

General Terms and Conditions of Purchase of asphericon GmbH Jena

Applicable in business transactions with enterprises, public law bodies and special funds under public law.

Article 1: General matters

Our General Terms and Conditions of Purchase shall apply exclusively.

The Incoterms 2010 shall apply additionally, as long as they do not contradict the General Terms and Conditions of Purchase of asphericon GmbH.

The General Terms and Conditions of Purchase of asphericon GmbH shall always apply in their currently valid version.

Article 2: Contract formation and amendments

2.1 All orders, contracts and delivery call-offs as well as subsequent arrangements modifying or amending the contract require the written confirmation by asphericon GmbH, in order to become legally effective. The written confirmation can be communicated by remote data transfer or telefax.

2.2 Any other terms and conditions of the suppliers of asphericon GmbH – especially their General Terms and Conditions of Purchase – are hereby expressly rejected, irrespective of whether modifying or amending the contract; they shall only take effect vis-à-vis asphericon GmbH as long as asphericon GmbH has accepted them in writing prior to it.

2.3 The contract shall become effective by asphericon GmbH placing an order or making a call-off, unless the supplier objects to it in writing within one week after having received the order or within two days after having received the call-off, or unless he submits a counter-offer. Unless asphericon GmbH rejects the counter-offer within two weeks after having received it, its content shall be binding, provided it does not deviate substantially from the purchase order or from the call-off. A substantial deviation shall be deemed to be a change of the delivery date or the delivery period by more than forty eight hours, a change in the delivery quantity by more than five per cent or a change in price, unless stated otherwise in the purchase order or in the call-off. The dispatch time of the rejected counter-offer shall be decisive for asphericon GmbH having adhered to the deadline for the rejection; with the post mark, or the fax or e-mail archive providing sufficient proof hereof.

2.4 Our purchasing staff and representatives are not authorized to enter into verbal subsidiary agreements or to make verbal representations in excess of the content of the written contract or of these General Terms and Conditions of Purchase. Hence, once a contract has been concluded, any subsidiary agreements as well as subsequent alterations and amendments to such contract require written confirmation, in order to become effective. Such written confirmation cannot be orally waived. Nor can the written form requirement for the contract, subsidiary agreements, subsequent alterations and amendments or the written form requirement contained in these General Terms and Conditions of Purchase be orally waived, but only in writing.

2.5 Cost estimates shall be binding and not be paid for, unless explicitly agreed otherwise in writing.

2.6 The requirements of ISO 9001 as well as the delivery and packaging regulations of asphericon GmbH shall become an integral part of the contract.

Article 3: Delivery

3.1 Deviations from the specifications agreed upon in our contracts and orders require our prior written approval.

3.2 Any deadlines and delivery periods agreed upon shall be binding. The receipt of the goods at our premises shall be decisive for the adherence to the deadline or delivery period. Unless “free works” (“Delivered Duty Unpaid” [DDU] or „Delivered Duty Paid“ [DDP]) pursuant to Incoterms 2010 has been agreed, the supplier shall make the goods available in a timely fashion by taking into account the time for loading and shipping to be agreed upon with the forwarder. In any other case, the supplier shall be liable for delays caused by the forwarding agent.

3.3 If the supplier is responsible for the set-up, installation or commissioning, he shall assume all necessary incidental costs, such as travel expenses, the provision of tools and daily allowances, unless agreed otherwise.

3.4 If deadlines agreed upon in writing are not met, the statutory default regulations shall apply. Furthermore, liquidated damages amounting to 0.2 per cent of the delayed item’s value shall become due for each working day of delay, with the contract penalty for individual items being limited to 5 per cent of the net contract value and to 5 per cent of the total contract value. If the supplier anticipates difficulties with regard to production, the supply of materials, meeting the delivery deadline or similar circumstances that might prevent him from making the delivery on time or in the agreed quality, he shall immediately notify our department that has placed the order.

3.5 The unconditional acceptance of a delayed delivery or service shall not constitute a waiver of our compensation claims for the delayed delivery or service, to which we are entitled; this shall be applicable until we have settled the delivery or service concerned in full.

3.6 Partial deliveries shall basically be inadmissible, unless we have explicitly agreed to them.

3.7 The quantities, weights and dimensions established by us during the incoming goods inspection shall be decisive, unless proven otherwise.

3.8 We shall have the right to use software that belongs to the scope of delivery, including its documentation, to the extent legally permissible (Articles 69a et seq. of the [German] Copyright Act [UrhG]).

3.9. We shall also have the right to use such kind of software. including its documentation, with the agreed performance characteristics and to the extent necessary for the contractually agreed use of the product, which may include disclosure to third parties. We shall also be entitled to create a backup copy without concluding a separate agreement in this respect.

Article 4: Force Majeure

Acts of God, labor disputes, operational disruptions beyond our control, unrest, government measures and other unavoidable events shall exempt us, for the duration of their existence, from the duty to accept the goods as scheduled. During such events as well as for a two week period thereafter we shall be entitled - irrespective of any other rights we have - to withdraw from the contract in whole or in part, as long as these occurrences are not of inconsiderable duration and if our demand has considerably decreased as a result of procuring the goods elsewhere.

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Article 5: Advice of Dispatch and Invoice

5.1 The information provided in our purchase orders and call-offs shall apply. The invoice shall be sent in one copy to the address indicated, with the invoice number and other identifiers, such as the delivery deadline, being stated. The invoice shall not be included in the delivery. If the supplier's invoice does not clearly indicate the order date or the order number as communicated to the supplier, asphericon GmbH shall, under exclusion of Article 286, sub-section 3, sentence 1, of the [German] Civil Code (BGB), not fall into arrears until forty days after the due date and receipt of the goods.

5.2 In the event of deliveries not conforming to the contractual provisions, especially with regard to deliveries being defective, asphericon GmbH shall be entitled to withhold payment without forfeiting rebates, discounts or similar payment abatements until proper fulfillment thereof.

Article 6: Pricing and Passing of Risk

Unless otherwise agreed, the prices shall be „free works“ (asphericon | Stockholmer Str. 9 | 07747 Jena) “Delivered Duty Paid“ pursuant to Incoterms 2000, including packaging & insurance and excluding sales tax. The supplier shall be responsible for the safety of the goods until they have been accepted by us or by our local representative at the place of destination to which the goods are to be delivered in accordance with the contract.

Article 7: Payment Terms

Unless otherwise agreed, invoices shall be paid either within 10 days by deducting a 2 % discount or within 30 days without deductions as of the payment due date and after the receipt of both the invoice and the goods or services. The payment shall be subject to invoice verification.

Article 8: Claims for Defects and Recourse

8.1 The acceptance shall be subject to an inspection, to the extent and as soon as is advisable in the ordinary course of business, in order to establish that the delivery is free from defects and, especially, correct and complete. We shall report defects immediately after having identified them, but not later than 5 days after having received the delivery.

8.2 The statutory provisions regarding defects as to quality or title shall apply, unless something else is stipulated below.

8.3 As a matter of principle, we alone shall be entitled to choose the kind of supplementary performance. The supplier shall have the right to refuse it, if the ensuing costs turn out to be unreasonably high.

8.4 Should the supplier fail to start rectifying the defects immediately after having been requested to do so by us, we shall be entitled in urgent cases, especially to ward off imminent risks or to prevent major damage, to undertake such corrections ourselves, or have them carried out by a third party, at the supplier's expense.

8.5 In the case of defects as to title, the supplier shall indemnify us against any possible third-party claims, unless the supplier cannot be held responsible for this defect.

8.6 Claims for defects shall become statute-barred after 3 years, except in cases of malice, unless the object has been used in accordance with its intended use for a building and has caused this building being defective. The limitation period shall commence with the delivery of the subject matter of the contract (passing of risk).

8.7 If the supplier performs his duty of supplementary performance by making a replacement delivery, a new limitation period shall commence with the delivery of the replacement goods, unless the supplier has explicitly and appropriately reserved the right when making his supplementary performance that he considers the replacement delivery merely as a gesture of goodwill, as an attempt to avoid any disputes or as a step in the interest of continuing the supply relationship.

8.8 Pursuant to Article 280, sub-section 1, BGB, the supplier shall bear any costs incurred to us as a result of delivering the defective subject-matter of the contract, especially shipping, traveling, labor and material costs as well as any extra costs arising from the incoming goods inspection beyond the normal scope.

Article 9: Product liability

9.1 Should a product liability claim be brought against us, the supplier shall hold us harmless from such claims if, and to the extent, the damage was caused by a defect of the subject matter of the contract as delivered by the supplier. In cases of fault-based liability this shall only apply, if the supplier can be blamed. If the cause of damage comes under the supplier's responsibility, the supplier shall have the burden of proof in this respect.

9.2 In cases referred to under sub-section 9.1 hereof, the supplier shall assume all costs and expenses, including the legal costs, if any.

9.3 As for the rest, the statutory provisions shall apply.

9.4 Before any recall campaign is started which is, wholly or partly, the result of a defect affecting the subject-matter of contract delivered by the supplier, we shall inform the latter, give him an opportunity to cooperate and discuss with him the ways of handling the campaign efficiently, unless such information or involvement of the supplier is impossible for reasons of urgency. If the recall campaign is the result of a defect affecting the subject-matter of contract delivered by the supplier, all costs of the recall campaign shall be borne by the supplier.

9.5 The supplier shall, at the commencement of the contractual relationship and at any time at the request of asphericon GmbH, prove to the latter that he has taken out a product liability and recall insurance with a minimum coverage of € 2 000 000 per each liability case; the supplier shall maintain this insurance cover after the mutual contractual obligations have been fully performed for a period of five years after the processed goods have been placed on the market by asphericon GmbH.

Article 10: Execution of work

Persons working on the company premises in the course of performing the contract shall observe the relevant provisions of the plant regulations. Any liability for accidents these persons suffer on the company premises shall be excluded, unless such accidents have been caused by willful acts or gross negligence on the part of our legal representatives or vicarious agents. Supplementary construction work is a priori not permitted.

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Article 11: Provision of material and equipment

11.1 Any material, parts, containers and special packaging provided by us shall remain our property and must only be used for the intended purpose. The material shall be processed and the parts be assembled on our behalf. There is agreement that we shall become co-owner of all products in the proportion of the value of our supplies to the value of the whole product which is manufactured with our material or parts and which is kept safe by the supplier on our behalf.

11.2 If a part provided by asphericon GmbH is culpably (intentionally or negligently) damaged or destroyed while being in the supplier's sphere of responsibility, the supplier's liability shall also extend to the repair or replacement of the part concerned. All damaged, destroyed or unprocessed components must be returned to asphericon GmbH and must not be disposed of by the supplier himself.

11.3 asphericon GmbH retains the ownership in all tools paid for, or provided by, asphericon GmbH. The supplier shall use these tools solely for the production of the goods ordered by asphericon GmbH.

Article 12: Documents and Secrecy

12.1 The supplier shall keep the secrecy about all and any business or technical information towards third parties (including features which might be derived from objects, documents or software possibly submitted to the supplier and any other information or experience gained), as long as and to the extent they are not in the public domain; this information must only be made accessible in the supplier's premises to those persons who necessarily need this information for the purpose of supplying us and who must also be committed to keep the secrecy. This information shall remain our exclusive property and must not be duplicated or commercially exploited without our prior written approval, except for deliveries to us. All and any information provided by us (including any copies or recordings, if applicable) and items made available on loan shall, at our request, be immediately and completely returned to us or be destroyed.

We reserve all rights to such information (including copyrights and the right to file industrial property rights, such as patents, utility models etc.). If such information has been made available to us by third parties, this reservation of rights shall also apply to these third parties.

12.2 Products manufactured or processed on the basis of documents prepared by us, such as drawings, models and suchlike, or on the basis of our confidential information, or with our tools or with tools modeled on our tools may neither be used by the supplier himself nor be offered or supplied to third parties. This shall also apply to our print orders accordingly.

Article 13: Export control and Customs

The supplier shall inform us in his business documents about all and any approvals required for the export or re-export of his goods in accordance with the German, European as well as US export and customs regulations, or about the export and customs regulations of his goods' country of origin. For this purpose, the supplier shall, at least in his offers, order confirmations and invoices, provide the following information for the relevant items:

- the export list number according to Annex AL of the German Foreign Trade Ordinance or equivalent list items of applicable export lists,
- the ECCN (Export Control Classification Number) of the US Export Administration Regulations (EAR) for goods from the US,

- the commercial origin of his goods and of the components of his goods, including technology and software,
- whether the goods were transported through the U.S.A., manufactured or stored in the U.S.A. or manufactured by using US technology,
- the statistical goods number (HS code) of his goods, and
- a contact in his organization in charge of dealing with possible inquiries on our part.

The supplier shall, at our request, provide us with any further foreign trade data concerning his goods and their components in writing and inform us of all changes to such data in writing without any delay (and in any case before the delivery of any such goods).

Article 14: Social responsibility and Environmental protection

The supplier shall undertake to observe all applicable statutory regulations concerning the interaction with his employees, environmental protection and work safety and to always make efforts to mitigate any negative effects on man or the environment arising from his activities. In order to do so, the supplier shall, within his means, set up and improve a management system based on ISO 14001. The supplier shall also observe the principles of the UN Global Compact Initiative which relate, in essence, to the protection of international human rights, the right to collective bargaining, the abolition of forced and child labor, the ban on discrimination in recruitment and employment, to the responsibility for the environment and to the prevention of corruption. More information on the UN Global Compact Initiative is available in the Internet under www.unglobalcompact.org.

Article 15: Place of performance

The place of performance shall be the place specified in the purchase order to which the goods are to be delivered or at which the service is to be provided.

Article 16: General provisions

16.1 Should any provision of these General Terms or of any further agreements be or become ineffective, the validity of the other provisions hereof shall in no way be affected. The contracting parties shall replace the ineffective provision by relative provisions that have the same economic effect.

16.2 The contractual relationships shall be exclusively governed by German law, with the United Nations Convention on Contracts for the International Sale of Goods (CISG) being excluded.

16.3 The place of jurisdiction for all disputes arising directly or indirectly from a contractual relationship based on these General Terms and Conditions of Purchase shall be Jena. We shall also be entitled, at our discretion, to sue the supplier at his place of jurisdiction, or at his registered office, or at the place of performance.