

(for individual and plant constructions and other services)

## § 1 General information and scope

- (1) Our General Terms and Conditions of Purchase and Payment (hereinafter abbreviated to "TCPP" ) apply exclusively; terms and conditions from our Suppliers and / or Business Partners (hereinafter referred to as "Supplier" or "Manufacturer" ) that oppose or deviate from our TCPP, shall not be recognised by "Advanced Composite Engineering GmbH" (hereinafter referred to as "ACE" or "Purchaser" ) unless we have explicitly confirmed their applicability in writing. Our Conditions of Purchase (also referred to as "TCPP" ) also apply in the event that we accept the Supplier' s delivery without reservation in knowledge of the Supplier' s terms and conditions that oppose, deviate from or are supplementary to our Conditions of Purchase. In the same way, terms and conditions of sale from our Suppliers or third parties cannot be considered valid if we do not separately object to them in each case, or, if we make reference to correspondence or similar material which contains such conditions or refers to them.
- (2) These TCPP are only applicable to companies as defined by § 310 para. 1 BGB [German Civil Code] and form an integral part of all contractual relationships which ACE enters into with its Suppliers regarding their deliveries and services.
- (3) For business relationships that currently exist with the Supplier, these TCPP shall be applicable in their currently valid form and operate as a framework agreement for all future deliveries, services, offers and contracts which are agreed to between the Supplier and ACE. We do not have to repeatedly make reference to their validity in each individual case.
- (4) All arrangements made between ACE and the Supplier for the purposes of executing the contract shall be set out in writing in this Contract. Individual agreements reached with the Supplier in specific cases (including subsidiary agreements, addenda and amendments) shall in every case take precedence over these TCPP, cf. § 305 b BGB.

## § 2 Ordering, obligations of the Supplier and termination

- (1) Our order shall become binding with written submission or acknowledgement of receipt at the earliest.
- (2) In the event that our order contains obvious errors and / or is incomplete, it is agreed that the Supplier shall make us aware of this before accepting the order so that we can revise or complete it. Failing this, the contract shall not be considered as concluded.
- (3) The Supplier is expected to confirm our order without undue delay, and no later than five working days after receipt, in writing or to deliver the ordered goods without reservation. If the order is accepted outside of this deadline, this shall be deemed as a new offer and we shall need to approve it, cf. §§ 148 et seqq. BGB. Whether or not an order confirmation has been sent in time shall be determined by when we are in receipt of the confirmation.
- (4) As the Client, we have the right to cancel the contract in writing either in part or in full. We do not need to state a reason for this. § 649 BGB shall apply accordingly in this matter.

## § 3 Changes to services

- (1) Whilst adhering to a business-oriented and appropriate timeframe before the agreed delivery date, we reserve the right to request changes or enhancements to the scope of delivery and service by providing a written notice. This shall apply unless this causes an considerable amount of additional expense and effort for the standard ordering process.
- (2) Any requests to change the order made by the Purchaser shall be reviewed by the Supplier within five working days to determine any possible consequences and the Purchaser shall be notified of the result in writing, clearly indicating the expected impacts in terms of: technical workmanship, costs and schedule.
- (3) If the Purchaser decides to proceed with the proposed changes, the Contracting Parties will alter the order accordingly. Our reviewed written order and / or the written confirmation of order from the Supplier shall be decisive in this respect.
- (4) The Supplier shall give the Purchaser immediate written notification of any amendments/extensions to the scope of supplies or services which may prove necessary during realisation of the order.

## § 4 Acceptance, inspection for defects and notice of defects

- (1) If the subject-matter of the contract is the manufacture or alteration of an item or a desired result to be achieved by work or a service (cf. § 631 BGB), we undertake to accept the work which is to be provided in accordance with the contract, unless the acceptance cannot be completed due to the quality of the work. We are entitled to refuse goods due to discovering any type of defect. Third parties may only accept the goods if a written agreement has been made in advance. If we do not receive the goods before the expiry of a deadline set by the Supplier, this shall not constitute an acceptance. In the same way, any payments already made by the Purchaser do not constitute an acceptance of the item delivered.
- (2) A Quality Assurance Agreement concluded between ACE and the Supplier shall take precedence when carrying out inspections for defects and the obligation regarding the notification of defects. If such a Quality Assurance Agreement is not in place then this stage shall be subject to the statutory regulations for commercial inspections and the obligation to notify (cf. §§ 377 and 381 HGB [German Commercial Code]) with the following provisions:
  - the goods delivered will be examined by ACE within a reasonable time for any deviations in quality or quantity,
  - in doing so, our obligation to examine the goods is limited to defects which become evident as part of an external inspection and random sample tests (e.g. damage caused by transportation, incorrect or short deliveries).
- (3) A notification of defect has been lodged in good time if this it is sent within five working days of receiving the goods, or, in the event of a hidden defect, if it is sent upon discovery. A notification of defects can thus also be raised if the goods have already been processed or delivered to the end user.
- (4) When the Supplier receives the Purchaser' s notification of defects, the limitation shall be inhibited by warranty claims.

## § 5 Warranty, material defects and defects of title

- (1) Unless otherwise agreed, ACE is entitled to the legal regulations of the unabridged version of the German Civil Code for matters concerning our rights in the event of material defects, defects of title and any other breach of duty by the Supplier, cf. §§ 434 et seqq. and 633 BGB. According to the legal regulations, the Supplier is especially responsible for ensuring that the goods are of the agreed quality in the case of the transfer of damages to us, cf. § 434 para. 1, pg. 3 BGB. As an agreement on the condition of goods, those product descriptions shall also apply, which are the subject of the respective contract or are included in the agreement in the same manner as these TCPP.
- (2) In the event that the previous paragraph occurs, it shall be at our own discretion to request whether the Supplier remedies the defects or delivers new goods.
- (3) Furthermore, we also explicitly reserve the right to see a reduction in purchase price or to withdraw from the contract, as well as the right to compensation for damages and expenses, and especially the right to compensation for damages instead of receiving the service, to the specific extent specified by law.
- (4) Deviating from § 442 para. 1, pg. 2 BGB, claims of defects only apply to us without restriction when the defect has remained unknown to us as a result of gross negligence.
- (5) The return of the rejected goods shall occur, provided that return is at the sole risk and expense of the Supplier. The costs incurred by the Supplier for examination and improvement shall also be borne by them when it is revealed that no defect actually existed. Our liability for damages in the case of unauthorised requests to correct deficiencies continues to apply; as such we are only liable when we have recognised or failed through gross negligence to recognise that there was no defect.
- (6) If the Supplier does not meet their obligation for supplementary fulfilment within a reasonable deadline set by us, we can correct the defect ourselves and demand compensation for the efforts required or a corresponding additional payment from the Supplier, cf. § 637 BGB.
- (7) There is no requirement to set a deadline if the supplementary fulfilment from the Supplier fails or is unreasonable for us (e.g. due to extreme urgency etc.).

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- (8) We shall not abstain from warranty claims by means of approval or acceptance of designs or samples provided.  
(9) The term of the warranty shall be 24 months, starting from the date of transferring the risk, unless the compulsory regulations as stated in §§ 478 and 479 BGB become applicable.

#### **§ 6 Default of acceptance**

- (1) The default in acceptance becomes effective in accordance with the statutory regulations, cf. §§ 293 et seqq. BGB. However, it is agreed that a written reminder must be sent by the Supplier in each case. We shall not be liable for any interest accruing. Default interest shall be calculated on the basis of statutory regulations, cf. § 247 BGB. In the case of the acceptance of early deliveries, the due date shall nevertheless depend on the agreed delivery date as stated on the order.  
(2) The Supplier must expressly offer us his services, cf. § 294 BGB. An offer must be made in writing. We do not accept offers made verbally.  
(3) Force majeure, industrial disputes, government measures or other unavoidable events within the domain of the Purchaser shall release the Purchaser from the obligation to take delivery of the item supplied for the duration of disruption and this shall not result in a default in acceptance.

#### **§ 7 Delivery time and delay in delivery**

- (1) The delivery shall be made according to the agreements made in the contract. The delivery time stated in the order shall be binding.  
(2) The Supplier undertakes to inform us without undue delay if, and to what extent, any circumstances or reasons arise or become known which may result in the delivery time not being met. Information regarding the expected length of the delay and the cause must also be given. In this respect, we reserve the right to request evidence from the Supplier regarding the delay along with any measures put in place to progress the order, especially with regards to granting a grace period.  
(3) In the event of a delay in delivery, we shall be entitled to make statutory claims without any restrictions. Cf. §§ 286 et seqq. BGB; without requiring to send a reminder. In particular, we are entitled to demand compensation in lieu of service and withdrawal once an appropriate grace period has passed to no avail. The Supplier is free to present evidence of breaches of duty which he is not responsible for.  
(4) Unless otherwise agreed, the goods to be supplied have to be packed in a merchantable and proper manner or the Supplier must, at our request, provide us with specific packaging as instructed by us or in packaging which we provide. The Supplier shall be liable for any damage caused as a result of defective packaging.

#### **§ 8 Reservation of title, ownership protection and further processing**

- (1) Ownership of the goods should be transferred to us unconditionally and without reservation upon payment of the respective price. If we accept an offer from the Supplier which requires payment of the purchase price to transfer ownership rights, the reservation of title shall expire upon payment of the purchase price at the latest, cf. § 362 para. 1 BGB. In any case, we shall only acknowledge a simple reservation of title. All other forms of reservation of title are precluded. The above regulation and the purchase of rights are of equal value, cf. § 453 BGB.  
(2) In the regular course of business, we are authorised, even before payment of the purchase price, to sell on the goods under the anticipatory assignment of payment requirements which may arise from this.  
(3) We shall be considered as a manufacturer due to processing, mixing or connecting (further processing) the delivered products and shall acquire ownership of the product upon undertaking such further processing stages at the latest, in line with the statutory regulations, cf. § 947 BGB.

#### **§ 9 Prices and payment conditions**

- (1) The price specified in the order shall be binding. All prices include VAT as defined by the law, unless this is shown separately. Unless otherwise agreed in writing, the price shall include free delivery including packaging.  
(2) The prices agreed with the Supplier at the time of ordering shall apply.  
(3) We shall be entitled to rights of offsetting and retention within a legal scope, cf. §§ 273 and 289 BGB. This also applies to the plea of non-performance of the contract, cf. §§ 320 BGB.  
(4) The Supplier shall only have a right of set-off and a right of retention on account of legally established or undisputed counterclaims. Without our written consent, the Supplier can transfer its existing claims from the contractual relationship against us, either fully or partially, to a third party. The same applies for the anticipatory assignment of future claims. An assignment shall be valid if the legal transaction represents a commercial transaction for both parties, as defined by § 354a HGB [German Commercial Code], and justifies a claim for money. We shall, however, remain entitled to make payments to our existing creditors with discharging effect.

#### **§ 10 Third-party and intellectual property rights**

- (1) We reserve all ownership rights and copyrights to illustrations, plans, drawings, descriptions and other documents, models, samples and other resources. Such documents may only be used as part of contractual services and must be returned upon completion of the contract. Copies of such documentation made by the Supplier must be destroyed.  
(2) The Supplier shall grant ACE the non-exclusive, free, transferrable usage right to all the property rights used during the manufacturing of the delivery items as well as the property right applications, designs and other know-how. The rights of use cannot be transferred to a third party without the written consent of ACE.  
(3) The Supplier guarantees that the products which they deliver are not in violation of any third-party rights which exist within the scope of the law of the Federal Republic of Germany and the European Union. The Supplier agrees to indemnify ACE from all claims which third parties assert against us as a result of intellectual property rights being violated. The Supplier shall likewise provide us with compensation for all necessary expenses connected to the assertion of a claim in the event of the preceding sentence arising.  
(4) All other statutory claims due to defects of title for the products delivered to us are unaffected by this.

#### **§ 11 Indemnity and product / manufacturer liability**

- (1) The Supplier must indemnify us from all third-party claims if they are accountable for injury to persons or damage to property and the cause for the claim is in the Supplier's own domain, and especially if this involves any of their vicarious agents or assistants, or if the cause can be traced back to a faulty product which they have delivered and they are liable themselves vis-à-vis third parties. This shall apply even if the claim is not based on German law.  
(2) Within the scope of their liability for such damages as defined by the above paragraph, the Supplier is also obliged to reimburse any expenses in accordance with §§ 683 and 670 BGB and §§ 830, 840 and 426 BGB which arise from or are in connection with product recalls carried out by us. We shall notify the Supplier, as far as is possible and reasonable, regarding the content and scope of the recall measures to be carried out and shall give him an opportunity to comment.  
(3) Our claims from the Supplier's recourse are also valid if the goods have been processed further by us or one of our customers before being sold to a consumer, e.g. assembly in another product.

#### **§ 12 Subcontractors**

Without our prior written permission the Supplier is not entitled to provide the services owed by them through third parties (sub-contractors). The Supplier shall bear the procurement risk for his services, unless otherwise agreed on an individual basis (e.g. procurement of goods in stock).

## SPECIAL TERMS AND CONDITIONS OF PURCHASE FOR ACE GMBH



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### **§ 13 Confidentiality, legal regulations, place of performance, applicable law and place of jurisdiction**

- (1) The Non-Disclosure Agreement can be found online ([www.ace-composite.de/downloads/termsandconditions.html](http://www.ace-composite.de/downloads/termsandconditions.html)) and applies to all information and documentation which we make available in any form and any information or documentation concerning ACE for the duration of the contract and after its termination.
- (2) References to the validity of legal provisions shall be for purposes of clarification only. Even without such clarification, the statutory provisions shall therefore apply insofar as they are not directly altered in these TCPP or expressly excluded.
- (3) If the subject-matter of the contract is the manufacture or alteration of an item or a desired result to be achieved by work or a service, then the rights of the service contract shall apply as defined by §§ 631 et seqq. BGB. The regulations as stated in § 434 para. 1, pg. 2 and 3 BGB shall also apply for the service contract. However, § 651 BGB shall not be applicable.
- (4) The place of performance for deliveries to the Client shall be the destination stated on each respective order and is dependent on any agreements which have been made.
- (5) The contracts concluded between ACE and the Supplier are subject to the laws of the Federal Republic of Germany excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods.
- (6) If the Supplier is a trader as defined by the German Commercial Code, then Ravensburg shall be deemed to be the place of jurisdiction for all disputes arising from the contractual relationship. However, we are also entitled to bring suit against the Vendor at the registered place of business where the delivery is to be made.

### **§ 14 Severability clause**

If one or more provisions of these TCPP are or become ineffective or impractical, the remaining provisions of the TCPP shall remain effective. The ineffective or impractical term shall be replaced by a term that approximates the financial purpose of the ineffective or impractical term to be replaced. The same shall apply to any loopholes.