

Purchasing conditions

of ADA TRADING GmbH (hereinafter referred to as "ADA TRADING")

Version June 2020

ADA TRADING GmbH
Steinhalde 38
73730 Esslingen
Germany

Tel. +49 711 41 03 172
Fax +49 711 41 03 173
Email info@adatrading.de
Website www.adatrading.de

§ 1 Scope

(1) Our purchasing conditions shall be applicable exclusively. Any terms and conditions of the supplier that are contrary to or deviate from our conditions shall not be recognised. These purchasing conditions shall also be applicable in all cases in which ADA TRADING accepts the supplier's deliveries without contradicting the supplier's conditions that deviate from these purchasing conditions.

(2) Our purchasing conditions shall be exclusively applicable to companies, legal entities under public law and special funds under public law within the meaning of § 310 of the BGB (German Civil Code).

(3) Our purchasing conditions shall also be applicable to all future transactions with the supplier.

(4) The following purchasing conditions shall be applicable to the delivery of movable goods (§ 651 of the BGB (German Civil Code)). For services, which also include repairs and service work, the following conditions shall be applicable with the exception of clauses 4, 5 and 9; the relevant statutory provisions shall apply here.

§ 2 Placing of order

An order is binding only if it is placed in text form or in writing; orders placed by telephone are binding only if they are subsequently confirmed by ADA TRADING in writing or in text form. An order confirmation by the supplier is not required. Possible further agreements require subsequent confirmation by ADA TRADING, whereby a fax or an email is sufficient (text form).

Each order is subject to these purchasing conditions. If the general terms and conditions of the supplier conflict with ADA TRADING's purchasing conditions, purchasing conditions of ADA TRADING shall nevertheless apply if the supplier does not object to them in writing, by fax or an email within 3 days of receipt of the order. The sending of other general terms and conditions of the supplier or any other reference to the supplier's general terms and conditions is not sufficient. The objection is irrelevant if the supplier begins to execute the order and informs ADA TRADING accordingly. If there is a quality assurance agreement, a framework agreement or an individual agreement between the supplier and ADA TRADING, these shall take precedence in any case, insofar as they deviate from ADA TRADING's purchasing conditions or the supplier's general terms and conditions. If the supplier does not accept the order within two weeks of receipt, ADA TRADING is entitled to cancel the order.

§ 3 Payment conditions / prices

(1) Unless otherwise agreed in writing, invoices of the supplier are payable to ADA TRADING within 14 days after receipt of goods and invoice with 2% cash discount, within 30 days after receipt of goods, whereby the net invoice shall be strictly applicable.

In all other respects, the due date of payment presupposes a faultless delivery.

The supplier is obliged to send 2 copies of the invoice to ADA TRADING.

The supplier's invoice must contain the ADA TRADING order number and, if applicable, the ADA TRADING article number. If 2 copies of the invoice are not available or if the above-mentioned numbers are missing or incorrect, ADA TRADING reserves the right to return the invoice unpaid to the supplier for supplementation or correction. In this case, the payment period begins only after receipt of the supplemented or corrected invoice.

(2) The price specified in an order shall be binding. In the absence of any deviating agreement, the price shall be "CIP" or "DDP" according to Incoterms 2010 and shall include packaging.

Changes due to subsequent cost increases are ruled out unless agreed otherwise.

(3) ADA TRADING must be immediately informed about any increase or decrease in price resulting from changes in execution as well as any change in the agreed delivery date in writing. The respective change must be confirmed in writing by ADA TRADING prior to production and delivery of the ordered item so that it becomes binding.

§ 4 Delivery conditions

The ordered item must be delivered to the delivery address specified in the order in accordance with INCOTERMS "CIP" (Carriage and Insurance Paid to). If the supplier delivers from abroad, the INCOTERM condition "DDP" (Delivered Duty Paid) shall be applicable. If necessary, the delivery must be made according to the applicable GGVSEB (Transportation of Hazardous Goods by Road, Rail and Inland Navigation) regulations. The supplier's delivery documents must contain the ADA TRADING order number, the ADA TRADING article number, the goods number, the part weight and the country of origin. If necessary, the supplier must provide further documents/data in accordance with the foreign trade requirements.

If terms of delivery according to Incoterms 2010 are agreed, where ADA TRADING pays for the transport, the transport must be carried out by a forwarding agent approved by ADA TRADING. However, the supplier shall undertake to notify the forwarding agent of the shipment unless otherwise agreed. If the forwarding agent does not collect the goods as confirmed by the notification, the supplier must inform ADA TRADING immediately.

§ 5 Transfer of risk / place of performance

Upon delivery and acceptance of the ordered item by ADA TRADING at the delivery address specified in the order, the risk of accidental loss or accidental deterioration shall be transferred to ADA TRADING. The registered office at the delivery address specified in the order shall be the place of performance.

§ 6 Delivery date / delay in delivery / force majeure

(1) The delivery date stated in the order shall be binding for the supplier.

(2) If a binding delivery date is agreed in accordance with clause 1 or a delivery time is fixed, is determined according to the calendar or if the delivery date can be calculated according to the calendar from a certain event (e.g. receipt of the order), the supplier shall be in default even without a reminder.

(3) If the contracting parties explicitly agree on a provision deviating from clause 1 and if the supplier's performance is due, the supplier shall be considered to be in default when ADA TRADING sends a reminder.

(4) In case of default, ADA TRADING is entitled to claim compensation for damages caused due to the delay. ADA TRADING is entitled to claim a flat-rate default damage worth 2.5% of the delivery value per completed calendar week, but not more than 10% of the total delivery value. Further legal claims shall remain reserved. The supplier can prove that the damage caused by the delay was lower.

Acceptance of a delayed delivery or service does not constitute a waiver of compensation for the damage caused by the delay.

(5) If the supplier receives a reasonable deadline for subsequent performance, ADA TRADING may withdraw from the contract and/or claim damages in lieu of performance after the fruitless expiry of the deadline.

(6) Withdrawal from the contract does not require the supplier to be at fault.

(7) Force majeure, operational disruptions for which ADA TRADING is responsible, riots, industrial disputes, official measures and other unavoidable events shall release ADA TRADING from the obligation for acceptance on time. During such events, ADA TRADING is entitled to withdraw from the contract in whole or in part, provided the events are not of insignificant duration and the need no longer exists.

§ 7 Obligation to notify defects / incoming goods inspection

ADA TRADING or the direct addressee of delivery are obliged to check the goods within a reasonable period of time for conformity of ordered and delivered goods, for possible quantity deviations as well as externally visible damages. ADA TRADING shall immediately notify the supplier of any defects detected during this inspection. The supplier releases ADA TRADING

from any further inspection of incoming goods at ADA TRADING. Other defects that are only detected by ADA TRADING during processing or the intended use of the delivered goods shall be reported by ADA TRADING immediately after detection. In this respect, the supplier waives the objection of late notification of defects.

§ 8 Description of the ordered item / EU Chemicals Regulation REACH/2011/65/EU (RoHS Directive)

(1) If the supplier receives drawings, samples, information or other instructions from ADA TRADING, these are solely decisive for the type, quality and design of the ordered item or the service to be provided. If ADA TRADING specifies drawing numbers, modification indices or similar in the order details, the supplier may only manufacture according to these specifications. Any drawings not available from the supplier must be requested from ADA TRADING. ADA TRADING will make these available free of charge.

If ADA TRADING requests reference or initial samples, series production that has started at the same time will be accepted by ADA TRADING only after ADA TRADING has approved and released the samples or sample series in writing.

Any objections of the supplier to ADA TRADING specifications must be immediately communicated to ADA TRADING in writing before the start of serial production. In such cases, series production may be started only on the basis of a further written instruction by ADA TRADING.

(2) The supplier shall comply with the recognised rules of technology and the applicable safety regulations for its deliveries. If as the supplier has received drawings, samples or other regulations or documents from ADA TRADING, the supplier shall comply with them with regard to the design and the characteristics of the delivery item. Changes to the delivery item, an already approved production process or its relocation to another location require timely notification in text form by the supplier and the prior express consent of ADA TRADING in the same form.

Irrespective of a successful sampling, the supplier must constantly check the quality of the delivery items.

(3) The supplier shall ensure that the requirements of the EU Chemicals Regulation REACH (Regulation (EC) No. 1907/2006, OJ EU of 30.12.2006) - hereinafter referred to as "REACH" - are complied with, in particular that pre-registration and registration are or have been carried out in due time. ADA TRADING is under no circumstances obliged to carry out the (pre-) registration. The supplier is aware that the products cannot be used if the requirements of REACH are not fulfilled completely and properly.

(4) The Supplier shall further ensure that the requirements of the EU Directive 2011/65/EU with CE marking obligation (RoHS Directive) - implemented by the Regulation on the Restriction of the Use of Hazardous Substances in Electrical and Electronic Equipment (ElektroStoffv), hereinafter referred to as "RoHS", are complied with. Furthermore, the supplier guarantees that all goods delivered by it - including those that are purchased from sub-suppliers - comply with the RoHS requirements. In this respect, the supplier shall be deemed to be the manufacturer and shall fulfil all obligations resulting from the RoHS. This applies in particular to any (pre-)registration obligations.

(5) The supplier is liable to ADA TRADING for all damages resulting from culpable non-compliance with existing legal regulations according to the above regulations (under paragraphs 3 and 4).

(6) The supplier is aware of the fact that the goods cannot be used if the requirements according to the above-mentioned legal regulations under paragraphs 3 and 4 are not fulfilled completely and properly.

(7) In fulfilling its contractual obligations, the supplier shall otherwise comply with all statutory and official regulations with regard to environmental protection.

(8) The supplier will fully indemnify ADA TRADING from all consequences, in particular damages and possible claims of third parties against ADA TRADING, resulting from the fact that the supplier culpably did not fully or timely comply or fulfil the above provisions according to paragraphs 3 and 4.

§ 9 Warranty

(1) The supplier is informed that the ordered item can also be installed in ADA TRADING products and that the unrestricted functionality of the ordered item must therefore be guaranteed. The supplier must inform the manufacturer or sub-supplier if it has not manufactured the ordered item.

(2) For a period of 36 months, beginning with the acceptance of the ordered item, the supplier guarantees that it is free of defects, which especially includes unrestricted functionality and the agreed quality.

(3) Acceptance is the point in time from which ADA TRADING or the addressee of the delivery has the opportunity to inspect the ordered item within the framework of the normal course of business at ADA TRADING or the addressee of the delivery.

(4) ADA TRADING is entitled to the full statutory warranty claims. ADA TRADING may demand subsequent performance, either the rectification of the defect or the delivery of a defect-free item.

This also includes expenses incurred as a result of the defectiveness of products, which arise from combining, mixing or processing with the ordered item.

If ADA TRADING has set the supplier a reasonable deadline for this purpose, ADA TRADING is entitled to the unrestricted warranty claims according to §§ 437, 440, 441 of the BGB (German Civil Code) after expiry of the deadline, whereby reference is made in particular to the right to a reduction in price or the right to withdraw from the contract and, in addition to withdrawal, to claims for damages in lieu of performance or instead to the claim for reimbursement of futile expenses.

Warranty restrictions in the supplier's general terms and conditions are not accepted.

It is agreed that functional capability in the sense of the above conditions exists only if the relevant accident prevention regulations are also observed.

§ 10 Product liability

(1) If ADA TRADING is held liable by third parties on the basis of product liability, the supplier is obliged to indemnify ADA TRADING on first demand from any claims for damages within the scope of its own obligation under the Product Liability Act. This also applies to damages resulting from a recall action.

(2) The supplier is obligated to maintain a product liability insurance with a coverage of 5 million euros for each instance of personal injury/property damage. The supplier must provide proof of this upon request by ADA TRADING.

(3) Insofar as a recall action or an owner notification program is necessary to comply with a law, regulation, order or other governmental requirement or as a safety measure to avoid personal injury, property damage or death, or in the case of other field or service actions, the costs, including, among other things, labour, transport and traceability costs, shall be allocated on the basis of the contributory negligence (§ 254 of the BGB)/co-causation attributable to ADA TRADING or the supplier.

ADA TRADING will inform the supplier - as far as possible and appropriate - of the content and scope of the recall actions or other field or service actions to be carried out, and will give the supplier the opportunity to comment thereon. All other legal claims remain unaffected.

§ 11 Retention of title / equipment and tools

(1) If ADA TRADING provides the supplier with parts, ADA TRADING reserves the right of ownership of these parts. Any processing or transformation by the supplier is carried out exclusively for ADA TRADING. In the event of processing or mixing, ADA TRADING acquires co-ownership of the new object in proportion of the value of the parts provided by ADA TRADING to the other processed objects at the time of processing.

(2) The supplier expressly agrees that parts, devices and tools owned by ADA TRADING, as well as all documents of ADA TRADING, may not be used for the manufacture or design of products for third parties without prior written consent or consent in the text form of ADA TRADING.

(3) If parts, devices and tools owned by ADA TRADING are damaged or destroyed during the supplier's possession period, the supplier is obliged to pay damages in the amount of the replacement value. ADA TRADING can demand that these parts must be insured at the replacement value at least against fire, water and theft at the expense of the supplier and that these insurances must be maintained by the supplier. If necessary, proof of these insurances must be provided to ADA TRADING upon request.

In any case, damage or destruction of the parts must be reported to ADA TRADING immediately.

Upon full payment of the purchase price for the products, they become the property of ADA TRADING. Any prolonged or extended retention of title by the supplier for the delivered products is ruled out.

§ 12 Third party rights / property rights

The supplier warrants that all deliveries and services are free of third party rights, even if the supplier has pointed out such rights when accepting the order or later, but nevertheless executes the order.

The supplier particularly guarantees that the delivery of the ordered item does not infringe any third-party industrial property rights. If ADA TRADING becomes aware of such a violation of rights or of third party rights, or if a third party claims against ADA TRADING directly on account of such violations, ADA TRADING may demand that the supplier immediately remedies the violation of rights or third party rights and/or indemnifies ADA TRADING against any claims arising from a possible violation of rights and claims by third parties. If ADA TRADING has set the supplier a reasonable deadline for this purpose, ADA TRADING may withdraw from the contract after expiry of the deadline and, in the event of fault on the part of the supplier, demand damages in lieu of performance or compensation for futile expenses.

§ 13 Preparatory work

Even if an order is not placed, the preparation of drafts, calculations, offers, etc. is free of charge for ADA TRADING, unless otherwise agreed.

§ 14 Secrecy

The supplier is obliged to treat all figures, drawings, calculations and other documents and information made available to it as strictly confidential and to keep them secret. All documents are the exclusive property of ADA TRADING. Business and trade secrets may be disclosed to third parties only with the prior explicit consent of ADA TRADING.

This obligation of secrecy shall also apply after termination of the respective supply contract. In particular, the supplier will not use the knowledge for its own production or for deliveries to competitors of ADA TRADING. In this respect, ADA TRADING reserves all rights (including, but not limited to, in case of patent or utility model registration for new features).

§ 15 Assignment to third parties / sub-contractors

(1) The assignment of claims or other rights of the supplier to third parties is ruled out without prior written consent of ADA TRADING.

(2) The same applies to the transfer of orders placed by ADA TRADING with the supplier to third parties / sub-contractors.

ADA TRADING will not unreasonably refuse consent to this.

§ 16 Rights of withdrawal and termination

ADA TRADING is entitled to withdraw from the contract beyond the legal rights of withdrawal, if a substantial deterioration of the financial circumstances of the supplier occurs or threatens to occur, if the supplier becomes insolvent or suspends payments, and if the fulfilment of the delivery obligation is endangered by this. The same shall apply in the event that insolvency proceedings or comparable proceedings for debt settlement are opened over the assets of the supplier or the opening of such proceedings is refused due to lack of assets.

In the event of a continuing obligation, there is a right to extraordinary termination under the aforementioned conditions.

In this case, the supplier must - subject to further legal claims of ADA TRADING - compensate for the damage resulting from this, unless the supplier is not responsible for the occurrence of the right of withdrawal or termination.

§ 17 Place of performance / Place of jurisdiction

(1) The place of headquarters of ADA TRADING or the agreed delivery address shall be the place of performance.

(2) The place of jurisdiction for all obligations arising from this contractual relationship is hereby agreed to be either the Esslingen Local Court or the Stuttgart Regional Court, depending on the subject matter jurisdiction, to the extent legally permissible. ADA TRADING is also entitled to bring an action at the supplier's place of business as well as at any other permissible place.

§ 18 Applicable law / contractual language

(1) The law of the Federal Republic of Germany shall apply to all legal disputes arising directly or indirectly from the contractual relationship.

(2) The provisions of the "United Nations Convention on Contracts for the International Sale of Goods (CISG)" and other conflict of law provisions are excluded.

(3) The contractual language is German.

§ 19 Partial invalidity

If individual provisions of these terms and conditions of purchase are or become invalid, this shall not affect the validity of the remaining provisions. Ineffective provisions shall be replaced by effective provisions that come closest to their purpose.

Esslingen, June 2020