

# General Terms and Conditions of Purchase of the AUMA Group\*

(for Contracts with Partners outside Germany)

EKR-0002-EN

## TABLE OF REVISIONS:

Issue date	Revision	Creator	Changes			
2021-02-10	00	P. Boll				

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## I. Scope

1. Unless other terms or conditions have been agreed upon in writing, solely the following terms and conditions of purchase are valid for all present and future orders. The supplier's or contractor's (hereinafter jointly referred to as "Supplier") general terms and conditions apply only to the extent to which we have agreed to them in writing. These General Terms and Conditions of Purchase are available for download under <https://www.auma.com/en/company/purchasing/download> in their latest version. They will be submitted to the Supplier in compliance with Article 25 Regulation (EU) No 1215/2012 on jurisdiction and the recognition and enforcement of judgments in civil and commercial matters and Article 8 CISG as independent document for the entire business relationship. The version applicable at the time of order shall be binding for the supply relationship.
2. The present General Terms and Conditions of Purchase shall only apply to companies within the meaning of § 14 BGB [German Civil Code], legal persons under public law or special funds under public law.

## II. Placing and Acceptance of Orders

1. Only written purchase orders and agreements are binding. In particular, our employees are required to confirm in writing oral supplementary agreements and commitments going beyond the contents of the written contract or changing these terms and conditions of purchase to our disadvantage.
2. The Supplier must confirm our order without delay.

## III. Delivery Dates and Acceptance

1. Agreed delivery dates are binding. The date upon which the delivery arrives at its destination determines whether the delivery deadline has been met. When performing service work (without delivery of goods) or if a final acceptance (hereinafter referred to as acceptance in accordance with § 640 BGB) has been agreed, successful acceptance must be undertaken by a person authorized for this task by AUMA. As soon as the Supplier realises that punctual partial or complete delivery and/or performance (hereinafter jointly referred to as "Delivery") is not possible, he must inform us thereof without delay, giving the reasons and the probable duration of the delay.
2. We may withdraw from the contract before the agreed-upon Delivery date when it is foreseeable that the Supplier cannot meet the Delivery date also taking into account an appropriate grace period, or, without taking an appropriate grace period into account, if we cannot longer use the goods / service after the agreed Delivery deadline has passed.
3. In the event of a delayed Delivery, we may demand a contractual penalty of 0.5 % of the agreed-upon total price of the Delivery for every full week of delay, up to a maximum 5 %. Further statutory rights remain unaffected. The Supplier may prove that the damage is less than the contractual penalty. We reserve the right to claim the contractual penalty up until final payment.
4. Partial and excess deliveries are allowed only when we have agreed to them in writing.

## IV. Inspection of Manufacturing

After prior appointment during normal business hours, we may inspect the manufacturing of the Delivery for quality, dimensional accuracy, and agreed-upon characteristics on the Supplier's premises.

## V. Delivery and transfer of risk

1. Delivery and transfer of risk are DDP place of destination indicated in the order Incoterms® 2020. This shall also apply where we deploy our own transport personnel. We may specify the type of despatch as well as the carrier. Otherwise, the Supplier shall select the type of despatch most favourable for us.
2. Should an acceptance in accordance with § 640 BGB be agreed or required by law, in deviation from V.1, the risk shall pass to us after successful acceptance by a person authorised for this task.
3. Every delivery must include a bill of lading and a bill of delivery. The bill of delivery must include all information given in the order, e.g., order number and date of the order, our article number, number of pieces or amount, and the article description of the delivered item.
4. The Supplier has not fulfilled its delivery obligations until the proper delivery and shipping documents have arrived at the place of destination. We may store the delivery at the Supplier's expense and risk until we receive these documents.
5. The amounts and weights we determine upon receipt of the delivery are authoritative.

## VI. Packaging and Shipment

1. The goods to be delivered must be packed as is customary in the trade, or, at our request, with special packaging according to our instructions. The Supplier is liable for damage resulting from defective packaging
2. Packaging material shall be returned freight collect at the Supplier's expense.

## VII. Prices and Payment

1. The agreed prices are fixed prices including packaging are apply DDP place of destination indicated in the order Incoterms® 2020. Should an order be given without an indication of price or with a suggested price, we reserve the right to accept the price after the order confirmation has been received.
2. The invoice must be sent in duplicate to the address printed on the order. The invoice must not be enclosed with the shipment. The order data must be clearly visible on the invoice (refer to V.3).
3. Payments are effected with 3 % discount within 14 days or net within 30 days. The payment period shall be met if we have given a payment order to our bank within the specified period. We are in delay of payment only after we have received a written demand for payment. Interest may only be charged from the date of default.
4. We reserve the right to select among all common types of payment. The payment period in accordance with section VII.3 will start after receipt of invoice and complete receipt of goods in accordance with the contract as well as receipt of documents in accordance with section V.3 and not prior to the agreed delivery date.
5. For the time the Supplier is in default meeting its obligations resulting from the business relationship but not necessarily the same contract, we shall be entitled to suspend meeting our obligations.

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**VIII. Liability in case of Lack of Conformity of the Goods**

1. The Supplier warrants that at the time of transfer of risk, the delivered goods comply with the terms of contract, i.e. are free from defects of title and of material/quality and comply with and conform to the current state of the art, the applicable laws, safety and accident prevention regulations, as well as with the usual technical quality standards (e.g., DIN, VDE, VDI, Ex guideline of the German Berufsgenossenschaft [employer's liability insurance association]) applicable in the country of destination. Unless the country of destination is Germany and should there be differences in the standards in Germany and the country of destination, the version with the stricter requirements shall apply.
2. The Supplier shall be obliged to perform an outgoing goods inspection. Unless an acceptance in accordance with § 640 BGB has been agreed, we will inspect the goods after receipt for obvious i.e. contractual damage discernible on the outside of the packaging and transport damage, as well as for identity and missing quantities by checking the order against the delivery documents. We shall be entitled to postpone this inspection of goods to the arrival of the goods at a new place of destination should (1) we redirect or forward the goods without the opportunity of inspection and (2) the Supplier knew or should have known about the possibility of redirecting or forwarding at the time of concluding the contract. There is no obligation to further examine the goods. Any lack of conformity detected during inspection will be reported to the Supplier within a reasonable period. Any lack of conformity discovered at a later date will be notified to the Supplier within a reasonable period after discovery. In this respect, the Supplier waives objections based upon the delayed notification of material defects. Should an acceptance in accordance with § 640 BGB have been agreed or required by law, the obligation of an incoming goods inspection shall not apply. There is no obligation to object to delivery of excess goods. We can put excess delivery on stock at the cost of the Supplier until pick-up.
3. In case of lack of conformity of the goods, we may demand new delivery of conforming goods instead of remedy of defect of those lacking conformity – irrespective of whether it is a material breach of contract. In case of urgency, we may, after consultation with the Supplier, remedy the defect ourselves or have the defect remedied by a third party at the Supplier's expense. The same applies if the Supplier does not comply with its obligations for subsequent performance in spite of an adequate deadline. In case of service work (without delivery of goods), the Supplier must not bear the cost of remedying the defect ourselves or by a third party unless the defect was the Supplier's fault.
4. The Supplier must bear all expenses caused by the repair of the defective goods or the delivery of replacement goods to the place of use. We will inform the Supplier of the place of use at its request.
5. We may withdraw from the contract when the lack of conformity of the goods is material and the Supplier fails to carry out the subsequent performance in due time or at all. There is no deadline for the declaration of withdrawal. Should there be a call-off order and should defects occur repeatedly, we may cancel also the order as to the still outstanding deliveries.

6. The statute of limitation for claims due to lack of conformity of the goods is 36 months from transfer of risk.
7. Should goods be repaired or replaced after notification of lack of conformity, the limitation period set forth in section VIII.6 for these goods begins anew unless the effort for the subsequent performance is insignificant or the Supplier has rightfully declared that it has provided subsequent performance without legal obligation as goodwill.
8. Furthermore, the legal provisions apply in addition.

**IX. Product Liability and Insurance**

1. Should we be held liable on the grounds of product liability by a customer or other third parties, the Supplier shall be obliged to hold us harmless and defend us against such claims on first written demand, insofar as and to the extent that the damage has been caused by a defect of the goods delivered by the Supplier. In cases of fault-based liability, this shall not apply if the Supplier cannot be held responsible for the violation of such obligation.
2. Within the framework of section IX.1. the Supplier shall reimburse the cost and expenditure corresponding to its share of causation / responsibility including the cost of potential court proceedings due to or within the context of a recall action. Further contractual and statutory rights are not affected.
3. The Supplier is obliged to insure its liability risk and to provide evidence the appropriate amount of cover upon request.

**X. Provision of Material, Information and Production Equipment**

1. All information and materials provided to the Supplier for the purpose of performing its contractual obligations must be checked by the Supplier for completeness, correctness, and suitability for the intended purpose. The Supplier obligates itself to keep secret from third parties all details of our orders, e.g., number of pieces, technical construction details, commercial conditions, etc., as well as trade and company secrets that it has received from us in connection with our business relationship.
2. Materials and production equipment provided by us remain our property. Production equipment made at our request and paid for by us becomes our property after it has been paid for in full. Transfer of possession of these items to us will be replaced by the Supplier storing the items for us with the diligence of a prudent businessperson and without charge. The Supplier must store our property separately from items not belonging to us and must insure our property sufficiently against fire, water, or burglary at its own expense.
3. The items must be clearly marked as our property on the items themselves as well as in the company records. After termination of the business relationship, all materials provided to the Supplier, all embodied information, and the production equipment belonging to us must be handed over to us upon request. These items may neither be used by the Supplier for its own purposes, nor may they be made available to third parties. Goods made according to documents designed by us (e.g., drawings, models, etc.), or according to our confidential information, or with our production equipment may neither be used by the Supplier nor offered or delivered to third parties.

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**XI. Third-party Industrial Property Rights**

The Supplier warrants that no third-party industrial property rights, e.g., patents or utility patents, or other rights or business or trade secrets, will be violated by the use of the delivered goods, even in the country of use. The Supplier must hold us harmless and defend us against from any possible third party claims on first written demand. In cases of fault-based liability, this shall not apply if the Supplier cannot be held responsible for the violation of such obligation. The Supplier is not liable to the extent that he manufactures goods exclusively according to our drawings or other specifications and he did not know or could not have known that the manufacture of these goods violated third-party rights.

**XII. Further Provisions**

1. Place of performance for all deliveries shall be the place of destination specified by us.
2. **Place of jurisdiction shall be the court competent for the headquarters of the ordering company within the AUMA Group.** However, we shall also be entitled to address to the court competent for the headquarters of the Supplier.

3. The contractual relationship shall be subject to the material law of the Federal Republic of Germany including the UN Convention on Contracts for the International Sale of Goods (CISG).
4. Should the Supplier provide service work (without delivery of goods), the CISG shall not apply. In this case, the Supplier shall only be held liable for claims for damages unless it is able to prove that it was not at fault concerning the breach of duty.

**\* AUMA Group**

**(affiliated companies)**

1. AUMA Riester GmbH & Co. KG
2. AUMA Drives GmbH
3. AUMA Industry & Marine GmbH
4. AUMA Motors + Systems GmbH
5. Drehmo GmbH
6. SIPOS Aktorik GmbH
7. APS Müllheim GmbH
8. APS Wenden GmbH