

Terms and Conditions of Purchase

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Terms and Conditions of Purchase | AMADA Austria GmbH

1. Scope of Validity

1.1. These Terms and Conditions of Purchase (hereinafter referred to as "terms") in the most recent version (most recent version is available from the internet on www.amada.at) apply to all orders and contracts of AMADA Austria GmbH (hereinafter referred to as "AMADA") for supplies and services. This also includes contracts for labor, work, services and similar contracts.

2. Acceptance and Application of Terms

- 2.1. On acceptance of the order by a written order confirmation, the contract comes into existence. If AMADA do not receive the order confirmation within five (5) days as from the order date, the contract shall in any event be deemed to have been agreed having as its terms the contents of our order.
- 2.2. No variation of or addition to these terms and conditions shall form part of any contract unless made or specifically accepted by AMADA in writing at its offices in Ternitz.
- 2.3. These terms and conditions shall override and take the place of any other terms and conditions in any other document or other communication used by the contractor in concluding the contract with AMADA.

3. Prices

3.1. The prices stated in the order are binding. Unless otherwise agreed upon in writing the prices include costs for the packing, equipment required for the shipping and transport (see point 6) to the address of delivery stipulated by AMADA as well as customs and other duties.

4. Payment

- 4.1. Unless otherwise agreed in writing, payment by AMADA shall be within fourteen (14) days with two percent (2%) cashback or ninety (90) days net after the supply or service was received and invoiced but time for payment shall not be of the essence of the contract.
- 4.2. AMADA reserves the right to set off any amount owing at any time from the contractor to AMADA against any amount payable by AMADA to the contractor. Any offset with counterclaims against our claims, irrespective of what type, is excluded.
- 4.3. Retentions of the contractor, whatever their nature, have no validity.

5. Quality and Rejection

- 5.1. The contractor hereby agrees that as conditions of the order all supplies and services ordered shall correspond strictly with description and specification and shall be in every respect for the purpose for which the AMADA has expressly or by implication made known that it required the same and shall be of satisfactory quality which is also of a standard not less than that of previous supplies and services (if any) approved by AMADA.
- 5.2. Where AMADA is entitled to reject or refuse to accept any supply or service, the contractor shall, at the option of AMADA and without prejudice to any other remedies to which AMADA may be entitled in addition, eliminate the deficiency, reimburse AMADA in full for the cost of repairs carried out by AMADA or any third party at AMADA's direction, or refund the full purchase price.

6. Delivery

- 6.1. All products are to be delivered, carriage paid (DAP acc. to INCOTERMS 2010), to the place of delivery specified in the order. The contractor shall ensure that each delivery is accompanied by a delivery note which shows, inter alia, the order number, date of order, number of packages and contents and, in the case of part delivery, the outstanding balance remaining to be delivered. Where AMADA agrees in writing to accept delivery by installments, the contract shall be construed as a single contract in respect of each installment.
- 6.2. Nevertheless, failure by the contractor to deliver any one installment shall entitle AMADA at its option to treat the whole contract as repudiated. In the case of a service the contractor has to keep records about the provision of services and to provide AMADA with these records on request.
- 6.3. The delivery date stipulated for the supply or service shall be the essence of the contract.
- 6.4. Should the contractor fail with the service provision at the agreed delivery date (without prejudice to any other remedies to which it may be entitled and notwithstanding any extension of time for delivery which may be given to the contractor by AMADA) AMADA reserves the right to:
 - (a) cancel the contract in whole or in part;
 - (b) cancel without charge that part of the order which is not fulfilled at the end of the period specified in the order; or
 - (c) recover from the contractor any additional costs, losses or expenses to which it may be subject due to the contractor's failure at the supply or service or any part thereof at the stipulated time.

7. Excess Quantities

7.1. Products delivered in excess of specified requirements shall not be charged to AMADA and may be returned to the contractor at the risk and expense of the contractor.

8. Inspection

8.1. AMADA reserves the right at any time to inspect the supply or service under the order within a reasonable time after the receipt but such inspection shall not relieve the contractor of any obligation under the order.

9. Passing of Risk

- 9.1. The risk for the supply shall remain the contractor's until delivery to AMADA according to the INCOTERMS is complete when ownership shall pass to AMADA.
- 9.2. If any products are validly rejected by AMADA, the property and the risk therein shall remain in or thereupon revert to the contractor.
- 9.3. In the case of supplies involving erection or installation and in the case of services, the risk passes upon acceptance.

10. Sub-Contracting

- 10.1. No part of this order may be sub-contracted by the contractor without the agreement in writing of AMADA.

11. Warranty

- 11.1. The contractor overtakes for a period of twenty four (24) months the warranty that the supply or service has the contractual agreed quality and guarantees and has no deficiencies which have influence to the function or use.
- 11.2. If a deviation from the agreed quality appears within the twenty four (24) months after the supply or service provision the contractor has to establish immediately the should-be state and to hold AMADA additionally harmless against all appearing costs.
- 11.3. For the interruption of the suspension of the guarantee it is only necessary to inform the contractor in written about such deviations.
- 11.4. The warranty period starts with the delivery of the products at AMADA location or with the acceptance of the service provision.

12. Liability

- 12.1. The contractor shall keep AMADA indemnified in full against all direct, indirect or consequential liabilities (all three of which terms include, without limitation, loss of profit, loss of business, depletion of goodwill and like loss), loss, damages, injury, costs and expenses (including legal and other professional fees and expenses) awarded against or incurred or paid by AMADA as a result of or in connection with:
- (a) defective workmanship, quality or materials;
 - (b) an infringement or alleged infringement of any intellectual property rights caused by the use, manufacture or supply; and
 - (c) any claim made against AMADA in respect of any liability, loss, damage, injury, cost or expense sustained by AMADA's employees or agents or by any customer or third party to the extent that such liability, loss, damage, injury, cost or expense was caused by, relates to or arises from the products as a consequence of a direct or indirect breach or negligent performance or failure or delay in performance of the terms of the contract by the contractor.
- 12.2. Incidentally, any underlying obligation from the product liability act related to the contractor's product will be passed along to the contractor.

13. AMADA's Property & Confidentiality

- 13.1. Materials, equipment, tools, moulds, copyright, design rights or any other forms of intellectual property rights in all drawings, specifications and data supplied by AMADA to the contractor or not so supplied but used by the contractor specifically in the manufacture of the products or service provision shall at all times be and remain the exclusive property of AMADA but shall be held by the Contractor in safe custody at its own risk and maintained and kept in good condition by the contractor until returned to AMADA and shall not be disposed of other than in accordance with AMADA's written instructions, nor shall such items be used otherwise than as authorized by AMADA in writing.
- 13.2. The contractor shall keep in strict confidence all technical or commercial know-how, specifications, inventions, processes or initiatives which are of a confidential nature and have been disclosed to the contractor by AMADA or its agents and any other confidential information concerning AMADA's business or its products which the contractor may obtain and the contractor shall restrict disclosure of such confidential material to such of its employees, agents or sub-contractors as need to know the same for the purpose of discharging the contractor's obligations to AMADA and shall ensure that such employees, agents or sub-contractors are subject to like obligations of confidentiality as bind the contractor.

14. Force Majeure

- 14.1. AMADA shall be entitled to rescind any contract which has not been delivered in whole or in part or to require the contractor to suspend the supply for any period if the activities of AMADA for which the supply or service was ordered are stopped or seriously interfered with by any causes of kind whatsoever beyond AMADA's control including, without limitation, acts of God, governmental actions, war or national emergency, acts of terrorism, protests, riot, civil commotion, fire, explosion, flood, epidemic, lock-outs, strikes or other labor disputes (whether or not relating to either party's workforce), or restraints or delays affecting carriers or inability or delay in obtaining supplies of adequate or suitable materials.

15. Termination

- 15.1. AMADA shall have the right at any time and for any reason to terminate the contract in whole or in part by giving the contractor written notice whereupon all work on the contract shall be discontinued and AMADA shall pay to the contractor fair and reasonable compensation for work-in-progress at the time of termination but such compensation shall not include loss of anticipated profits or any consequential loss. AMADA shall have the right at any time by giving notice in writing to the contractor to terminate the contract forthwith if:
- (a) the contractor commits a material breach of any of the terms and conditions of the contract; or
 - (b) any distress, execution or other process is levied upon any of the assets of the contractor; or
 - (c) the contractor has a bankruptcy order made against him or makes an arrangement or composition with his creditors, or otherwise takes the benefit of any statutory provision for the time being in force for the relief of insolvent debtors, or (being a body corporate) convenes a meeting of creditors (whether formal or informal), or enters into liquidation (whether voluntary or compulsory) except a solvent voluntary liquidation for the purpose only of reconstruction or amalgamation, or has a receiver or manager, administrator or administrative receiver appointed of its undertaking or any part thereof, or documents are filed with the court for the appointment of an administrator of the Contractor or notice of intention to appoint an administrator is given by the contractor or its directors or by a qualifying floating charge holder or a resolution is passed or a petition presented to any court for the winding-up of the contractor or for the granting of an administration order in respect of the contractor, or any proceedings are commenced relating to the insolvency or possible insolvency of the contractor; or
 - (d) the contractor ceases or threatens to cease to carry on its business; or
 - (e) the financial position of the Contractor deteriorates to such an extent that in the opinion of AMADA the capability of the Contractor adequately to fulfill its obligations under the contract has been placed in jeopardy.
- 15.2. The termination of the contract, however arising, shall be without prejudice to the rights and duties of AMADA accrued prior to termination. The conditions which expressly or impliedly have effect after termination shall continue to be enforceable notwithstanding termination.

16. Remedies

- 16.1. Without prejudice to any other right or remedy which AMADA may have, if any products or services are not supplied in accordance with, or the contractor fails to comply with, any of the terms of the contract AMADA shall be entitled to avail itself of any one or more of the following remedies at its discretion, whether or not any part of the products have been accepted by AMADA:
- (a) to rescind the order;
 - (b) to reject the products or service (in whole or in part) and return them to the contractor at the risk and cost of the contractor on the basis that a full re-

fund for the products so returned shall be paid forthwith by the contractor;
(c) at AMADA's option to give the contractor the opportunity at the contractor's expense either to remedy any deficiencies or to supply replacement products and carry out any other necessary work to ensure that the terms of the contract are fulfilled;
(d) to refuse to accept any further supplies or services but without any liability to the contractor;
(e) to carry out at the contractor's expense any work necessary to make the products comply with the contract; and to claim such damages as may have been sustained in consequence of the contractor's breach or breaches of the contract.

17. Assignment, Cession

17.1. The contractor shall not be entitled to assign the contract or any part of it without the prior written consent of AMADA. AMADA may assign the contract or any part of it to any person, firm or AMADA. The contractor shall be entitled to transfer any claims against us or to have such collected by third parties only with our prior written consent.

18. Disposal and Packaging

18.1. Any transport, sales and service packaging of domestic supplies to AMADA must be disposed of by the contractor exclusively through Altstoff Recycling Austria AG ("ARA AG"). The contractor shall indemnify AMADA for any costs arising from a lack of disposal or from disposal by a collecting and disposing system other than that of ARA AG.

18.2. Notwithstanding any legal information duties, the contractor shall provide AMADA with all necessary and useful information pertinent to the goods and services to be delivered, in particular, information on proper storage as well as safety data sheets in accordance with existing regulations.

18.3. In addition, the contractor shall raise AMADA's attention to the possibility of hazardous waste or waste oils arising from the goods delivered by the contractor and shall, in particular, advise AMADA on their disposal.

19. Miscellaneous

19.1. The place of performance of the order shall be the place of destination expressly stated in the order. In absence of such a statement, the place of performance shall be the production plant of AMADA in 2630 Ternitz, Austria.

19.2. Each right or remedy of AMADA under the contract is without prejudice to any other right or remedy of AMADA whether under the contract or not.

19.3. If any provision of the contract is found by any court, tribunal or administrative body of competent jurisdiction to be wholly or partly illegal, invalid, void, voidable, unenforceable or unreasonable it shall, to the extent of such illegality, invalidity, voidness, void ability, unenforceability or unreasonable-ness, be deemed severable and the remaining provisions of the contract and the remainder of such provision shall continue in full force and effect.

19.4. Failure or delay by AMADA in enforcing or partially enforcing any provision of the contract shall not be construed as a waiver of any of its rights under the contract.

19.5. Any waiver by AMADA of any breach of, or any default under, any provision of the contract by the contractor shall not be deemed a waiver of any subsequent breach or default and shall in no way affect the other terms of the contract.

19.6. Legal relations existing in connection with this contract shall be governed by Austrian substantive law, especially the general civil code (ABGB) and the commercial code (UGB). The application of the United Nations Convention on contracts for the International Sale of Products (CISG) is explicitly excluded.

19.7. Court jurisdiction for both parties shall be Wiener Neustadt. AMADA shall, however, be entitled, if AMADA choose to do so, to institute legal action at such court which has local jurisdiction and jurisdiction in the subject matter, according to the applicable laws of the state in which the contractor has his place of business or residence.