



ASTA – GENERAL PURCHASING CONDITIONS (GPC) (January 2018)

- 1. Scope of application**
 - 1.1 All orders and purchases of ASTA Elektrodraht GmbH, Oed 1, 2755 Oed, Austria (hereinafter referred to as **ASTA**) are carried out solely on the basis of these General Purchasing Conditions in their current version, as amended from time to time (hereinafter referred to as **GPC**). The GPC also apply to future transactions between the parties without a need of prior explicit agreement.
 - 1.2 ASTA rejects all contradicting, diverging or complementing terms and conditions, particularly terms and conditions of ASTA's contracting partner (hereinafter referred to as the "**Supplier**"). Such terms and conditions may never apply to contracts between ASTA and the Supplier, even if ASTA had knowledge of their content and did not raise any objections prior to contracting.
 - 1.3 The GPC form the basis of the contractual relationship between the parties as amended.
 - 1.4 The provisions set out in the GPC shall only apply in the absence of a diverging agreement.
- 2. Conclusion of contract /Orders from ASTA / Offers from Supplier**
 - 2.1 Inquiries of ASTA are non-binding.
 - 2.2 Offers from Supplier towards ASTA are binding offers to form a contract and are not an invitation to submit an offer.
 - 2.3 Offers made by Supplier need not be made in a specific form in order to become effective.
 - 2.4 An offer from Supplier shall be binding for a period of 12 weeks from receipt at ASTA.
 - 2.5 After an offer has been made by Supplier, the effective conclusion of a contract in any event requires a written order from ASTA. Such written orders may be submitted via electronic communication. Once ASTA has placed an order based on an offer of Supplier, the contract between ASTA and Supplier comes into effect.
 - 2.6 Supplier shall check all of ASTA's inquiries, documents, information and orders with regards to ambiguities and incompleteness and shall determine whether the order at hand is capable of fulfilling its intended use. ASTA shall immediately be informed in writing by Supplier about recognizable faults and doubts. In this regard, Supplier shall furthermore make suggestions to ASTA concerning the rectification or improvement within a reasonable period and without additional costs for ASTA.
 - 2.7 Supplier shall confirm in writing the execution of the contract (see 2.5.) (order confirmation). The confirmation has to be received by ASTA within 24 hours of receipt of the order by Supplier, otherwise ASTA is free to cancel the order without any claims of Supplier for compensation.
 - 2.8 Should the order confirmation (see 2.7.) diverge from the order, any such deviations shall explicitly be mentioned and described in the order confirmation. Deviations, as well as subsequent additions made by Supplier, need to be confirmed in writing by ASTA in order to become legally binding.
 - 2.9 Once the order confirmation has been received, ASTA is not obligated to point again to these GPC as the sole provisions applicable to the transaction and does not explicitly need to declare contradictory terms to these GPC as rejected and denied.
 - 2.10 In case ASTA submits an order without having received an offer from Supplier beforehand, this order shall be deemed a non-binding invitation for Supplier to make an offer. Should Supplier subsequently make an offer, the execution of the contract shall again be subject to the rules as specified in points 2.2.-2.9. The conclusion of the contract shall then again depend on a written confirmation or a written order made by ASTA.
 - 2.11 Agreements between the parties include all necessary ancillary, auxiliary and additional supplies and services. They are all part of the agreed price. Such additional supplies and services may include assembly, installation and test operations. Furthermore, the order or offer includes, if necessary, briefings and trainings, as well as the handing over of German instruction manuals and technical documentation.
- 3. Place of performance / Delivery / Default**
 - 3.1 The place of performance for all obligations arising from the parties' business relation is the business address of ASTA in Oed 1, 2755 Oed, Austria. The delivery shall be packaged and delivered free domicile at Supplier's risk under the Incoterm DDP place of performance (Incoterms 2010). Should, by exception, other terms of delivery have been agreed upon in writing, the transport instruction of ASTA shall be strictly adhered to.
 - 3.2 The date of delivery as mentioned on ASTA's order is binding and shall be deemed as the date of arrival of goods. Time is of essence.
 - 3.3 Advance or partial deliveries shall only be permitted subject to ASTA's approval. Regarding excess deliveries surpassing the ordered amounts, ASTA may choose to either keep and pay them or return them at the cost and risk of Supplier.
 - 3.4 ASTA is entitled to deny and reject the acceptance of faulty deliveries/services, regardless of the severity of the fault. Consequently, Supplier is in default – late delivery.
- 3.5 As far as Supplier is obliged to provide material tests, inspection protocols, quality certifications or other documents, the delivery shall only be deemed complete if and by the time these services and/or documents have been received by ASTA.
 - 3.6 In cases of late delivery, the statutory legal provisions shall apply. Additionally, in case Supplier is not capable of fulfilling its obligations within a reasonable period, ASTA shall have the right to refer to a third party to perform the respective service. Supplier shall bear any additional costs originating from the services performed by such third party. The criterion determining, whether a delivery has been made on time shall be the receipt of the delivery at the place of performance.
 - 3.7 If Supplier exceeds agreed delivery terms or dates, ASTA may – regardless of Supplier's fault or evidence of damage – claim a contractual penalty amounting to 0,5% per exceeded calendar day up to a maximum of 15% of the total order value per exceeded delivery date and retain said amount. This contractual penalty applies regardless of the amount of the actual damage and the possibility of compensation for damages. This provision does not limit or preclude the enforcement of damages exceeding the amount of the contractual penalty.
 - 3.8 For shipping, goods shall be packaged appropriately in order to prevent damages typically resulting from the chosen transport method. Costs of packaging are included in the agreed price.
 - 3.9 Each delivery shall contain a delivery note including the order number and the product name. Deliveries of several packages have to contain an order number for each of the packages. Lack of a delivery note shall give ASTA the right to decline acceptance of the delivery.
- 4. Legal reservation / Usage rights and exploitation rights**
 - 4.1 All of ASTA's rights regarding works, documents such as sketches, plans and samples of whatever kind, know-how, patents, etc. are explicitly reserved. Such works, documents, know-how, samples, patents, etc. may not be passed on or made accessible to third parties nor may be used for own purposes without the prior written permission of ASTA on a case-by-case basis. In case of doubt, such permission shall not be deemed granted by ASTA.
 - 4.2 If tools, models, samples, devices, computer programs or other works are developed by Supplier or a third party on behalf of Supplier in order to fulfil ASTA's order, the sole ownership, as well as all exclusive usage rights and exploitation rights, shall be transferred to ASTA upon payment of the purchase price. Ownership of physical objects is transferred to ASTA already before the physical handover by means of the *constitutuum possessorium* in accordance with section 428 of the Austrian Civil Code (ABGB). ASTA may transfer all of the aforementioned rights partly or entirely to third parties, without further approval of Supplier. This further includes the right to fully alter, duplicate, distribute or otherwise exploit the aforementioned tools, models, samples, devices, computer programs etc. Supplier may not use these tools, models, samples, devices etc. in connection with orders made by third parties.
 - 4.3 If the law does not know or allow a transfer of rights as set out in 4.2., Supplier shall, upon request from ASTA, hold these rights in trust in favour of ASTA or give its consent to another contractual solution that corresponds to 4.2. economically.
- 5. Warranty**
 - 5.1 Supplier warrants the absence of defects of the ordered goods and/or services. Supplier in particular warrants that the ordered goods and services are free from hidden defects, as well as from rights and claims from third parties, in particular also based on intellectual property rights. Furthermore, Supplier warrants that the ordered goods and services possess the agreed upon and usually expected features and that they will meet ASTA's requests.
 - 5.2 The statutory warranty period as well as assumption period shall apply.
 - 5.3 The duty to inspect delivered goods in accordance with sections 377, 378 of the Austrian Commercial Code (UBG) (*Mängelrüge*) is hereby waived and shall not apply.
 - 5.4 In the event that Supplier does not fulfil its warranty obligations within a reasonable period of time, not exceeding 14 days, ASTA may remedy at the cost of Supplier the defect or refer to a third party to remedy the defect.
 - 5.5 Statutory claims of ASTA remain unaffected by this clause.
- 6. Withdrawal from contract**

ASTA may at any time withdraw from the contract with Supplier. In such a case, Supplier may claim compensation for all expenses made, provided that Supplier provides detailed proof of the made expenses. If goods have already been produced based on ASTA's individual wishes and specifications, Supplier shall be entitled to compensation for its own detailed costs, provided that Supplier is unable to use such goods otherwise. Supplier has a duty to mitigate damages.
- 7. Reporting obligation – Contractual penalty**

Supplier shall immediately inform ASTA in writing about an envisaged filing for insolvency or an application submitted by a third party. A breach of this reporting obligation results in a contractual penalty in the amount of EUR 5,000.- to ASTA.

8. Prices / Billing / Payment

- 8.1. The prices set out in the order are firm and fix (including all costs, charges, taxes and fees) and may therefore not be adjusted until the agreed order has been fulfilled. Supplier guarantees the accuracy of a cost estimate and shall provide such cost estimates free of charge.
- 8.2. Invoices to ASTA shall – irrespective of the start of the statutory limitation period – be paid within 60 days upon complete delivery of the ordered service which is free of defect and upon submission of a correct invoice. This also applies to partial deliveries. Also, the discount period shall only start upon complete delivery and receipt of the invoice. Payments shall be qualified as having taken place on the day on which ASTA instructed its bank for payment.

9. Retention of title

Titel to goods and services rendered by Supplier shall be transferred to ASTA upon delivery. A retention of title on the part of Supplier is not accepted and shall be null and void.

10. Liability

- 10.1. Supplier is liable for all damages caused by it or by third parties acting on behalf of Supplier. Subcontractors and suppliers of Supplier are regarded as agents of Supplier pursuant to section 1313a Austrian Civil Code (ABGB).
- 10.2. Supplier is responsible for ensuring adequate insurance of its goods and services (liability insurance, assembly insurance, transportation insurance and guarantee insurance). Upon request from ASTA, the respective insurance policy shall immediately be handed over to ASTA.
- 10.3. Any liability for slight negligence of ASTA or of third parties acting on behalf of ASTA is in any event excluded. This does not apply in case of personal injuries.
- 10.4. Any liability for simple gross negligence of ASTA or of third parties acting on behalf of ASTA is in any event excluded.
- 10.5. Multiple Suppliers under the same contractual relationship are jointly and severally liable towards ASTA.

11. Formal requirements / Notifications

- 11.1. Orders, acceptances of orders, order confirmations, changes/amendments to these GPC and to individual contracts as well as other communication between Supplier and ASTA shall be in writing unless otherwise agreed upon in these GPC or in the individual contract. Any notification shall be submitted to the address last given, unless otherwise agreed. The electronic communication shall qualify as written form.
- 11.2. Also the modification of the written form requirement as set out in these GPC or in an individual contract needs to be made in writing.
- 11.3. Supplier shall inform ASTA immediately about any change of its address. If Supplier fails to do so, notifications shall be deemed to be effectively delivered if sent to the previous address of Supplier, last communicated in writing to ASTA. The postal stamp shall be decisive for the determination of the timely receipt of notifications.

12. Set-off / Retention / Refusal of performance

- 12.1. Supplier is only entitled to set-off claims of ASTA with counterclaims or to declare a retention of its services if such counterclaims have been judicially determined or if ASTA has not objected against such counterclaims of Supplier.
- 12.2. Supplier may only make use of its right of retention and right of refusal of performance if the respective underlying counterclaim originate from the same contractual relationship.
- 12.3. Out-of-court disputes as well as pending legal law suits do not give Supplier the right to discontinue its services that are due or to retain goods/deliveries.

13. Termination of order / Termination for cause

- 13.1. Both ASTA and Supplier may terminate contracts entered into for an indefinite period with a 4 weeks prior notice period. ASTA is also entitled to partly terminate the order. A termination shall always be made in writing. The termination of an order stops any ongoing claims for remuneration of Supplier. Advance payments made for periods after termination of the contract shall be paid back by Supplier along with interest without undue delay.
- 13.2. ASTA may immediately terminate a contract for good cause, such as but not limited to the following:
- the judicial filing for insolvency regarding Supplier's assets either by Supplier or a third party. In such case, the withdrawal shall take place prior to the opening of insolvency proceedings.
 - the dismissal of a filing for insolvency regarding Supplier's assets.
 - Supplier has generally stopped payments without pending insolvency proceedings.
- 13.3. The effectiveness of 13.2. (i) and (ii) shall be determined based on the jurisdiction in which Supplier is domiciled.

14. Limitation period

All claims originating from the contractual relationship between ASTA and Supplier shall be legally asserted with the court within one year as of the due date, otherwise such claims shall preclude. The pleading instituting the

proceedings at court shall be decisive for determining the timely assertion of a claim.

15. Place of jurisdiction / Applicable law

- 15.1. All disputes arising out of or in connection with purchases between ASTA and Supplier shall be resolved under the exclusive jurisdiction of the competent court in Wiener Neustadt. ASTA reserves the right to file claims against Supplier also at the court of Supplier's place of general jurisdiction.
- 15.2. All relationships between ASTA and Supplier shall be governed exclusive under Austrian law without the application of its conflicts of laws provisions and the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.

16. Data protection

- 16.1. Supplier as well as ASTA shall treat personal data that is received during the contractual relationship according to the then prevailing data protection rules. Supplier and ASTA will use received data only for the purpose of fulfilling their contractual obligations and will not pass on said information to third parties nor will they give third parties access to such data in any other form and shall take appropriate measures in order to prevent third parties from access to such information. These obligations shall also survive termination of the contractual relationship between the parties.
- 16.2. The obligations set out in 16.1 do not apply to ASTA in cases where the passing on of information to insurances, experts or suppliers etc. engaged by ASTA is necessary due to their respective obligations, provided, however, that ASTA shall pass on the obligation of confidentiality to those parties to the extent possible.

17. Compliance

Supplier acknowledges that ASTA commits itself to comprehensive compliance and has enacted a respective compliance guideline in that respect. Supplier confirms and guarantees that it acts in accordance with any and all applicable laws, regulations and codes and will do so during the existence of this contract, including, but not limited to, every anti-corruption-law as well as the ASTA Directive on Compliance and Corporate Integrity (accessible at <http://www.asta.at/en/company/corporate-governance/compliance.html>). In connection with the subject matter of this contract or any other business relationship with ASTA, Supplier has not and will not, neither directly nor indirectly, participate in any prohibited action. Prohibited actions include promising, offering or granting another person improper advantages or demanding or accepting improper advantages in order to unduly influence the course of action or other behaviours.

18. Severability clause

- 18.1. If individual terms of these GPC turn out to be void, invalid, impracticable or unenforceable, the validity of the residual terms shall remain unaffected. In this case such valid and enforceable terms shall be regarded as applicable that come closest to the economical purpose of the void or invalid terms as well as to the intentions of the parties.