of the contract.

3. Documents prepared by the Supplier for the purpose of the performance of the contract must be checked by the Supplier for correctness and completeness. If the Supplier discovers errors or any unclarity or ambiguity in the documents, the Purchaser must be notified. If the Supplier violates this obligation, the Supplier shall compensate the Purchaser for any damage resulting from such breach of duty.

Documents made available by the Purchaser to the Supplier for the purpose of the performance of the contract must be examined by the Supplier for their correctness and completeness prior to the execution of the Purchaser's order. If the Supplier discovers errors or any unclarity or ambiguity in the documents, the Purchaser must be notified promptly.

4. The Supplier shall upon delivery of the goods or rendering the services send to the Purchaser all drawings, calculations, parts lists, concepts and all of the technical documents concerning the delivery item in German language. The documents must comply with the German norms and must be copyable. The Supplier shall adjust the documents to any changes of the goods or services agreed on subsequently.

5. The Purchaser retains title and copyright to illustrations, drawings, calculations and other documents; they must not be made accessible to any third party without the Purchaser's express prior written consent. They may be used exclusively for production on the basis of the Purchaser's order and must be returned to the Purchaser at its request after the performance of its work and services under the contract. They shall be kept secret from any third party.

6. The Supplier must take back any packaging at the Purchaser's request: Obligation to take back: The place of performance of the obligation to take back packaging within the meaning of paras 4, 5 and 6 of the Packaging Regulations is the domicile of AIXTRON AG. The Supplier shall bear the costs for taking back and/or transporting packages back to its domicile.

IV. Delivery Date

The delivery date stated in the order shall be binding. The delivery date is met if the goods are delivered or services rendered in time at the place

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of performance specified by the Purchaser. The Purchaser must be informed promptly by the Supplier in writing of any circumstances which endanger the delivery on the agreed delivery date.

2. If the Supplier is in default in delivery, the Purchaser has the right to demand a contractual penalty amounting to 0.5% of the net purchase value concerned per full week of delay, but no more than 5 %. The Purchaser shall be entitled to demand this contractual penalty in addition to performance. The Purchaser can within 30 days of receipt of the Supplier's invoice reserve the right to demand payment of the contractual penalty. The Purchaser reserves the right to claim further damage.

3. The Purchaser has the right to reject any deliveries made to it prematurely. However, if the delivery is accepted, the goods shall be stored by the Purchaser up to the agreed delivery date at the Supplier's cost and risk.

V. Prices, Passing of the Risk

1. Unless otherwise expressly agreed, all prices are fixed prices "free domicile" (DDP Incoterms 2000) at the address for shipments stated on the order.

They include, inter alia, shipping and packaging costs, taxes, duties, commissioning costs, fees and other charges. Any value-added tax and other taxes which are payable by the Supplier are also included in the price.

2. Mark-ups for small-volume purchases, minimum order values and any downgrade of conditions due to small quantities will not be accepted.

3. Shipping documents and/or delivery notes describing the contents, stating the Purchaser's order number and other order information must accompany every delivery. A dispatch note with the same information must be sent to the Purchaser no later than upon dispatch. If for reasons that the Supplier is responsible for, the required shipping documents and/or delivery notes relating to a delivery are not available in time, the Supplier shall be responsible for the ensuing consequences. The Purchaser shall in particular but not limited to have the right to store the goods at the Supplier's risk and cost.

4. Unless otherwise agreed in writing, the risk shall pass over to the Purchaser in accordance with DDP (Incoterms 2000) only upon delivery at the address indicated by the Purchaser on the order.

VI. Insurance

The Purchaser is a self-insurer. Costs for insurance for a consignment will not be recognized.

VII. Invoices, Payments

1. A separate invoice shall be issued to the Purchaser's address for every order/delivery, unless a different address for the invoice is stated on the order, and every invoice must show the Purchaser's order number and other order information. Invoice duplicates must be designated as such. The Supplier shall ensure that its invoice is issued in compliance with sec. 14 UStG (German VAT Act).

Invoices can be processed by the Purchaser only if they show the order number stated on the Purchaser's order; the Supplier shall be responsible for all consequences arising from any failure to perform this obligation.

2. Payments shall be made in accordance with the conditions set out in the order.

Unless otherwise agreed in writing, the Purchaser shall pay the invoice amount within 14 days, counting from the delivery of the goods and receipt of a proper invoice, with a discount of 3%, or the net amount within 30 days.

The deduction of a discount is admissible also if the Purchaser sets off justified counter-claims from the Supplier's claim within 14 days.

3. The Purchaser has set-off and retention rights to the extent granted by law. The Supplier may set off counter-claims from the Purchaser's claims only if the counter-claims are not disputed by the Purchaser or have been awarded by final and non-appealable judgement. The same shall apply to the exercise of rights of retention which in addition must be based on the same contract.

4. Payments made by the Purchaser shall not constitute an acknowledgement of proper performance.

VIII. Warranties

1. The limitation period for warranty claims is 36 months from the passing of risk except where longer limitation periods are fixed by law.

2. At any rate, a notice of defects is given by the Purchaser in time if it is given within 2 weeks of delivery or, in the case of hidden defects, within 2 weeks of their discovery.

3. The Supplier warrants that the goods or services are state of the art and in compliance with all applicable laws, the applicable environmental protection and accident prevention and other industrial safety regulations as well as the generally recognized technical safety rules and industrial medicine standards applicable in Germany, except if special rules are agreed on.

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The Supplier must also comply with the provisions in force at the place of final destination if the place of destination for its goods/services are known to it at the time of the conclusion of the contract.

4. The Supplier warrants that all things delivered by it burden the environment in the course of their production, their later use/consumption and their possible disposal as little as possible in view of the state of the art at the time of the conclusion of the contract.

5. The Purchaser's statutory warranty claims shall not be limited. Notwithstanding the foregoing, the Purchaser may, at its sole option, demand that the Supplier either remedies defects or make substitute delivery. The Supplier shall be obliged to bear all expenses necessary to remedy the defects or to make substitute delivery. The Purchaser's right to demand damages, in particular damages for non-performance, is expressly reserved and unaffected.

6. If the Supplier fails to perform subsequently within a reasonable period fixed by the Purchaser after requesting the subsequent performance (remedy of defects or substitute delivery), Purchaser may rectify the defect itself and/or by qualified third parties at the Supplier's cost and risk.

If damage or any loss appears to be imminent, or if this is necessary to avoid substantial damage also in the Supplier's interest, and the Purchaser cannot reach the Supplier first, the Purchaser shall be entitled to remedy the defects itself at the Supplier's expense. The Supplier shall however be notified promptly by the Purchaser.

7. The Purchaser's warranty claims against the Supplier in respect of the Supplier's work and services shall remain unaffected by the Purchaser's approval, if any, of the Supplier's drawings, calculations and other technical documents. The same applies in case the Purchaser makes proposals or recommendations to the Supplier regarding the performance of its work or services. Unless otherwise expressly agreed, the Supplier's warranty obligations shall remain unaffected thereby .

IX. Product Liability

1. The Supplier must indemnify and hold harmless the Purchaser at its first request from any third-party damage claims arising from any product damage that the Supplier is responsible for, but only to the extent that the damage has its cause within the Supplier's organization and influence and the Supplier itself is liable in relation to third parties.

2. The Supplier shall also be obliged to compensate the Purchaser for any expenses which arise from or in connection with a recall carried out by the Purchaser (in accordance with secs. 603, 670 et seq. BGB and secs. 830, 840, 426 BGB). The Purchaser shall inform the Supplier – to the extent possible – about the content and scope of the recall to be carried out and shall give the Supplier an opportunity to comment. Further statutory claims of the Purchaser shall remain unaffected.

3. The Supplier undertakes to maintain product liability insurance with an insurance sum of € 5 million – as a lump sum – per occurrence of personal injury/property damage; any further damage claims that the Purchaser may have shall remain unaffected.

X. Intellectual Property Rights

1. The Supplier shall be liable for any violation of third-party industrial property rights or copyrights in Germany or, provided the Supplier knows the final destination of the goods or services at the time of the conclusion of the contract, at the place of destination through its goods or services, also in respect of their use, and warrants that the Purchaser has the right to use and resell the goods without any restrictions.

2. If a third party makes any claims against the Purchaser because of a violation of industrial property rights or copyrights, the Supplier shall be obliged to indemnify and hold harmless the Purchaser from such claims at upon first written request; the Purchaser shall not enter into any agreements with the third party – without the Supplier's prior consent – to the Supplier's disadvantage, in particular not to enter into any settlement.

3. The Supplier's obligation to indemnify and hold harmless the Purchaser relates to all expenses necessarily arising from or in connection with any claims made by a third party.

4. Claims based on defects in rights are statute-barred 3 years after the Purchaser obtains knowledge or should have obtained knowledge of the defect, but not later than five years after the passing of risk.

5. Products upon which the Supplier affixes the Purchaser's trademark, name or logo must not be delivered by the Supplier to any third party.

XI. Spare Parts

1. The Supplier is obliged to remain able for at least 3 years after delivery to supply spare parts to the Purchaser on reasonable terms.

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2. If the Supplier discontinues the production of the spare parts, it shall be obliged to give the Purchaser an opportunity to make a final order. If the Supplier violates this obligation, the Supplier must compensate the Purchaser for any accruing damage or loss.

XII. Retention of Title/Order/Tools/Confidentiality

1. The Purchaser retains title to all its tools. The Supplier may use the tools and other items made available to the Supplier exclusively for the production of the goods ordered by the Purchaser. The Supplier is obliged to insure the Purchaser's tools and items against fire, water damage and theft at its own expense for the value when new. The Supplier must have any necessary maintenance and inspection work carried out in time at its own expense. Any malfunction or trouble must be reported immediately to the Purchaser; if the Supplier fails to do so, damage claims of the Purchaser shall remain unaffected.

2. The Supplier is obliged to keep all illustrations, drawings, calculations and other documents and information received by it strictly confidentially, and shall not disclose them to any third party without the Purchaser's express prior consent. The obligation of non-disclosure shall survive the termination of this agreement. However, the obligation of non-disclosure shall cease if and to the extent that the know-how contained in the illustrations, drawings, calculations and other documents made available becomes generally known.

3. The Purchaser objects to any extended retention of title of the Supplier.

XIII. Software

1. If software purchased by the Purchaser is no longer supported by the Supplier, the Supplier shall be obliged to provide the source codes to the Purchaser on reasonable terms with documentation enabling a third party having knowledge of the program language to make any necessary modifications.

2. Unless otherwise explicitly agreed in writing, the Purchaser shall have the full and unrestricted rights to use individual software ordered by it, and all such rights shall pass over to the Purchaser upon the passing of risk. The Supplier shall not make such individual software accessible or available to any third party and shall not use the software and parts of the software developed for the Purchaser for any third-party purposes.

XIV. Assignment of Claims

No claims of whatever kind arising against the Purchaser can be assigned without the Purchaser's written consent. Section 354a HGB (German Commercial Code) shall remain unaffected.

XV. Severability

If any provision is or becomes legally unenforceable or void, the remaining provisions of the contract shall remain in full effect. The contracting parties shall then promptly agree on an enforceable provision which comes as close as possible to the economic purpose and intent of the unenforceable or void provision.

XVI. Jurisdiction/Place of Performance/Governing Law

1. The exclusive place of jurisdiction for all claims and disputes in respect to the contract shall be the Purchaser's seat, provided that the Supplier is a merchant; the Purchaser shall, however, have the right to also sue the Supplier at its seat or domicile.

2. Unless otherwise stated in Purchaser's order or confirmation of order, the place of performance is the Purchaser's domicile.

3. The law of the Federal Republic of Germany, without giving effect to its conflict of law rules, shall govern. The United Nations Convention on the International Sales of Goods (UNCITRAL) shall not be applicable.