

Conditions of Purchase

umdasch Store Makers United Kingdom Ltd.
4 The Gallery, 54 Marston Street, OX4 1LF Oxford, UK

umdasch

THE STORE MAKERS

I. Applicability

1. The following Conditions of Purchase between umdasch Store Makers United Kingdom Ltd. (hereinafter referred to as „umdasch“) and the contracting party shall be governed by Austrian law, excluding the conflict of law rules of international private law and the UN sales convention.
2. If any clauses of these Conditions of Purchasing are ineffective, the remaining provisions shall nonetheless be binding. If a clause is or becomes not permitted by law in terms of its content, it shall not be invalid in total but remain effective in terms of its meaning to the extent permitted by law.
3. If interpretation of a contract (including these Conditions of Purchase) is not clear and/or ambiguous, the interpretation which is most favourable to umdasch shall apply, contrary to Section 915 of the Austrian General Civil Code [ABGB].

II. General

These Conditions of Purchase of umdasch form an integral part of all contracts with contracting parties from whom umdasch acquires or purchases goods or services of all kinds in particular service/work for the company's own use or for passing on to a third party, with or without further processing or handling by umdasch. Amendments or supplements shall be in writing. This shall also apply to an agreement to dispense with this written form. umdasch shall not be bound by the Terms and Conditions of Business of the contracting party. These Conditions of Purchase alone shall apply. Should one provision in these Conditions of Purchase be or become invalid, the validity of the remaining provisions shall not be affected. Only purchase orders or contract awards that are in writing shall be valid. Verbal or telephone agreements shall be binding if they are confirmed by umdasch in writing.

III. Prices/payment conditions

1. The prices are fixed prices and include Value Added Tax, packaging, any assembly required, insurance and carriage paid to the respective destination point advised by umdasch including unloading. Estimates, quotations, and planning and consultancy work shall not be charged to umdasch, unless an agreement is made to the contrary.
2. Invoices from the contracting party for supplies and services provided are due for payment when they have been received by umdasch, unless the supply/service from the contracting party is not in accordance with the contract or is the subject of a complaint by umdasch. umdasch may choose to pay the invoice within 120 days after receipt of the invoice that can be checked, insofar as umdasch does make use of its right to offset the amount due against payments due to umdasch. If the payment is made within 60 days of receipt of the invoice, umdasch shall be entitled to deduct 2% for cash payment.
3. umdasch shall be entitled to offset unpaid receivables which may be due to umdasch or companies affiliated with umdasch within the Group against the contracting party's receivables and claims. The VP explains itself in all other respects in agreement with a complete or partial transmission of the rights and obligations of umdasch from the present treaty on third by umdasch; in this connection the VP passes on a possible right objection in the sense of the §38 exp. 2 UGB.

IV. Delivery date/transfer of risk

1. Delivery dates and periods are to be adhered to strictly. The goods are to be at the destination point advised by umdasch at the agreed deadline. If this is not the case, umdasch is entitled to exercise the option either to refuse a late delivery and withdraw from the contract without setting an additional period or to continue to demand that the commitment be fulfilled.
2. Unless an agreement is made to the contrary, the earliest point at which the risk pertaining to the goods delivered is transferred to umdasch is when the goods have been delivered and unloaded at the notified destination point, if applicable. If it is the task of the contracting party to assemble and/or install the item (in particular, a machine), the risk is not transferred until the contracting party has successfully completed the assembly and/or installation and umdasch has signed any acceptance report that may be planned. The risk and costs incurred for any return deliveries shall in any event be covered by the contracting party.

V. Warranty/indemnity for loss suffered/product liability

1. umdasch does not have a duty to check the goods immediately in accordance with §§ 377 ff of the enterprise law book and/or to lodge a complaint in respect of a defect. It is agreed by common consent that the use of this statutory provision shall be excluded.
2. The contracting party is liable for ensuring that his contractual services – in particular deliveries of goods and work as regards the processing, workmanship or manufacture of products and services – comply with the intended use of which the contracting party was aware or of which he should have been aware. The contracting party has a duty to clarify any queries he may have about the purpose for which the product is to be used by asking umdasch. In particular, the contracting party also guarantees that, if the products for which the contracting party has provided services of whatever kind are passed or sold on to a third party, these products can be used for the purpose envisaged by the third party.
3. The contracting party shall also be liable for the faults of his subcontractors. Where umdasch makes available personnel, in particular for processing, assembly work, undertaking a trial run or unloading, these members of staff shall be subject to the contracting party's instructions and are considered to be his agents. Therefore the contracting party and not umdasch is responsible for their mistakes.
4. The contracting party shall provide for the goods or services rendered a full guarantee for the duration of 12 months from handover or acceptance. Here all defects that occur within the warranty period shall be covered by the warranty. The contracting party shall within the context of this warranty also replace all losses that have been incurred by umdasch as a result of the defective supplies/services without the need for proof of negligence.
5. Apart from the warranty umdasch shall be able to make unlimited use of the warranty regulations within the statutory period of two years (for moveable property) and three years (for immovable property). It is agreed by common consent that the assumption of defects at the point of handover as provided for in § 924 art. 2 of the Austrian General Civil Code is amended to the effect that this assumption shall apply if the defect manifests itself within 18 months after the handover or acceptance. In the event of warranty becoming operative, umdasch shall have the choice between a reduction in price, cancelling the contract, or asking for the item to be improved or exchanged. However, umdasch may only request improvement or exchange if this is not impossible and if it does not involve a disproportionately large outlay.
6. Where umdasch has to provide warranty to the subsequent holder, umdasch shall be able to obtain warranty from the contracting party even after the period set out in § 933 of the Austrian General Civil Code has elapsed, and notwithstanding § 933b para. 2 art. 1 of the Austrian General Civil Code it is sufficient if this is claimed in court by umdasch within six months of a full completion of the warranty obligation.
7. The product safety of the supplies and services provided by the contracting party shall comply with the requirements of the relevant regulations, in particular the Austrian Law on Product Liability. The contracting party shall be liable to umdasch for this and shall also indemnify umdasch against all claims by third parties. Furthermore, in this context the contracting party shall, if requested to do so by umdasch, undertake for a period of 15 years to

name the relevant manufacturer, importer or the party who supplied him with the product and all useful documentation to fight product liability claims by a third party and make these available to umdasch in a timely manner. Insofar as the contracting party provides any services on umdasch's premises (including unloading and erection work), in respect of other liability vis-à-vis umdasch, the contracting party shall ensure that the relevant accident prevention regulations will be complied with.

VI. Prohibition against offsetting receivables

The contracting party shall not be entitled to set off his own receivables against umdasch's claims or receivables or to withhold or reduce payments for whatever reason. This prohibition in respect of offsetting receivables shall not apply to the contracting party's receivables if these have been acknowledged in writing by umdasch or if they have been recognized by a declaratory judgement.

VII. Miscellaneous points

1. Where umdasch has made documentation available to the contracting party – in particular, drawings, plans and samples – the contracting party shall, in particular, check these to ensure that they are correct and complete and, if any doubts exist in this respect, the contracting party shall take the initiative to clarify these with umdasch. Documentation that has been handed over shall remain the property of umdasch and is to be handed back to umdasch at the end or upon completion of the contract. Copyright and/or other industrial property rights to these documents have not been transferred by umdasch or assigned for use.
2. The contracting party undertakes to treat in the strictest of confidence all documents and other information received from umdasch and in particular, but not exclusively, production know-how, quantities, documentation and drawings, which are made available to the contracting party in the course of the business relationship with umdasch or from which the contracting party derives knowledge in another way, and only to use these for the purpose set out in the subject of the agreement. This duty shall not cease when the business relationship ends.
3. The contracting party and umdasch hereby agree that all deliveries to umdasch shall be free of retentions of title.
4. The place of performance for all services of all kinds, in particular deliveries and payments, is 3300 Amstetten. This shall even apply if it is agreed that the handover or acceptance shall be at another location.
5. For all disputes between umdasch and the contracting party, it is agreed that the relevant court at Amstetten shall have jurisdiction for the subject matter. umdasch shall however also have the right to bring an action against the contracting party at any other legally permissible competent court.