

GENERAL TERMS AND CONDITIONS OF PURCHASE OF ESAROM GMBH

FROM 05.04.11



ESAROM GMBH
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1. Applicable terms
- 1.1. Unless stipulated otherwise in individual agreements, the following terms shall exclusively apply to all legal relationships – including any pre-contractual relations – between esarom gmbh, hereinafter referred to as the ordering party, and its suppliers. The ordering party shall not accept any deviating terms and conditions of the supplier. Nor shall such terms and conditions be effective in the event that they are sent to and received by the ordering party.
2. Purchase order and order confirmation
- 2.1. Purchase orders and call-off notices as well as any modifications of and amendments to such documents must be made in writing. Verbal orders or orders made by telephone, e-mail or fax must be confirmed by the ordering party in writing to be effective, unless the order made by fax or remote data transmission includes a statement that no written order will follow.
- 2.2. The supplier shall immediately confirm each purchase order by stating the price, the binding period of delivery and the order number. Such confirmation must be made in writing and must be signed and sealed. Written documents shall only be deemed received, if they bear the order number and are addressed to the purchasing department of the ordering party or to the competent employee, whose name is indicated in the purchase order. If the purchase order is not confirmed and/or accepted within the required period of delivery, but at the latest within three days after receipt of the order, the ordering party may cancel its order. Call-off notices shall become binding, if the supplier does not object at the latest within three days after receipt of such notice.
- 2.3. If the price is not fixed at the time the order is placed, it must be specified at the latest when the order is confirmed. In this event, the final acceptance shall be reserved to the ordering party.
- 2.4. The ordering party is entitled to immediately cancel a purchase order or the whole supply contract, if bankruptcy or composition proceedings are commenced by or against the supplier.
3. Payment and price
- 3.1. At the option of the ordering party, payment shall be effected either within 14 days after proper delivery and receipt of the invoice deducting a cash discount of 3% or within sixty days without deduction.
- 3.2. In the event that early deliveries are accepted by the ordering party, the due date and any other deadlines tied to the delivery date shall be based on the agreed delivery date.
- 3.3. Delivery shall only be deemed completed when the ordering party has received the agreed documents and/or certificates.
- 3.4. In the event of defective delivery, the ordering party is entitled to hold back the overall payment until the delivery is properly completed.
- 3.5. Prices are generally fixed prices. Other stipulations require the explicit written consent of the ordering party. Prices shall also include the costs for the appropriate packing of the purchased goods as well as all offers and the related expenses and documents and, unless otherwise provided for, shall include delivery free house.
- 3.6. Any charges or fees for international payment transactions shall be borne by the supplier.
- 3.7. Payment of the invoice shall not imply that the ordering party acknowledges the correctness of the delivery and thus shall not be considered as a waiver of any claims arising from defective performance.
- 3.8. A transfer of invoice amounts to third parties shall only be permitted upon written authorisation of the ordering party.
4. Delivery date
- 4.1. In the event that the supplier fails to exactly comply with the stipulated delivery date – arrival at the place of destination – or any other agreed delivery terms, the ordering party is entitled, at its option, either to withdraw from the contract and claim damages for non-performance or to demand subsequent delivery and damages for delayed delivery. Partial deliveries that were not agreed and deliveries made cash on delivery may be rejected by the ordering party.
- 4.2. The ordering party is entitled, without proof of damage, to charge the supplier a default penalty of 1% of the value of the overall order for each week or part of a week the delivery date is exceeded. This shall not exclude the enforcement of any further claim for default damages. The ordering party shall not be obliged to warn the supplier of a possible default. Full or partial acceptance and/or payment of the delivery shall not be deemed a waiver of the default penalty.
- 4.3. In the event that the supplier exceeds the delivery date as a result of force majeure or because of subsequent instructions of the ordering party, he shall immediately provide the ordering party with written information to this effect. If the supplier submits a justified request for an extension of the delivery period, the new delivery date must be fixed in writing. Failure to provide the ordering party with the aforementioned information or failure to comply with the new delivery date shall result in the legal consequences described under 4.1 and 4.2.
5. Packing, shipping, documentary evidence of origin
- 5.1. The goods to be delivered must be appropriately packed to commercial standards or, on request of the ordering party, must be delivered in the original packing material of the ordering party or any other special packing, according to the instructions of the ordering party.
- 5.2. The supplier shall be liable for any damage arising from inadequate packing.
- 5.3. The supplier shall ensure that the packing is exempt from the provisions of the Packaging Ordinance.
- 5.4. In the event that any re-usable packing material (loading aids) is used, the expenses for such packing material shall be borne by the supplier, who shall collect the packing material at his own cost.
- 5.5. The supplier is obliged to provide a long-term supplier's declaration for all delivered goods with preferential origin, as defined in Directive EEC 1207/2001, valid for one year, without request at the beginning of each calendar year.
- 5.6. Delivery notes must be handed over upon delivery (acceptance) of the goods. Goods which are delivered without delivery note or with delivery documents which do not bear the order number will not be accepted by the ordering party. Any additional costs arising therefrom, particularly costs for transport and storage, shall be borne by the supplier.
- 5.7. Until the goods are taken over by the employees of the ordering party, responsibility for risk and accident shall be borne by the supplier. Unless agreed otherwise, the supplier shall, at his cost, insure the goods against all transport risks.
- 5.8. In the event that Esarom considers it necessary that the supplier holds consignment stock at a warehouse of Esarom, the supplier undertakes to provide such consignment stock at an economically reasonable level, i.e. a level adjusted to the normal volume of business. The consignment stock shall be provided at supplier's cost and after consultation with Esarom.
6. Labelling of goods
- 6.1. The supplier must label the delivery items and spare parts in the manner agreed or stipulated by the ordering party.
- 6.2. Delivery items whose packing bears a protected trade mark of the ordering party or which are packed in the original packing material of the ordering party shall be exclusively delivered to the ordering party or a third party specified by the ordering party. If goods labelled in this way are rejected as being defective, the supplier shall destroy them at his cost.
7. Acceptance
- 7.1. The confirmation given on the counter notice shall always be valid with reservation. The goods shall only be considered as accepted, if the subsequent inspection does not reveal any missing items or any defects.
- 7.2. In the event that the delivery fails to comply with the agreed or customary terms and conditions or differs in quality from previous deliveries (even if the deviating parameters were not specified), the ordering party may refuse the acceptance of the goods and may demand either the delivery of replacement goods or the cancellation of the agreement. In this event the supplier shall immediately remove the rejected goods at his cost.
8. Guarantee, warranty, product liability
- 8.1. The supplier shall guarantee the ordering party the flawlessness of the goods and the warranted qualities, particularly as defined in any quality agreements that have been concluded, for the period of one year, starting from the acceptance of the goods (in the case of hidden defects from the time the defects were detected). As regards goods with limited durability, the guarantee period shall cover the minimum durability of the goods. The guarantee shall include all goods (part of goods) which are or become

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useless or defective, especially as a result of flaws in the documentation, construction, material, design, function, quality or performance. The ordering party may, at its option, demand a price reduction, cancellation of contract, repair or replacement. In the latter case, the supplier shall immediately remove the goods (parts of the goods) concerned from the ordering party's premises at his risk and cost and replace them with faultless goods.

- 8.2. Notice of defects shall be considered as given in due time, when the ordering party notifies the supplier of the defect as soon as it is detected in the ordinary course of business.
- 8.3. The supplier shall be liable to the ordering party without restrictions for any damage caused by him, particularly also for any consequential damage, and shall indemnify and hold the ordering party harmless against all third-party claims which are fully or partly related to the goods delivered by him. The supplier shall refund any expenses incurred by the ordering party for measures taken to prevent damage (e.g. call-back campaigns).
- 8.4. In the event that the goods can no longer be used within the EU as a result of new findings or changes in the legal situation, the supplier undertakes to repurchase any existing stock from the ordering party at the invoiced amount. Such a repurchase obligation shall not exist if the supplier has pointed out in his order confirmation that the goods are not marketable in the EU. In this event the ordering party is entitled to cancel the purchase.
9. Safety, environment and quality
- 9.1. For materials which require special treatment with respect to their packing, transport, storage, use and waste disposal, because of laws, regulations, or other provisions or because of their composition and their effect on human beings or on the environment, the supplier shall hand over to the ordering party a fully completed safety data sheet together with the offer. In the event of changes in the materials or in the legal situation, the safety data sheet must be updated.
- 9.2. The supplier shall make available all quality and function related documents (analysis certificates, certificates of non-objection, ...) free of charge.
10. Copyrights, patent and proprietary rights
- 10.1. The supplier shall not disclose to third parties any documents and information which were provided or made otherwise available to him by the ordering party in the context of the order placement. Such documents and information shall be treated as intellectual property of the ordering party and shall only be used to perform the delivery.
- 10.2. The supplier may only advertise his business relations with the ordering party upon prior written consent of the ordering party.
- 10.3. In the event that the supplier does not comply with the aforementioned provisions, he is obliged to pay a contractual penalty in the amount of the overall value of the delivery, without prejudice to any further damage claims on the part of the ordering party.
11. Final provisions
- 11.1. The laws of Austria shall apply to the contractual relationship and any and all direct

and indirect disputes arising therefrom. The place of performance for delivery and payment as well as the venue for all disputes arising from the deliveries shall be the competent court in Korneuburg, Austria. However, the ordering party is also entitled to take legal action against the supplier at the supplier's general venue.

- 11.2. In the event that one or several of these terms are found to be ineffective, the remaining terms shall continue in full force and effect

Additional terms for purchases of software, plant and machinery

1. The supplier undertakes to inform the ordering party in the course of the preparation of the offer about any licences (CE, TÜV, ...) which the ordering party must obtain for the lawful operation of the object of the purchase.
2. The order confirmation, the delivery note and all invoices must bear the project number and project name.
3. The supplier is obliged to specify the exact technical details of the delivery and the object of the purchase in the order confirmation.
4. Combined invoices for several projects shall not be accepted by the ordering party.
5. The price shall include delivery free house as well as the expenses for the installation of the delivered object of the purchase, provided that the installation is to be performed by the supplier or his vicarious agents.
6. Unless otherwise agreed in writing, the supplier shall install the object of the purchase at its place of destination and ensure its working order. 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 ordering party by executing an acceptance protocol.
7. In the event of an undue delay in delivery, the agreed price shall be reduced by 1% for every week or part of a week of delay, but not more than 10% of the gross purchase price. The ordering party reserves the right to enforce further damage claims.
8. As far as reasonable, the ordering party may demand changes in the construction and design of the delivery item. The consequences, particularly with regard to extra cost or reduced cost and delivery dates, shall be appropriately determined by mutual consent.
9. The supplier shall guarantee the full operability of the object of the purchase, when run in a two-shift operation, for a period of 24 months, starting from the acceptance of the object of the purchase. In the event that any performance guarantees given by the supplier are not fulfilled by the purchased object, the ordering party is entitled, at its option, to withdraw from the contract or to claim a price reduction of at least 10%.
10. The supplier shall give the same warranty for spare parts and repairs as is given for the object of the purchase. For spare parts and repairs, the warranty period shall start anew

after completion of the repair works; with regard to the other parts of the purchased object the warranty period shall be extended by the down time resulting from the relevant defect and the repair works. In the event of malfunctions or defects, the supplier is obliged to take adequate repair measures within 24 hours. The supplier shall particularly ensure that an engineer will be sent to the relevant location of the respective machine/plant/software.

11. The risk of an accidental loss of or accidental damage to the purchased object shall only be transferred to the ordering party upon the acceptance of the purchased object (acceptance protocol).
12. The supplier warrants that the object of the purchase complies with the relevant Austrian and EU legislation, particularly with employee protection and plant safety regulations.
13. The supplier undertakes to test the software/service/product to be delivered in accordance with general German industrial standards and shall, on request of the ordering party, make available the relevant test documentation free of charge.
14. The supplier shall provide instructions and drawings – if required, workshop drawings – which contain sufficient details to enable the installation, obtaining of the operating licence, putting into operation and use of the object of the purchase as well as the maintenance of all parts including ongoing repair works.
15. By accepting the order, the supplier explicitly declares that the object of the purchase is not subject to any third-party rights, particularly proprietary rights of third parties. In the event that third-party rights are enforced, the supplier shall indemnify and hold the ordering party harmless and shall fully reimburse the ordering party for any damage arising therefrom.
16. The supplier is obliged to keep secret any information which he has received in the context of negotiations or the actual business relationship and to maintain such secrecy also after the termination of the contract. Non-compliance shall result in the payment of damages. The disclosure of information to sub-contractors requires the written consent of the ordering parties.
17. All documents of the ordering party shall be returned to the ordering party 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 ordering party. Sub-contractors shall be bound by corresponding obligations.
18. To the extent that the "General Terms and Conditions of Purchase" of the ordering party are not explicitly amended or modified by the aforementioned provisions, they shall continue in full force and effect.