Terms and Conditions of Purchase, Last updated in August 2001

1. General

All our orders are subject to the following Terms and Conditions of Purchase. Any other terms and conditions, such as terms and conditions of sale issued by the supplier, which we have not expressly accepted in writing, shall not be binding on us, even if we do not expressly object to them. By accepting the order the supplier accepts our Terms and Conditions of Purchase. In the case of an ongoing business relationship, subsequent orders shall be deemed to have been placed in accordance with our Terms and Conditions of Purchase, even if no specific reference is made to them. Our Terms and Conditions of Purchase apply only in business-to-business transactions.

2. Quotations

We do not pay any remuneration for preparation of quotations or plans, nor for visits, consultancy or the production of samples.

3. Orders

Only orders placed in writing are binding on us. Verbal agreements require our subsequent written confirmation. Subsequent amendments or ancillary agreements, in particular relating to prices, delivery terms or payment terms, must also be in writing. Orders must be accepted as placed by us. Any deviations from our order in an acknowledgement of order will only be valid if they are expressly acknowledged by us.

4. Acknowledgements of orders

Orders must always be confirmed in writing without delay, but no later than 14 days after the order has been placed. Once this period has expired, we will no longer be bound by our order.

5. Delivery

The agreed delivery dates, periods, deadlines and quantities must be met punctually and must not be exceeded or fallen short of. The date at which the goods are received by us shall be decisive in this regard. The supplier is obliged, as soon as they become aware of a possible future delay in delivery, for whatever reason, to notify us of this in writing or verbally, to enable us to make alternative arrangements. This shall not release the supplier from their obligation to fulfil the order on time, nor from their liability to pay damages. Furthermore, should the agreed delivery dates, periods or deadlines not be met, we shall be entitled to claim or withhold a contractual penalty of 2% (two per cent) of the invoice amount for each week of delay commenced, which shall not be subject to the judicial right of reduction.
If the confirmed delivery date is not met and a reasonable grace period granted by us expires without result, we shall be entitled to rescind the contract and to purchase from third parties the services not rendered or to have them provided by third parties. We shall also be entitled to claim full compensation for consequential damage incurred by us as a result of the failure to meet the delivery date. If deliveries are received ahead of schedule, the date of the invoice shall be deemed to be the agreed delivery date, provided that the goods are accepted by us.
The delivery contents shall be in accordance with Directive 89/392/EEC (EC Machinery Directive) as amended. The delivery contents include the declaration of conformity or manufacturer's declaration, operating and maintenance instructions, including a spare parts catalogue. Declarations of conformity or manufacturer's declarations, operating and maintenance instructions, including a spare parts catalogue, form part of the purchase order and must be provided to us within two weeks of receipt of the purchase order.

6. Materials; Scrap

All materials supplied by us are, without exception, the property of AFC and may only be used for orders placed by AFC. Leftover materials must be handled with care and stored until further notice.
Should the material scrap developing during production exceed the scrap rate specified in the order, the value of the scrap material shall, without exception, be borne by the supplier.

7. Dispatch

Where it has been agreed that we shall bear the freight costs, the supplier must select the method and route of dispatch that is the most cost-effective one for us. In the event of non-compliance we reserve the right to deduct any additional freight costs from the supplier's invoice. The shipping documents must be sent to us without delay. In the absence of shipping documents, the consignment shall be stored at the supplier's expense and risk until we have received the documents.
The order master data must be stated on all shipping documents. Delays caused by incorrect order details or any failure to issue the necessary consignment notes shall be borne by the supplier. Any costs incurred by us as a result of non-compliance with shipping regulations shall be borne by the supplier. Proof of freight payment for direct deliveries must be provided to us by means of a duplicate consignment note.
If it has been agreed that the transport risk is to be borne by the purchaser, the consignor of the goods shall be obliged, in the event of damage, to immediately lodge all claims for compensation with the railway or other carriers for loss, reduction in quantity, damage to the goods and the like, and to assign these claims to the purchaser without delay.

Where it has been agreed that we shall bear the packaging costs, the supplier must select the most cost-effective type of packaging for us. We reserve the right to deduct any overcharged packaging costs from the supplier's invoice. We shall decide at our discretion whether to return packaging materials to the supplier at the supplier's expense and risk and to deduct 15% of the invoiced packaging costs from the supplier's invoice. This shall also apply to single-use packaging. In the event of non-compliance with packaging regulations, such as a failure to use pallets or the use of non-reusable packaging, we shall be entitled to deduct the resulting additional costs from the supplier's invoice.

8. Acceptance

We are free to have the ordered goods inspected and accepted by our representatives on the supplier's premises. Such acceptance does not release the supplier from their warranty obligations.

9. Quality; Documentation

In terms of quality, deliveries must comply with the terms and specifications set out in our order letter and/or in the drawings, or with any acceptance guidelines.
The scope of documentation is set out in the order letter or in a general agreement. For the goods to be accepted, the documentation must be enclosed with the delivery note.
The supplier agrees to grant our quality assurance staff access to the production facilities, who shall be accompanied, where necessary, by our customers' quality representatives, and to provide sufficient information about the production methods and the quality assurance measures applied.
If defects come to light during the incoming goods inspection, we shall be entitled, in the case of urgently required goods, to promptly repair the same and to charge the supplier for the costs incurred.

10. Warranty

The supplier warrants that the goods and services comply with the respective purpose of the contract, the latest technical and regulatory requirements and standards, and the conditions and specifications set out in the order letters and/or drawings; that they are free from defects that may reduce their value or suitability; and that no warranted features are missing.
Unless otherwise agreed in writing, the warranty period is two years. The supplier must remedy any defects that arise and are reported during the warranty period immediately upon request and free of charge. Furthermore, the supplier shall be liable for any and all damage arising from delivery of defective goods. The warranty period shall recommence upon each remediation of a defect or replacement delivery.

In urgent cases, or if the supplier fails to fulfil their warranty obligations within the specified period, we shall be entitled, at the supplier's expense and risk, to replace or repair defective parts, or to have them remedied by third parties. The supplier waives their right to plead late notice of defect.

To the extent set out in the above warranty provisions, the supplier shall provide the same warranty for parts supplied by their subcontractors. Our acceptance or approval of drawings, documents and/or technical specifications submitted by the supplier shall constitute no waiver of our warranty claims.

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11. Damages; Product liability
The supplier guarantees that the delivered goods are free from defects and faults. The supplier also guarantees accuracy and completeness of the specifications, instructions for use, etc., supplied with the products.

Should the supplier subsequently become aware of circumstances that could give rise to a product defect, they undertake to notify us of such findings without delay and to reimburse us all costs incurred in connection with any recall of defective products.

The supplier shall also indemnify and hold us harmless, even without proof of fault, from and against all claims arising from any defect or fault in the goods supplied. In the event of a product liability claim the supplier shall indemnify and hold us harmless from and against any claims. Any further claims to which we may be entitled by virtue of the law or under the contract (e.g. damages) shall remain unaffected thereby. In particular, the supplier is obliged to compensate us for any damage incurred by us, whether directly or indirectly, as a result of a faulty delivery, a breach of official safety regulations, or for any other reasons attributable to the supplier.
The supplier is obliged to take out adequate insurance against the risks set out above and, at the purchaser's request, to provide evidence of such insurance cover.
Limitations of liability of any kind, whether in relation to the contractual terms set out herein or, in particular, in deviating terms and conditions of sale and delivery, shall not be recognised.

12. Prices; Invoicing
The agreed prices are fixed prices and apply to the entire order, including deliveries on call. Unless otherwise agreed, the prices include packaging, which shall only be returned if expressly agreed.
All insurance costs shall be borne by the supplier, unless otherwise agreed in writing with us in advance.
Where prices per kilogram are agreed, either the weight determined by the railway authorities or by us shall apply for the purposes of calculation, at our option.

Invoices must be sent in duplicate. They must not be enclosed with the goods. The wording of the invoice must be exactly equal to our descriptions as stated in the order and must include the order number, order date and recipient. Should this information not be included in the invoice, we shall not be held responsible for any resulting delays. If a unit price was agreed at the time the order was placed, this unit price shall also apply to sub-deliveries, provided we have given our consent to such deliveries.

13. Terms of payment
We shall make payment within 30 days at a minimum cash discount of 3% (three per cent) or within 60 days without deduction, but under no circumstances before delivery. The payment and discount period shall run from the date of our received stamp on the relevant invoice, provided that the goods have been duly received. We reserve the right to pay by cheque or bills of exchange eligible for rediscounting, provided that we bear the resulting charges.
The date of payment shall be deemed to be the date at which our payment is dispatched. The supplier shall not be entitled to assign their claims against us or to have them collected by third parties without our prior written consent.
We shall be entitled to retain 10% (ten per cent) of the price as a non-interest-bearing security for warranty or guarantee claims or claims for damages for a period of 45 days beyond the warranty period. The final payment shall only be released upon receipt of a final summary invoice covering all deliveries and services provided in accordance with the order and any related accounts receivable or claims.

14. Proprietary rights
The supplier shall be liable for any claims arising from the infringement of proprietary rights and in connection with a delivery or service, or use and further processing thereof. The supplier shall indemnify us and our customers against any and all claims arising from the use of such proprietary rights.

In addition, in such a case, we reserve the right, at our option, to demand that
a) the contract be reversed against full refund of payments made, or
b) those parts use of which is prohibited due to a proprietary right held by the third party be replaced by other parts, or
c) the holder of the proprietary right be compensated by the supplier paying the licence fee requested by that party.

15. Production documents; Confidentiality
Drawings, sketches, samples, models, jigs and other documents transmitted for the purpose of executing the order shall remain our property, shall be regarded as trade secrets and shall be protected from unauthorised access. Upon delivery of the goods, all such documents must be returned to us immediately. The supplier shall be fully liable for any consequences arising from failure to comply with this provision. The supplier shall also be liable for ensuring that their subcontractors comply with our terms and conditions of purchase.
The supplier may only refer to their business relationship with us if we have expressly agreed thereto. This provision shall remain in force even after termination of the contractual relationship; however, it shall cease to apply if and when the knowledge contained in the documents, drawings, calculations and other documents or information has come into the public domain.

16. Insolvency
If a petition is filed for the opening of bankruptcy or composition proceedings in respect of the Supplier's assets, we shall be entitled to rescind the contract by written notice. This shall also apply if the Supplier suspends payments or if their business is liquidated, be it voluntarily or as a compulsory measure. In such a case we shall not be liable for damages vis-à-vis either our contractual partner or third parties. We shall also be entitled to the aforementioned right of rescission if the contract has already been performed in whole or in part by one or both contracting parties, provided that the Supplier's warranty obligation still exists or the Supplier's business is transferred to a successor company.

17. Force majeure
Natural disasters, force majeure, industrial action, civil unrest, official measures and other unforeseeable, unavoidable and serious events shall release us from our obligation to perform for the duration of the disruption and to the extent of their effects. In such cases the supplier shall not be entitled to consideration or damages.

18. Place of performance
Unless otherwise agreed, the place of performance for delivery, inspection and acceptance, and for payment shall be the purchaser's registered office. The risks associated with transport, the cost of transport insurance and breakage insurance, shall be borne by the supplier.

19. Jurisdiction
The exclusive place of jurisdiction for both parties is St. Pölten.

20. Governing law
Austrian law shall apply exclusively to all purchases and purchase orders placed by us and to any disputes that may arise in this connection.

21. Data protection
In accordance with data protection regulations, we are hereby informing you that we will process your data automatically by means of IT systems and store it in a database.

22. Severability
Should any of the above terms and conditions of purchase be or become ineffective, this shall not affect the effectiveness of the remaining provisions. The contracting parties shall instead endeavour to agree on an effective provision that most closely approximates the business purpose of the ineffective provision.