



General Terms of Purchase

ARGOR-HERAEUS SA, Via Moree 14, CH-6850 Mendrisio

1 Scope

All purchase orders (deliveries of goods and provision of services) of ARGOR-HERAEUS SA (AHSa) are subject to the following General Terms of Purchase only. AHSa objects to general terms and conditions of the supplier, which deviate from these General Terms of Purchase or the provisions of law except where AHSa gives its express prior written consent to the applicability of the supplier's general terms and conditions. The supplier's general terms and conditions will also not become part of a contract between AHSa and the supplier even if AHSa, although being aware of the supplier's deviating or contravening terms and conditions, takes delivery of products, accepts services or effects payment for such deliveries or services.

2 Offer and Formation of a Contract

- 2.1 All orders, agreements and changes shall be binding only if placed or confirmed by AHSa in writing.
- 2.2 Orders placed by AHSa without a time limit for acceptance may be accepted by the supplier only within two (2) working days from the order date.
- 2.3 Quotations are binding and non-refundable unless otherwise expressly agreed in writing.
- 2.4 In case of any deviation or variance between the supplier's order confirmation and AHSa's purchase order, a contract shall be formed only if the supplier has expressly advised AHSa of the deviation and AHSa has agreed to such deviation in writing.
- 2.5 The commissioning of subcontractors by the supplier is subject to the prior written consent of AHSa.

3 Examination and Procurement Duties

- 3.1 Within the scope of its general and special professional knowledge, the supplier shall examine all drawings, calculations, specifications and other terms of reference provided by AHSa for errors and inconsistencies on its own initiative and shall report to and clarify with AHSa all concerns or objections, if any, promptly in writing.
- 3.2 The supplier bears the procurement risk of the products.

4 Delivery and Transport; Supplier's Lien; Security in the Supply Chain

- 4.1 The period of delivery/performance specified by AHSa in the purchase order is binding. If the purchase order does not specify such period, delivery of the product or performance of the service, respectively, shall be effected within fourteen (14) days after the date of the purchase order.
- 4.2 Deliveries before the agreed delivery date are only permitted with the consent of AHSa. AHSa is entitled to refuse acceptance of a premature delivery of products or to place the products so delivered into interim storage at the supplier's cost and risk.
- 4.3 If the supplier is unable to comply with the binding period of delivery/performance, set forth in clause 4.1, the supplier shall notify AHSa promptly and advise a practicable date for the delivery/performance. If the supplier is also unable to comply with the new delivery date, AHSa is entitled to cancel the delivery free of charge. In addition, the supplier is committed to notify AHSa without request of any difficulties in delivery/performance which may arise, for any reason whatsoever, immediately after such difficulties have come to the supplier's knowledge.
- 4.4 All deliveries and services shall be effected in accordance with the INCOTERMS 2010. The supplier is obligated to strictly comply with all instructions and requirements of AHSa as regards mode of transport, forwarding agent, and shipping instructions.
- 4.5 The costs of packaging shall be borne by the supplier.

Euro pallets may not be invoiced. To the extent available, euro pallets will be exchanged by AHSa free of charge.

- 4.6 The supplier will be liable for any transport damage, in particular as a result of improper or inappropriate packaging. AHSa reserves the right to charge the costs for the disposal of non-recyclable packaging to the supplier.
- 4.7 Partial deliveries are permissible only with the express written consent of AHSa, which consent shall not be unreasonably withheld.
- 4.8 The supplier is committed to attach to each shipment a delivery note exactly specifying the contents of the shipment, the net weight per item, and the complete SAP purchase order number of AHSa.
- 4.9 The unconditional acceptance by AHSa of a late delivery or late performance does not constitute a waiver by AHSa of any compensatory claims arising to it from such late delivery or late performance; the foregoing shall apply until AHSa has fully settled all payments owed by it for the products or services so affected.
- 4.10 With regard to quantities, weights and dimensions, the figures determined by AHSa during its incoming inspection shall be controlling, unless otherwise evidenced by the supplier.
- 4.11 The supplier shall provide reasonable assistance to AHSa in obtaining preferential tariffs and other governmental benefits and submit to AHSa all supporting records and documents, especially certificates of origin, which are requested by AHSa for this purpose.
- 4.12 If any payment instruments, shipping documents, certificates of origin or sales tax vouchers are missing, improper or incorrect, AHSa reserves the right to refuse acceptance of the products at the supplier's cost and risk.
- 4.13 If the supplier has agreed to carry out the installation or assembly, or in the absence of any agreement stating otherwise, the supplier shall bear all necessary expenses, such as travel expenses or tooling charges, unless otherwise agreed.
- 4.14 Any contractual liens and reservations of title by the supplier are subject to a separate written agreement between AHSa and the supplier.
- 4.15 The supplier shall give all organizational instructions and take all organizational measures, in particular in the areas of property protection, security of business partners, personnel and information, as well as in the areas of packaging and transport, which are required to ensure security in the supply chain, for example by adopting the requirements of internationally accepted initiatives on the basis of the WCO SAFE Framework of Standards (especially AEO). The supplier shall protect its deliveries of products to and the performance of its services for AHSa against unauthorized access and manipulation and shall have such deliveries and services performed by reliable personnel only. The supplier shall obligate its subcontractors, if any, to take corresponding measures and to give corresponding instructions.
- 4.16 The supplier represents and warrants that the products do not contain any substances which are restricted by Directive 2011/65/EU (RoHS), that the substances which are contained in the products and their use(s) are either already registered or not subject to registration in accordance with the Regulation (EC) No. 1907/2006 (REACH) and, if necessary, that an authorisation in accordance with the REACH Regulation has been granted. Supplier shall prepare the safety data sheet pursuant to Annex II of the REACH Regulation, if required, and provide it to AHSa. If the products delivered are to be classified as dangerous goods within the meaning of the applicable international rules, standards and guidelines, the supplier must notify AHSa thereof no later than on the date of the order confirmation.



General Terms of Purchase

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- 4.17 AHSA retains title to, and ownership of, any and all items, such as substances, tools, materials and other items, which are provided by it to the supplier for production. As long as they are not processed, any such items must be stored separately and insured at replacement value against loss and destruction at the supplier's cost. The processing, blending or combining (further processing) of any such items by the supplier is made on behalf of AHSA. The same applies to the further processing by AHSA of the products delivered to it, so that AHSA is deemed to be the manufacturer and obtains ownership of the product so manufactured.
- 4.18 Title to, and ownership of, the products shall be transferred to AHSA unconditionally and regardless as to whether the purchase price has been paid. If, in the individual case, AHSA accepts an offer from the supplier for the transfer of ownership of products which is conditional upon payment of the purchase price, the supplier's reservation of title shall lapse upon payment of the purchase price of the goods at the latest. If a reservation of title has been validly created, AHSA shall be authorized to resell the products in the ordinary course of business also prior to the payment of the purchase price on the condition that AHSA assigns to the supplier in advance the purchase price claims arising from such resale. All forms of reservation of title are excluded, in particular the expanded and the assigned reservation of title, as well as the reservation of title extended to further processing.
- ## 5 Force Majeure
- Acts of God, labor disputes, operational breakdowns through no fault or negligence of AHSA, civil disturbances, actions by any governmental authority and other events or circumstances beyond AHSA's control will entitle AHSA - notwithstanding any other rights or remedies available to it - to rescind the contract in whole or in part if such circumstances or events continue for a significant period of time and result in a substantial decrease in AHSA's demand.
- ## 6 Contractual Penalties
- 6.1 In the event that the supplier defaults in the timely performance of its duty to deliver/provide a service, AHSA may claim a contractual penalty at the rate of 0.5 % of the aggregate order value for each commenced calendar week of the supplier's default, but no more than 5 % of the aggregate order value. This shall not apply if the supplier furnishes valid proof that the default was caused by reasons beyond the supplier's control.
- 6.2 The contractual penalty pursuant to clause 6.1 shall be incurred as soon as the supplier defaults in delivery. The contractual penalty is immediately due for payment.
- 6.3 AHSA may assert the contractual penalty in addition to its claim for performance of the supplier's contractual obligations. If AHSA accepts the supplier's delayed performance, AHSA may claim the contractual penalty also if it has not expressly reserved this right at the time of receipt of delivery. AHSA shall declare the reservation of its right to assert the contractual penalty no later than at the time of its final payment of the delivery concerned. This declaration may be given on a printed form.
- 6.4 The assertion of any further damage by AHSA shall not be excluded, but the contractual penalty pursuant to clause 6.1 shall be set off against any such further damage.
- 6.5 The supplier will indemnify and hold AHSA harmless from and against any and all third-party claims which arise from a delay in delivery or from the cancellation of an order.
- ## 7 Claims for Defects; Recourse and Product Liability; Insurance
- 7.1 The supplier is responsible for the perfect condition of the products delivered and the services provided and for the existence of warranted characteristics. The supplier is in particular responsible for the conformance of the products and services to the state of the art, to the generally accepted technical and occupational health and safety regulations of public authorities and trade associations, and for the compliance of the products and services with all applicable laws.
- 7.2 AHSA's duty to examine and give notice of defects shall be subject to the statutory provisions (Art. 201 of the Swiss Code of Obligations) with the following proviso: AHSA's duty to examine is limited to defects which become apparent upon outward examination of the products, including the shipping documents, during the incoming inspection, and to defects which become apparent during quality control by way of random sampling (such as damage to the products during transport, wrong delivery and short delivery, for example). The duty to examine shall not apply if acceptance of the products delivered has been agreed. Above and beyond the foregoing, it depends on the feasibility of such an inspection in the ordinary course of business, with due regard to the circumstances in the individual case. AHSA's duty to give notice of defects which are discovered later remains unaffected. In all cases a notice of defects shall be deemed to have been given promptly and timely if it is delivered to the supplier within a period of fourteen (14) calendar days.
- 7.3 The statutory provisions on material defects and defects of title shall apply, except as otherwise provided hereinbelow. In the event of a defective product delivery, AHSA may, at its choice, demand subsequent performance of the contract or a reduction of the purchase price, or rescind the contract. Defective product deliveries will be picked up at the supplier's risk and expense or returned by AHSA.
- 7.4 If the supplier, within the scope of subsequent performance of the contract, remedies a defect by rectification or by delivery of a faultfree product, the statutory warranty periods will commence to run again.
- 7.5 If the supplier defaults in its duty of subsequent performance of the contract within a reasonable time period fixed by AHSA without having the right to refuse such subsequent performance, AHSA is entitled to rescind the contract or to itself remedy, or cause to be remedied by any third party, the defect at the cost of the supplier and to claim from the supplier an advance payment of the costs thereby incurred.
- 7.6 All costs arising to AHSA from the supplier's delivery of defective products or provision of defective services, especially travel and transport expenses, labor and material costs, and the costs of an incoming inspection exceeding the usual scope, shall be borne by the supplier. Any costs incurred by the supplier for the examination and rectification of defects (including any removal and installation costs) shall be borne solely by the supplier even if it turns out that there was actually no defect. AHSA shall be liable to pay damages to the supplier for unjustified claims for remedy of a defect only if AHSA has recognized, or grossly negligent failed to recognize, that no defect existed.
- 7.7 The supplier is obligated to indemnify and hold AHSA harmless from and against any and all product liability claims, and from any loss or damage arising therefrom, if and to the extent that such claims are attributable to a defect in the products delivered/manufactured or the services provided by the supplier. If a product liability claim under strict liability should be asserted or entered against AHSA, the foregoing shall apply only if the supplier is at fault. If the cause of the loss or damage is within the responsibility of the supplier, the burden of proof shall rest on the supplier. The supplier shall refund also any and all necessary costs and expenses in accordance with Art. 402 (1) of the Swiss Code of Obligations to the extent of the supplier's indemnity obligation, including the costs of bringing an action or the costs generated by a product recall. Above and beyond the foregoing, the statutory provisions shall apply. AHSA will inform the supplier of the scope and content of such product recall to the extent practicable and reasonable.
- 7.8 The supplier is obligated to take out and maintain a product liability insurance with adequate coverage and to furnish proof of the existence of such insurance to AHSA upon request.
- 7.9 The mutual claims of the contracting parties against each other become barred by the statute of limitations in accordance with the



General Terms of Purchase

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- statutory provisions unless otherwise specified below. In derogation of Art. 210 (1) of the Swiss Code of Obligations, the general limitation period for claims for defects is three (3) years from the passing of the risk or acceptance, if acceptance should be required.
- 7.10 The supplier agrees and undertakes to provide spare parts on reasonable terms for the period of the expected useful life of the products delivered but at least for a period of ten (10) years from the date of delivery (Spare Parts Supply Period).
- 7.11 If the supplier discontinues the manufacture of a product or a spare part after the expiry of the Spare Parts Supply Period, the supplier is obligated to give AHSA the opportunity to place one last order.
- ## 8 Infringement of Third-Party Property Rights
- The supplier warrants that no patent rights or other intellectual property rights of any third party are infringed by or in connection with the supplier's delivery of products or provision of services, and the supplier will, upon first written request, indemnify and hold AHSA harmless from and against any and all claims which are asserted or entered against AHSA by any third party on account of the infringement of a patent or other property right. The supplier will reimburse AHSA for all necessary costs and expenses arising to AHSA out of or in connection with such third-party claims. Irrespective of the foregoing, AHSA shall be entitled to enter with any third party into agreements on the alleged infringement of property rights, especially compromise settlement agreements, also without the consent of the supplier.
- ## 9 Prices and Terms of Payment
- 9.1 The prices specified in the purchase orders are binding. If no prices have been agreed, the supplier's list prices in force at the time shall apply. Ancillary costs, such as transport costs and customs duties, must be indicated separately. The supplier shall take back packaging materials at the request of AHSA.
- 9.2 The supplier's invoices must specify the SAP purchase order number of AHSA.
- 9.3 Unless otherwise agreed between the parties, the agreed prices become due and payable within thirty (30) calendar days after full performance of the delivery and/or service (as well as acceptance, if applicable) and receipt of a proper invoice in accordance with clause 9.2. If the invoice is paid within fourteen (14) calendar days, the supplier shall grant a 3 % discount on the net invoice amount at the request of AHSA, unless otherwise agreed.
- 9.4 No interest shall be payable from the due date. The rate of interest for default is two (2) percentage points per annum. The commencement of default in payment is generally governed by the statutory provisions. However, a written reminder for payment from the supplier is required in each case.
- 9.5 Rights of setoff and rights of retention as well as the defense of non-performance of the contract shall be due to AHSA within the statutory scope. In particular, AHSA is entitled to withhold payments due for so long as AHSA has claims against the supplier from incomplete or defective deliveries and/or services.
- ## 10 Industrial Property Rights and Know-How
- 10.1 All right, title and interest in and to any models, samples, drawings, software, documentations and other records as well as all right, title and interest in and to any materials, tools, production and testing equipment and know-how disclosed or released by AHSA to the supplier shall remain vested solely in AHSA. Any such items, information and documents must be treated as confidential and may not be transmitted to any third party, unless with the express prior written consent of AHSA and unless such third party is bound by the same obligations of confidentiality.
- 10.2 All items, information and documents set forth in clause 10.1 must be returned to AHSA, without request, immediately upon performance of the contractual obligation or when they are no longer required by the supplier for the performance of the contract. Any other use or disposal, whether in fact or in law, and/or any direct or indirect exploitation of such rights, items and documents by the supplier or any third party is expressly prohibited.
- 10.3 In the case of research, development, construction, engineering or other contracts covering the elaboration of a solution to a technical problem, all right, title and interest in and to any inventions made by the supplier in performing the contract as well as any patents to be applied for, already applied for, or granted on such inventions shall be exclusively due to AHSA. The same shall apply to any new technical know-how which does not belong to the state of the art. At the request of AHSA, the supplier will claim inventions which are made by its employees. The supplier agrees and undertakes to notify AHSA in writing of any such new technical know-how or employee invention within a period of six (6) weeks.
- ## 11 Code of Conduct
- 11.1 The supplier hereby commits to AHSA to comply with all legally binding rules and regulations, in particular with all applicable laws for the protection of fair competition, all export and import prohibitions in force, all applicable customs and tax regulations, all applicable legal regulations for the protection of the environment as well as the code of conduct and the internal guidelines of AHSA regarding the compliance with laws and regulations (www.argor.com), and not to offer, promise, or grant any benefits to employees of AHSA as consideration for the preferential treatment in the procurement of products or services (bribery), to ban forced and child labor, and to ensure for its own staff a fair pay, appropriate working hours, safety at work and a non-discriminating working environment.
- 11.2 AHSA may terminate the contract with the supplier without notice effective immediately in the event that the supplier commits a breach of its obligations set forth in clause 11.1. The supplier commits to pay a contractual penalty in the amount of 10% of the order value to AHSA in the case of bribery and in the case of a violation of the applicable laws for the protection of fair competition. Furthermore, the supplier is committed to indemnify and hold AHSA harmless from and against any third-party claims which are asserted or entered against AHSA on account of, or in connection with, the supplier's breach of its obligations set forth in clause 11.1.
- ## 12 Miscellaneous
- 12.1 The place of performance for all payments between AHSA and the supplier is the registered place of business of AHSA entered in the Commercial Register of the Canton of Ticino, Switzerland.
- 12.2 These General Terms of Purchase and any agreement between AHSA and the supplier shall be governed by and construed in accordance with the law of Switzerland, without giving effect to its conflict of law provisions and without giving effect to the UN Convention on Contracts for the International Sale of Goods (CISG).
- 12.3 The place of jurisdiction, also for actions on checks and bills of exchange, shall be the registered place of business of AHSA entered in the Commercial Register of the Canton of Ticino, Switzerland. However, AHSA shall be entitled to recourse in any court having jurisdiction as to the respective legal action under the laws of Switzerland or under the laws of the country in which the supplier has its registered place of business.
- 12.4 In the event of any discrepancies between the German version of these General Terms of Purchase and any translation, the German version shall prevail.