

Standard Ordering Terms

Umicore Technical Materials AG & Co. KG, Hanau-Wolfgang (as of: May 2017)

1. **General terms**
These Standard Ordering Terms apply to all purchase and service agreements including contracts for supply of movable objects to be produced or created concluded by us with contractors ("CO") for supplies and services ("Delivery"). Our Standard Ordering Terms apply exclusively. Contrary, divergent or additional terms of the CO are not applicable even if they are included in an order confirmation subsequent to our order or assignment ("Order") and even if we do not explicitly contradict the latter or if we accept Delivery without reservations. Our silence signifies rejection of the CO's terms.
2. **Conclusion of the contract**
Each Order must be confirmed by the CO in writing. The contract only comes about if the CO has confirmed the Order within two weeks of its dispatch or if it delivers within that period of time. Should the CO not wish to carry out our Order, then the latter is obliged to inform us immediately. Any additional verbal understandings must be set forth in writing.
3. **Correspondence**
In all CO correspondence, the Order number and Order date must be indicated together with the material number if indicated in the Order.
4. **Execution**
The CO shall maintain a quality control system such as that pursuant to DIN EN ISO 9000 et seq. and/or DIN ISO 14001. We are entitled, acting in agreement, to check the CO's system by way of quality audits.
5. **Subcontractors**
Engagement of subcontractors requires our prior written consent. The CO must impose on the subcontractor all obligations with regard to the tasks assumed and must ensure such compliance with them as it itself assumed in relation to us.
6. **Shipping**
 - 6.1 The CO shall deliver to the place of Delivery indicated in the Order. When shipping, the relevant rates, transport and packing regulations of the railway, road transport, sea carriage and air traffic etc. must be observed, in particular with respect to any regulations on customs and dangerous goods. In addition, shipping options most favourable for us shall be selected unless we have explicitly given specific instructions on shipping.
 - 6.2 In the transportation documents, in addition to the shipping address, the Order information (Order number, Order date, place of Delivery and performance, the name of recipient and material number where applicable) shall be indicated. The Delivery items must be labelled according to the provisions of the Hazardous Substance Ordinance and EC/EU Guidelines for Hazardous Materials/Substances. The CO is obliged to supply us in good time prior to Delivery with all requisite product information, e.g. safety datasheets, processing instructions, labelling regulations, work safety measures, etc. all in their currently valid wording. All information including drawings and other documents indispensable for installation, operation, maintenance and repair of the Delivery items must be made available by the CO without specific request and free of any charge.
 - 6.3 Where subcontractors are engaged, the latter shall identify the CO as customer in all correspondence and shipping documents, specifying the Order data.
 - 6.4 On the loading units (upwards of 1 metric ton), the unit weight must be affixed in a well visible and permanent manner.
 - 6.5 The CO is only entitled to make partial deliveries upon our consent.
 - 6.6 Only packaging complying with the objectives and requirements of the Packaging Ordinance in its actual version may be used.
 - 6.7 Where for deliveries by the CO waste products within the meaning of environmental law are generated beyond the packaging, the CO must process or remove such waste, except where otherwise agreed in writing, at its own expense in accordance with the provisions of environmental laws. Title, risk and environmental law responsibility pass at the moment of Delivery to the CO.
7. **Delivery date, default in delivery**
 - 7.1 The date of Delivery agreed upon in the contract shall be binding and understood as the date of arrival "carriage paid" at the place of Delivery and performance. The CO is obliged to inform us immediately in writing if any circumstances occur or become known to it, from which it emerges that the date of Delivery cannot be kept.
 - 7.2 The CO may only plead our failure to provide necessary documentation/information to be provided by us if it had not received the same within reasonable term despite written reminder
 - 7.3 In the event of a default in delivery we will be authorised to claim a penalty at the rate of 0.1% of the net Order value for each workday, however, not exceeding 5% in total. The CO has the right to demonstrate that no damages at all or only damages of a considerably lower amount were generated due to his default. We are authorised to reserve the contractual penalty until final payment. Assertion of further damages beyond the contractual penalty is not excluded hereby.
8. **Performance certification and acceptance**
Any performance certification envisaged by the contract and the acceptance need to be recorded in writing.
9. **Weights/quantities**
For weight discrepancies, the weight as determined by us at inspection upon receipt applies, unless the CO can show that the weight it has charged was correctly determined according to a generally recognised method at the time when risk passed. The same applies to quantities mutatis mutandis.
10. **Prices, invoices and terms of payment**
 - 10.1 The prices agreed upon in the contract are to be understood as "carriage paid", including packing and shipping to the place of Delivery or performance, as well as installation, if agreed upon, plus VAT.
 - 10.2 Invoices shall be issued in duplicate with the second copy clearly marked as such. The Order number and material number are to be indicated on the invoices. The amounts invoiced shall be clearly associated with individual Order items. Invoices have to be issued in Euro and shall indicate VAT separately. The invoice must be sent separately to the invoice address indicated in the Order.
 - 10.3 Invoices are paid by us within 14 days less discount of 2% or net within 30 days. The payment term begins with the Delivery of the goods respectively with the acceptance of the services at the place of Delivery or performance and upon receipt of a regular and verifiable invoice at the invoicing address indicated in the Order. The time of payment has no effect on the CO's warranty. Effectuation of the payment does not imply that Delivery is found to be in order.
 - 10.4 If we are sued for payment of a default interest for late payment established by law or in the contract, we shall be authorised to demonstrate that the loss actually suffered by the CO was lower than the interest claimed.
11. **Notice of defect**
If the CO delivers under a purchase contract, our obligation for inspection upon receipt of the goods will be restricted to check the quantity and identity thereof, as well as for evident defects and transport damages. We may report such divergences, defects and damages within six workdays upon Delivery, while hidden defects are to be reported within six workdays upon their discovery, where in both cases, mailing of the notice within the specified term will suffice.
12. **Claims for defects**
 - 12.1 The CO shall supply the delivered items or the service rendered free from any physical or legal defects. The goods or services are deemed to be free of defects if they have the agreed quantity and character, in particular if they comply with all conditions and requirements stipulated in respect of quantity, quality and nature, as well as regarding packing or container. Unless agreed otherwise, the goods or services shall meet the state-of-the-art standards and all relevant statutory and regulatory requirements. Approval of drawings or our participation in the inspection of any item ready for shipment does not mean either acknowledgment of quality or modification of a quality agreement or acceptance, and does not exempt the CO of his obligations specified above.
 - 12.2 In the event of a defective Delivery, we may claim, at our discretion, free of charge amendment (repair of the defect) or free of charge replacement (delivery of goods or rendering of services free of defects) by way of subsequent fulfillment. If a reasonable term set by us for subsequent fulfillment has passed with no avail, we shall be authorised to remedy the defects ourselves at the CO's expense, cancel the contract, reduce remuneration and demand damage and expense compensation. Setting of a deadline may be neglected in cases defined by law.
 - 12.3 Statutory regulations apply to the time limitation of our claims for defect. However, the limitation is also suspended by our notifying the CO of a defect. The suspension ends in such a case upon complete remedy of the defect or when the CO refuses to complete performance and the statutory limitation occurs at the earliest three months after the end of such suspension. The limitation period restarts afresh for subsequently repaired or replaced parts.
 - 12.4 If we are entitled to damage compensation or cancellation, we may demand a flat-rate compensation amounting to 10% of the net Order value. The assertion of additional damage claims is not excluded. The CO is entitled to demonstrate that a substantially lower damage or no damage at all occurred as a result of the defect.
13. **Insurance**
 - 13.1 The CO shall maintain a liability insurance coverage with terms current in the trade, minimum coverage of € 2 million per claim event for the duration of the contractual relationship including the guarantee and warranty period and shall give proof thereof upon our demand. Lesser coverage amounts in individual cases may be agreed with us in writing.
 - 13.2 For the event when we would assume the costs of transport in divergence from the provisions of Article 10.1 hereinabove, we hereby emphasise that we are a banned customer by virtue of the ADSp (German Freight Forwarders' Standard Terms and Conditions).
14. **Entering the plant grounds or construction site**
When entering, on foot or by vehicle, the plant ground or construction site, the instructions of our professional staff must be followed. Entering the plant grounds or the construction site on foot or by vehicle must be announced on time. The regulations of the Roadway Code must be observed. Where services are rendered on the plant grounds or construction site, the relevant factory or construction site rules apply.
15. **Disclaimer of liability**
We and our employees, authorised representatives and agents are not liable for the CO's damages. This disclaimer of liability does not apply if a substantial contractual obligation has been violated. Similarly, the disclaimer of liability does not apply for damages suffered due to injuries to life, body or health or for any other damages deriving from a breach of duty by gross negligence or on purpose.
16. **Confidentiality**
The CO is obliged to maintain the confidentiality of all information, knowledge and documentation received from us or becoming known to it in any other way on our activity or on the activity of any affiliated company (Umicore Company), such as technical and other data, measurements, techniques, operational experience, trade secrets, know-how, blueprints and other documentation (information), not to make them available to third parties and to use them exclusively for the purpose of processing the Order in question. This does not apply to cases where the information was already known or gets to the knowledge of the CO without any violation of a contractual obligation being caused by the CO or by a third party. The confidentiality obligation ends three years after completion of the Order concerned, if the information has not previously been made public. The CO obligates itself to immediately return to us all physically transmitted information such as documentation, patterns, samples or similar things when once requested to do so without retaining copies or notes as well as immediately destroying upon our request its own notes, compilations and evaluations containing information and to confirm the same to us in writing. We possess ownership and intellectual property rights to all information.
17. **Advertising material**
Reference to business relations maintained with us in information and/or advertising materials is only allowed made upon our explicit written consent.
18. **Planning documents and other documentation**
All drawings, drafts etc. drawn by the CO according to our specifications pass into our own unlimited ownership without compensation to the CO. Any adverse declarations made by the CO, e.g. on the documents handed over to us, are not binding. Planning documents have to be handed over to us at delivery date according Article 7 hereinabove together with any further documents agreed upon and/or documents necessary for operation and maintenance, such as source codes, operation manuals or assembly instructions (other documentation). Without prejudice to any further rights that we may have according to the law, we do have a right of retention on claims of the CO up to an adequate amount until the complete hand-over of all planning documents and other documentation papers will be accomplished.
19. **No assignment**
Assignment by the CO beyond the scope of application of Section 354a of the Commercial Code is excluded, unless otherwise agreed upon in writing.
20. **Competent Court and applicable law**
 - 20.1 The exclusive place of jurisdiction is the place of our company's legal seat, in case the CO is a merchant. However, we will also be entitled to sue the CO at its general place of jurisdiction or at the place of jurisdiction of any of its branch offices.
 - 20.2 The German law will apply. The United Nations Convention on the International Sale of Goods (CISG) signed on 11 April 1980 is not applicable. Clauses usual in the trade are to be construed according to the ICC Paris Incoterms in their currently applicable version.