



# Terms and Conditions of Purchase of Austria Email AG

## I. Application

1. These terms and conditions of purchase apply for all contracts concluded by Austria Email AG (hereinafter AEAG); through the submission of a quotation or acceptance of a quotation submitted by AEAG, the seller, supplier or contractor (hereinafter contract partner) accepts the present terms and conditions. Upon delivery/fulfilment, the contract partner accepts the terms and conditions of purchase of AEAG unconditionally and fully.
2. The terms and conditions of purchase of AEAG shall apply exclusively; terms and conditions of the contract partner that conflict with or deviate from the terms and conditions of purchase of AEAG will not be recognised by AEAG and are therefore not valid, unless AEAG has consented to their application in writing. The terms and conditions of purchase of AEAG shall also apply if AEAG uses or provides services despite knowledge of terms and conditions of the contract partner that conflict with or deviate from the terms and conditions of AEAG.

## II. Free quotations etc.

Quotations as well as visits, advising, preparation of plans, submission of cost estimates etc. shall be free of charge for AEAG in all cases.

## III. Conclusion of contract

1. AEAG shall only be legally bound by written declarations of intent. Verbal or telephone orders or assignments shall only be legally valid if confirmed in writing by AEAG.
2. Confirmation of order or delivery date with prices and complete order data must be sent to AEAG at the latest 10 days (in words ten days) following receipt of the order or assignment.
3. Through acceptance of the order, the contract partner undertakes to supply the goods in precisely the agreed quality, quantity and description as set out in the order, in drawings or in technical documentation etc. If the order involves items of machinery and equipment, these must be supplied ready for operation.
4. Material delivered must comply with the relevant Austrian standards and regulations. In the event of deviations from these Austrian standards and regulations, these deviations require the prior, written approval of AEAG.
5. All orders must be confirmed immediately using the enclosed reply letter (order confirmation) (see point III/2).

## IV. Subcontractors

The contract partner is fundamentally obliged to execute orders placed with him himself. Should he wish to make use of subcontractors, the choice of these requires the prior, written confirmation of AEAG; such confirmation shall not, however, limit the responsibility of the contract partner or supplier for the entire delivery. The contract partner shall be liable for his subcontractors as per Section 1313 a ABGB (Austrian Civil Code).

## V. Delivery dates, delivery periods

1. The delivery period shall begin on the date of the written order, in urgent cases on the date of the verbal order. The contract partner is only entitled to make partial deliveries with the consent of AEAG. Premature deliveries or over-deliveries in excess of the firmly ordered quantities are not permitted and will not be accepted by AEAG.
2. Agreed delivery periods must be adhered to precisely. If a delivery is not made at the envisaged time, to the envisaged location or not in the contractually agreed manner, AEAG shall be entitled to withdraw from the contract without setting any deadline or to insist on fulfilment of the contract and to demand damages for late fulfilment. The withdrawal from the contract can be declared within a period of 6 months from the original due date; there is no need for the written form. In the event of withdrawal, the claim to damages shall cover all costs associated with the procurement of replacement deliveries. In all cases of late delivery, AEAG shall be entitled to payment of a contractual penalty of 10% of the order value, at least, however, 300.00 euros. This is not subject to judicial discretion. Any damage over and above this must also be compensated for – provided the contract partner is at fault.
3. As soon as he recognises that it will not be possible for him to deliver on time – either in part or in full -, the contract partner must notify this immediately in writing stating the reasons and the foreseeable duration of the delay. AEAG shall then be entitled to declare immediately that it will withdraw from the order with the result that it is entitled to assert the claims agreed under point V/2. This procedure shall not result in any claims whatsoever of the contract partner against AEAG.

## VI. Dispatch

1. Delivery must be made correctly packed as per the dispatch regulations stated in the order. Immediately following dispatch, AEAG must be forwarded a notification of dispatch in duplicate, stating the order number, the parts or material identification number and other information contained in the order. In the event of failure to comply with the dispatch regulations issued by AEAG as well as in the event of incorrect packing, all resulting damage, additional freight charges and costs shall be for the account of the contract partner.

2. Receipt or acceptance of the delivery is only possible during the periods envisaged for this by the receiving body. The return of packaging material, packing and transport aids shall be for the account of the contract partner.

3. With deliveries of goods subject to the relevant provisions of the international hazardous substances regulations, the contract partner shall assume responsibility for complete adherence to these regulations (including customs regulations) through acceptance of the order. AEAG shall be indemnified against the legal consequences of failure to comply with these regulations.

#### **VII. Invoicing and payment**

1. Invoices must be sent separately and in duplicate for each order following delivery or performance. They must comply with the respectively applicable turnover tax regulations and state the order or material identification number. They must not be enclosed with the goods.

2. In the absence of any agreement to the contrary, payment shall be made within 30 days of delivery and invoicing with 3% cash discount or within 90 days net. Authoritative for payment dates is the date of receipt of the invoice by AEAG, at the earliest, however, the date of receipt of the goods.

3. AEAG reserves the right to pay by three-month acceptance bill of exchange with charges and interest for its account.

4. Payment can also be through offsetting against claims of AEAG against the contract partner. If the contract partner is a juridical person, he also guarantees that the juridical persons with a shareholding in him are in agreement with offsetting against the claims of AEAG. In the event of default on payment by AEAG, the contract partner shall not be entitled to charge interest (not even at the statutory level) or other administration charges.

5. Payment shall not constitute recognition of the correctness of the delivery (performance) and thus shall not constitute renunciation of claims for fulfilment defects on the basis of warranty or damages. Down payments shall retain their value and indeed pro-rata in relation to the total order value.

#### **VIII. Prices**

All prices are to be understood as fixed or lump-sum fixed prices and are inclusive of all ancillary performances and charges including transport, unloading and necessary packing. The prices cannot be increased for any reason whatsoever. Planned price increases must be notified in writing and will only be recognised with the explicit, written approval of AEAG. Obvious errors, spelling and calculation mistakes shall have no binding effect on AEAG.

#### **IX. Prohibition to assign**

Claims to which the contract partner is entitled against AEAG must not be assigned to third parties. Under no circumstances is the contract partner entitled – irrespective of the reason – to delay and/or withhold his performances. The contract partner is likewise not entitled to a right of withholding concerning items provided by AEAG.

#### **X. Patent protected privileges**

The contract partner shall guarantee that use by AEAG of the goods supplied by him does not violate existing protected privileges and rights of third parties. He explicitly undertakes to indemnify AEAG against any corresponding claims of third parties and to compensate AEAG for all related damages.

#### **XI. Passing of risk and title**

1. The risk concerning the goods delivered shall not pass until delivery at the goods receipt point of AEAG or at the headquarters of AEAG. This shall also apply in the event of acceptance on default by AEAG.

2. Irrespective of the agreed payment periods, title to the goods delivered shall pass to AEAG with the risk. The contract partner is not entitled to reserve title to the goods delivered. Any corresponding clauses shall be invalid.

3. Through execution of the order, the contract partner guarantees that he has title to the goods delivered. Should this not be the case, he shall be obliged to provide damages irrespective of fault.

#### **XII. Warranty**

The contract partner guarantees execution of the performance in accordance with the order and adherence to all relevant, statutory provisions and ÖNORM regulations in the respectively applicable version and shall provide a warranty in accordance with the statutory regulations of the ABGB, including the Warranty Rights Amendment Act that came into effect on 01.01.2002. Nevertheless, the following modifications have been agreed:

1. The period as per Section 933 ABGB shall not begin to run until upon delivery. This shall also apply if delivery is delayed through default on acceptance on the part of AEAG.

2. Section 377 HGB (Commercial Code) is hereby rendered not applicable by mutual consent. AEAG is not obliged to notify defects but rather it can assert them during the entire warranty period.

3. AEAG is at liberty to claim rescission, a reduction in price, repair or subsequent delivery of missing items. The contract partner shall be bound by a corresponding choice of AEAG which will be made through extra-judicial declaration.

4. Defects which AEAG cannot detect without further checking shall entitle AEAG to claim damages for futile costs of processing and treatment irrespective of whether the contract partner is at fault or not.

5. In urgent cases or if the contract partner fails to fulfil his warranty obligations immediately, AEAG shall be entitled to replace or repair defective parts and to remove any damage incurred at the expense of the contract partner.

6. Under no circumstances shall acceptance or approval of drawings submitted constitute renunciation by AEAG of its warranty claims.

7. It is explicitly agreed that the contract partner, irrespective of whether he is a manufacturer, importer, supplier or only a dealer, shall indemnify AEAG in the event of successful claims being asserted against AEAG under the Product Liability Act and indeed for the entire costs incurred by AEAG through the respective assertion of product liability claims, including all costs associated with defence against such claims.

8. The contract partner shall only be released from this obligation if he demonstrates that he has not supplied the defective product to AEAG or that the product did not have the defect, responsible for the damage, at the time of delivery to AEAG.

9. AEAG is obliged to inform the contract partner immediately and in writing of all claims asserted against AEAG under the Product Liability Act. In the event of legal action against AEAG based on such claims, AEAG is at liberty to issue a third party notice against the contract partner. In the event of non-compliance with any such request by AEAG for third party intervention, the contract partner shall forfeit the right to dispute the recourse claims of AEAG against him and they shall apply as recognised.

### **XIII. Goods outward / goods inward check Right of return**

1. The contract partner guarantees that the products delivered conform to the state of the art or to the recognised EU regulations as well as to the technical delivery specifications agreed between both business partners, and shall confirm his goods outward check as per AQL 1.0 Checking Level II, DIN ISO 2859 Part 1 for each delivery using the check report provided by AEAG upon separate request. AEAG is released from a goods inward check in accordance with the paragraphs of the HGB. Nevertheless, we reserve the right to carry out an additional goods inward check in accordance with the criteria set out above with critical products.

2. In the event of AEAG detecting defects which constitute an exceeding of the respectively acceptable quality threshold (AQL) which is dependent on the effects of the processing of the defective part, AEAG shall be entitled to return the entire delivery, in which the defective part was contained, to the contract partner. By way of subsequent fulfilment, AEAG can, at its discretion, demand removal of the defect or delivery of a defect-free item. If applicable, the contract partner shall be obliged to bear all costs necessary for the purpose of subsequent fulfilment. The defect claims and rights to which AEAG is entitled by law shall remain unaffected. In the event of particular urgency, AEAG shall be entitled to remove defects itself or to have these removed. This shall also apply if the contract partner is in default with the warranty. The costs of warranty work arranged by us shall be for the account of the contract partner.

### **XIV. Models, samples, tools, drawings**

1. If the order involves the assumption of model, sample, tool and drawing costs, irrespective of whether the costs are stated specially or are included in the purchasing price of the goods, it shall apply as agreed that the models, samples, tools and drawings shall pass to the ownership of AEAG.

2. Nevertheless, they shall continue to apply as provided to the contract partner on a loan basis for the execution of these orders. The models, samples, tools and drawings must be treated as confidential and must be used exclusively for performance of the AEAG orders and under no circumstances reproduced. No models, samples, tools and drawings produced in accordance with AEAG specifications must be handed over to third parties. Parts protected for AEAG under the provisions of industrial property rights must never be supplied to third parties. This shall also apply even if no further orders are placed.

3. In particular, it shall apply as agreed between the contract partner and AEAG that the contract partner shall keep and look after the models, samples, tools and drawings for AEAG correctly and free of charge, including adequate insurance against fire, water and theft.

4. If, at its own discretion, AEAG sees a need to request the contract partner to return the models, samples, tools and drawings of which AEAG is the owner, the contract partner shall recognise this request without objection.

5. If, however, models, samples, tools and drawings have become the property of the contract partner on the basis of special contractual agreements, AEAG shall be entitled to acquire these parts at cost price, if applicable taking account of wear and tear and amortisation in the interim period, and to dispose exclusively of these. If necessary, the contract partner must provide AEAG with evidence of this insurance cover, stating the insurance company and policy as well as the headquarters of the insurance company.

### **Safety provisions**

The goods delivered must comply with all applicable safety regulations (laws, ordinances, standards etc.), whereby this shall apply in particular in terms of the General Ordinance on Protection of Service Recipients, the Ordinance on Machine Protection Devices and the applicable regulations on electrical engineering. The responsibility for ensuring adherence to all respectively applicable protection regulations shall lie exclusively with the contract partner.

## **XVI. Documentation**

The contract partner is obliged to note all circumstances, of relevance for the presentation of his product as well as for its use and which can reasonably be reckoned with, in as comprehensive a description (documentation) of the goods as possible and to hand this to AEAG together with the goods. In particular, he is obliged to draw attention in writing to all circumstances that could impair the safe use of the goods sold.

The contract partner undertakes to name the respective manufacturer, importer or upstream supplier of the products supplied by him immediately (within 14 days) as well as providing all documents concerning the products delivered indicating their production and delivery data and/or date of production and delivery. This undertaking shall apply for a period of 11 years.

## **XVII. Confidentiality**

The contract partner is obliged to treat orders of AEAG and the related work as business secrets and to keep these confidential. He may only make reference to his business relation with AEAG in his advertising if AEAG has given its explicit written consent to this.

## **XVIII. Insolvency**

AEAG can withdraw from the contract through written notification if insolvency or settlement proceedings are applied for against the assets of the contract partner or if the contract partner ceases payments or liquidates his company, either voluntarily or through enforcement, or requests a moratorium, without there being any possibility of AEAG being held liable for damages in any form as a result. AEAG shall also be entitled to the said right if the contract has been fulfilled, either in part or in full, by one or both contract parties, provided the warranty period has not yet expired.

## **XIX. Force majeure**

The release of the contract partner from his obligations shall only apply in cases of force majeure such as war, mobilisation, strike for more than 30 consecutive days in the supply plant. The contract partner must inform AEAG immediately and in writing of any such case of force majeure. In such cases, the contract partner shall be entitled to withdraw from the contract immediately. Performances exchanged up until this time must be reverse processed in accordance with Section 1447 ABGB.

AEAG shall also be released from on-time receipt/acceptance of the service/delivery in cases of industrial unrest (strike and lockout), operational disruptions, operational restrictions and similar cases which result in a reduction in consumption. This release shall apply for the duration of the disturbance.

## **XX. Place of performance, place of jurisdiction**

At the discretion of AEAG, the place of performance for deliveries and services is either the goods receipt location prescribed by AEAG or the headquarters of AEAG. Exclusive place of jurisdiction for all disputes arising directly or indirectly from the delivery relation, in particular for all differences to be settled with the contract partner in connection with the products delivered, as well as for disputes concerning cheques and bills of exchange, is the court factually and locally responsible for the headquarters of AEAG which must apply Austrian law both substantively and formally.

The foreign contract partner undertakes furthermore to consent to enforcement of a judgement, passed by an Austrian court concerning recourse claims of AEAG, in his home country and not to resist any corresponding application for enforcement.

## **XXI. Exclusion of the UN Convention on Contracts for the International Sale of Goods**

Austrian law shall apply both formally and substantively, nevertheless subject to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

## **XXII. Consent to data processing**

The contract partner hereby gives his explicit consent to AEAG storing all order and customer-related data in so far as this is connected to the order, and processing and using this in automated form for own purposes if required. At the same time, he is hereby explicitly informed of this processing.

## **XXIII. Written form**

Subsidiary agreements as well as retrospective amendments can only be agreed in writing; amendment of this requirement of the written form also requires the written form. Verbal assurances from employees or representatives of AEAG are therefore only valid if confirmed in writing by AEAG.

## **XXIV. Invalidity of individual clauses, partial nullity of individual clauses**

Should individual provisions of these terms and conditions of purchase of AEAG be or become invalid, the validity of the other terms and conditions of purchase shall remain unaffected. In such cases, AEAG shall be entitled to determine a replacement clause – corresponding closely to the meaning and purpose of the invalid clause. The contract partner shall be bound by this replacement clause, unless it is grossly unreasonable.

In the event of individual clauses partially violating mandatory law, they will be retained by the contract parties in so far as they are legally admissible.