

# GENERAL TERMS AND CONDITIONS OF PURCHASE

of Ebbinghaus Styria Coating GmbH

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## A) SCOPE OF APPLICATION

1. The terms of purchase (in short: terms) regulate the legal relationship between us, Ebbinghaus Styria Coating GmbH and our suppliers.
2. Our orders and purchases (hereinafter only orders) are made on the basis of these terms exclusively. These terms also apply to all future business relationships even if they are not referred to once again expressly prior to each individual business case. Deviations from these terms are only effective if they are confirmed by us in writing.

If delivery of the supplier's goods or provision of services is done by sub-suppliers or third parties, the supplier has to indemnify and hold us harmless for the observance of these conditions of purchase by the sub-suppliers or third parties.

3. The supplier's terms of business, sale and delivery do not take precedence over these terms and they are only binding if they are expressly acknowledged in each individual business case. We are particularly not obligated to object the terms used by the supplier which conflict with these terms. If we do not object or if an order is just placed, it does not mean consent or acknowledgement and not even when we are aware of the purchaser's conflicting terms or terms which deviate from our terms. Reference on our part to the supplier's documents does not mean acknowledgement of its terms or rules. Order acceptance or supply, even partial supply, is considered as acknowledgement of our terms and conditions of purchase in any case.

## **B) OFFER AND ORDERS**

1. The supplier's offers have to be binding at least three months after we receive them and can be accepted by us within this period unless expressly otherwise specified in writing.
2. The compilation of offers including the drafting of drawings and plans as well as the construction of models, sample items or suchlike is done free of charge regardless of the preliminary work that is necessary.
3. Our orders are legally binding only if they are done in writing and duly signed. The written form shall be considered fulfilled if the order is placed via e-mail or fax. Orders placed verbally or over the telephone shall only be considered as preliminary announcement of orders. They become legally binding when we confirm this in writing and we specify the order number.
4. Each of our orders is to be confirmed immediately in writing by the supplier with a binding delivery deadline or within 3 working days at the latest after receipt. The same applies to written addenda. If the supplier does not accept our offer within 2 weeks after receipt in writing, we shall no longer be bound to the order. If the order confirmation deviates from our order, the alterations on the order are to be highlighted clearly. Irrespective of that, we are only bound to the deviations or alterations if we consented to this in writing prior to commencement of order execution. Silence is never considered as consent.
5. Without our express written consent, the supplier's orders are not to be forwarded partly or wholly to subcontractors. An exception is the unavoidable acquisition of primary materials and/or standard parts and special parts.
6. Deliveries and/or services which are executed without written order or under unauthorised deviation from the contract shall only be remunerated if we expressly acknowledge them subsequently. Upon our request, such deliveries and/or services are to be rescinded within the appropriate term otherwise we shall do this at the expense of the supplier.
7. If the intended purpose or the detailed facts on the usage of the product to be delivered or the service to be provided are mentioned in the order, this information shall be a

component of the contract. The supplier assumes liability for the suitability and usability of the item it delivered or service it provided for the mentioned purpose.

8. The drawing and suchlike provided to the supplier by us do not exempt the supplier from the obligation to review, get informed and warn. If the supplier does not fulfil its obligation to get informed, review the order documents handed over and warn, the supplier shall be liable for all losses which we shall incur as a result. Each case of not getting informed, not reviewing the forwarded order documents and not warning us shall be considered as gross negligence.

The supplier is obligated to carry out inspections on site if the supplier considers this to be necessary for the comprehensive fulfilment of its duty to get informed. These shall not be remunerated separately.

9. The supplier is obligated to inform us in good time about changes in raw materials, production processes and vendor parts. We expressly reserve the right to consent to such alterations. Upon our request, the supplier has to prove the equivalence of the alternatively used materials or processes in writing at its own expense.

An unauthorised alteration is expressly prohibited. If it is nevertheless carried out, the supplier shall be liable for all losses that we incur as a result to an unlimited amount. Moreover, the supplier commits to pay a penalty of 10% of the total order value to us for each proven case of unauthorised alteration. This penalty is a contractual penalty for the breach of contract and it is due to us regardless of whether through the alterations done by the supplier without authorisation a defect occurs on the delivered product or consequential damage occurs or whether the altered material, vendor or production process is equivalent. In case of unauthorised alterations by the supplier we reserve the right not to accept the delivery and to withdraw from the contract without the supplier asserting claims against us.

10. The adaption or contestation of the contract by the supplier due to an error (including calculation errors) is excluded. The supplier waives the right to contest due to reduction by more than half.

### **C) DELIVERY TERMS/DELIVERY DATES**

1. The dates or terms indicated in our orders are binding and are to be adhered to whereupon the item has to be received at the stated place of fulfilment on the delivery date or within the delivery term as per the order. Partial services are not permitted and do not effectuate any claims for payment unless we expressly demand or accept it in writing. We will accept deliveries only during our office hours (Monday to Friday from 7:00 A.M. to 4:00 P.M.).
2. The supplier commits to provide the services that we have ordered at the time that we have stipulated. The supplier moreover commits to always have sufficient capacities of the necessary resources so that in case of an unforeseeable event such as interruption in operation, production or delivery, it is guaranteed that the dates and terms that we have stipulated shall not be exceeded.

Additional costs for expedited haulage which is necessary in order to adhere to the delivery date shall be borne by the supplier.

3. Deliveries are to be done in such a way that they are available at the place of fulfilment on schedule. If the supplier can foresee a delay, it has to notify us immediately stating reasons behind the imminent delay and the expected duration. This applies regardless of whether the entire or a part of the delivery is affected. The notification does not lead to exemption from the legal consequences mentioned below, particularly the contractual penalty.
4. Deliveries which deviate from the order or defective deliveries shall be considered as delayed even if they are made within the agreed upon deadlines.
5. In case of default in delivery, we are entitled to withdraw from the contract immediately or still demand fulfilment after setting a grace period. If a fixed date is agreed upon, the contract shall be terminated upon lapse of the date unless we request fulfilment of the contract within 10 days.

If the supplier delays delivery, we are moreover entitled to provide replacement for the services or products owed due to the default in delivery in order to maintain production or to fulfil our contractual obligations vis-à-vis our clients. The supplier shall bear the extra costs which accrue due to this. If we have provided a replacement, we are not

obligated to accept the supplier's service or pay even if the supplier was not responsible for the delays.

6. We are entitled, in case of default in delivery, even without proof of loss incurred, to demand 5% of the entire value of the order as a penalty for each week or part thereof of exceeding the deadline. We reserve the right to claim damages that exceed the scope, irrespective of whether the supplier announced the delay.

This also applies when a partial delivery is delayed and even in the case whereby the delayed partial delivery was accepted by us without reservation.

7. Regardless of the regulation in point 6., the supplier has to reimburse us for all losses and negative consequences arising from a default in delivery especially wasted expenditures and financial surplus load.
8. Deliveries prior to the agreed upon date can only be made with our express written consent. In case of contravention, we are free to send back the delivery that has been made too early at the expense and risk of the supplier or have it stored by a third party until the due date at the expense and risk of the supplier and postpone the settlement of the account until the agreed upon date.

If partial deliveries are expressly excluded, the payment deadline for all partial deliveries shall commence with the complete delivery of the order to us or the place of fulfilment stated by us.

9. We are entitled to request the supplier to interrupt the execution of the delivery or performance for good cause as well as to postpone the set dates or change the deadlines. The supplier has no claim for remuneration or compensation in this regard.

#### **D) DELIVERY/DISPATCH/TRANSFER OF RISK**

1. Delivery and dispatch basically occur free of all expenses at the expense and risk of the supplier to the place of fulfilment mentioned by us. Cash on delivery packages shall not be accepted.

A notification of dispatch is to be sent to us immediately for each delivery.

2. All deliveries are to be packaged by the supplier in such a way that they do not get damaged during transportation or storage and the quality is not compromised.
3. The supplier shall take out transport insurance for the goods and package them properly and as per the instructions. The costs for the transport insurance, which has to include the offloading process, are to be borne by the supplier.
4. Dispatch instructions issued by us are to be adhered to strictly. Packaging must be done at the supplier's expense in such a way that the item is protected from damage and corrosion during transportation and during subsequent short-term storage (i.e. up to 60 days at the most after actual delivery). If special packaging is agreed upon (e.g. seaworthy or long-term packaging), our instructions are to be followed in this regard. Damages or costs which arise due to improper packaging or packaging contrary to instructions (e.g. additional freight; truck demurrage charges; customs duties) are for the supplier's account exclusively. If there are no dispatch instructions or dispatch terms, the most favourable means of transportation and delivery are to be selected.
5. All consignments must include a delivery note in duplicate with the exact content information (all order details, particularly order and material numbers which we have disclosed). All packages are to be marked externally with material numbers and quantity. Deliveries can only be made from Monday to Friday from 7:00 A.M. to 4:00 P.M.
6. If dispatch documents are missing or incomplete, especially if order data to be confirmed is missing, we have a right to reject receipt at the expense and risk of the supplier.
7. In case of deliveries of goods whose duty is unpaid, the corresponding customs duty documents are to be included.
8. The supplier bears the costs and the risk of transportation/dispatch until goods are fully received or in case of services, until we accept them. The risk of loss or damage is transferred to us upon receipt or acceptance. This also applies if a carriage-free service was not expressly agreed upon. If the item bought is a machine which has to be assembled at the place of fulfilment by the supplier or a third party commissioned by

the supplier, the risk is transferred to us if the machine is assembled as per the contract and its sound function was jointly ascertained by a test run.

9. Inspections, tests, viewing, acceptance or approval of plans etc. do not imply that we have accepted the service.

The delivery or service is considered as accepted if we confirm receipt or acceptance in writing.

10. We reserve the right to return packaging material to the supplier and demand an appropriate credit note. The costs of the return transport are to be borne by the supplier.

## **E) PRICES**

1. The prices mentioned in our orders are fixed prices.
2. The prices stated in the supplier's offer as well as the agreed upon prices indicated in our orders include all payments which are necessary for contract execution especially all documentation and instruction costs, any licence fees, overtime costs, packaging (also special packaging), transport and dispatch at the supplier's expense and risk to the place of fulfilment, offloading costs, insurance costs as well as possible social benefits, all fees, taxes and duties (with the exception of value added tax) and other expenses.
3. The fixed prices exclude additional claims due to wage or material price increments or similar.

## **F) ACCOUNTING AND PAYMENT**

1. The supplier has to send an auditable invoice to the address indicated in the order immediately after delivery is made or service is provided.
2. The invoice must specify the goods delivered to us or the services provided to us and it has to contain our order number otherwise we are entitled to return this without

processing and these invoices shall be considered as not received. The supplier's claim for payment can therefore not exist.

3. Payments are to be made, unless expressly otherwise agreed upon, within 14 days with 3% discount or within 30 days net. These payment terms commence on the day of receipt of the auditable and proper invoice (as per point no. 2.) and not prior to complete receipt and if necessary, acceptance of the contractual service.
4. Payments made by us do not mean acknowledgement of delivery or service as contractual.
5. In case of a defective or incomplete delivery or service, we are entitled to retain the entire payment until the contract is fulfilled fully and properly without losing our right to payment benefits such as allowances or discounts.
6. We are entitled to add all receivables (regardless of the type) which the supplier owes us.

#### **G) RETENTION OF TITLE**

1. All details, drawings, plans, models, sample items etc. which we give to the supplier as well as drawings, plans, models, sample items etc. which the supplier produces according to our specifications shall remain our sole property or ownership is transferred to the supplier and they may not be used for other purposes, duplicated or made accessible to third parties. They must be forwarded or returned to us immediately after service provision or in case of non-provision of the service without prompting at the supplier's expense unless otherwise agreed upon expressly in writing. Decrease in value or loss are for the supplier's account.
2. Materials provided shall remain our property. They are to be marked as such, stored separately and managed. In case of damage, decrease in value or loss, the supplier has to pay damages whereupon the supplier has to pay expenses and costs which we have incurred in connection with the completed preparatory work (pre-treatment or pre-processing of the material given to the supplier for processing). The provided material may only be used for orders issued by us. When this material is treated and processed, we shall become owners of the new or processed item.



Provided materials are to be returned to us without special prompting with the offers or after execution of the order. We are also entitled to mark our property in a suitable manner.

3. The processing or alteration of the materials is done exclusively for us. In this respect, we shall be considered as the producer and we acquire ownership over the new or altered items immediately. If this is not possible on legal grounds, it is agreed that we are owners of the new or altered item at every point in time of processing or alteration. If the items provided by us are mixed or combined with objects that do not belong to us, we shall acquire co-ownership over the new item in the ratio of the value of the item subject to retention of title to the other mixed or combined objects at the time of mixing or combining. If the mixing or combining is done in such a manner that foreign items are to be seen as the main item, it is being agreed that the supplier shall grant us partial co-ownership.
4. The supplier is obligated to insure the tools that belong to us at replacement value at its own expense against fire, water and theft. At the same time, the supplier is assigning all claims for compensation from this insurance to us. We are accepting this assignment. The supplier is obligated to carry out any necessary maintenance and inspection work in good time at its own expense. The supplier must notify us immediately about any faults. If the supplier fails to do this, it shall pay for all damages resulting from this. If a separate tool supply agreement has been concluded, the regulations in the tool supply agreement shall apply.

## **H) CONFIDENTIALITY**

1. The orders and all specifications, documents, etc. which refer to the order are our business secrets and are to be handled confidentially.
2. The supplier commits expressly and irrevocably, to use the knowledge, documents and other information obtained from us exclusively for the purpose of cooperating with us and to maintain secrecy regarding all business and trade secrets which he becomes aware of in connection with or due to the cooperation with us. Unless this is not necessary for the achievement of the purpose of the cooperation, the supplier may not record and disclose this information directly or indirectly to

anybody, not even relatives, employees or other third parties who don't seem to be in a competitive relationship with us and/or use it for its own purposes and/or utilise it in some other way.

If the transfer of information and documents to third parties is necessary for contract fulfilment, the supplier shall transfer the obligation to maintain secrecy to them and indemnify and hold us harmless.

3. The obligation to maintain secrecy persists even after termination of the business relationship with us or irrespective of a business relationship after bid solicitation.
  
4. All private incidents which are not apparent and in case of doubt, everything that is not known elsewhere shall be considered as business and trade secrets. This applies for instance also to data and information which would usually be considered as insignificant. The business and trade secrets also include all technical and economic information; skills acquired regarding the basis; new developments; all written documents (plans, drawings, consultancies etc.); photographic material, methods of operation; work schedules; data about clients; suppliers and supply sources; production equipment and facilities etc., even if these have not or are not referred to as "confidential".

## **I) WARRANTY**

1. The supplier warrants the usage of the best, appropriate materials, execution in a professional and proper manner as per order, appropriate construction and flawless assembly and adhering to the state of the art, adhering to all relevant norms (ÖNORM, DIN, European and international norms) and all the relevant technical specifications even if these are not expressly predefined.

The supplier's warranty obligation covers all the parts it has delivered even if it does not produce them or if it acquired them from third parties.

2. All services provided by the supplier have to correspond to the contract, the purpose, the state of the art, the applicable laws, protective regulations and norms as well as the corresponding regulations of the respective authorities and trade associations.

3. We do not waive our warranty claims by receiving delivery or accepting service.
4. The warranty term runs for 2 years unless otherwise agreed upon. After correction of defects or replacement delivery, the warranty term shall start running afresh for the entire ordered delivery.

The warranty term shall be interrupted by each written notice of defects.

5. The warranty term for deliveries and services commences at the earliest at the time when complete delivery is made or service is provided to us at the place of fulfilment. Partial deliveries and partial services (as well as start-up or putting partial services into use) even if these were agreed upon, can never trigger a deadline. In case of concealed defects, the term shall begin at the time the defect becomes visible.
6. If the purchased item is a machine which has to be assembled at the place of fulfilment by the supplier or a third party appointed by it, the term will start running at the time of mutual ascertainment of proper function.
7. The supplier waives the defence of late notification of defects. The application of § 377 of the Austrian Commercial Code is mutually excluded.
8. The supplier warrants in this manner that we – regardless of our other rights – are entitled to demand, at our discretion, replacement delivery, rectification of the defect, an appropriate price reduction or conversion. If the supplier does not fulfil its warranty obligation within an appropriate term despite prompting or if in our opinion it is an urgent case (especially in order to avoid delay or higher consequential costs), we are entitled to rectify the defect ourselves without further ado at the expense of the supplier or have the defect rectified by a third party or if this is not possible or feasible, we shall find an alternative replacement. Moreover, the supplier shall compensate us for damages incurred due to poor service.
9. All costs in connection with the fulfilment of the warranty obligation, particularly even costs for assembly and disassembly, shall be borne by the supplier invariably. This also applies in case the defect was detected after further processing or assembly – for whatever reason.

10. The supplier warrants or is liable to us to the scope in which we are obligated to warrant vis-à-vis our respective contractual partner. If therefore longer liability, guarantee or warranty terms are agreed upon with our respective contractual partner, we shall notify the supplier and the supplier now consents – for such cases – to an extension of the term plus 2 additional months in the scope of the extension in the ratio between us and our respective contractual partner.
11. If one of our contractual partners makes a claim on us for rectification of defects, this obligation shall concern the supplier if the supplier is responsible for the defect.
12. If one of our contractual partners makes a claim on us due to poor services for which the supplier is responsible, compensation paid to the respective contractual partner shall be transferred to us to the full extent. We are entitled to assert by means of recourse vis-à-vis the supplier who is responsible for the poor service – regardless of whether there was an obligation to pay for damages to the respective contractual partner or the payment was made as a gesture of goodwill – especially in order to avoid a lawsuit.
13. We shall determine the place of fulfilment for the rectification of defects.
14. The supplier shall bear all costs and ancillary costs incurred in connection with the rectification of defects (e.g. for the assembly and disassembly, transportation, disposal, journey time and transit time).
15. If a notification of defects is made within the warranty period, it shall be assumed that they were already present at the time of delivery or service provision. Defects which have appeared within the warranty period can be legally claimed 2 years after lapse of the warranty period. Our right to claim defects indefinitely by means of plea shall remain unaffected.
16. Our warranty rights shall persist until at least 24 months after handing over the goods purchased by the supplier to our respective contractual partner.
17. There shall be no restriction of the right of recourse which we are entitled to pursuant to § 933b of the General Civil Code.

## J) LIABILITY

1. The supplier is liable for us in any case of culpability for all damages or claims asserted against us in connection with the delivery or service particularly also mere financial loss and lost profit. Moreover the supplier commits to indemnify and hold us harmless in recourse claims even with regard to costs of the proceedings or costs of extrajudicial settlement as well as interest. Individual provisions regarding liability expressly regulated in these terms and legal provisions which are favourable to us shall remain unaffected.
2. The supplier's exclusions from liability and limitations of liability of whatever kind are void to us.
3. In case of extrajudicial or judicial assertion of claims by third parties, the supplier is obligated to give us all the necessary information for the defence of these claims and join an action as an ancillary intervener.
4. The supplier is obligated to indemnify and hold us harmless if third parties assert claims for compensation against us due to a (even only partial) product fault or defect for which the supplier is responsible.
5. Regardless of other obligations, the supplier has to compensate us for all damages with regards to the products delivered by it pursuant to the Austrian Product Liability Act. The supplier also has to indemnify us and hold us harmless with regards to all third party product liability claims. The supplier is also obligated to reimburse us all costs which we incur during the defence of a claim or as a result of substitute performance. With reference to the goods delivered, the supplier commits to disclose to us upon request the respective producer, importer or preliminary supplier and immediately provide us with the necessary documents particularly production documents and documents which show production and delivery charges and/or production and delivery time for the purpose of defence of third party product liability claims. The supplier waives the defence of being free of liability as a trader and not as the producer of the product delivered to us.

6. The application of § 2 of the Product Liability Act for the products delivered to us by the supplier is excluded. This means that damage due to the supplier's defective product which occurred on items which are predominantly used in our company is to be compensated. The regulation on retention between us and the supplier is considered waived.
7. The supplier is obligated to notify us immediately of any defects of the product detected after delivery. If the delivered product turns out to be defective based on new findings (especially in production and construction), such that it can no longer be processed by us or used, the supplier is obligated to take back the stock that we still have at the purchasing price at that time.
8. The supplier is responsible for ensuring that its deliveries and services are free from third party rights (especially ownership rights and security interest), that we are being granted unencumbered property and that through the deliveries and services and their usage, no property rights or intellectual property rights of third parties locally and abroad are violated. The supplier indemnifies and holds us harmless in this regard.
9. The supplier commits to take out sufficient insurance for all the risks that have just been outlined (minimum sum insured € 5,000,000) and provide us with the necessary proof when requested (especially copy of the policy and confirmation of regular and full payment of premiums). Failure to do this will result in the supplier being in default and we are free to refuse to accept the supplier's delivery or service until corresponding insurance confirmation is presented or withdraw from the contract and request for compensation or take out appropriate insurance at the supplier's expense.
10. Within the framework of statutory provisions, we shall be liable only in case of intent and gross negligence.

#### **K) PREMATURE CONTRACT TERMINATION**

1. We can terminate all contracts concluded with the supplier for good cause any time without notice.
2. An important reason for the premature termination of the contract exists particularly if

- a) a motion for the institution of insolvency proceedings on the purchaser's assets is rejected due to lack of assets covering the costs or we get information which is likely to justify doubt on the purchaser's solvency or willingness to pay (§ 25b of the Insolvency Code remains unaffected by this clause);
- b) there are changes in the supplier's ownership situation;
- c) the supplier (even partially) gives orders to third parties without our express written consent;
- d) the supplier comes to an agreement with third parties which are detrimental to us or which offend against common decency or violate statutory provisions;
- e) complete delivery or service is or becomes impossible due to reasons for which the supplier is responsible.

#### **L) PLACE OF FULFILMENT AND PLACE OF JURISDICTION**

1. Place of fulfilment for delivery and payment if nothing different has been agreed upon is the headquarters of Ebbinghaus Styria Coating GmbH in 8055 Graz, Puntigamerstraße 127.
2. The place of jurisdiction for legal disputes regarding the existence or non-existence of a contractual relationship which is based on these terms, or for disputes from such contractual relationships is the competent court for Graz for the supplier's lawsuits exclusively. For lawsuits which we file, the place of jurisdiction shall be the competent court for Graz or the supplier's general place of jurisdiction.
3. Austrian law applies with the exception of the reference norms. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

#### **M) GENERAL PROVISIONS**

1. All deviations from the terms at hand must be in written form for them to be valid. This also applies to deviation from the requirement of the written form. Verbal side agreements are ineffective.
2. If individual clauses of these terms are partly or wholly ineffective or infeasible, the effectiveness of the other clauses shall not be affected. The contractual parties commit to replace the ineffective or infeasible clause with an effective or feasible regulation whose economically intended purpose comes closest to the partly or wholly ineffective or infeasible regulation within the framework of the entire contract.
3. In case of subsequent occurrence of a gap, the clause which corresponds to the one which would have been agreed upon with regards to the purpose of the contract at hand if one had considered the solution for matters which are not contractually regulated from the outset is agreed upon.
4. If beyond these terms contractual agreements are made between us and the purchaser and these conflict with the clauses of the terms, it is being agreed upon that the clauses in the contractual agreements beyond the terms shall have priority in application if it was expressly agreed upon in writing that the corresponding clauses of these terms are of secondary importance.
5. The purchaser agrees that we shall save the data we received from the business relationship according to the data protection act and use it for our own business purposes.