

PROFACTOR terms and conditions of purchase Orders:

The terms and conditions below apply to our orders unless these contain any explicit written agreement to the contrary. Terms and conditions which differ from these are only valid if we have expressly acknowledged their content in writing. Our silence in respect of documents you have sent us, such as order acceptances, invoices or other correspondence, does not signify our agreement or tacit amendment of the content of the contract in comparison with our terms and conditions of purchase. Faxes or emails are also considered to be the written form. Your supply / fulfilment counts as unreserved and full acknowledgement of our terms and conditions of purchase. Only written and signed orders are valid. Amendments to contracts require written confirmation in order to be legally effective. If we provide samples, models, drawings, plates or other devices, these remain our intellectual property which we are able to dispose over freely and which shall be identified as such. These devices may only be used for implementing our orders and shall neither be made accessible nor be handed over to external third parties. They must be returned to us free of charge after the order has been dispatched. The supplier must indemnify us and render us harmless for any disputes in respect of patents, protection of models or copyright which arise from the supply and/or service, and must guarantee us the unrestricted use of the items supplied and/or the services provided. If a breach of these provisions should be caused even by minor negligence of the supplier, then he must compensate us for all damages arising due to the transmission of our intellectual property.

If the object of the order is used for a project supported by public funds, the supplier shall allow organs or representatives of the EU and FFG to inspect his books and vouchers as well as other documents serving to verify the implementation of the project at his own premises and to allow an on-site inspection or shall submit them on request. He must provide them with the necessary information and have them provide it, and must make a suitable person available to them for this purpose, whereby the auditing body shall decide on the respective connection of these documents with the project.

Conclusion of contract:

The contractor must confirm orders immediately, and at the latest one week after they have been received. A late confirmation or one which differs from our order counts as a new quotation and requires our express written acceptance. If such acceptance has not been given and yet the contractor undertakes the delivery or other service anyway, then we will accept this only under the terms of the order which we issued. Verbal agreements are only effective when we have confirmed them in writing. This also applies to the clause requiring the written form.

Delivery/delivery note:

All deliveries take place DDP in accordance with INCOTERMS 2000 to the place of receipt or use specified by us. Unless the agreed price includes packaging, the packaging is to be charged at the net cost price without any security deposit. The contractor must also deliver at the same time free of charge and in a reproducible format all the documents necessary for acceptance, operation, maintenance and repairs, especially test certificates, factory certifications, drawings, plans, operating instructions and repair manuals. Verifiable delivery notes must be enclosed with every delivery. Part deliveries and residual deliveries must be identified as such. Any special instructions for handling the goods, in particular for unloading, transport and storage in our operating area must be indicated separately to us. All costs in connection with the non-provision or incorrect issuing of the documentary proof of origin, and all costs connected with non-compliance with the carriage regulations, such as customs, vehicle demurrage charges, transfer charges and similar are solely your responsibility. The place of performance is our delivery address.

Address for shipment:

As agreed / noted in the order.

Delivery time:

The agreed delivery deadlines and delivery periods are binding. The deciding factor for compliance with the delivery deadline or the delivery period is the date the goods are received at the place of receipt or use specified by us, or the timeliness of successful acceptance. Any delays occurring must be pointed out in writing to the ordering party immediately they become known and before the delivery period has expired, and the reasons and probable duration of the delay must be indicated. Any rescheduling in respect of the order which becomes necessary due to the delayed delivery will immediately be notified by us and must be complied with by the contractor. The contractor is obliged to replace all direct and indirect damages caused by delay unless he is not responsible for the delays. In the event of delay in delivery we are entitled to request flat-rate damages due to delay amounting to 3 % of the delivery value per completed week, however not more than 10 %. We reserve the right to more extensive statutory claims. The supplier has the right to prove to us that as a result of the delay no damages, or substantially lower damages, arose. If the delivery period is exceeded we are entitled to set an appropriate period of grace whilst threatening to otherwise refuse acceptance, and once this has expired without result – provided the delivery deadline has been specified according to the calendar –also to withdraw from the contract without an advance reminder and/or to request compensation due to non-fulfilment. The above specified rights are not excluded by the fact that we have unreservedly accepted previous delayed deliveries.

Under customs regulations, the following apply:

- For suppliers from the EU area: If we so request, a legally binding overall supplier's declaration pursuant to Regulation (EC) No. 1207/2001 of 11 July 2001 must be provided free of charge.
- For suppliers from third party states: If the goods supplied are subject to a most favoured nation agreement with the EU, we assume that this can be applied. In particular all the necessary documents (EUR 1/ EUR 2, preferential certificate of origin) must be attached to the delivery as originals, in order to ensure that they can be imported free from customs duty or subject to reduced customs duties. If these proofs are absent or subsequently supplied later, we will charge you for the costs arising (customs costs, administrative costs).
- For all suppliers: If on the basis of customer contracts or processing these the ordering company is or becomes subject to an obligation to provide proofs of certain facts, in particular producers, addresses, country of origin and any applicable embargo provisions, then the supplier shall accept to do this at his own costs and risk and without any claim to reimbursement for the fact that he has done so independently and under his own responsibility.

Acceptance of the goods:

The acceptance of the goods shall take place only when they have been used as intended, however at the latest 24 months after delivery. You therefore renounce the requirement for immediate checking and also the objection of delayed written notification of defects. Our payment does not signify any unreserved acceptance of the goods.

Payment:

We strictly pay with 3 % discount or within 60 days net. Invoices subject to discount:

- Invoices from the 1st to the 15th of a month are paid on the 30th of the same month, invoices from the 16th to the 31st of a month are paid on the 15th of the following month, with a discount being deducted.
- Invoices subject to payment deadlines: Invoices which are due between the 1st and 15th of a month are paid on the 15th of the same month, invoices which are due between the 16th and the 31st of a month are paid on the 30th of the same month. We assume that the invoice date is identical to the delivery date. Longer delays in shipment which continue beyond the 15th or 30th can no longer be taken into account in the same period.

Guarantee/warranty:

Payment does not signify any acknowledgement of the correctness of a delivery (service) and thus does not signify any renunciation of the claims to which we are entitled under guarantee or warranty as a result of defects in fulfillment. Down-payments remain stable in value and indeed aliquot in relation to the total order value.

The place of performance for rectifying a defect under the guarantee obligation is subject to our choice. More extensive statutory provisions remain unaffected by this. In those cases where you do not meet your guarantee obligation immediately when requested, additionally in the case of minor defects and also especially in urgent cases we are entitled to remedy the defect ourselves at your expense without asking you further or to have this done by a third party, or if this is not possible, to obtain a replacement elsewhere. We reserve the right to assert a claim for replacement or a price reduction instead of improvement. The damages we incur as a result of defective supplies must be compensated by you.

If we as the manufacturer of the end product incur a liability for damages which can be attributed to faults in the basic materials or components delivered by you, then you must indemnify us against such liability and provide full redress irrespective of fault. You guarantee the intended use, perfect quality and the fact that the agreed characteristics will be met for a period of three years from the start of the intended use. You undertake to rectify all defects occurring during this period immediately and at your own expense, and to compensate for all damage in connection with the defect, including the costs of identifying the defect.

Place of jurisdiction:

For all disputes arising from the present contract, initially an amicable ruling should be found. The supplier's performance obligations shall remain fully in force during this period. Should it not be possible to reach an amicable agreement, then the competence of the court in Steyr with jurisdiction over the subject matter shall be deemed to be agreed between the parties, and this court shall decide according to Austrian substantive law, with the exclusion of the United Nations Convention on the International Sale of Goods.