

Titel/title: **General Conditions of Purchase of Aerzener Maschinenfabrik GmbH**

**Table of contents**

§ 1. General .....	2
§ 2. Conclusion of contract, changes.....	2
§ 3. Prices .....	2
§ 4. Terms of payment.....	2
§ 5. Delivery and delay in delivery .....	3
§ 6. Transfer of risk .....	4
§ 7. Delivery note, invoice .....	4
§ 8. Quality and documentation .....	4
§ 9. Defect claims .....	5
§ 10. Liability for defects .....	5
§ 11. Retention of title, ownership of supplies and means of production provided by the customer .....	6
§ 12. Documents and secrecy .....	7
§ 13. Customs, proof of origin .....	7
§ 14. Export control.....	7
§ 15. Force majeure .....	9
§ 16. Industrial property rights .....	9
§ 17. Place of performance, place of jurisdiction, applicable law.....	10
§ 18. Effectiveness of these conditions .....	10

## **§ 1. General**

- 1.1. These terms and conditions of purchase apply to all business transactions of Aerzener Maschinenfabrik GmbH (purchaser) with its suppliers or other contractors (hereinafter referred to as supplier).  
The Terms and Conditions of Purchase shall also apply to all future business relations between the purchaser and the supplier, even if this is not expressly agreed.
- 1.2. These General Terms and Conditions of Purchase shall apply mutatis mutandis to services and services of a contractual nature.
- 1.3. These Terms and Conditions of Purchase shall apply exclusively; supplier's terms and conditions which conflict with or deviate from these Terms and Conditions of Purchase shall not be recognised unless their validity is expressly agreed to in writing. These Terms and Conditions of Purchase shall also apply if the purchaser accepts deliveries without reservation in the knowledge that the supplier's terms and conditions conflict with or deviate from these Terms and Conditions of Purchase.

## **§ 2. Conclusion of contract, changes**

- 2.1 Orders must always be confirmed immediately, but no later than three working days after receipt of the order. Otherwise the purchaser is entitled to revoke the contract.
- 2.2 Verbal agreements are only effective after written confirmation by the customer. This also applies to any changes to the contract.

## **§ 3. Prices**

- 3.1 If no special agreement has been made, the prices are quoted free works duty paid (DDP according to Incoterms 2010) including packing. The sales tax is not included in the price.
- 3.2 The purchaser shall not grant any remuneration for the preparation of offers and the production of samples.  
Cost estimates are binding and not to be paid for, unless otherwise expressly agreed between the parties.

## **§ 4. Terms of payment**

- 4.1 Unless otherwise agreed, the purchaser shall pay the supplier's invoice in accordance with the agreed AERZEN terms of payment from the due date of the payment claim and receipt of both the invoice and the goods or performance of the service. Payment shall be made subject to invoice verification. Default in payment shall only occur after written reminder by the supplier.
- 4.2 The supplier may not assign its claims or obligations or have claims collected by third parties without the prior written consent of the purchaser.

- 4.3 The supplier shall only be entitled to set-off if counterclaims are undisputed and ready for decision or have been legally established.
- 4.4 The customer has the right to withhold payments or declare offsetting on the basis of counterclaims.

## **§ 5. Delivery and delay in delivery**

- 5.1 Deviations from our orders, delivery call-offs and orders are only permissible with the prior written consent of the customer.
- 5.2 Agreed dates and deadlines are binding. Decisive for compliance with the delivery date or the delivery period is the receipt of the goods at the place of use/place of performance specified or agreed by the customer. If delivery "free works" (DDP according to Incoterms 2010) has not been agreed, the supplier must make the goods available in good time, taking into account the time for loading and dispatch to be agreed with the forwarder.
- 5.3 If agreed deadlines are not met, the statutory provisions shall apply. In the event of a delay in delivery, the customer shall be entitled to the statutory rights without restriction. If the supplier foresees difficulties with regard to production, the supply of raw materials, compliance with the delivery date or similar circumstances which could prevent it from delivering on time or in the agreed quality, the supplier must immediately inform the purchaser thereof.
- 5.4 In the event of a delay in delivery, the purchaser shall be entitled to demand from the supplier a contractual penalty of 0.2% of the order amount affected by the delay in delivery per working day, up to a maximum of 5% of the order amount. The contractual penalty shall be set off against any damage caused by default to be compensated by the supplier. We reserve the right to assert a claim for damages in excess of the contractual penalty.
- 5.5 The unconditional acceptance of the delayed delivery or service shall not constitute a waiver of any claims for compensation to which we are entitled due to the delayed delivery or service.
- 5.6 Partial deliveries are generally not permitted unless the customer has expressly agreed to them.  
The delivery is not fulfilled until the entire order frame has been fulfilled. This also includes the technical documentation for the order (final documentation).
- 5.7 For quantities, weights and dimensions, the values determined by the purchaser's incoming goods inspection shall be decisive, subject to proof to the contrary.
- 5.8 At the request of the purchaser, the supplier must take back packaging material or bear the costs of disposal. Packaging must be environmentally friendly and biodegradable (e.g. plastic must be avoided).

- 5.9 The customer is free to have the ordered items accepted by a representative at the supplier's works. The invoice cannot be issued before the date of acceptance declared by the customer. Until acceptance, the supplier shall bear the burden of proof for the quality/accuracy of the ordered items. This acceptance does not release the supplier from its liability for defects.

#### **§ 6. Transfer of risk**

The risk shall not pass to the customer until the goods have been accepted by the customer or its representative at the place to which the goods are to be delivered.

#### **§ 7. Delivery note, invoice**

- 7.1 Each delivery must be accompanied by a delivery note. The invoice, one copy of which shall be sent to the invoice address specified by the purchaser stating the invoice number, order data and any drawing or material numbers, may not be enclosed with the consignments. Costs incurred by the customer due to non-compliance with the packaging instructions shall be borne by the supplier. Should one or more of these details be missing from the delivery note or invoice and processing be delayed as a result within the framework of our normal business dealings, the payment periods specified in § 4.1 shall be extended accordingly by the duration of the delay.
- 7.2 The invoice must contain all information entitling the customer to deduct input tax, such as tax number or VAT identification number, invoice number and other mandatory information of an invoice pursuant to §§ 14 and 14a UStG. If the invoice does not contain the aforementioned data, the customer shall not be obliged to pay the stated sales tax. If the purchaser is denied input tax deduction due to an incorrect invoice, the supplier shall repay the VAT paid by the purchaser.

#### **§ 8. Quality and documentation**

- 8.1 For its deliveries, the supplier must comply with the rules of science and technology recognised at the time of delivery, the agreed technical data, valid safety regulations and statutory safety provisions. Changes to the delivery item require the prior written consent of the customer.
- 8.2 The supplier must set up and prove an appropriate quality management system. In its quality records it must record for all products when, how and by whom their defect-free production was ensured. In the case of articles requiring official permission or approval, it must record in special records when, in what manner and by whom the delivery items have been tested with regard to the characteristics requiring permission or approval and what results the quality tests have produced. Specifications and supporting documents must be kept for 15 years and presented to the customer if required. The supplier shall oblige sub-suppliers to the same extent to the extent permitted by law.

**§ 9. Defect claims**

- 9.1 Acceptance shall be subject to an inspection for freedom from defects, in particular also for correctness and completeness, insofar and as soon as this is feasible in the ordinary course of business. Defects will be notified by the customer immediately after discovery.
- 9.2 The statutory provisions on material defects and defects of title shall apply, unless otherwise stipulated below.
- 9.3. The purchaser has the right to choose the type of subsequent performance. The supplier may only refuse the type of subsequent performance selected by the purchaser if its implementation is only possible at disproportionate cost.
- 9.4 If a reasonable period set by the purchaser for subsequent performance has expired without success, the purchaser shall be entitled in urgent cases, in particular to avert acute risks or avoid major damage, to carry out such work itself or have it carried out by a third party at the expense of the supplier. The same shall apply if, due to particular urgency, a particularly high level of damage is to be expected in relation to the defect and a request for subsequent performance is not possible or reasonable or the supplier does not immediately commence subsequent performance.
- 9.5 In the event of defects in title, the supplier shall also indemnify the purchaser against any existing third-party claims, unless the supplier is not responsible for the defect in title.
- 9.6 Warranty claims become statute-barred two years after delivery of the subject matter of the contract (transfer of risk).
- 9.7 If the supplier fulfils its obligation to subsequent performance by supplying a replacement, the period of limitation for the goods supplied as replacement shall begin anew after their delivery.
- 9.8 If the purchaser incurs costs as a result of the defective delivery of the subject matter of the contract, in particular transport, travel, labour, material costs or costs for an incoming goods inspection exceeding the usual scope, the supplier shall bear these costs within the scope of § 10 (Liability). The rights from §§ 478, 479 BGB remain unaffected.

**§ 10. Liability for defects**

- 10.1 The supplier shall be obliged to compensate the purchaser for damages and expenses incurred directly or indirectly as a result of defective delivery, breach of official safety regulations or for other legal reasons, unless the supplier is not responsible for the breach of duty. The supplier shall be liable regardless of fault for damage incurred directly or indirectly by the purchaser as a result of a breach of warranty.

10.2 If claims are asserted against the purchaser on the basis of product liability, the supplier shall indemnify the purchaser if and to the extent that the damage was caused by a defect in the goods delivered by the supplier. In the case of fault-based liability, however, this shall only apply if the supplier is at fault. If the cause of the damage lies within the area of responsibility of the supplier, it shall bear the burden of proof in this respect. In such cases, the supplier shall bear all costs and expenses, including the costs of any legal action or recall action. The regulations on the recourse of the entrepreneur with the consumer goods purchase (§§478 f. BGB) remain unaffected

10.3 The supplier undertakes to take out business and product liability insurance, including damage to product assets and recall costs with an insurer licensed in the EU. The sum insured must be appropriate to the contractual items for personal injury and property damage as well as product asset damage and recall costs, but must be at least €5 million in each case.

10.4 Persons carrying out work on the purchaser's premises in fulfilment of the contract must observe the relevant company regulations. Liability for accidents occurring to these persons on the factory premises is excluded, unless caused by intentional or grossly negligent breach of duty on the part of the purchaser, its legal representatives or vicarious agents.

## **§ 11. Retention of title, ownership of supplies and means of production provided by the customer**

11.1 A prolonged or extended retention of title of the supplier requires an express separate agreement in order to be effective.

11.2 The materials provided by the customer remain the property of the customer and may only be used as intended. The processing of materials and the assembly of parts are carried out for the customer. In proportion to the value of the materials provided to the value of the entire product, the purchaser shall be co-owner of the products manufactured using these materials and parts, which in this respect shall be stored by the supplier for the purchaser.

11.3 Drawings, calculations, matrices, templates, samples, models, dies, tools and other means of production which the purchaser has made available or paid for to the supplier for the execution of an order shall remain or become the property of the purchaser; they may not be used, made available or disclosed for deliveries to third parties without the prior written consent of the purchaser, nor may the reproduction of such objects exceed the scope of operational requirements and copyright provisions. Subcontractors shall be obligated accordingly.

11.4 The goods manufactured thereafter may not be delivered to third parties either raw or as semi-finished or finished products without the written consent of the purchaser. The same shall apply to parts which the supplier has developed according to specifications or with the cooperation of the purchaser (e.g. through tests, etc.).

11.5 Third parties within the meaning of these provisions shall also include such companies or persons who are in any way involved in the sale of these products.

**§ 12. Documents and secrecy**

12.1 All business or technical information made accessible by the purchaser (including features which may be inferred from any objects, documents or software handed over, and other knowledge or experience) shall be kept secret from third parties as long as and insofar as they are not demonstrably publicly known, and may only be made available in the supplier's own company to persons who must necessarily be consulted for their use for the purpose of delivery to us and who are also obliged to secrecy; they shall remain the exclusive property of the purchaser. Such information may not be reproduced or used commercially without our prior written consent - except for deliveries to the customer.

12.2 Upon request, all information originating from the purchaser (including any copies or records made) and any items lent shall be returned to the purchaser immediately and completely, or be destroyed.

The customer reserves all rights to such information (including copyrights and the right to register industrial property rights such as patents, utility models, etc.). Insofar as these have been made available to the customer by third parties, this reservation of rights shall also apply in favour of these third parties.

12.3 The supplier may only advertise the business relationship with the customer with the customer's written consent.

**§ 13. Customs, proof of origin**

If the customer demands a specific origin of the goods, this must be confirmed to the customer immediately upon acceptance of the order.

Damage caused by non-compliance with the ordered origin of the goods shall be borne or repaired by the supplier.

Customs

The supplier is obliged to provide the purchaser with all documents/information on the product if this is required by statutory regulations or is required by customs in the case of a foreign trade audit.

If a supplier's declaration of preferential origin is requested by the customer when placing the order, this must be communicated immediately upon enquiry or at the latest when the order is accepted, whether a declaration of preference can be issued or not.

**§ 14. Export control**

14.1 If services rendered by the supplier require an export permit, it shall inform the customer of this circumstance in writing without being asked to do so. If the supplier culpably fails to make this reference, it shall be obliged to compensate the customer for the resulting damage. All necessary documents shall be made available to the purchaser by the supplier immediately upon request.

14.2 For all goods to be delivered and services to be rendered, the supplier shall comply with the applicable requirements of national and international export, customs and foreign trade law (hereinafter referred to as "foreign trade law"). The supplier shall obtain any necessary transfer or export permits unless the applicable foreign trade law does not oblige the supplier but the purchaser or a third party to apply for such permits.

14.3 Upon request, but at the latest upon delivery, the supplier shall provide the purchaser in writing with all information and data required by the purchaser to comply with the applicable foreign trade and payments laws for exports, transfers and imports and, in the event of resale, for re-export of the goods and services, in particular for each good and each service:

14.3.1 at the latest with the order confirmation

- the Export Classification Number (ECCN) according to the U.S. Commerce Control List (CCL), if the good is subject to U.S. Export Administration Regulations;
- all applicable export list items (if the good does not fall under any export list item, indicate this with 'AL:N');

14.3.2 at the latest, however, upon delivery on the invoice

- the Customs Tariff Number according to the current commodity classification of foreign trade statistics and the HS (Harmonized System) code;
- the country of origin (non-preferential origin), and if requested by the customer: Issue supplier declarations on preferential origin, if the requirements for issuing a supplier's declaration cannot be fulfilled, this shall be declared and a certificate of origin shall be made available to the customer free of charge.

14.4 In the event of changes to the origin, characteristics of the goods or services or the applicable foreign trade law, the supplier must update the export control and foreign trade data as early as possible, but no later than one week before the delivery date, and inform the customer in writing. The supplier shall bear all expenses and costs for damages incurred by the purchaser due to the absence of, or deficiencies in, the export control and foreign trade data.

14.5 Shipments and services (the fulfilment of contract) shall be under the proviso that fulfilment is not being restricted by any national or international regulations, particularly export control regulations and embargoes or any other restrictions. The contract partners shall obligate themselves to provide all information and documentation needed for the export/domestic shipment/import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any licenses for certain items cannot be obtained, the contract shall be considered as not concluded regarding the items in question; because of this and of above mentioned missed deadlines, any claims for damages shall be excluded.

**§ 15. Force majeure**

Force majeure, labour disputes, operational disruptions through no fault of its own, riots, official measures and other unavoidable events shall entitle the customer - without prejudice to its other rights - to withdraw from the contract in whole or in part insofar as they result in a considerable reduction in its requirements and are not of insignificant duration.

**§ 16. Industrial property rights**

16.1 The supplier shall be liable for ensuring that its performance and the contractual and intended use by the purchaser does not infringe any industrial property rights of third parties (e.g. patents applied for and laid out, copyrights). The supplier is obliged, if necessary, to enable the customer to use the object of performance by satisfying the third party asserting its rights or by appropriately converting the object of performance. The performance of the subject matter of the contract may not be reduced in any way by the conversion.

16.2 If the supplier cannot enable the purchaser to use the goods, in particular because the third party insists on the shutdown of the object of performance, and if an appropriate conversion proves to be impossible, the supplier must remove the object of performance at its own expense, refunding the remuneration received plus 5% interest above the base interest rate pursuant to § 247 BGB (German Civil Code). Further legal claims remain unaffected.

16.3 If the supplier's own industrial property rights are affected, the supplier shall grant the purchaser the irrevocable right to unrestricted, free use of these industrial property rights in connection with the delivery item upon execution of the order.

16.4 Notwithstanding the statutory claims, the supplier shall indemnify the purchaser against all claims of third parties and all damages, expenses and other disadvantages incurred by the purchaser in this connection.

This shall not apply insofar as the supplier has manufactured the delivered goods in accordance with samples, drawings, models or other equivalent descriptions or arrangements provided by the purchaser and does not know or, in connection with the products manufactured by it, cannot know that industrial property rights of third parties are thereby infringed. The supplier shall bear the burden of proof for the lack of knowledge.

16.5 If, during the preparation or execution of the order, patentable or utility modelable know-how is obtained in respect of offered processes, devices or plants and if the supplier has contributed to the development of such know-how through the cooperation of the purchaser in negotiations, meetings, joint trials, trial runs etc., the supplier and the purchaser shall act jointly as applicants in the filing of applications for industrial property rights both in Germany and abroad.

The obligations arising from the German Employee Invention Act shall remain unaffected.

The supplier shall be liable for ensuring that no patents or other industrial property rights of third parties are infringed by the supplier's delivery and its exploitation by the purchaser. The supplier shall indemnify the orderer and its customers against all claims arising from the use of such industrial property rights.

This shall not apply insofar as the supplier has manufactured the delivered goods in accordance with samples, drawings, models or other equivalent descriptions or arrangements provided by the purchaser and does not know or, in connection with the products manufactured by it, cannot know that industrial property rights of third parties are thereby infringed. The supplier shall bear the burden of proof for the lack of knowledge.

#### **§ 17. Place of performance, place of jurisdiction, applicable law**

17.1 The place of performance shall be the place stated in the order, unless another delivery address is expressly stated. The place of performance for payments by the customer is the registered office of the customer.

17.2 For all disputes arising from or in connection with a contractual relationship based on these Terms and Conditions of Purchase, the general place of jurisdiction shall be the court competent for the place of business of the purchaser.

However, the purchaser shall be entitled to institute legal proceedings against the supplier at its discretion at the court of its registered office or its branch office or at the court of the place of performance.

17.3 The contract is subject exclusively to the law of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.

#### **§ 18. Effectiveness of these conditions**

**Should any provision of these terms and conditions and any further agreements reached be or become invalid, this shall not affect the validity of the remaining provisions. The contracting parties shall be obliged to replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision.**