



General Purchasing and Sales Terms and Conditions of

ACO Passavant GmbH (Status 2008/02/13)

1. Governing Law

1.1. Contracts between ACO Passavant GmbH (hereinafter referred to as Buyer) and the Supplier made subject to the following terms and conditions, their coming into effect, their effectiveness, interpretation and performance as well as all other legal relationships existing between the parties shall be governed by the laws of the Federal Republic of Germany under exclusion of the UN Convention on the International Sale of Goods (CISG), unless otherwise agreed upon in individual cases.

1.2. Unless otherwise agreed upon, the most recent version of these general purchasing and sales terms and conditions applicable at the time the contract is executed shall apply. In the event that these general purchasing and sales terms and conditions should not be attached to the quotation or purchase order, they can be downloaded from: www.aco-haustechnik.de/ekb.

1.3. The above general purchasing and sales terms and conditions shall apply only to contracts made between an entrepreneur pursuant to § 310 Article. 1 BGB (German Civil Code) and the Buyer and other legal relationships of the Buyer with same. They shall also apply to contracts and legal relationships for which the Buyer acts on the basis of a power of attorney on behalf of a third party in a relationship with an entrepreneur.

1.4. Provisions agreed upon in individual contracts shall prevail over these general purchasing and sales terms and conditions if the individual agreements have been confirmed by the Buyer in writing at the latest upon execution of the contract.

2. Order Placement and Order Confirmation

2.1. We shall place orders only on the basis of these general purchasing and sales terms and conditions. Quotations to the Buyer shall be made in writing pursuant to §§ 126, 126a BGB. They shall always be presented in German language. Remuneration or compensation for appointments or for the preparation of quotations, projects, etc. shall not be paid.

2.2. All prices shall be quoted in Supplier's local currency (in the event that same should be other than EUR, the quotation shall also include the EUR equivalent and if applicable, a separate statement as to how said currency is secured). Unless otherwise stipulated, prices quoted shall be fixed prices. In the event that the prices quoted should not clearly identify whether they include value added tax, said prices shall be considered gross prices.

2.3. In the event of an inquiry by the Buyer, Seller shall be bound to Seller's quotation for the period indicated in the inquiry, in all other cases, Supplier shall be bound for the period stipulated by buyer. In the event that both parties should fail to stipulate an explicit binding period, it shall be 4 weeks as of the receipt of the quotation by the Buyer.

2.4. Purchase orders shall be placed in writing. Verbal and phone agreements shall not be binding. Purchase orders may be accepted only within a period of 14 days after receipt of the order via a written order confirmation.

2.5. Any and all general terms and conditions of the supplier, in particular those cited in order confirmations, shall not become integral parts of the contract, even if they are not expressly rejected in conjunction with the execution of the contract. Other provisions shall apply only if the Buyer consents to the integration of the other contracting party's general terms and conditions in writing.

2.7. Order confirmations deviating from the purchase order in terms of pricing, delivery dates or production data shall be deemed rejections of the order.



2.8. In the event that these general purchasing and sales terms and conditions have been integrated into a contract made with the Supplier, they shall also apply to other contracts of the same type made with said Supplier in the future, even if no express reference to the application of these general purchasing and sales terms and conditions is made.

3. Prices

3.1. Unless otherwise agreed upon, all prices shall be quoted free plant. Unless otherwise agreed upon, transportation, shipping, packaging and insurance costs shall be included in the prices quoted.

3.2. In the event that packaging is billed separately based on a prior written agreement, Buyer shall have the right to return same and deduct at least 2/3 of the packaging price from the invoice amount.

4. Invoices and Payment

4.1. Invoices shall be sent to the following address, one original being sufficient:

ACO Passavant GmbH
Ulsterstraße 3
36269 Philipsthal, Germany

4.2. Invoices shall be submitted to the Buyer in auditable format, including the order number, requisition number, the name of the person placing the order and the account. All required billing documents shall be included. Value added tax shall be stipulated separately.

4.3. Invoices that are not sufficiently identifiable, in particular those missing complete reference and numbers pertaining to the order, shall be subject to due dates that are extended by the time it takes the Supplier to fully clarify them, provided the latter has been notified of the insufficient identification information pertaining to said invoices. In the event that certificates, documents, etc. expressly made part of the order, should not be attached to the invoice or included with the shipment, the due date of the invoice shall be delayed by the time it takes to receive all of these documents. The invoice shall be sent to the Buyer under separate cover upon shipment of the goods, even in the event that partial deliveries are made.

4.4. The Buyer shall pay within 30 calendar days subject to a 3 % discount or within 60 calendar days net as of the complete delivery and rendering of services and receipt of the invoice by the Buyer. Any deviations from said terms shall be subject to written agreement with the Buyer. At Buyer's discretion, payments shall be made by check drawn on Buyer's account or via bank transfer to bank or postal accounts. A payment shall be deemed timely if the post mark of letters containing checks or bank debit date is concurrent with the payment due date.

4.5. In the event that the goods delivered should have deficiencies, the due date of the payment shall be deferred to the date deficiency free merchandise is accepted. Payments by the Buyer shall not constitute an acceptance of the contractual compliance of the services rendered or of the correctness of the amount billed.

4.6. In the event that goods should arrive/services should be performed at Buyer's end earlier than agreed upon, the payment term shall begin to run only on the day the delivery or service was scheduled to be due.

4.7. In the event that prices should not be stipulated in exceptional cases, the list prices published by the supplier at the time the order was placed shall apply, subject to the above deductions.



4.8. The pricing terms shall not have any impact on the agreement pertaining to the place of fulfillment. Unless expressly agreed upon otherwise, the place of fulfillment for all obligations arising from the contractual relationship shall be the shipping address stipulated by the Buyer. In all other cases the place of fulfillment shall be the domicile of the Buyer.

5. Delivery and Delivery Time

5.1. The delivery times stipulated in purchase orders shall begin on the date the order is placed. Delivery deadlines shall be complied with. Any delivery delays shall be communicated to the Buyer immediately along with the reasons for same and an indication of their anticipated duration. Buyer shall be sent a delivery notice for all shipments on the day of shipment stipulating the precise order details and the exact quantities delivered.

5.2. Compliance with the scheduled delivery date or delivery time shall be determined by the receipt of the goods at the reception or utilization location stipulated by the Buyer, provided the delivery has been made at that time in compliance with the contract or if the Buyer has confirmed the delivery as completed in a timely manner.

5.3. In the event of early delivery, Buyer shall have the right to either return the goods at Supplier's expense or to store the goods until the agreed upon delivery date has been reached. Same shall occur at the sole expense and risk of the Supplier. The Buyer shall accept partial shipments only subject to written agreement. In the event that partial shipments have been agreed upon, the balance of the order remaining at the time of delivery shall be stipulated in writing.

5.4. In the event of tardy delivery, Buyer shall, other statutory entitlements notwithstanding, have the right to grant Supplier a reasonable remedial period. Upon expiration of the latter, Buyer shall, at Buyer's sole discretion, have the right to rescind from the contract or to demand compensation for damages incurred.

5.5. In the event that as a result of force majeure, strike, lockouts, insufficient workers or energy, government agency measures, etc., Supplier should be completely or partially unable to deliver in a timely manner, Buyer shall have the right to rescind from the contract after granting a reasonable remedial period, if delivery is not made within said remedial period. In the event of partial temporary inability or absolute inability, this right to rescind shall apply to the entire contract, if partial delivery is of no interest to the Buyer. In the event that the delivery should no longer be of interest to the Buyer due to its tardiness or if the Supplier should declare that Supplier is unable to perform the delivery within a reasonable remedial period after its due date, Buyer shall have the right to rescind without having to set a remedial period.

5.6. In the event that the supplier should be in default of performance, Supplier shall be required to pay a contractual penalty in the amount of 0.1 % of the contractually agreed upon price for the order per calendar day, however, not to exceed a total of 5 % of the contractually agreed upon price. The Buyer shall have the right to claim the payment of the contractual penalty until the final payment is made, regardless of whether Buyer has reserved entitlement to the contractual penalty upon hand over/acceptance of the late delivery.

5.7. In the event that Buyer should be entitled to statutory compensation for damages due to default, the contractual penalty paid shall be deducted from said compensatory entitlement pursuant to § 341 BGB. This shall be without prejudice to claims of damage compensation above and beyond the contractual penalty amount.

5.8. The quantities stipulated in purchase orders or master order shipping requests shall be fixed. Deliveries that exceed these quantities by more than 5 % shall not be accepted, unless same have been agreed upon with the Buyer. Deliveries that fall more than 5 % short of the quantities ordered shall be considered non-fulfilled deliveries.



6. Documentation

6.1. Buyer shall retain the intellectual property and licensing rights in all figures, drawings, sketches, samples, calculations and other documents. Such documents shall be used solely for the fulfillment of the executed contract and shall not be made accessible to any third party without the express approval of the Buyer. Upon completion same shall be returned to the Buyer by the Shipper without further notice being required.

6.2. Supplier shall be required to pay compensation for damages if the documentation should be used for any purpose other than those communicated. Copies, duplicates and reproductions made from same shall not be retained. Models, templates and the like shall become Buyer's property once they have been billed and shall be handed over to the former along with the delivery of the parts, unless otherwise agreed upon in writing.

6.3. Supplier shall undertake to treat the contract made with the Buyer and all commercial and technical details related to same as business secrets. The confidentiality agreement shall apply regardless for any know-how and knowledge acquired during the quotation phase and shall survive the completion of the contract. It shall be rendered null and void if the circumstances, in particular manufacturing know-how, become generally known or public domain.

7. Liability for Deficiencies

7.1. Supplier warrant that any and all components delivered and services rendered by Supplier shall be state-of-the-art, in compliance with applicable legal provisions and the requirements and guidelines of government agencies, occupational associations, industry associations and the EU standards. Any and all product properties shall be subject to the EU standards or material data sheets, unless other standards have been expressly agreed upon with the Buyer in writing. In the event that EU standards or material data sheets should not exist or no longer be valid, the respective DIN standards, or in their absence, common industry practices, shall apply, unless same do not fall short of the state-of-the-art. The contents and scope of the required technical documentation shall be governed by the EU guidelines, and if applicable, the provisions of the EU member states, in which the product is sold. References made by the Supplier to standards, material data sheets or plant testing certificates as well as information pertaining to qualities, dimensions and usability shall be expressly guaranteed to the Buyer by the Supplier.

7.2. In the event that deviations from these requirements should be necessary in exceptional cases, the Supplier shall be required to obtain Buyer's prior consent in a timely manner. The contractual obligations of the Supplier shall not be affected by such approvals. In the event that Supplier should have misgivings about the type of design requested by the Buyer, Supplier shall immediately communicate same to Buyer in writing citing the reasons.

7.3. Buyer shall be under no obligation to examine the goods and open packages. Payment of an invoice shall not constitute any acceptance to the extent that the goods were actually ordered, shipped completely and free of defects and shall not constitute a waiver of any entitlement to claims of defectiveness or late delivery. All quality defects, quantity and dimensional discrepancies shall be considered concealed deficiencies and shall obligate the Supplier to accept liability for said deficiencies, even if such defects are determined only by the Buyer's final customer. Supplier shall have the right to cite the absence of a filed claim by the Buyer in the event that the goods supplied were deficient, if Supplier has requested Buyer to examine the goods for their freedom from defects in a timely manner after the delivery and by giving adequate notice and by requesting a respective response.



7.4. In the event that the goods should have defects or if an unjustified partial shipment was delivered, Buyer shall have the right to demand the Supplier remedy the situation, either by shipping goods free of defects or by eliminating the deficiencies. Supplier shall be required to absorb all expenditures incurred in conjunction with the remedial action. This shall, among other things, include transportation, errand, work and material costs. In the event that such remedial action should fail to deliver the required results, Buyer shall have the right to continue to insist on remedial action. Supplier shall have the right to refuse the mode of remedial action demanded by the Buyer only if same could be achieved only at a disproportionate expense. In this case Buyer's entitlement shall be limited to the other type of remedy, provided the Supplier proves the disproportionate expenditures involved to the Buyer in writing. In the event that the Supplier should fail to perform the remedial action within the reasonable deadline set by the Buyer, the Buyer shall have the right to procure a replacement at Supplier's expense or to have the deficiencies of the goods remedied by third parties or in-house at Seller's expense. The Buyer shall furthermore have the right to reduce the price, provided a residual value remains upon doing so. This shall be without prejudice to Buyer's entitlement to compensation for damages.

7.5. The validity period of liability for deficiencies shall begin no earlier than as of the date of transfer of the goods to the Buyer or to a third party nominated by the Buyer or to the reception or utilization location stipulated by Buyer, unless a later point in time has been expressly agreed upon. As of said date, the validity period of Seller's liability for defects shall be 3 years; however, it shall be extended to 5 years if the products are delivery objects used for a building in compliance with their intended purpose of use and if same cause the latter to be defective. The above provision shall also apply to the delivery of spare parts. In the event that parts should be delivered or repaired within the scope of remedial action, said shall be subject to a renewed statute of limitation or if same are subject to estoppels, the general provisions of the BGB shall apply. If the objects delivered are machines, machine parts or machine-like devices to be set-up by the Supplier or third parties commissioned by the former, the period to file claims shall begin on the date the equipment is operational upon completed installation.

8. Product Liability, Recall Costs

8.1. In the event that Buyer should become the target of litigation or other claims as a result of the violation of government agency safety requirements or due to domestic or foreign product liability act provisions or statutes because of errors of a product caused by goods supplied by the Supplier, Buyer shall have the right to claim compensation of said damages from the Supplier, provided said damages were actually caused by products supplied by the latter. Said damages shall also extend to the costs resulting from any precautionary recall action.

8.2. Supplier shall indemnify Buyer against any third party entitlements resulting from product liability, and from claims based on product liability acts, provided Supplier is to be held liable for the error triggering the damages.

9. Intellectual Property Right Infringements

Supplier shall indemnify the Buyer and the latter's customers at all times during the term of this contract against any all damages, costs and disadvantages (including lost profits, loss of use, downtimes, penalties, attorney's fees, etc.), Buyer or Buyer's customers should incur in connection with the use, sale, processing, combination or resale of the parts to be delivered by the Supplier based on alleged patent, ornamental design, copyright, trademark or similar intellectual property right infringements and shall immediately reimburse to the Buyer or Buyer's customers any and all costs and damages incurred as a result of same.



10. Assignment of Receivables, Right to Withhold and Set-Off Rights

10.1. The assignment of any receivables, regardless of the content of said assignment, shall be subject to Buyer's written consent in all cases. Assignments made in the absence of the required approval shall be rendered void. Buyer shall have the right to refuse such approvals only if, upon verification of the individual case, the interests of the Buyer regarding the receivables relationships outweigh the interests of the Supplier in making the assignment.

10.2. Any limitation of Buyer's right to enforce a right to withhold against entitlements of the Supplier, or to set same off against Supplier's entitlements, shall be null and void.

10.3. Supplier waives the right to object to the designation of the receivable to be set off made by the Buyer if the receivables outweigh payments.

11. Liability Insurance

11.1. Buyer shall, at Buyer's expense obtain corporate, product, environmental liability insurance with adequate coverage amounts per incident for personal injury, death, material damages and pecuniary losses caused by Supplier, Supplier's legal representatives, executives or other agents in connection with the performance of the contract and shall maintain same during the term of the contract and for a period of at least 5 years as of the order date. The insurance policies shall be presented to the Buyer for verification upon request.

11.2. In the event that the insurance policy should call for a maximum coverage amount for all incidents that occur during an insurance year, same shall be at least twice the amount of the coverage amounts available per incident. The insurance policy as well as any applicable insurance terms and conditions along with receipts verifying that the premium payments have been made shall be presented to the Buyer within two weeks upon request. Upon Buyer's request records proving the continued existence of such insurance coverage shall also be presented throughout the term of the contract. The non-submission or absence of such records shall entitle the Buyer to terminate for important cause.

12. Transportation Risk

12.1. All shipments shall be made at the sole risk of the Supplier.

12.2. Supplier shall bear the risk of accidental loss and of the decline of the quality of the goods until same is accepted by the Buyer.

13. Delivery Note

13.1. All shipments shall be accompanied by a delivery note. Same shall in particular specify
a) the precise contents of the shipment as well as

b) All of Buyer's purchase order details.

14. Acceptance of Goods

Goods shall be accepted only Monday through Thursday, from 7.00 AM to 3.00 PM and on Fridays from 7.00 AM to 2.00 PM.



15. Sub-Contractor

Unless otherwise evident from a separate agreement or from the contents of the purchase order and identifiable for the Buyer in terms of Supplier's performance capability, Supplier shall undertake to perform all obligations arising from the purchase order at Supplier's own place of business. All commissioning of sub-contractors by the Supplier – regardless of whether same was evident to or foreseeable for the Buyer at the time the contract was executed – shall be subject to Buyer's prior consent.

16. Data Protection/Data Storage

ACO Passavant GmbH shall have the right to record and store the data pertaining to the Supplier and of the individual contractual relationships in compliance with all applicable data protection provisions for business transactions within the scope of the respective purpose of use.

17. Illegal Encroachment of Competitors

Supplier shall undertake to ensure through appropriate organizational measures that Supplier's employees interacting with the Buyer do not perform any criminal acts against competitors pursuant German Criminal Code (StGB) and pursuant to §§ 17, 18 of the German Statute Prohibiting Unfair Competition (UWG).

18. Confidentiality Obligations and Advertising

18.1. Moreover, Supplier shall undertake to keep confidential the business relationship with the Buyer and to treat any and all disclosed commercial or technical detail Supplier becomes aware of as a result of the business relationship as confidential and to not make same accessible to any third parties.

18.2. In the event that in exceptional cases, Supplier should, in Supplier's advertising intend to make reference to the relationship with the Buyer, same shall be done only after the Buyer has agreed to this use in writing. The thus declared exceptional written approval shall apply only to the specific advertising presentation cited to obtain said approvals.

18.3. In the event that Supplier should violate this covenant, Buyer shall reserve the right to demand compensation for damages incurred. Supplier shall be required to surrender to Buyer all benefits obtained as a result of said violations and shall reimburse any damages incurred by Buyer as a result of same.

19. Severability

In the event that one or several provisions of this general purchasing and sales terms and conditions or a provision within the framework of any other agreements should be or become ineffective, this shall not affect the effectiveness of the remaining provisions or agreements. In lieu of the ineffective provision, the parties shall agree upon a provision that meets the economic objectives of the parties as closely as possible. In the absence of such a substitute, the statutory provisions shall apply.

20. Place of Jurisdiction

The sole place of jurisdiction for any all disputes or litigation arising from these provisions or any purchase orders integrating these general purchasing and sales terms and conditions, shall be the court having competence at Buyer's domicile. Nonetheless, the Buyer shall have the right to file suit at the location of Supplier's headquarters.