

ASM General Terms and Conditions of Purchase



(Issued 2010)

1. Legal validity

- 1.1 These ASM Terms and Conditions (hereafter called the "Terms and Conditions") will be applied when ASM concludes a contract of purchase with a supplier.
- 1.2 In the event of any deviations between the contractual provisions and these Terms and Conditions, the contractual provisions will take precedence.
- 1.3 Other general commercial and supply terms and conditions (Incoterms) will only apply if they have been agreed in writing by both parties. In the event of any deviations between these Terms and Conditions and any other general commercial and supply terms and conditions, these Terms and Conditions will take precedence.
- 1.4 Swiss law applies as a complement to the contractual provisions and these Terms and Conditions.

2. Quotation

- 2.1 The supplier will provide ASM with a quotation, by request and free of charge. If the supplier has not set a date limit in the quotation, it shall remain in force and binding for a period of 60 days.
- 2.2 If the supplier discovers that the purchase object requested by ASM infringes the recognised technical regulations, or that it is unsuitable for the purpose envisaged by ASM, it is the duty of the supplier to inform ASM of this immediately.

3. Order

- 3.1 An order is only valid if it is issued in writing by ASM or confirmed in writing by the company.
- 3.2 If the supplier's confirmation deviates from the order, the supplier has a duty to point this out to ASM. If ASM does not agree expressly to these deviations, the contract will apply in accordance with the order from ASM.

4. Purchase price

- 4.1 Unless otherwise agreed in the quotation, the specified price shall apply as the fixed all-inclusive price, in payment for the purchase object and any secondary services provided by the supplier.
- 4.2 The all-inclusive price includes all costs, in particular those for approvals, duties, taxes (excluding Value Added Tax), insurance cover, packaging, transport, delivery and expenses, as well as all secondary tasks to be carried out by the supplier.

5. Payment dates and methods

- 5.1 The purchase price will become due upon acceptance of the purchase object.
- 5.2 If a partial retention of the purchase price has been agreed as security against any possible guarantee claims, this portion will become payable if the
 - a. statutory limitation for the law regarding defects has been reached;
 - b. the supplier has provided an irrevocable bank guarantee to the same amount, payable upon first demand.
- 5.3 ASM must make any due payments within a period of 60 days. Special agreement by both parties is necessary before any discount for advance payment can be approved.

6. Sub-suppliers

- 6.1 The supplier bears the liability for the services provided by sub-suppliers to the same extent as if the supplier had provided those services himself/herself. This also applies in particular in relation to the sub-suppliers suggested by ASM. The supplier must include in the sub-supply contract those provisions of the contract of purchase that are necessary to safeguard the interests of ASM.

7. Confidentiality

- 7.1 Information provided by ASM to the supplier for the purposes of the contract must not be used, copied or made available to third parties.
- 7.2 The supplier has a duty to treat all the information and trade secrets obtained from ASM in connection with the fulfilment of the contract ASM in confidence. The supplier must ensure that any assistants and sub-suppliers involved also safeguard ASM's information and trade secrets.
- 7.3 ASM has a duty to treat the information and trade secrets of the supplier and the supplier's sub-suppliers in confidence.

8. Information

- 8.1 ASM has the right to be informed at all times about the status of fulfilment of the contract.
- 8.2 ASM's exercise of the right of information does not release the supplier in any way from his/her contractual obligations.
- 8.3 The supplier must advise ASM immediately of any circumstances that endanger the interests of ASM.

9. Approval of the authorities

If any approval is required from the authorities for the fulfilment of the contract, the supplier must obtain this approval in good time, and at the supplier's own cost.

10. Packaging

The supplier must bear the responsibility for providing the purchase object with appropriate, clean packaging, suitable for transport. If special care is required in the removal of the packaging or sub-constructions, the supplier must inform ASM in advance of this fact. If this advice is not provided, the supplier will be liable for any damage caused as a result.

11. Delivery

- 11.1 Unless otherwise agreed in the confirmation of contract, under-deliveries will not be accepted. Over-deliveries are only permissible up to 5% of the total order.
- 11.2 Unless otherwise agreed, test certificates for material deliveries, plus analysis certificates and safety data sheets for raw materials, must generally be supplied with the delivery.

- 11.3 Delivery times must be observed:
Monday - Friday 7am-11.30am
Monday - Thursday 1pm-4pm
Friday -3pm

Other delivery times are subject to notification.

12. Declaration and labelling obligations

- 12.1 The supplier must advise ASM of the specific characteristics of the purchase object. In addition, the supplier also has a duty to advise ASM about any relevant experience involving the purchase object.
- 12.2 All documents must be marked with the relevant reference numbers (Order No., Article No.).
- 12.3 In the case of raw materials, the ordered amount should, if possible, be supplied from a single manufacturing batch or lot. The batch or lot number must be marked clearly on the packaging, together with the gross, net and tare details.
- 12.4 If the supplier infringes these declaration obligations, the supplier will be liable for all damages thus caused.

13. Place of fulfilment and responsibility for risk

- 13.1 The place of fulfilment for the supplier is the location specified by ASM.
- 13.2 The benefits and risks of the case are transferred to ASM at the time of delivery at the place of fulfilment.

14. Deadlines

- 14.1 If the supplier discovers that it will not be possible to fulfil the contract in accordance with the established deadlines, he/she has a duty to inform ASM immediately of this fact, outlining the reasons and the expected delay.
- 14.2 Partial deliveries are only permissible by previous agreement with ASM.

15. Delivery of the purchase object

- 15.1 When the purchase object is delivered, the supplier must hand over, free of charge, the ownership of all the designs and data carriers relating to the purchase object to ASM, together with all operating and maintenance documents.

16. Transfer of ownership

Ownership of the purchase object is transferred to ASM at the time of delivery.

17. Guarantee

17.1 The supplier guarantees to ASM that there are no third-party claims with regard to the purchase object, and that the purchase object does not have any defects that affect its value or its fitness for purpose, and that it possesses the guaranteed characteristics, capacities and specifications. It also guarantees that the purchase object meets the statutory requirements, particularly in relation to safety of operation, and the recognised security-related regulations.

17.2 The supplier's guarantee also extends to any work carried out by sub-suppliers.

17.3 ASM's rights in relation to defects are limited to within 2 years from acceptance of the purchase object. During this guarantee period, ASM can complain about defects of any kind, but the responsibility for any deterioration that might have been prevented by a prompt complaint must be borne by ASM.

17.4 In the case of replacement or repaired parts, the period of limitation begins afresh from the acceptance of these replacement or repaired parts.

18. ASM's rights with regard to defects

18.1 Any defects that are the subject of complaint during the guarantee period, whether in the purchase object itself and/or in the installation, must be repaired immediately by the supplier, at the supplier's cost. Instead of repairs, ASM can demand a replacement delivery of defect-free goods, a reduction in the purchase price or a change in the contract of purchase.

18.2 If the supplier has not repaired the defect within the period set by ASM, or if the replacement delivery also proves to be defective, ASM can continue to apply all rights with regard to defects, in accordance with Art. 20.1 of these Terms and Conditions.

18.3 In addition, the supplier must also reimburse ASM for damages in accordance with the statutory provisions.

19. Insurance cover

The supplier must insure himself/herself sufficiently against the consequences of any liability. ASM can demand proof of the relevant insurance protection from the supplier.

20. Withdrawal from the contract

20.1 ASM can terminate the contractual relationship unilaterally with immediate effect, if

- a. it emerges even before delivery is due that the supplier can not fulfil the contract, through no fault on the part of ASM;
- b. it later emerges that fundamental factors that are important to ASM for the conclusion of the contract are not present;
- c. the supplier falls behind with the delivery of the purchase object;
- d. the supplier or a sub-supplier files an application to the court for bankruptcy or abatement proceedings against the supplier or sub-supplier.

20.2 Any compensation and/or reimbursement for damages must be made within the framework of the statutory provisions.

21. Assignment

The rights and duties contained within the contract of purchase can not be transferred to third parties without the written consent of the partners in the contract.

22. Modifications and supplements

These Terms and Conditions can only be modified or supplemented if this is undertaken in writing and with the agreement of both parties.

23. Settlement of conflicts

23.1 The parties will make every effort to come to an amicable agreement regarding any disputes that might arise in the interpretation of the contract of purchase and these Terms and Conditions.

23.2 If the parties do not reach an amicable agreement, the matter must be decided by the ordinary court of law. Swiss law will apply.