

GENERAL TERMS AND CONDITIONS OF PURCHASE No. 01/2016 of the firm I.T.S. GmbH (hereinafter referred to as "I.T.S.")

General information

1. With regard to the entire business relation between I.T.S. and the seller/supplier (hereinafter referred to as "Seller"), including any future business relations, these General Terms and Conditions of Purchase No. 01/2016 shall apply exclusively. Any and all other sales terms or other general terms and conditions of business of the Seller are herewith rejected. They will not be applied. I.T.S. shall be entitled to modify its General Terms and Conditions of Purchase No. 01/2016 effective for the entire future business relation with the Seller, following an appropriate notification.
2. If there is a framework agreement between the Seller and I.T.S., the present General Terms and Conditions of Purchase shall apply to both the framework agreement and the individual orders.
3. Only orders made in writing shall be binding for I.T.S. Oral agreements (by phone) require a written confirmation by I.T.S.
4. The Seller commits to submitting to I.T.S. an order confirmation within three workdays after receipt of an order and to announce the delivery date, unless any other deviating agreement has been made with I.T.S. In case the Seller should not comply with this obligation in due time, I.T.S. shall no longer be bound by the order.
5. In case a framework agreement is concluded, the Seller commits to keeping I.T.S. notified about the first possible date for a call-off from the agreed purchase scope within two weeks from the conclusion of the framework agreement. In case the Seller does not comply with this obligation in due time or in case he advises that the first call-off of goods from the agreed purchase limit would be possible for more than eight weeks after the conclusion of the framework agreement, I.T.S. shall be entitled to withdraw from the concluded framework agreement unilaterally without having to state any reasons for doing so. The Seller shall be liable to I.T.S. for any consequential damage to I.T.S. in case of a justified withdrawal from the framework agreement on the part of I.T.S.
6. The preparation of quotations shall be free of charge for I.T.S.
7. Documents and other means of manufacture such as samples, drawings, models, tools, technical specifications and the like provided to the Seller or paid to the Seller by I.T.S. may only be used for supplies to I.T.S. They must neither be disclosed to any third party nor used for the Seller's own purposes. This applies to the present goods as well as any goods produced in the future. They must be kept confidential and must be returned to I.T.S. immediately and in perfect condition as soon as the order has been filled, without keeping any copies, individual items and the like.

II. Prices, payment terms, late payment

1. The agreed prices basically apply delivered free to the place of reception named by I.T.S. including transport, packaging and ancillary costs as well as tariffs and taxes (import sales tax), unless an expressed written agreement is made that I.T.S. shall also carry transport, packaging and ancillary costs as well as tariffs and taxes in addition to the agreed prices. In the absence of any deviating agreement, I.T.S. shall only bear the most competitive transport costs in case delivery is not included. Unless the agreed price does not include packaging, only net costs of packaging may be charged.
2. Price increase reservations require the expressed written consent of I.T.S. Otherwise any such reservation will be null and void to I.T.S.
3. I.T.S. shall pay all invoices either within 21 days with a 2 % discount or within 60 days without discount, unless any other payment terms have been agreed with the Seller in writing.
4. Payment and discount deadlines shall be counted from the date of receipt of the invoice, however, not before the receipt of goods and/or the acceptance of services and – if documents or other material is included in the scope of supply – not before the contractual submission of such documents to I.T.S.
5. Payments can be made by cheque or bank remittance. It shall be deemed sufficient, if the cheque is sent by mail on the due date and/or if the remittance is made at the bank at the due date.
6. I.T.S. may claim set-off and retention rights within the legally allowed scope.

III. Delivery term, scope of delivery, transfer of perils

1. The delivery terms and deadlines specified by I.T.S. in the order shall be binding. I.T.S. must be kept

notified of any impending delivery delays immediately. As regards framework agreements, maximum delivery terms of two weeks after call-off of the goods from the agreed scope shall basically be deemed agreed. Any other delivery terms announced by the Seller shall be ineffective. I.T.S. and the Seller may make agreements that deviate from these delivery terms. Such deviating terms must, however, be made in writing.

2. The legal claims becoming effective in case of any delay in delivery cannot be excluded. In case the grace period granted by I.T.S. after a delay in delivery shall expire without any effect, I.T.S. shall be entitled to withdraw from the agreement and claim damages instead of the agreed goods/services. In case the maximum delivery term for framework agreements specified under clause III (1) or the agreed delivery term (last sentence under clause III (1) is exceeded, I.T.S. shall be entitled to unilaterally withdraw from the framework agreement, even without granting any period of grace, and to claim damages instead of the agreed services/goods.
3. Partial deliveries shall only be admissible with the expressed consent given by I.T.S. Multiple deliveries shall only be admissible, if they are not in excess of 5% of the total supply quantity. Short deliveries shall not be admissible, and I.T.S. shall not be obligated to accept any such short deliveries.
4. If the Seller has made framework agreements with I.T.S. regarding certain products and/or product groups, orders of these products/product groups made by I.T.S. shall be supplied according to the agreed scope, unless I.T.S. has already reached the agreed purchase quantity or I.T.S. expressly requires the supply outside the agreed scope.
5. In case of imported goods subject to import tax, tariffs and other taxes, the Seller shall be liable for the correct and proper submission of any and all declarations required for customs and tax declarations to the competent tax and customs authorities. In case of any violations of this obligation, the Seller shall be obligated to keep I.T.S. indemnified for any resulting property-related or legal disadvantage.
5. The Seller shall bear the risk of accidental loss and accidental deterioration until handover of the goods at the agreed point of destination. He must take out insurance coverage for transport damage at his own costs.

IV. Warranty, damages, limitation

1. The deliveries must be made free from material or legal defects and must be according to the acknowledged rules of technology, the contractually agreed properties, standards and regulations on safety, work protection, accident prevention and other legal provisions.
2. In case of any defects, I.T.S. shall be entitled to legal rights and claims.
3. The limitation and exclusion deadlines with regard to damages and warranties shall be determined on the basis of Austrian law, independent of the registered office of the Seller.
4. I.T.S. must examine the deliveries for any potential defects within a reasonable time period and notify the Seller of any defect/s identified. Any such notice of defects is deemed to have been submitted in due time, if it is received by the Seller within a period of 10 workdays, counted from the date of receipt of the goods, or from the date of discovery in case of hidden defects.
5. If the Seller has made declarations on the origin of the delivery, he shall be obligated to pay keep I.T.S. indemnified for any damage resulting from the fact that the declared origin is not recognised e.g. due to incorrect documentation or the lack of traceability. This liability on the part of the Seller shall only become effective in case of culpable conduct or in case one of the guaranteed properties should be missing.
6. The Seller shall be obligated to keep I.T.S. indemnified from legal claims of domestic or foreign third parties with regard to the goods to be delivered, resulting from domestic or foreign patents, utility patents, copyrights and other rights and to compensate I.T.S. for any resulting damage in this regard. This also includes legal costs, damages as well as expenses for conversions and costs for work related to design modifications.

V. Place of fulfilment, place of jurisdiction, applicable law

1. Unless otherwise agreed, the place of fulfilment for payments and deliveries shall be the registered office of I.T.S.
2. If the Seller is a legal person under public law or a special fund under public law as defined under the Commercial Code, the registered office of I.T.S. shall be the exclusive place of jurisdiction for any and all legal disputes arising from the contract and the deliveries between I.T.S. and the Seller.

3. The law of the Republic of Austria shall apply exclusively, with the exclusion of international private law, unified international law and the United Nations Convention on Contracts for the International Sale of Goods.

VI. Legal effectiveness, data privacy

1. If any of the provisions in these General Terms and Conditions of Purchase should be or become ineffective, the remainder of this agreement shall not be affected. Instead of the ineffective provision, the intention of the parties to the agreement shall apply. Otherwise the relevant legal regulation shall become applicable instead. In any case, the relevant provision of these General Terms and Conditions of Purchase shall not be replaced by the terms of business of the Seller.
2. Any changes or additions to the Agreement by the Seller shall require the written confirmation by I.T.S in order to become effective. The same applies to any deviation from the requirement of the written form for any such confirmation.
3. Legally material declarations of intent on the part of the Seller, such as terminations, declarations of withdrawal or claims for damages shall only be effective if they are made in writing.
4. I.T.S. shall be entitled to process and save data on the Seller it has received in connection with the business relation according to the Data Privacy Act, or to have such data processed and saved by sub-contractors of I.T.S. even if such data originates from third parties.