



## **General Terms of Purchase of ACO Guss GmbH and ACO Eurobar GmbH**

(valid from 01.09.2011)

### **I. General information**

1. The Terms of Purchase apply to all orders and purchases of ACO Guss GmbH and ACO Eurobar GmbH (hereinafter: "Customer"). The Terms of Purchase of the Customer shall apply exclusively. The Customer shall not recognise contradictory terms and conditions or which deviate from the Terms of Purchase of the Customer unless the Customer explicitly agrees to these in writing.
2. The Terms of Purchase of the Customer shall also apply if the Customer accepts or pays for the delivery of the supplier without reservation with the knowledge of contradictory terms and conditions of the supplier or which deviate from the Terms of Purchase of the Customer.

### **II. Orders**

1. Each order of the Customer has a validity of 2 weeks. The supplier has to accept the order within 2 weeks.
2. Orders are only binding if they are placed by the Customer in writing within the meaning of §§ 126, 126a BGB [Civil Code]. Oral agreements require the written confirmation by the Customer in order to be valid.
3. The Customer reserves the property rights to diagrams, drawings, samples, models, calculations and other plant documents to which it is entitled and all other rights, in particular copyrights and registered design rights. Such documents may not be accessible to third parties without the explicit and written release by the Customer. They are exclusively to be used for the production based on the order of the Customer; after processing of the order they are to be returned to the Customer without request or to be destroyed as proven with the written release by the Customer.

### **III. Delivery**

1. The deliveries have to be carried out to the stated shipment addresses. The delivery to another place of receipt than that named by the Customer does not effect any passing of risk for the burden of the Customer. This shall also apply if the goods were accepted without reservation. The additional costs of the

Customer for the shipment of the goods to the agreed place of receipt are to be borne by the supplier.

2. Partial deliveries are not permitted insofar as this was not explicitly approved by the Customer in writing.
3. The values determined by the Customer with the acceptance of the goods are decisive numbers of units, dimensions and weights. The weighing is carried out on the calibrated scales of the Customer.

### **IV. Delivery time**

1. The delivery time stated in the order is binding.
2. The supplier undertakes to inform the Customer of the delay in delivery immediately in writing by stating the reasons as well as the expected duration if the delivery time stated in the order cannot be adhered to.
3. In the event of the delay in delivery the Customer shall be entitled to the statutory claims. After the expiry of a reasonable deadline the Customer is authorized to request damages instead of the service and cancellation of the contract.
4. The opening times of the goods acceptance of ACO Guss GmbH - ACO Eurobar GmbH are from Mon. - Thurs 7.00 am - 3.00 pm and Fri. 7.00 am - 1.00 pm (Kaiserslautern plant and Aarbergen plant).

### **V. Liability for defects**

1. The supplier shall be responsible for ensuring that its delivery complies with the recognised rules of technology, the safety regulations and the agreed technical data. It assures that it delivers according to EU - standards, DIN - standards, environmental protection standards as well as all other statutory regulations which are relevant at the time of the delivery and guarantees that the delivered parts are free of faults. It in particular guarantees the compliance with the technical specifications and plant standards as well as quality guidelines of the Customer which are valid at the time of the order.
2. The Customer is not obliged to inspect the goods. The supplier undertakes to carry out outgoing goods inspections. The payment of the invoice does not represent any acknowledgement that the delivered goods are free of defects.
3. The Customer is entitled to the statutory claims for defects in full. The Customer can at its choice request remedy of the defects or delivery of a new object. The statutory rights to cancellation, reduction and damages remain



unaffected.

4. Claims for defects shall become statute-barred in 24 months, longer legal statutes-of-limitations remain unaffected hereby. The statute-of-limitations shall begin to apply again for newly delivered or subsequently improved parts. The costs for the remedy of the defects or the substitute delivery including secondary costs shall be borne by the supplier.
5. For each complaint we shall charge an administration flat rate of € 50.00. The costs shall be increased accordingly for further administration expenses.

## VI. Prices

The price shown in the order is binding and a fixed price. It includes everything which the supplier has to effect in order to satisfy its service obligation. In the absence of deviating written agreements the delivery has to be carried out "free house", including packaging. The return of the packaging requires a special agreement. Insofar as not otherwise market the applicable rate of value added tax is included in the price.

## VII. Invoicing

1. Invoicing has to be carried out according to § 14 UStG [Value Added Tax Act] and by stating the order number, all necessary settlement documents are to be added; the supplier is responsible for all consequences incurred owing to the non-compliance with this obligation insofar as it does not prove that it was not responsible for the non-compliance.
2. In the absence of any written agreement otherwise payment shall be made within 14 days, beginning from delivery and receipt of the invoice, with 2% cash discount or within 30 days after receipt of the invoice net. With invoices which are incomplete (missing technical documents, test certificates, time sheets etc.) or cannot be sufficiently identified, the deadline shall only begin with the full availability of the invoice documents.
3. The supplier can only offset against undisputed claims or claims which have been declared final and binding.
4. The Customer is entitled to offset against the claims to which the supplier is entitled against the customer with all claims to which it is entitled.

## VIII. Insurance cover

1. The supplier indemnifies the Customer from claims from product liability upon first request

insofar as the cause of the damages originated in its area of organisation and it is directly liable in the external relationship. The liability shall also cover possible costs, which arise within the framework of recall measures. If the recall measures are carried out by the Customer it shall inform the supplier – within the limits of that which is possible and deemed reasonable - and give it the possibility to make a statement. Other statutory claims remain unaffected hereby.

2. The supplier undertakes during the delivery relationship to maintain employer's liability, environmental liability and extended product liability insurance with at least € 5 million per physical injuries / property and product financial losses. Upon request it has to submit the insurance policy to the Customer. Further claims for damages of the Customer remain unaffected hereby.

## IX. Subcontractors

The commissioning of subcontractors always requires the prior written release of the Customer. Incidentally the supplier undertakes to provide all services itself.

## X. Reservation of title to provided parts and tools, service

1. All parts provided by the Customer shall remain its property. Insofar as processing is carried out the supplier carries this out for the Customer. If the parts provided by the Customer are processed or inseparably connected with other objects then the Customer shall acquire the co-ownership to the next object in the ratios of the invoice value of the goods to the other processed or mixed objects at the time of the processing.
2. All tools of the Customer shall its property as all times and are to be labelled as such. The supplier has to insure these at the value as new against fire, water and theft. The supplier hereby now already assigns all claims against the insurance to the Customer; the Customer hereby accepts the assignment. All costs for maintenance and repair are to be borne by the Supplier and to be carried out in time.
3. Insofar as the collateral rights according to Sub-clause 1 exceed the purchase price of all not yet paid reserved goods of the Customer by more than 10% the Customer is upon request of the supplier obliged to release the collateral rights at its choice.



## **XI. Force majeure**

Events of force majeure, industrial disputes, interferences to operation without fault, civil commotion, official measures and other unavoidable events shall release the Customer from the service obligations for the duration of the interference and in the scope of their effect.

## **XII. Property rights**

1. The supplier guarantees that no rights of third parties are infringed in connection with its delivery within the Federal Republic of Germany.
2. If a claim is asserted against the Customer by a third party the supplier undertakes to indemnify the Customer from these claims upon first written request, the Customer is not entitled to reach any agreements with the third party – without the supplier's consent – in particular to reach a settlement.
3. The indemnification obligation of the supplier refers to all obligations incurred to the Customer from the assertion of the claim by the third party.
4. The statute-of-limitations is 36 months from passing of the risk.

## **XIII. Non-disclosure obligation**

The supplier undertakes to maintain strict secrecy concerning all received diagrams, drawings, samples, models, calculations and other plant documents. The non-disclosure obligation shall not apply to knowledge which was already generally known or becomes generally known for the duration of the non-disclosure obligation. The documents which are liable to secrecy may only be made accessible to third parties with the explicit written consent of the Customer. All documents which are liable to secrecy are to be returned to the Customer after the end of the business relationship, otherwise – after the explicit written release by the Customer – to be destroyed as proven. The non-disclosure obligation shall continue to apply after termination of the business relationship for a period of 2 years.

## **XIV. Data protection/ REACH regulations**

The Customer points out to the supplier that data associated with the business relationship are stored in line with the stipulations of the Federal Data Protection Act (§ 33 BDSG). The supplier undertakes to comply with all stipulations and measures of the REACH regulations with the deliveries to the Customer.

## **XV. Export control**

1. The supplier undertakes towards the Customer to comply with all applicable national, European and US export control regulations, including all European or US sanction lists and other personal embargos ("export control regulation").
2. The supplier undertakes towards the Customer to make a notification without request by stating the concrete AL or ECCN number for the event that goods which are to be delivered or their parts are listed in the export list, the annexes I and IV or the CCL.
3. The supplier undertakes to report all circumstances of which it becomes aware after conclusion of the contract which substantiate the assumption of a possible or actual breach of the export control regulations, to the Customer immediately in writing. For the event that the Customer determines circumstances after conclusion of the contract which substantiate a possible or actual breach of export control regulations the Customer shall inform the supplier hereof in writing.
4. In each case in which circumstances become known which substantiate the assumption of a possible or actual breach of export control regulations a delay in acceptance by the Customer is excluded for a reasonable period of time in order to give the Customer the opportunity for examination.
5. If actual breaches of export control regulations are determined or cannot be excluded the Customer can at its choice cancel the contract or request cancellation of those partial deliveries which substantiate the assumption of a breach. The supplier undertakes to indemnify the Customer from each damage which is suffered due to the faulty or non-executed satisfaction of the obligation of the supplier from this clause and the sub-clauses. The scope of the damages which are to be compensated for shall also include the reimbursement of all necessary and reasonable expenses which will be incurred or were incurred to the Customer in particular the costs and expenses of a possible legal defence as well as possible official administrative fines or fines.

## **XVI. Compliance with environmental and quality management standards**

1. The environmental and quality management standard (DIN ISO 14001 and DIN ISO 9001) of the Customer are to be complied with the supplier.
2. Decisive is respectively the version which is



valid at the time of the order of DIN ISO 14001 and DIN ISO 9001.

3. The non-compliance by the supplier represents a breach of contract.

#### **XVII. Place of performance – place of jurisdiction**

1. The place of performance is the place of receipt respectively stated by the Customer in the order. In case of a missing detail the place of performance is the registered seat of the Customer.
2. The place of jurisdiction is the registered seat of the Customer.

#### **XVIII. Applicable law**

The substantive law of the Federal Republic of Germany shall apply to all legal relations between the Customer and the supplier under the exclusion of the Convention of the United Nations of 11.04.1980 concerning the Contracts for the International Sale of Goods (CISG) in its respective valid version.