

General Terms and Conditions of Purchase

December 2021 version | English translation of the German original

These General Terms and Conditions of Purchase apply without exception to all business transactions of NCA Container- und Anlagenbau GmbH (NCA, hereinafter the Client).

These general delivery conditions are primarily intended for legal transactions between businesses. If, exceptionally, they are also applied to transactions with consumers within the meaning of section 1(1)(2) of the Consumer Protection Act, Federal Law Gazette 140/1979, they apply only insofar as they do not conflict with the provisions of Part One of that Act. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 96/1988, is expressly excluded.

1. Preamble

1.1. These General Terms and Conditions of Purchase of NCA Container- und Anlagenbau GmbH apply to all transactions between the Client and contractors (hereinafter the Contractor). Any conflicting or differing conditions of the Contractor are excluded and not recognised unless the Client agrees in writing to the application of individual provisions. These purchasing conditions also apply where the contractual relationship is performed without objection or reservation despite knowledge of conflicting or differing conditions of the Contractor.

1.2. These purchasing conditions supplement contracts between the Client and the Contractor. The Contractor agrees that, if it uses its own general terms and conditions, these purchasing conditions shall apply in cases of doubt, even if the Contractor's conditions remain unchallenged. Acts of contractual performance by the Client do not constitute agreement to contractual conditions differing from these General Terms and Conditions of Purchase.

1.3. All agreements between the Client and the Contractor concerning performance of the contract must be concluded in writing.

1.4. These purchasing conditions also apply to future transactions between the parties, even if their application to future transactions is not expressly agreed.

1.5. Correspondence with the Client must be conducted exclusively with its purchasing department, quoting the order number. Agreements with other departments require express written confirmation by the Client's purchasing department, in the form of an addendum to the agreement, to be legally effective.

1.6. The Contractor undertakes to keep the conclusion of the contract confidential. It may name the Client as a reference to third parties only with the Client's written consent.

1.7. The Client makes these General Terms and Conditions of Purchase the basis of the contract and declares that it enters into contractual relationships exclusively subject to these purchasing conditions. It will not enter into a transaction without these purchasing conditions or individual provisions thereof applying unless it expressly states otherwise in writing.

2. Orders

2.1. The content of an order is determined by the order placed in writing by the Client. Oral orders and additions, amendments or deviations of any kind become binding only when confirmed in writing.

2.2. The Contractor must confirm orders in writing, quoting the order number, within a maximum of five days of the order date. Changes or deviations are valid only if the Client expressly reconfirms them in writing.

2.3. Silence on the part of the Contractor following an order placed by the Client constitutes acceptance of the order in full.

3. Prices

3.1. Agreed prices are fixed prices excluding VAT, delivered to the place of use, including packaging and freight costs.

3.2. The Contractor bears all costs incurred up to handover to the carrier, including loading but excluding local cartage charges.

3.3. The Contractor must prepare quotations, projects, cost estimates and similar documents free of charge. Expenses associated with preparing a quotation, such as conferences, visits and site inspections, are not reimbursed by the Client.

3.4. The Contractor's invoices become valid only when they contain the relevant order number, cost centre or the Client's name. Invoices submitted contrary to this provision shall be treated as invalid. The Contractor is responsible for the consequences of failing to meet this requirement.

3.5. Unless otherwise agreed in writing, the Client pays the agreed purchase price within 21 days with a 3% cash discount or within 45 days without deduction. Payment is made by bank transfer. The Contractor must state the relevant bank details on its invoice. For partial deliveries, the payment period starts only upon the final partial delivery, but no earlier than receipt of the final partial invoice, unless the contract provides for successive deliveries.

3.6. Where the Contractor must provide material samples, inspection certificates in German, quality documents or other documentation, delivery and performance are complete, and the payment period begins, only once the Client has received these documents.

3.7. In the event of incorrect or defective deliveries, the Client may withhold payment until proper performance.

3.8. In the event of an advance payment, the Contractor must provide appropriate security, such as a bank guarantee, upon request.

4. Delivery and delivery time

4.1. The delivery time stated in the order is binding. If delivery is made before the agreed date without written authorisation from the Client's purchasing department, the Client reserves the right to return the goods at the Contractor's cost and risk or to store them at the Client's premises at the Contractor's cost and risk.

4.2. The Contractor must immediately notify the Client in writing if circumstances arise or become known to it which indicate that the agreed delivery time cannot be met.

4.3. If the Contractor is late in delivering, the Client may demand a contractual penalty of 1% of the total order value per completed week, up to a maximum of 10%. The right to claim additional damages remains unaffected.

5. Force majeure

5.1. Force majeure releases the Client from its performance obligations for the duration of the disruption and to the extent of its effects. The Client must promptly provide the Contractor with the necessary information insofar as reasonably practicable. In cases of force majeure, including a pandemic or epidemic, the Client may adapt its obligations to the changed circumstances in good faith.

5.2. The Client is wholly or partly released from the obligation to accept the ordered goods and may withdraw from the contract to that extent if delays caused by force majeure mean that the delivery can no longer be used by the Client, taking economic considerations into account.

6. Withdrawal from the contract

6.1. The Client may withdraw from the contract if insolvency proceedings have been opened against the Contractor's assets or if the Client becomes aware of execution or enforcement measures.

6.2. The Client may also withdraw if the Contractor promises, offers or grants benefits of any kind to an employee or representative of the Client, or to a third party in that person's interest.

7. Risk, transfer and documents

7.1. Unless otherwise agreed in writing, the place of performance is the Client's registered business address. Unless otherwise agreed in writing, the Contractor must deliver carriage paid, including packaging and freight insurance.

7.2. Risk passes when the goods are made available at the delivery address or place of use requested and communicated by the Client.

7.3. Each delivery or partial delivery must include a delivery note precisely itemised by type, quantity and weight. Delivery notes, consignment notes and all correspondence must state the Client's order number, cost centre or the ordering party's name. If the Contractor omits this information, processing delays are unavoidable. The Contractor is liable for these delays.

8. Export

8.1. For FCA deliveries under the INCOTERMS version valid when the contract is concluded, the documents needed to prepare export papers must be provided to the Client at least three working days before the delivery date. These include, in particular, delivery notes showing the Client's order number and the information specified in clause 7.3.

9. Trade terms

9.1. Trade terms shall be interpreted in accordance with the INCOTERMS version valid when the contract is concluded.

10. Export restrictions, VAT evidence and proof of origin

10.1. The Contractor must immediately inform the Client if a delivery is subject, in whole or in part, to export restrictions under Austrian or European law.

10.2. The Contractor must include all required information in VAT documentation for foreign and intra-Community deliveries.

10.3. The Contractor must also include all required information in certificates of origin, sign them properly and provide them promptly.

11. Warranty

11.1. The Contractor guarantees and warrants that all supplies and services have the agreed or otherwise assured characteristics, unless higher requirements are agreed in the individual contract. The Contractor further warrants that all supplies and services comply with the latest state of the art, relevant European standards and Austrian ÖNORM standards, legal provisions and regulations, and guidelines issued by authorities, occupational insurance associations and professional associations. The Contractor also undertakes to meet statutory environmental and safety requirements in the countries of manufacture and distribution.

11.2. If the Contractor needs to deviate from these requirements in an individual case, it must obtain the Client's written consent.

11.3. The warranty period is five years and begins upon proper handover of the supplied item to the Client. If the Client reports defects in the supply or service during the warranty period, the Contractor must, upon request, promptly and free of charge rectify them, including all ancillary work, or replace the defective goods at its own expense. Defects include failure to achieve guaranteed data, missing assured characteristics or quality certificates, and failure to provide quality assurance documentation.

11.4. All statutory warranty claims remain unaffected, particularly claims for a price reduction or rescission.

11.5. The Contractor must compensate the Client for all direct, indirect and consequential losses caused by defective supplies or services, including lost profit.

11.6. If the Contractor fails to fulfil its warranty obligations within a reasonable period set by the Client, the Client may take the necessary remedial measures itself or engage third parties, and charge the resulting costs to the Contractor or set them off against its own payment obligations.

12. Retention of title, assignments and set-off

12.1. Supplies to the Client must be free of any retention of title.

12.2. The Contractor may not assign claims against the Client to third parties. In the event of an assignment contrary to the contract, the Client may nevertheless make payment to the Contractor with discharging effect.

12.3. The Client may at any time set off claims held by itself or an affiliated company against the Contractor or its affiliated companies against claims of the Contractor.

13. Product liability

13.1. In the event of damage caused by a product, the Contractor shall indemnify and hold the Client harmless against third-party claims for damages. This applies in particular where the cause of the damage lies within the Contractor's sphere of control or organisation and the Contractor is itself liable towards third parties.

14. Intellectual property rights

14.1. The Contractor expressly guarantees and warrants that all supplies are free of third-party intellectual property rights. In particular, it warrants that delivery and use of the supplied items do not infringe any third-party patents, licences or other intellectual property rights.

15. Confidentiality

15.1. The contracting parties undertake to treat as business secrets all non-public commercial and technical details that become known to them through the business relationship.

15.2. The Contractor must keep the conclusion of the contract confidential. It may refer to business relations with the Client in promotional materials only after obtaining the Client's consent, where applicable in writing; otherwise, the business relationship must remain entirely confidential.

15.3. Drawings, models, templates, samples and similar items must not be handed over or otherwise made accessible to unauthorised third parties. Reproduction is permitted only to the extent required for operational purposes and within the applicable copyright provisions.

15.4. The Contractor must impose corresponding obligations under this clause 15 on its subcontractors and business partners.

15.5. The Contractor acknowledges the Client's privacy statements and undertakes to assume the obligations contained in them.

16. Place of performance and jurisdiction

16.1. Unless otherwise agreed in writing between the parties, all disputes arising directly or indirectly from the contract between the Client and the Contractor fall within the jurisdiction of the Austrian court having territorial and subject-matter jurisdiction for the Client's registered office.

16.2. These purchasing conditions and all legal relations between the Client and the Contractor are governed exclusively by Austrian law. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

16.3. If any provision of these purchasing conditions is invalid, only that provision shall be invalid; the validity of the remaining provisions remains unaffected. In place of an invalid provision, a lawful provision coming as close as possible to it shall be deemed agreed.