

General Terms of Delivery and Payment of Abifor AG

These Terms are for use vis-à-vis:

1. a person who at the conclusion of the contract is acting in execution of their commercial or free-lance professional career (contractor);
2. Legal entities under public law or a special fund under public law

I. General remarks

The General Terms apply to all contracts for purchase, services, labor and materials of Abifor AG (hereinafter referred to as Abifor AG or Supplier). They apply without express agreement to all future business transactions of the above-mentioned type. General Terms and Conditions of Business of Orderer to which Abifor AG has not expressly agreed shall in no case become the subject matter of contract.

Deviations from these General Terms are only effective if they have been agreed in writing in an individual contract with Orderer. This applies in particular to agreements abolishing the requirement for written form.

II. Offer documents

Documents such as statements of weights and measures which are an integral part of the offer of Abifor AG allow for customary deviations insofar as they are not expressly stated to be binding. Abifor AG reserves ownership and copyrights to all cost estimates and other documents; they may not be made accessible to third parties without the express consent of Abifor AG. Abifor AG is obligated to make plans designated by Orderer as confidential available to third parties only with Orderer's consent.

III. Scope of delivery; acceptance

1. The contract note of Abifor AG definitively applies to the scope of delivery insofar as nothing to the contrary has been agreed in writing outside of said note. Subsidiary agreements require the written consent of Abifor AG.
2. If Orderer must undertake an acceptance of the goods, Orderer must perform such acceptance on the premises of and at Abifor AG within fifteen days of receipt of the notification of readiness of acceptance. If this deadline is not met, the goods shall be considered accepted when this time period expires. Acceptance may not be refused due to minor defects; the rights of Orderer pursuant to IX remain intact in this respect, however.

IV. Price, payment and price adjustment

1. Prices are regarded as net prices that are in particular, without deducting taxes, fees, charges and customs ex works including loading at the plant yet excluding packaging, transport insurance and transit, import or other permits, as well as other costs caused by delivery.
2. Each invoice amount must be paid within thirty days of the invoice date without any deductions to the designated account of Abifor AG.
3. Payment is due immediately without any deduction for repairs, spare parts and assembly.
4. Bills of exchange are not permitted as payment. Abifor AG can at its discretion claim for payment by confirmed irrevocable negotiable letter of credit of an international major bank.
5. If Order should default on payment, Supplier shall be entitled to demand immediate payment in cash of all outstanding debts from the business relationship. This right shall not be excluded through deferment of payment or the acceptance of checks. Furthermore, Supplier shall then also be entitled to make outstanding deliveries only on the basis of payment in advance or the provision of securities.
6. If the financial standing of Orderer should considerably worsen after the contract is signed, Supplier can also withdraw from the contract insofar as Orderer is not willing or able to match payment with delivery or provide security.
7. Orderer can only offset such receivables as are uncontested or legally established.
8. If Orderer is in default of payment, Abifor AG shall charge default interest amounting to EURIBOR plus 5 %. The proof of higher or lower damage remains permissible.
9. Supplier reserves the right to adjust prices if wage rates or material prices should change between the time the offer is made and the fulfillment of the contract. Prices shall moreover be adequately adjusted if the delivery period is subsequently extended for reasons for which Orderer is responsible, or if the type or scope of the agreed services or service undergo a change, or if the material or the execution undergo a change because the documents provided by Orderer did not match the actual conditions or were incomplete.

V. Delivery dates; delays

1. The agreed delivery dates apply only under the assumption that all details of the order are clarified in due time and all obligations of Orderer are fulfilled in due time, such as providing the necessary official permits, issuing a letter of credit or making a down payment.
2. If, once the contract is signed, the delivery is delayed due to acts of God, such as war, force majeure, national unrest, forces of nature or other unforeseeable events for which Abifor AG cannot be held responsible, such as industrial action, interruption of operations for which Abifor AG is not responsible, etc., the delivery period shall be extended by the duration of the obstruction and by a reasonable start-up period.
3. If Abifor AG should not be able or expected to fulfill its obligations due to an obstruction stated in Section 2 above, it can withdraw from the contract; Orderer has the same right, if the delay makes acceptance unreasonable for Orderer.

4. If Abifor AG should default, Orderer can withdraw from the contract following a reasonable period set by Orderer in writing. The same applies if Abifor AG should not be able to fulfill its obligations for reasons attributable to Abifor AG.
5. A right of withdrawal to which Orderer or Abifor AG is entitled pursuant to Subparagraphs 3 and 4 above always covers only that portion of the contract not yet fulfilled. Insofar as partial deliveries or services rendered for Orderer are unusable, Orderer is also entitled to withdraw with regard to these parts.
6. All other claims against Supplier with regard to delay are excluded insofar as Supplier is not culpable owing to violation of essential contractual obligations, intent or gross negligence.

VI. Transfer of risk; consignment; packaging

1. Risk is transferred to Orderer when the goods are handed over to the carrier or forwarding agent, but at the latest when they leave the plant. The Incoterms in the version effective at the time the contract is signed shall apply. Goods reported as ready for shipment must be picked up by the agreed delivery date at the latest; otherwise Abifor AG shall store them at the expense and risk of Orderer and charge for them as delivered ex works. Abifor AG is entitled to make and charge for partial deliveries. Delivered items must be received even if they exhibit minor defects; this does not affect the rights pursuant to Section IX.
2. We will take back packaging within the limits imposed by the Federal stipulations on packaging. During official opening hours packaging may be returned at the factory site following prior timely announcement if no other collecting point was designated. Packaging may also be returned during deliveries if no other collecting point was designated. However, packaging will only be taken back immediately on the delivery of goods. Packaging of previous deliveries will only be taken back on the occasion of a new delivery if we were notified priorly in good time and the packaging is made readily available. The customer bears the costs connected with the return of used packaging. Should a collecting point designated to the customer be further away than our factory site the customer is only obliged to bear the cost which would arise if the goods were returned to our factory site. Packaging returned must be clean, free of impurities and sorted according to different types of packaging. Otherwise we are entitled to charge the customer for any further costs which may arise for the waste disposal.

VII. Title retention

1. Abifor AG retains ownership of the delivered goods until all claims due to Abifor AG from the business relationship and still outstanding, on whatever legal grounds, are fully settled.
2. Orderer is entitled to process or combine products from Abifor AG with other products within the scope of its proper business operations. Abifor AG acquires co-ownership to the items produced through such processing or combination in order to ensure its claims stated in Section VIII.1., which co-ownership Orderer now transfers to Abifor AG. Orderer must hold in safe custody free of charge the items to which Abifor AG has co-ownership as an accessory contractual obligation. The extent of our co-ownership shall be determined by the ratio of the value the product from Abifor AG has to the item created by the combination at the time they are combined.
3. Orderer is entitled to a right of resale for cash or with retention of title in the ordinary course of business. Orderer now transfers all claims with ancillary rights arising from the resale to Abifor AG.

If products belonging to Abifor AG are resold together with other goods, then the purchase price claim is transferred to Abifor AG in the amount of the price of the products from Abifor AG. The transferred claims serve as security for all claims pursuant to Section VIII.1. Orderer is entitled to collect the transferred claims. The rights stated in this section can be revoked if Orderer does not properly fulfill all Orderer's contractual obligations toward us, especially if Orderer should default on payment. These rights shall expire without express revocation if Orderer ceases to make payment for longer than merely temporarily. Upon request of Abifor AG, Orderer must declare without delay in writing who has purchased the goods to which Abifor AG retains title or co-ownership and state the claims arising from the sale, as well as issuing at Orderer's own expense a public notarized deed on the transfer of claims to Abifor AG.

4. Orderer is not entitled to otherwise dispose of the items to which Abifor AG retains title or co-ownership, nor of the claims transferred to the latter. Orderer must inform Abifor AG without delay of attachments or other impairment of rights to the items or claims belonging in full or in part to Abifor AG. Orderer shall bear all the expenses required to keep third parties from gaining access to the goods to which title has been retained or which is pledged as security and to replace the item, insofar as they cannot be collected from third parties.
5. In the event of default of payment or culpable violation of other contractual obligations of Orderer, Abifor AG is entitled to demand restitution of the goods to which Abifor AG has reservation of title or co-ownership. If Abifor AG should exercise this right, then this shall only constitute withdrawal from contract if Abifor AG has expressly so declared in writing – regardless of any other mandatory legal provisions. If the value of the securities existing for Abifor AG exceeds the total claims by more than ten percent, then Abifor AG shall, at Orderer's request, release securities of its own choice to this extent.
6. If the retention of title is not effective according to the law in whose area the goods are situated, then a security corresponding to the retention of title in this area shall be considered as agreed. If the cooperation of Orderer is necessary for the formation of such rights, then Orderer must take all action necessary to establish and maintain such rights.
7. If according to the law in whose area the goods are situated, the agreement of a further retention of title provision is permissible (for example, the advance assignment of claims of the purchaser arising from a resale of the goods delivered by Abifor AG), said purchaser shall make an agreement of this nature with Abifor AG upon request.

VIII. Complaints due to incorrect, defective or incomplete deliveries

Complaints must be indicated to Abifor AG without delay, in the case of obvious defects, within eight days, indicating all necessary details, such as type of device, number of device and type of failure.

IX. Liability for defects

1. Supplier is obligated to remedy all defects or deviations in the goods based on a defect in design, material or workmanship.
2. The warranty period amounts to twelve months. If the daily operating time of the delivery item exceeds the agreed framework, the period shall be reduced accordingly.
3. If, within the period of limitation, there should be a material defect whose cause was present at the time of risk transfer, Supplier can undertake supplementary performance by choosing either to eliminate the defect or to deliver an item free of defects.

The faulty product must be sent to Supplier for repair, or to the closest after-sales service point approved by Supplier for the respective product territory. The cost of the cheapest shipment to and from the delivery address agreed with Orderer for the original delivery of the products domestically shall be borne by Supplier if the complaint should prove to be justified. The defect will be remedied by replacement or repair of the defective products on Supplier's premises. Defects will be remedied on site only within the scope of special agreements. Supplier shall continue to retain title to the replaced goods.

4. Liability for material defects is excluded if the product has been modified by other parties or if parts of third-party origin have been incorporated, unless there is no causal relationship between the defect and the modifications and if regulations for shipment, packaging, installation, treatment, use, maintenance or repair by unauthorized third parties have not been observed, or if Orderer has performed faulty assembly or commissioning or if it is a case of excessive stress.
5. Natural wear and damage through improper treatment are not included in the material defect liability. In particular, Supplier shall not be liable for modifications of the state or mode of operation of the product through improper storage or unsuitable production facilities, as well as climatic or other effects. The warranty does not cover defects based on faulty design or the choice of unsuitable materials insofar as Orderer has specified the design or the material. We shall assume no liability for parts provided by Orderer.
6. Orderer must give Supplier or a third party bound to the guarantee sufficient time and opportunity for the performance of the warranty services. Orderer is entitled to undertake such work with Supplier's consent. The expenses necessary for subsequent performance shall be borne by Supplier in reasonable proportion of the value of the item in a state free of defects to the significance of the defect and/or the possibility of achieving a different kind of supplementary performance; Orderer shall bear further expenses.
7. Warranted characteristics are only those expressly designated as such in the order confirmation or the specifications. This warranty applies at the longest until the termination of the warranty period. If an acceptance inspection has been agreed, the warranty is considered fulfilled if the proof of the respective characteristic has been provided at this inspection. If the warranted characteristics are only partly fulfilled or not at all, Orderer shall first be entitled to immediate reworking by Supplier. To this end, Orderer must grant Supplier the necessary time and opportunity. If the reworking is only partially successful or not at all, then Orderer shall be entitled to the damage compensation agreed for this case or, if no such agreement has been made, to a reasonable price discount. If the defect is so grave that it cannot be remedied within a reasonable period of time, and if the deliveries or services are no longer suitable for the declared purpose, or if their suitability is substantially impaired, Orderer shall have the right to refuse to accept the defective part or, if Orderer considers a partial acceptance economically unreasonable, to withdraw from the contract. Supplier can only be obligated to refund those amounts paid for the parts affected by the withdrawal.
8. Supplier shall only be liable for Orderer's claims based on defective advice or the like, or due to violation of any accessory obligations, in cases of intent or gross negligence.
9. The limitation period shall not be renewed during the time required for supplementary performance. It shall not begin anew.
10. If the supplementary performance should be to no avail, Orderer can withdraw from the contract or reduce the remuneration.

11. Further rights based on defects – especially contractual or non-contractual claims to damage compensation not originating in the goods themselves – are excluded to the extent stated in Subparagraph XI (see exclusion of liability).
12. If a complaint should prove to be unjustified, Supplier shall be entitled to charge Orderer for all expenses this has caused us.
13. The provisions of this Subparagraph apply accordingly to defects of title not based on the violation of third-party property rights.

X. Liability for damage compensation

1. Any claims of Orderer other than those mentioned above, in particular claims for damage compensation, shall be excluded. This exclusion of liability does not apply:
 - in the event of intent or gross negligence of legal representatives, executives or vicarious agents of Abifor AG;
 - in the event of initial inability to perform
 - in the event of culpable violation of essential contractual obligations; in these cases, the liability is limited to reasonably foreseeable damage that is typical of the contract;
 - to claims under the Product Liability Act for defects in the delivery item for persons or material damages to privately used items;
 - to such risks against which Abifor AG can be reasonable expected to insure itself;
 - if warranted characteristics are lacking, insofar as covered by the warranty in each case.

Insofar as liability of Abifor AG is excluded or limited, this also applies to the personal liability of its legal representatives, employees and vicarious agents.

2. All cases of violation of contract and their legal consequences, as well as all claims of Orderer, regardless of the legal grounds on which they are asserted, are conclusively provided for in these Terms. In particular, all claims for damage compensation, mitigation, cancellation of contract or withdrawal from contract not expressly mentioned are excluded. In no case is Orderer entitled to claim for compensation of damages not occurring directly on the delivery item, such as loss of production, loss of effectivity, loss of orders, loss of profits and other direct or indirect damages. This exclusion of liability does not apply in cases of intent or gross negligence on the part of Supplier, yet does apply to intent or gross negligence on the part of auxiliary persons. This exclusion of liability does not apply if it contradicts compelling law.

XI. Other provisions

1. The place of fulfillment for all deliveries and services of the Parties arising from their business relationship is Wutöschingen / Germany (Supplier).
2. The legal venue for all disputes arising from the contractual relationship, including actions on checks and bills of exchange, is the competent court for Wutöschingen /Germany (Amtsgericht/Landgericht Waldshut-Tiengen). Abifor AG can at its own discretion bring an action against the contractual partner at said partner's main office or any other competent court. This legal venue also applies to disputes concerning the origin and effectiveness of the contractual relationship. With regard to Orderers located abroad, Abifor AG is also entitled to have differences of opinion or disputes arising from or related to the business relationship decided according to the arbitration code of the Zurich Chamber of Commerce by one or three arbitrators appointed in accordance with this code under exclusion of ordinary legal proceedings. The arbitration court is located in Zurich, Switzerland. The arbitration proceedings will be held in German language. The arbitration award shall be final and binding for both parties involved.
3. Orderer is entitled to transfer Orderer's claims arising from the business relationships only with the prior written consent of Abifor AG.
4. The laws of the Federal Republic of Germany apply exclusively, excluding its international private law insofar as it refers to the applicability of another legal system. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and other standardizations of bilateral and multilateral treaties concerning international purchases shall be excluded.