

# General Terms and Conditions of Purchase

## 1. General provisions

- 1.1 The following provisions apply to all orders placed by X-Compound GmbH - hereinafter referred to as X-COMPOUND - unless otherwise expressly agreed to. This expressly excludes the conditions of the contractor, the contractor's general terms and conditions of business or the contractor's confirmation of order that may deviate from this order and / or these general terms and conditions of purchase. The unqualified acceptance of confirmations of orders or deliveries in no way implies recognition of such conditions.
- 1.2 Upon initial delivery according to these terms and conditions of purchase, the Supplier acknowledges the exclusive applicability of these terms and conditions to all further orders .
- 1.3 Should the Supplier not accept an order placed by X-COMPOUND within two (2) weeks of receipt, then X-COMPOUND is no longer bound by the offer.
- 1.4 Contracts of any kind are only valid if they are reduced to writing by X-COMPOUND. Oral and telephonic agreements are confirmed in writing by X-COMPOUND. This also applies to all amendments, addenda, specifications, etc.
- 1.5 All correspondence regarding an offer and / or order shall be directed to the Purchase Department only, under separate cover for each process and identified by means of the order number and / or other reference numbers:
- X-Compound GmbH  
Abt. Einkauf (Purchase Department)  
Hardmatt 932  
CH-5082 Kaisten
- 1.6 Remuneration for visits or the drafting of quotations, projects, etc. shall not be paid unless agreements to the contrary are made in writing.

## 2. Delivery and shipment

- 2.1 Costs of shipping - including packaging, insurance and any other incidental expenses - are for the account of the contractor unless an agreement expressly to the contrary has been made.
- 2.2 Further information regarding the following items is to be found on the X-COMPOUND supplier portal at <http://www.x-compound.ch/about-us/supplier/>:

- Delivery times
- Delivery and packaging instructions

- 2.3 Should we incur additional costs as a result of a failure to implement the above-mentioned guidelines or other instructions, these shall be for the account of the Contractor. This applies particularly to forwarder's invoices in the case of "ex works" deliveries. No forwarder's invoices are accepted should these deviate from the provisions in the supplier portal.
- 2.4 The relevant customs tariff number of the country of origin is to be supplied for all goods; in the case of listed goods the national export control number must also be provided as well as that of the USA, if the goods are subject to US re-export regulations. Proof of preferential origin as well as declarations and marks of conformity of the country of origin or destination are to be furnished without a request being required; non-preferential certificates are to be supplied on request.
- 2.5 The Supplier is to furnish an invoice with an indication of origin and customs preferences per item. On request, the Supplier is to supply certification of origin by a duly authorised chamber of commerce. Should the Supplier not comply with the express requests, then the Supplier shall be liable for any damages incurred by the Purchaser as a result thereof, including enquiries related to foreign import duties, penalties, etc. The Supplier accepts responsibility for ensuring that all details are correct.

### 3. Delivery deadlines, delivery periods and delivery quantities

- 3.1 The delivery details or delivery periods stated in the orders are binding and are applicable on arrival at the place of performance.
- 3.2 Should the Supplier determine that the periods agreed to cannot be adhered to for whatever reasons, then the Supplier shall immediately provide notice in writing regarding the reasons for and duration of the delay. The Supplier shall disclose the measures that shall be taken by the Supplier to minimise absolutely the damages resulting from the delay in delivery. This measure does not, however, exclude the possibility of compensation for damages in accordance with the Swiss Code of Obligations (schweizerisches Obligationenrecht, hereinafter referred to as OR), which X-COMPOUND is entitled to claim in this case.
- 3.3 X-COMPOUND is entitled to refuse to accept goods that are not supplied within the delivery period specified in the order, and to return said goods for the account and at the risk of the Contractor, or to store the goods at a third party.
- 3.4 The Supplier may only rely on the absence of required documentation that is to be supplied by X-COMPOUND if the Supplier has furnished a written reminder and has not received the documentation immediately.
- 3.5 The quantities ordered by X-COMPOUND are to be fulfilled in full. Partial quantities are only permissible if permission is obtained in writing. In the case of deliveries in part, the delivery note

shall be compiled accordingly. It must be possible to determine the total quantity as well as the partial quantity from the delivery note.

#### 4. Quality and acceptance

- 4.1 The Supplier guarantees and represents to X-COMPOUND that all objects supplied and all services performed by the Supplier at the time of delivery conform to the current state-of-the-art, relevant statutory provisions and the specifications and regulations of local authorities, trade associations and professional associations. Should deviations from these regulations be necessary in individual cases, then the Supplier is obliged to obtain the relevant permission in writing. The guarantee and warranty obligation of the Supplier is not affected by such consent. Should the Supplier have any concerns regarding the nature of the design that we require, or should he become aware of any errors in the documentation or drawings, then the Supplier shall notify us in writing immediately.
- 4.2 The obligation to inspect and reject immediately, pursuant to Article 201 of the Swiss Code of Obligations, is excluded. By accepting the order, the Supplier agrees to accept notices of defects as having been raised in due time, without a deadline for complaint being adhered to. Rights to redhibition (return of goods), reduction in price, reworking or rather a replacement delivery and compensation (Art. 205 et seq. and 368OR) remain reserved. In addition, X-COMPOUND reserves the right to withhold payment in full or in part until (i) insofar as replacement is required, or (ii) the situation regarding redhibition (the return of goods), reduction in price or compensation has been settled with binding effect. Curtailments of the statutory warranty period are not accepted.
- 4.3 Acknowledgement of receipt of goods to be delivered and acceptance or approval of drawings do not imply that X-COMPOUND waives warranty claims or any other rights.

#### 5. Review and work progress verification

- 5.1 X-COMPOUND is entitled, during manufacture and up to the time of delivery, to inspect the goods ordered with regard to material, the manufacturing process and other work associated with the provision of the contractually agreed service, at the premises of the Supplier by prior appointment and within normal business hours. At any time, X-COMPOUND may also request a report regarding the goods that it has ordered, especially regarding their production status.

Should the inspection, visit or provision of information mentioned in this clause not be permitted or be significantly impeded, then X-COMPOUND is entitled to terminate the contract. Furthermore, in the event of a culpable breach of the obligations stated in this clause, the Supplier is obliged to compensate X-COMPOUND in full for the resulting damages.

This inspection neither affects nor voids the warranty offered by Supplier in respect of the goods to be supplied.

5.2 Should defects or deviations from the contractual agreement already manifest themselves at the time of inspection, then X-COMPOUND is entitled to demand immediate rectification. Should the Supplier not comply with this demand for rectification, X-COMPOUND may, having granted a reasonable period of grace and having given the Supplier notice that the the contract shall be cancelled and / or the delivery be rejected in the event of a failure to perform by the expiry of the deadline, cancel the contract .

## 6. Warranty

6.1 The warranty obligation of the Supplier conforms to the statutory provisions unless otherwise specified hereinafter. The Supplier absolves X-COMPOUND in the first instance from all claims, based on proportional causation, that may be raised by third parties due to defects, infringements of proprietary rights of third parties or damage to products delivered. The Supplier shall ensure the existence of appropriate product liability insurance.

6.2 In any event, the warranty shall remain in effect for a period of at least two (2) years as from commissioning of the complete installation in which the supplied parts are installed or as from the date of acceptance, in the event of a separate formal acceptance having been agreed to (whichever date is the later).

6.3 In the event of defective delivery, the Supplier shall, at the discretion of X-COMPOUND, provide the required replacement free of charge, reduce the price in the amount prescribed by law, or rectify the defect free of charge. In cases of urgency, X-COMPOUND is entitled – after consulting the Supplier – to undertake the required rectification, or cause the rectification to be performed by a third party, or procure a replacement in some other way, the costs of which shall in any event be for the Supplier's account. The same shall apply should the Supplier default in meeting the warranty obligations.

6.4 In the case of replacement deliveries and improvement services, the Supplier shall incur liability tot he same extent as for the original goods to be delivered; this thus also applies to shipping, travel and labour costs, without being limited hereto. The statutory warranty period for replacement deliveries commences on the day of receipt of the replacement delivery at the earliest.

6.5 The Supplier is obliged to reimburse reasonable expenses for a product recall based on product liability law. X-COMPOUND shall provide the Supplier with prior notification and opinion in this regard as soon as possible.

## 7. Prices and terms of payment

- 7.1 The prices quoted in the purchase order are the maximum prices; a reduction in price at any time between the order being placed and payment of the invoice shall be for the benefit of X-COMPOUND.
- 7.2 In the case of repeat order, the prices of the initial order are applicable; should the initial order have been placed more than 18 months earlier and if the Supplier can justify an increase in price, then an increase may be agreed to in writing.
- 7.3 In the case of price lists that have been agreed to, these lists are then applicable until a new price list has been agreed to by X-COMPOUND and the Supplier. The Supplier shall verify the measures implemented not to escalate the price.
- 7.4 Unless otherwise agreed, payment is to be made in Swiss Francs, either within 30 days of delivery / provision of service and receipt of a verifiable invoice at a cash discount of 3 % or after 60 days without discount, at the discretion of X-COMPOUND.
- 7.5 Insofar as certification or material examination is agreed to, the term of payment for invoices commences on receipt of these certificates.

## 8. Offsetting and assignment

- 8.1 The Supplier is only entitled to charge undisputed or legally valid claims.
- 8.2 In the event of defective deliveries, X-COMPOUND is entitled to withhold payments proportionately until proper performance has been made.
- 8.3 The assignment of claims against X-COMPOUND is only valid with the written consent of X-COMPOUND.

## 9. Information and data

- 9.1 Drawings, drafts, samples, manufacturing specifications, in-house data, tools, facilities that X-COMPOUND has entrusted to the Supplier for the purposes of preparing an offer or the execution of an order, remain the property of X-COMPOUND. They may not be used or duplicated for other purposes or made accessible to third parties and are to be stored with the diligence expected of a prudent businessperson.

## 10. Protection of the property rights of third parties

The Supplier shall ensure that the rights of third parties in respect of the proper use of the purchased goods and especially the proprietary rights of third parties are not infringed. Insofar as X-COMPOUND may, however, be held liable for the potential infringement of the rights of a third party, such as copyright, patent and other proprietary rights, the Supplier shall absolve X-COMPOUND thereof and of any other related performance.

## 11. Data protection

X-COMPOUND deals with the confidential personal information in a responsible manner. This refers to so-called personal data, such as names, addresses, telephone numbers, email addresses.

The Supplier declares its revocable agreement to the personal data divulged by the Supplier being captured and processed, subject to the applicable statutory provisions, for the purpose of processing the quotation and purchase order. Should the Supplier not be in agreement with the collection and processing as described, this must be raised in writing.

## 12. Court of Jurisdiction, Place of Performance, Severability Clause

12.1 Notwithstanding that Aarau in Switzerland is established as the legal domicile and court of jurisdiction of X-COMPOUND, the right is reserved to bring legal action against the Supplier at the court of general jurisdiction of the Supplier. The same applies should the Supplier not have a domestic domicile / court of general jurisdiction, or should the Supplier move its domicile or customary place of residence abroad or if of the Supplier's domicile or customary place of residence is unknown at the time of litigation.

Insofar as the Supplier has a foreign domicile, the following additionally applies:

The contractual relationship is subject to Swiss substantive law. The United Nations Convention on Contracts for the International Sale of Goods (so called Vienna Convention) of 11.4.1980 is not applicable to this contractual relationship.

12.2 Unless otherwise expressly agreed to, the place of performance of the obligation to deliver is the despatch address or the the point of use requested by us; for all other obligations of both parties, it shall be Kaisten.

12.3 Should any provisions of these general terms and conditions of purchase be or become void, then the remaining provisions shall still apply.

Kaisten, July 2018

X-Compound GmbH