

STANDARD TERMS OF PURCHASING (STP)

1. SCOPE OF APPLICATION
- 1.1. The recognition of these Standard Terms of Purchasing (STP) shall be the general basis for the issue of a contract by the Customer.
- 1.2. The present STP shall apply subsidiarily to the provisions of the applicable contract and to the provisions of the Technical Terms of Supply and Purchase (TISP) or other specifications.
- 1.3. Terms of business and declarations by the Contractor that would constitute a departure from these STP shall only apply if such have been acknowledged in writing in advance by Customer.
- 1.4. The following terms concerning the supply of products shall also apply mutatis mutandis to services.
- 1.5. The terms and conditions used in these STP are to be interpreted and applied by analogy with the requirements of the international ISO 9000 - 9004 series of standards.
2. CONCLUSION OF CONTRACT
- 2.1. The supplier must confirm the order in writing within 14 days.
- 2.2. Silence on the part of the Contractor shall be deemed to be an acceptance in full of Customer's order subject to the conditions specified hereafter and in the contract.
- 2.3. By performing or even partially performing Customer's contracts the Contractor acknowledges these STP and the conditions specified in Customer's order.
- 2.4. Any oral agreements shall be invalid unless confirmed in advance in writing by Customer.
- 2.5. These STP and the conditions specified in Customer's orders shall as a matter of principle apply to any subsequent contracts, even if such are concluded without taking into account these STP. This shall apply in particular to contracts issued without prior acknowledgment of these STP by the Contractor.
- 2.6. By signing the confirmation of order, the Contractor guarantees that it is capable of being able to provide the products contracted by Customer in technically fault-free condition and that it is entitled to supply these products to Customer without restrictions.
- 2.7. Quotations by the Contractor shall be submitted as binding.
- 2.8. Official authorisations (such as import or export licenses, currency permits, etc.) which must be provided by the Contractor in order to perform Customer's contracts must be submitted in good time before delivery of a product. The Contractor undertakes to assist Customer in acquiring any authorisations which Customer must obtain in accordance with the applicable statutory provisions. If the object of delivery is subject to an export licence restriction (decree on dual use, etc.), the supplier must communicate this to the customer in writing no later than upon receipt of the order, and in any case before conclusion of the contract.
- 2.9. The supplier undertakes to make available documents or drawings (e.g. quality records) within 14 days following demand by the purchaser, in order to be able to prove safety within the meaning of the Product Safety Act (in the version last valid) to third parties.
- 2.10. If the subject matter of the contract is a building product, the Contractor undertakes to supply only building products that are capable of use within the meaning of the Austrian Building Products Act and the Provincial Building Regulations, with proof being submitted of conformity.
3. PRICES AND PACKAGING
- 3.1. Deliveries resulting from Customer's contracts shall be effected pursuant to INCOTERMS as amended.
- 3.2. Fees, taxes and other charges incurred through the performance of Customer's contracts shall be borne by the Contractor. Turnover Tax on Imports shall be borne by Customer.
- 3.3. The costs for commercially available packaging or packaging required by Customer shall be borne by the Contractor. The Contractor undertakes on the request of Customer to take back from Customer free of charge packaging materials originating from the Contractor.
- 3.4. Packaging shall be selected by the Contractor in such a way that maximum environment compatibility applies in terms of production, application and destruction or reuse.
- 3.5. The return of packaging shall be at the Contractor's cost and risk.
- 3.6. All prices in Customer's orders shall be unchanging fixed prices. They shall include all secondary services, expenses and transport costs. Prices subject to adjustment shall only be accepted if these are agreed in writing together with the mode of calculation. Resulting price changes shall only be acknowledged for the agreed delivery time. In the event of doubt, the Contractor shall disclose the price calculations. Any necessary evidence shall be submitted by the Contractor.
- 3.7. The most-favoured treatment clause shall be deemed to be agreed for Customer's contracts.
4. DELIVERY PERIOD
- 4.1. All dates specified in Customer's orders shall be interpreted as fixed dates and refer to the arrival of the product at the place of destination.
- 4.2. The delivery periods or delivery dates specified in Customer's orders shall commence with the date of the order. In the event of failure to comply with the agreed delivery deadlines, Customer reserves the right to set a reasonable grace period not exceeding 14 days and thereafter to withdraw from the contract without incurring costs.
- 4.3. If Customer fails to exercise its right of withdrawal as specified in Sec. 4.2, this shall by no means release the Contractor from its delivery and performance obligations. Furthermore, in no way shall claims for damages be limited or excluded in such cases.
- 4.4. In cases where it becomes apparent before the delivery date that the Contractor will not be able to perform Customer's orders correctly and/or on time, Customer reserves the right to carry out its orders itself or to have such carried out by third parties. The resulting extra costs shall be borne by the Contractor.
- 4.5. On pain of damages, the Contractor undertakes to notify Customer immediately and without any delay of circumstances that might prevent or impede the due and timely performance of Customer's contracts.
- 4.6. Performance of Customer's contracts before the agreed date shall require Customer's prior written consent. In such cases, payment deadlines shall always begin from the original date agreed in Customer's order.
- 4.7. Agreed fines or contractual penalties shall not exclude the assertion of a claim for damages going beyond such. The assertion of such a claim for damages shall not be subject to fault. The payment of such damages shall by no means release the Contractor from its obligation to duly perform Customer's contracts.
5. DISPATCH
- 5.1. Unless expressly requested otherwise by Customer the Contractor shall select the mode of dispatch that is most favourable in terms of costs for Customer.
- 5.2. The Contractor shall ensure that Customer's dispatch regulations are always complied with and applied. In particular, the Contractor shall be responsible for ensuring that Customer's instructions are complied with by any third parties, even if such are only partially entrusted with the performance of our contracts.
- 5.3. A single copy of delivery notes, delivery notifications, packing slips and the like shall be attached to the freight papers. Any notification of dispatch requested shall be communicated separately in writing in the fastest possible manner upon departure of a shipment.
- 5.4. The number of Customer's order shall be clearly and visibly marked on all packages, freight papers, invoices and the documents intended for the recipient. In addition, the gross and net weight or at least an estimate of the total weight shall be specified. If Customer's order refers to an item number of a contract, this number shall be specified on all documents and on all delivery papers.
- 5.5. In cross-border goods traffic, the freight papers shall be accompanied by the invoices in duplicate, a declaration of origin and a movement certificate. The said documents may also be sent separately. In this case, it must be ensured that all the documents bear the notice "For customs purposes" and are received by Customer in good time.
- 5.7. If the Contractor's dispatch and customs clearance regulations are not complied with, all risks, damage and costs resulting therefrom shall be borne by the Contractor. The payment deadline shall be postponed in accordance with the time of the due performance of the Contractor's contract and the submission of all documents required by Customer.
- 5.8. Customer shall not accept cash-on-delivery shipments.
6. TRANSFER OF RISK AND PLACE OF PERFORMANCE
- 6.1. The risk shall only transfer to Customer after due acceptance at the specified places of designation and performance.
- 6.2. If the place of destination and performance for Customer's contracts is not specified, Customer's registered office shall be deemed to be the place of destination and performance.
7. ACCEPTANCE OF THE PRODUCTS
- 7.1. The products shall be accepted after positive inspection concerning identification, quantity and quality at the specified places of destination. The Contractor undertakes to permit inspections of this kind by authorised representatives of Customer at its places of business.
- 7.2. Products that do not satisfy the required characteristics and products whose defects are only determined after acceptance shall be deemed retrospectively not to have been accepted.
- 7.3. Products to be accepted by Customer shall only be deemed to be accepted if acceptance has been confirmed in writing by Customer.
- 7.4. Products arriving before receipt of the confirmation of order shall be rejected or only conditionally accepted.
8. QUALITY ASSURANCE AND PROGRESS CHECKS
- 8.1. The Contractor shall ensure that the quality evidence stages required for Customer's contracts are satisfied by means of corresponding quality assurance systems at the enterprise of the Contractor itself and of any subcontractors involved.
- 8.2. The Contractor guarantees Customer the right to subject quality assurance systems and quality assurance measures to an audit. This shall apply in particular to the business establishments of the Contractor and its subcontractors.
- 8.3. The quality evidence required for Customer's contracts and other documents shall be deemed to be an integral part of the performance of the contract and shall form the basis for the acceptance of products. The failure to deliver such documents on time shall constitute delivery default, even if the product itself has been delivered!
- 8.4. The Contractor guarantees the Customer the right to inspect regularly and without prior notice the processes laid down by Customer at the Contractor's business establishments or at the business establishments of its subcontractors, and to reject faulty products during the production process.
9. RESERVATION OF TITLE AND PROHIBITION OF ASSIGNMENT
- 9.1. Products supplied shall be free of reservation of title. Any reservations of title shall be invalid even without an express objection by Customer.
- 9.2. Claims deriving from products supplied to Customer may only be assigned with Customer's written consent.
10. PRODUCTS PROVIDED
- 10.1. Products provided by Customer shall remain Customer's property. They shall be labelled as such and kept separately.
- 10.2. The new or reworked products created by working and processing products provided by Customer shall be deemed to be transferred immediately to Customer's property even if only in partially finished condition.
- 10.3. If products provided by Customer are made unusable as a result of errors by the Contractor, the Contractor undertakes to hold Customer harmless for the resulting damage. This shall apply in particular to expenditure for cover purchases or any reworking.
11. INVOICING AND PAYMENTS
- 11.1. Invoices must be prepared in keeping with official regulations, include the AQUASYS order number, and be sent by post or with our written consent electronically to the clearing centre indicated by AQUASYS. Moreover, the invoices must be divided according to the orders. The invoice shall be submitted in the month of the performance of our contract.
- 11.2. Payments shall be made on the 15th of the month following invoice and performance at a discount of 3% or 90 days net. Payment shall be deemed to have been made when the amount is debited from our account.
- 11.3. The discount period for an invoice shall only commence once the contract has been performed in accordance with Customer's requirements.
- 11.4. The time and execution of a payment shall have no influence whatsoever on warranty and complaints rights.
- 11.5. Misdelivery or incorrect delivery shall not give rise to an entitlement to payment. The costs incurred by Customer under this heading as well as claims for penalty, penalty for noncompliance or contractual penalty shall be offset against the accounts receivable of the Contractor.
12. WARRANTY AND LIABILITY
- 12.1. Unless agreed otherwise, upon delivery of parts for the customer's systems, for a period of 24 months from acceptance of the system at the customer's client, no later than 40 months after delivery by the supplier, the supplier guarantees that the products delivered on the basis of Customer's contracts satisfy the customer's requirements and their production has taken into account the applicable statutory regulations and standards and the accepted engineering standards.
- 12.2. The Contractor's guarantee within the meaning of Sec. 121 shall also apply to products that the Contractor supplies but does not manufacture itself.
- 12.3. In the event of a claim, irrespective of the other statutory possibilities available to it, Customer reserves the right to demand replacement deliveries free of charge, remedy of the defect free of charge or a reasonable price reduction at Customer's discretion, even if the defects are insignificant or capable of repair. In addition, Customer reserves the right to have defects found remedied by another Contractor at Customer's free choice at the expense and at the risk of the Contractor causing such defect. If a grace period is to be set by virtue of statutory provisions, a period of two weeks shall be deemed to be reasonable.
- 12.4. The Contractor without separate demand shall supply the appropriate number of copies of the product documentation required by Customer's contracts at the latest at the time of the delivery. If requested, parts of the product documentation such as safety, storage and transport regulations shall be delivered to Customer before shipment of the products. The Contractor shall be expressly liable for damage resulting from the failure to comply with the regulations concerning a product provided by the Contractor if these regulations were not delivered by the Contractor in time.
- 12.6. Respective of the minimum warranty period of 24 months, concealed defects can be asserted for up to three years. Concealed defects shall in particular be defects that only become apparent upon removal from the packaging in the case of products normally left packed until use.
- 12.7. In the case of the delivery of spare parts and repairs, the warranty period shall commence again for the delivery or service as a whole. The supplier guarantees that replacement, wear and operational conversion parts for the object of delivery will be deliverable up to 10 years after the warranty period has ended.
- 12.8. The Contractor shall be liable for all disadvantages incurred by Customer as a result of non-delivery, incorrect, incomplete, faulty or delayed delivery, and in particular the Contractor shall be liable for lost profits and consequential losses, and shall be liable to compensate for any claims against Customer by Customer's clients.
- 12.9. The Contractor shall be responsible for its suppliers. In particular, the Contractor shall be liable for any fault or negligence by the suppliers and manufacturers of parts purchased by it as it would be for its own fault or negligence.
13. WITHDRAWAL FROM THE CONTRACT
- 13.1. Customer shall be entitled to withdraw from the contract if the Contractor is not capable of supplying the products specified by Customer qualitatively and quantitatively in the time required by Customer.
- 13.2. Customer shall be entitled to withdraw from the contract if the Contractor becomes insolvent, goes bankrupt or if agreements have been concluded in order to achieve an unreasonably high price. The same shall apply to cases in which the Contractor loses the right to supply Customer with the product in question for political, legal or other reasons.
- 13.3. Products supplied and deemed to be usable and performances provided in part shall be taken into account pro rata.
- 13.4. Cancellation: The customer has the right to withdraw from the contract, in whole or in part, even if the supplier is not at fault. In this case, the customer is bound to pay the supplier the contractual price in proportion to the deliveries/services already provided and also make reimbursement for verified costs incurred for deliveries/services in progress especially for the customer and/or for cancellation of subcontractors. After declaring withdrawal, the supplier must make every effort to keep the costs to be paid by the customer as low as possible.
14. PRODUCT LIABILITY
- 14.1. Limitations on the liabilities and obligations of the Contractor under the Product Liability Act, Federal Gazette No. 99/1988 of Feb 12, 1988 shall not be recognised. This shall apply also to the subcontractors appointed by the Contractor.
15. PROCUREMENT DOCUMENTS
- 15.1. All documents, specimens and models supplementing the inquiries, orders and contracts by Customer shall remain Customer's property and shall not be used for other purposes without Customer's written consent. These documents, specimens and models shall be returned without separate demand together with the quotations or at the latest after completion of a Customer's contract.
- 15.2. Inquiries, orders and contracts from Customer shall, unless otherwise agreed in writing, be treated confidentially as a matter of principle. Any information, documents, specimens, models and products shall be regarded as business secrets.
- 15.3. Customer information, documents, specimens, models and products and all knowledge obtained from the performance of Customer's contracts shall only be used in order to perform Customer's contracts. Under no circumstances shall such be used by or communicated to third parties not causally involved in the performance of Customer's contract.
- 15.4. The Contractor is expressly forbidden from using Customer information, documents, specimens, models and products for advertising purposes.
- 15.5. No payment shall be made for the preparation of quotation documents.
- 15.6. The submission of quotation documents shall be deemed to be consent by the Contractor to Customer making available the information and documents to the partners in question.
- 15.7. Quotation documents shall as a matter of principle not be returned.
16. INDUSTRIAL PROPERTY RIGHTS AND PATENTS
- 16.1. By submitting the confirmation of order, the Contractor confirms that there are no third-party rights attached to the products supplied as a consequence of a Customer's contract, and in particular that no third-party industrial property rights are infringed. In any event, the Contractor undertakes to indemnify and hold Customer harmless in full, and to compensate Customer in full for any resulting losses should nevertheless third-party rights be asserted.
17. MISCELLANEOUS
- 17.1. Cases of force majeure, interruptions to business operations, labour disputes, unforeseen and unavoidable production changes and other circumstances outside Customer's influence that lead to Customer no longer requiring the product shall release Customer from the obligation to accept. The costs incurred by the Contractor up to the occurrence of such an event shall be refunded by Customer. As a careful businessman the Contractor shall, without being asked, take out an appropriate manufacturer's public liability insurance with extended product cover before accepting a contract from Customer.
- 17.2. Should the delivery dates agreed upon in the purchase order be postponed due to circumstances beyond the Contractor's control, the Contractor agrees to properly warehouse the product for AQUASYS at the Contractor's expense and risk for up to 6 months. In the case of storage shipments may only be made in whole or in part after AQUASYS has issued a written release for shipment.
18. LEGAL VENUE AND APPLICABLE LAW
- 18.1. All contracts shall be subject to Austrian law.
- 18.2. The legal venue for all disputes resulting directly or indirectly from Customer's contracts shall be the Austrian court with local jurisdiction for Customer. Customer shall also be at liberty to have recourse to another court.
- 18.3. Customer and the Contractor shall be at liberty to determine the jurisdiction of an arbitration tribunal before conclusion of the contract.
- 18.4. Costs of any necessary expertises for the settlement of disputes shall be borne by the Contractor.

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