

DO General Terms and Conditions of Procurement



General Terms and Conditions of Procurement of esarom gmbh, Esaromstraße 51, A-2105 Oberrohrbach (valid from 27.02.2024)

1. Scope; Exclusive Application

- 1.1. The present terms and conditions apply to all contractual and pre-contractual legal relationships concerning (inter alia) the acquisition of movable goods by esarom gmbh (the *Purchaser*).
- 1.2. The present terms and conditions apply mutatis mutandis to all contractual and pre-contractual legal relationships concerning services, e.g., transport services, in favor of the Purchaser.
- 1.3. The present terms and conditions apply exclusively. The Purchaser does not accept any deviating terms or conditions. Such conditions have no effect even if they are sent to the Purchaser and the latter takes them over.

2. Definitions

- 2.1. A *Supplier* is any (prospective) contractual partner of the Purchaser, irrespective of the specific type of contract.
- 2.2. An *Order* is the acceptance or an offer by the Purchaser to enter a contract or - if the order does not include all minimum contents for the contract (essentialia negotii) - a request by the Purchaser to the Supplier to make such an offer (by means of an order confirmation).
- 2.3. A *Supply Contract* is a contract for the purchase of a certain quantity of goods at a certain price, partial deliveries of which are triggered within a certain period (e.g., a calendar year) by call-offs by the Purchaser.
- 2.4. A *Call-Off* is the determination of a specific delivery date and quantity for a partial delivery from a Supply Contract.

3. Order; Call-Off; Order Confirmation

- 3.1. Orders and Call-Offs as well as their amendments and supplements must be made in (electronic) writing.
- 3.2. The Supplier shall confirm and sign each Order and each Call-Off, stating the price, the delivery date, and the order number. These order confirmations shall be addressed to purchase@esarom.com or the initiator named in the Order.
- 3.3. Together with the order confirmation, the Supplier must provide the Purchaser with a fully completed safety data sheet if, for legal, environmental, health or comparable reasons, special requirements must be met for the goods concerned regarding packaging, transport, storage, handling or waste disposal. In the event of changes to the materials or the legal situation, the Supplier must update the safety data sheet without being asked to do so.
- 3.4. The Supplier must calculate the product carbon footprint and provide it to the Purchaser with the order confirmation.
- 3.5. Until receipt of an order confirmation, the Purchaser is always entitled to revoke the order. In addition, the Purchaser is entitled to revoke the Order even after receipt of an order confirmation, if the order confirmation is received later than 3 days after placing the Order.
- 3.6. If the price is not specified at the time of the Order, it is to be specified with the order confirmation at the latest.

In this case, the acceptance of the Purchaser remains reserved. (See also Item 2.2.)

- 3.7. Call-Offs become binding without order confirmation if the supplier does not object within 3 days of receipt at the latest.
- 3.8. Objection of a Call-Off requires that the Call-Off is not in line with the Supply Contract or that the delivery date set in the Call-Off cannot be met taking the usual lead time into account. In the latter case, the Supplier must propose an alternative delivery date on the basis of the usual lead time. This alternative delivery date gets binding with the acceptance of the Purchaser.

4. Price; Payment Conditions

- 4.1. The price is a fixed and total price. Other agreements require the express written consent of the Purchaser. The price includes especially all costs for proper packaging and for all ancillary services, such as the preparation of the offer submission and the documentation carried out.
- 4.2. The price includes all quality and function-relevant documents (certificates of analysis, health certificate, etc.).
- 4.3. The price includes all transportation costs.
- 4.4. Payment shall be made at the discretion of the Purchaser either 14 days after proper delivery and receipt of invoice less 3% discount or within sixty days without deduction.
- 4.5. Fees for international payment transactions are to be borne by the Supplier.
- 4.6. In the event of acceptance of early deliveries, the due date remains based on the agreed delivery date.
- 4.7. The Purchaser shall be entitled to withhold all payments under the specific contract as well as under all other contracts between the Purchaser and the Supplier until complete and proper performance by the Supplier.

5. Product Characteristics

- 5.1. The goods shall comply with all agreed and customary conditions as well as with the quality of previous deliveries. This also applies regarding parameters that have not been specified.
- 5.2. The goods must comply exactly with all quality agreements.
- 5.3. If the Purchaser has informed the Supplier of the purpose for which it intends to use the goods by the time the contract is concluded, this purpose becomes part of the contract and the goods are not in conformity with the contract if they cannot be used for this purpose.
- 5.4. The Supplier guarantees the usability of the goods as an ingredient in food production in Austria and the entire EU. If the goods can no longer be used within the EU due to new findings or changes in the legal situation, the Supplier is obliged to take back any stocks held by the Purchaser and to refund the full purchase price. Such obligation to take back does not arise if the Supplier has pointed out in its timely (Item 3.2) order confirmation that the goods are not marketable in the EU or will lose this marketability. In this case, the Purchaser has the right to withdraw from the purchase

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contract regarding the outstanding, i.e., not yet delivered, part.

6. Packing; Labeling

- 6.1. The goods shall be packed in a customary and appropriate manner or, at the request of the Purchaser, in the Purchaser's original packaging or other special packaging in accordance with the Purchaser's instructions.
- 6.2. The Supplier shall be liable for any damage resulting from defective or inadequate packaging irrespective of fault.
- 6.3. The Supplier guarantees that obligations of the ARA system (Altstoff Recycling Austria = Used Material Recycling Austria) in connection with the packaging are met and paid.
- 6.4. Any reusable packaging (loading equipment) is provided by the Supplier free of charge and shall be collected at the Supplier's own expense.
- 6.5. The Supplier shall mark the delivery items in the agreed manner or in the manner prescribed by the Purchaser.

7. Delivery Condition; Transport Risk

- 7.1. Unless otherwise agreed in writing, DDP Bahnhofplatz 1, A-2111 Harmannsdorf, Austria (Incoterms 2020) shall apply.
- 7.2. The Supplier shall bear the risk and any liability for returns and transport detour back to the Supplier (e.g. due to import regulations, product defects, or wrong products delivered). The Purchaser shall be deemed to be authorized to commission such transports as well as transport detour for the account and/or on behalf of the Supplier.

8. Delivery Date; Acceptance; Default

- 8.1. Unless agreed on a more precise delivery slot, the delivery date shall be met to the day, considering the Purchaser's goods acceptance times.
- 8.2. The acceptance of partial deliveries not agreed upon as well as deliveries against cash on delivery may be refused by the Purchaser. In this case, the consequences of default (Items 8.6 - 8.12) shall apply.
- 8.3. Delivery notes shall be handed over together with the goods. The acceptance of goods delivered without delivery note or with delivery documents not indicating the order number may be refused by the Purchaser. In this case, the consequences of default (Items 8.6 - 8.12) shall apply.
- 8.4. The confirmation of acceptance on the delivery note or its carbon paper copy is always subject to reservation. The goods shall only be deemed to have been accepted without reservation if the subsequent inspection reveals neither an insufficient quantity nor defects. Within 24 hours of delivery, the Purchaser may notify the Supplier of insufficient quantities, incorrect deliveries, or defects, thereby leaving the acceptance finally subject to the reservation that the goods have not been delivered properly. In this case, the consequences of default (Items 8.6 - 8.12) shall apply.
- 8.5. Delivery shall be deemed to have taken place only upon hand over of the agreed documentation and/or certificates. Before this handover, the consequences of default (Items 8.6 - 8.12) shall apply.
- 8.6. In any case of default, the right of retention pursuant to Item 4.7 applies.

- 8.7. In the event of default on the part of the Supplier, the Purchaser shall be entitled to withdraw from the contract without setting a grace period. Alternatively, the Purchaser may adhere to the contract and insist on its performance.
- 8.8. If the Supplier is at fault for the default, the Purchaser shall be entitled to claim damages for non-performance in the event of withdrawal from the contract and damages for the delay in the event of adherence to the contract.
- 8.9. In the event that the delivery date is exceeded by the supplier, a no-fault default penalty shall be agreed. It shall amount to 3% of the price of the total order for the first week and 1% for each additional week. The default penalty is limited to a maximum of 10% of the price of the total order. The right to claim further damages remains unaffected."
- 8.10. The Supplier must notify the Purchaser in writing without delay of any (foreseeable) default, whether or not the Supplier is at fault. A new delivery date must be agreed in writing.
- 8.11. The Purchaser is not obliged to inform the Supplier of any default on the part of the latter. Neither complete nor partial acceptance and/or payment of the delivery shall be deemed to be a waiver of the default penalty or other claims of the Purchaser.
- 8.12. Additional costs, such as transport and storage costs, incurred due to justified refusals of delivery acceptance as well as in the cases of items 8.4 und 8.5, are to be borne by the Supplier.

9. Warranty; Damages

- 9.1. The Supplier provides the Purchaser with a warranty for a period of 3 years from the date of handover. The warranty shall also cover all goods which are or become unusable or defective due to insufficient or inaccurate documentation. The Purchaser may, at its option, demand a price reduction, the termination of the contract, an improvement, or a replacement. In the event of termination of the contract or replacement, the Supplier shall – at its own risk and expense – immediately remove the affected goods from the Purchaser's premises.
- 9.2. The Purchaser is not obliged to notify defects of the goods within a reasonable period. Warranty claims, claims for damages due to the defect itself as well as claims arising from a mistake as to the defect-free nature of the goods remain unaffected irrespective of the absence of such notification.
- 9.3. The Supplier shall be liable to the Purchaser for all damage caused unlawfully and culpably, in particular also for all consequential damage and damage to reputation. The Supplier shall also reimburse the Purchaser for the costs of measures to prevent damage (e.g., recall campaigns).
- 9.4. Until the complete settlement of warranty claims and claims for damages, the right of retention pursuant to Item 4.7 shall apply.

10. Force Majeure and Uncontrollable Circumstances

- 10.1. If force majeure or other circumstances beyond the control of the Purchaser (e.g., a sharp increase in the cost of energy respectively raw materials used, or plant closures due to outbreaks of illness) lead to a (partial) interruption of the Purchaser's production lasting at least one week, the Purchaser may withdraw from the contract without being liable for damages.

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11. Intellectual Property; Non-Disclosure

- 11.1. The Supplier shall treat all documents and experience made available by the Purchaser as intellectual property of the Purchaser, keep them secret from third parties and use them exclusively for the performance of the contract.
- 11.2. The Supplier is obliged to keep secret any information received in the context of negotiations or the actual business relationship and to maintain such secrecy also after the termination of the contract.
- 11.3. The disclosure of documents and/or information to sub-contractors requires the written consent of the Purchaser.
- 11.4. The Supplier may only advertise the business relationship existing with the Purchaser with prior written consent.
- 11.5. Goods bearing a trademark of the Purchaser as well as goods packed in original packaging of the Purchaser may only be delivered to the Purchaser or a third party designated by the Purchaser. If goods marked accordingly are rejected as defective, the Supplier must destroy them at its own expense.
- 11.6. The Supplier shall owe the Purchaser a contractual penalty, irrespective of fault, in the amount of € 25,000 for each violation of these provisions (items 11.1 - 11.5). Any further damages shall remain unaffected.

12. Transportation Services

- 12.1. The Purchaser shall be liable to the transport company engaged by it - except for personal injury - only in cases of gross negligence and willful misconduct. Neither gross negligence nor intent shall be presumed.
- 12.2. Any storage costs and costs for standing times are included in the total price (item 4.1).
- 12.3. Agreements between the Purchaser and its supplier or its customer (especially agreed Incoterms) which were or could be known to the transport company shall become part of the transport contract.

13. Miscellaneous

- 13.1. **Prohibition of Assignment** - An assignment of claims against the Purchaser is only permitted with the Purchaser's consent.
- 13.2. **Insolvency** – The Purchaser shall be entitled to immediately withdraw from the contract as soon as an application for the opening of insolvency proceedings has been filed regarding the Supplier.
- 13.3. The Supplier is obliged to provide the Purchaser with a **long-term supplier's declaration** for all goods delivered by him with preferential originating status (Customs Code Implementing Regulation 2015/2447), valid for one year, at the calendar year change without request.
- 13.4. **Consignment Stock** – If the Purchaser deems it necessary to set up a consignment stock, the Supplier shall set up such a stock at its expense after consultation to an economically justifiable extent, i.e., to an extent adapted to the usual scope of business.
- 13.5. **Applicable Law** – The contractual relationship and all direct and indirect disputes arising therefrom shall be governed by Austrian law, to the exclusion of its conflict of law provisions. The applicability of the UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

13.6. **Jurisdiction** – The place of jurisdiction for disputes or claims arising from or in connection with the concluded contract, including disputes about its validity, violation, dissolution, or nullity, shall be the competent court in A-2100 Korneuburg, Austria. However, the Purchaser shall also be entitled to sue the Supplier at the latter's general place of jurisdiction.

13.7. **Severability** – Should one or more of the present conditions be or become void or ineffective, this shall not affect the validity of the remaining conditions. The affected provisions shall be replaced (if necessary, by the court) by such provisions that come closest to the original conditions and can be effectively agreed.

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Additional terms for purchases of software, machinery, and equipment

- A 1. The provisions of the foregoing Sections 1 to 13 shall also apply in full to purchases of software, machinery and/or equipment by the Purchaser unless they are modified or supplemented by the provisions of Items A 1 to A 19.
- A 2. The Supplier undertakes to inform the Purchaser during the preparation of the offer about any licenses (CE, TÜV, ...) which the Purchaser must obtain for the lawful operation of the object of purchase.
- A 3. The order confirmation, the shipping list and all invoices must bear the project number and project name.
- A 4. The Supplier is obliged to specify the exact technical details of the delivery and the object of purchase in the order confirmation.
- A 5. Invoices must be issued for each project separately. Combined invoices are deemed to not have been issued.
- A 6. The price includes delivery free house as well as the expenses for the installation of the delivered object of purchase. (See also the provisions under section 4.)
- A 7. Unless otherwise agreed in writing, the supplier shall install the object of purchase at the place of destination and ensure its proper functioning.
- A 8. After successful completion of a 14-day test run, which is carried out under the supervision of the Supplier, the purchased object shall be accepted by the Purchaser by executing an acceptance protocol.
- A 9. The risk of accidental loss of and accidental damage to the purchased object shall be transferred to the Purchaser not before acceptance of the purchased object (acceptance protocol).
- A 10. The penalty for default (Item **Error! Reference source not found.**) is limited to 10% of the total price. Further damages remain unaffected.
- A 11. As far as reasonable, the Purchaser may demand changes in the construction and design of the delivery item.
- A 12. The Supplier guarantees the full operability of the object of purchase, when run in a three-shift operation, for 24 months starting with the acceptance of the object of purchase.
- A 13. In the event of malfunctions or defects within this guarantee period (Item A 12), the supplier is obliged to take adequate repair measures within 48 hours. The supplier shall particularly ensure that an engineer will be sent to the relevant location of the respective machine/plant/software.
- A 14. The Supplier shall give the same warranty (Items 9.1, 9.2, and 9.4) for spare parts and repairs as is given for the object of purchase. For spare parts and repairs, the warranty period shall start anew after completion of the repair works. The warranty period regarding all other parts shall be extended by the down time resulting from the defect and the repair works.
- A 15. The Supplier guarantees that the object of purchase complies with the relevant Austrian and EU legislation, including but not limited to employee protection and plant safety regulations.
- A 16. The Supplier undertakes to test the software/service/product in accordance with general German industrial standards and shall, on request of

the Purchaser, make available the relevant test documentation free of charge.

- A 17. The Supplier shall provide instructions and drawings – if required, workshop drawings – which contain sufficient details to enable the installation, obtaining of the operating license, putting into operation and use of the object of purchase as well as the maintenance of all parts including ongoing repair works.
- A 18. The Supplier guarantees that the object of purchase is not subject to any third-party rights, particularly proprietary rights of third parties. If third-party rights are enforced, the Supplier shall indemnify and hold the Purchaser harmless and shall fully reimburse the latter for any damage arising therefrom.
- A 19. All documents of the Purchaser shall be returned to the latter after their use or at the latest after proper delivery of the goods. Provision of the documents to third parties shall require the written consent of the Purchaser. Sub-contractors shall be bound by corresponding obligations.