

# Terms and Conditions of Purchase

Valid since: 04/2024

## 1) General

- 1.1. These Terms and Conditions of Purchase (hereinafter referred to as "TCP") constitute an integral part of all contracts of the companies of umdasch Store Makers (hereinafter referred to as "umdasch"). The contractual partner is in each case the specific affiliated company of umdasch with which the contractual relationship has been agreed. Business partners of umdasch ("BP") are suppliers of goods and service providers from whom umdasch purchases goods or services of any kind. This applies in particular to services or works which are acquired for umdasch itself or for transfer to third parties – with or without further processing by umdasch.
- 1.2. umdasch shall not be bound by the validity of the general terms and conditions of the BP in any way. This clause shall also apply even when umdasch does not expressly object to these terms.
- 1.3. Any amendment to these TCP or any side agreement must be made in writing. This shall also apply to any abolition of the formal requirement of the written form.
- 1.4. If any provision of these TCP is or becomes ineffective, the validity of the remaining provisions shall not be affected.
- 1.5. Only written purchase orders or orders shall be valid. Agreements made orally or by telephone shall be binding only when they have been confirmed in writing by umdasch. The processing of orders by the BP shall be regarded as acceptance of our terms.

## 2) Price

- 2.1. The prices are in all cases exclusive of VAT, but include if appropriate assembly, packaging, insurance, delivery to the relevant destination and unloading. They are fixed prices which cannot be increased for any reason whatever. Offers, cost estimates, visits and consulting and planning services shall be free of charge for umdasch unless otherwise agreed.

## 3) Delivery Date

- 3.1. If a delay in delivery on the part of the BP hinders umdasch in fulfilling an order, umdasch shall be entitled to reject the delayed delivery, and is not obliged to grant the BP a grace period. umdasch shall be entitled to avail itself immediately of a substitute service from a third party and to charge the BP with the cost of this service. In all other cases the BP shall be required to supply its services or goods within an appropriate period of grace.
- 3.2. Unless otherwise agreed, umdasch shall be entitled to deduct a contractual penalty amounting to 0.5% of the net order value for each day that the delivery is delayed. The total contractual penalty shall be limited to 10% of the net order value. The right to assert further damages remains unaffected by this condition. Delays of specified intermediary deadlines trigger the contractual penalty as well. umdasch reserves the right to assert contractual penalties after the final account.

## 4) Transport and Packaging

- 4.1. Transport and the complete unloading at the relevant places of receipt stated in the purchase order, as well as all associated obligations, shall be at the cost and risk of the BP.
- 4.2. The shipment shall be packaged duly and in a way suitable for the relevant means of transport.

## 5) Invoicing and Payment

- 5.1. All invoices must state the number, date and reference of the purchase order and must be suitable for the deduction of input VAT. The due date and the commencement of the payment period shall begin at the earliest after receipt of the invoice by the agreed contact partner of umdasch together with all proofs of performance and if appropriate any additional documents which may have been requested. Partial billing shall only be valid when this was agreed individually in the case in question.
- 5.2. Unless otherwise agreed, and provided that no offsetting is applied and no complaints have been made regarding the supply of goods and services, payment of the correctly presented invoice will take place net, less a 3% cash discount within 45 days, or in full within 60 days.
- 5.3. umdasch is entitled to set off outstanding accounts to which umdasch or an associate company within the concern is entitled vis-à-vis the BP, against claims by the BP.
- 5.4. The BP is not entitled to set off outstanding accounts due from umdasch or to hold back or reduce services. This prohibition does not apply to demands which have been recognised by umdasch in writing or which have been recognised by a final court order.
- 5.5. Any claims to damages or default interest due to delayed payment on the part of umdasch shall be due only after two written payment reminders have been issued without success.
- 5.6. The BP is not entitled to transfer the rights and obligations from this contract in whole or in part to third parties or to companies linked with it within the concern without obtaining the prior written agreement of umdasch.
- 5.7. All credit advices which are issued within the business relationship between the parties are to be regarded as cash credits which entitle the beneficiary to the free choice of exchanging the credit advice against goods and services or against a cash payment at any time.
- 5.8. All hedging instruments, such as for example retentions for collateral, security deposits and similar, are to be structured against insolvency.

## 6) Takeover, Assumption of Risk and Guarantee

- 6.1. For all contractual performance, the BP shall inform umdasch of completion in good time. The performance will be checked for visual and obvious faults within the framework of a joint inspection and a preliminary acceptance will take place. At this point the risk of accidental loss is transferred to umdasch for the obviously recognisable part of the performance which is free of any faults.
- 6.2. Should a delivery item arrive in the safekeeping of umdasch before assembly, for example by arriving at the agreed destination, or because umdasch has organised the transport, this does not mean that the delivery item has been accepted by umdasch. In such cases the acceptance will only take place after the correct and fault-free assembly of the item.
- 6.3. umdasch has no obligation to give notice of defects in the case of product deliveries and services.
- 6.4. The BP shall be liable for ensuring that its performance under the contract – in particular goods deliveries, work services in the form of processing or manufacturing of products, and rendering of services – is in accordance with the designated purpose which was or must have been known to the BP. The BP is obliged to clarify any doubts and to ensure that it is in possession of knowledge regarding the designated purpose and any other necessary information.
- 6.5. The BP shall guarantee that the items delivered (the services) conform to all laws and regulations in accordance with the purchase order which could be relevant at the place of manufacture and at the destination. In addition the BP shall ensure that the items delivered (the services) fulfil all technical requirements and correspond with the latest technical standards.
- 6.6. Provided that no hidden faults have come to light following preliminary acceptance, the warranty period for all contractual services begins again from the point at which the transfer of the entire project to the customer of umdasch takes place. This also applies by analogy in the case of software elements.

- 6.7. Unless otherwise agreed the duration of the warranty shall be two years for all goods and products supplied and four years for all work services.
- 6.8. Under the terms of the warranty the BP shall also compensate umdasch for all damage which may arise as a result of the defective delivery/services, without proof of fault being necessary. It is hereby agreed that the period of assumption for damage shall correspond to the warranty period.
- 6.9. The BP shall also carry full responsibility for its subcontractors. If umdasch makes staff available to the BP, in particular for unloading, processing, assembly or carrying out a test run, these workers are subject to the instructions of the BP and shall be considered as its agents. Hence the BP and not umdasch will be held responsible for their errors.
- 6.10. Provisions which oblige the client to undertake an examination of the goods, or other similar provisions, are ruled out.
- 6.11. In the case of warranty, and without prejudice to other options under the law, umdasch shall have the option of asking for a free substitute delivery, free repair of the defect, conversion or an appropriate discount or in the case of exceptional time pressure, of having the fault repaired by a third party at the expense of the BP, also without previously informing the BP and setting a grace period. The costs of any travelling time that may be necessary, and inspection and transport which may arise in connection with the processing of the warranty, shall be treated as additional costs that are eligible for compensation and will be charged to the BP.
- 6.12. In the case of faulty products and services the warranty period shall start again for the entire contractual performance following the complete repair of the faults. The warranty period shall be extended by the period during which the faulty products and/or services could not be used for the intended purpose.
- 6.13. The delivery (services) shall be considered as having been provided in full only when the BP has delivered instructions regarding storage, care and operating standards as well as instructions for use in the agreed languages (in any case in German and English) to umdasch.

## The following terms apply in addition for software products:

- 6.14. The BP shall use the latest security software to verify software and data prior to dispatch, in order to avoid any damage on the premises of umdasch or their customer. The BP guarantees that when software is purchased it shall be fully functional and that it shall retain full functionality within the software landscape of umdasch or of the customer of umdasch.
- 6.15. Should the software product demonstrate substantial faults or shortcomings, umdasch shall have the right to refuse to accept it. A substantial fault or shortcoming shall be deemed to exist in any case if a normal user is unable to use the software without difficulty and for the purpose for which it was intended.
- 6.16. Inasmuch as the software is acquired by umdasch under licence, the BP shall fulfil all requirements and maintenance obligations necessary to ensure performance in line with the contract for the entire duration of the contract. Similarly, in the case of software licences, the terms of the warranty shall extend throughout the entire validity of the contract.
- 6.17. The BP guarantees that no third-party rights are infringed (e.g. licence rights, including for open-source applications) through the delivery of the software, and shall indemnify and hold umdasch harmless in this respect.
- 6.18. In respect of the acquisition of software or source codes, sufficient documentation must also be supplied upon delivery.

## 7) Product Liability

- 7.1. The BP undertakes for a period of 7 years following the transfer to indemnify and hold umdasch harmless with regard to all product liability claims of third parties, to name the manufacturer, importer or supplier of the product upon request by umdasch and to make available to umdasch all expedient documents for defending product liability claims by third parties in a timely manner.
- 7.2. The designer (planner, architect, structural engineer, etc.) undertakes to compensate umdasch for all damage if umdasch is held liable for a design error.

## 8) Prevention of Accidents

- 8.1. If the BP is required to provide its services on the premises of umdasch or its customers, it will ensure that all applicable provisions for the prevention of accidents and the regulations protecting employees are complied with. The BP shall be liable vis-à-vis umdasch for damage which may be caused thereby, or by non-observance of the safety regulations of umdasch.

## 9) Changes to the Content of the Contract

- 9.1. When a contract has been agreed, changes to the agreed terms and services can only be agreed with the BP if these are confirmed via two independent paths of communication. In all cases one form of communication must be carried out in writing. This shall serve to prevent attempts at fraud on the part of third parties.
- 9.2. An exception to the requirement that two independent paths of communication be used will be made when the written signature takes place through the physical presence and proven authorisation of the persons representing the parties.

## 10) Right of Rescission

- 10.1. If umdasch should learn that the assets of the BP are over-indebted, that the BP is insolvent or that an application for the opening of insolvency proceedings on behalf of the BP has been filed, umdasch shall be entitled to rescind the contract without granting a period of grace. The BP can pre-empt these grounds for rescission at all times during the validity of the contract by issuing a contract guarantee in the amount of the contract.
- 10.2. umdasch shall also be entitled to rescind the contract with immediate effect should it transpire that the BP has contravened the legal requirements or norms, especially in the fields of anti-corruption, antitrust law and the employment of foreigners as well as the provisions of the code of behaviour of umdasch Store Makers (accessible online under: <https://www.umdasch.com/en/company/the-store-makers/responsibility>), or has seriously contravened these TCP.

## 11) Reservation of Proprietary Rights

- 11.1. Inasmuch as umdasch makes materials or goods available to the BP, the ownership of such provisions shall remain with umdasch. In the case of processing or mixing of goods provided, the joint ownership shall automatically lie in a corresponding value ratio. When goods and materials provided are resold, the BP shall relinquish the purchase price claim to umdasch upon conclusion of the contract. Any remaining quantities are to be returned after fulfilment of the contract unless the parties agree otherwise.

## 12) Intellectual Property

- 12.1. The copyright, the rights to industrial designs and utility models for all work results, works, programs including the relevant source codes and the associated documentation – espe-

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cially drawings, plans and samples – and other deliverables in connection with the working relationship, are the sole property of umdasch, inasmuch as mandatory law so permits. This also includes an unlimited and irrevocable right of use, which also includes the right to transfer, to change and to copy such designs and models.

- 12.2. Inasmuch as umdasch makes documents available to the GP – in particular drawings, plans and samples – the GP shall check them in particular for accuracy and completeness, and must settle any related doubts with umdasch on its own initiative. Any such documents, plans, samples, models, prototypes, source codes etc. remain the property of umdasch and shall be returned to umdasch in full after termination or fulfilment of the contract.

## 13) Confidentiality

- 13.1. The BP undertakes to maintain strict secrecy with regard to all documents and other information received from umdasch, including in particular but not limited to production expertise, quantities, documentation and drawings which are made available to the BP during the course of the business relationship with umdasch, or of which the BP otherwise obtains knowledge, and to use all such documentation or other information only for the performance of the present agreement. In particular the parties agree that the BP is expressly prohibited from undertaking all behaviour in the sense of Art. 3 para. 1 lit. b) of guideline (EU) 2016/943 or in accordance with other national legal provisions, in particular observation, investigation, dismantling or testing of a product or object, for any other purpose except the fulfilment of the present agreement with umdasch.
- 13.2. This obligation shall remain in place for a period of at least two years after the termination of the business relationship. It is expressly stated here that documents and information of third parties (in particular but not limited to customers or business partners of umdasch) are also included in the obligation to maintain confidentiality.

## 14) Data protection

- 14.1. umdasch takes the protection of the person-related data of its customers, employees and other business partners very seriously indeed. Further information can be found under <https://www.umdasch.com/en/gdpr> or upon request from [Dataprotection@umdasch.com](mailto:Dataprotection@umdasch.com).
- 14.2. In order to fulfil its contractual obligations, out of justified interest or following agreement, umdasch will process person-related data concerning contact person(s) of the BP, if necessary including their transfer to processors and concern-related companies. The BP hereby agrees to this processing. Inasmuch as the processing exclusively serves the fulfilment of the actual contract between umdasch and the BP, this does not represent job processing in the sense of Art. 28 DSGVO.
- 14.3. The BP is required to comply with the conditions of the DSGVO and applicable national data-protection laws – in particular but not exclusively rights of information and the rights of affected persons. The BP confirms compliance in this respect. The BP confirms that no processors will be employed without obtaining the express prior permission of umdasch. The BP will prove its compliance at any time upon request from umdasch. If the BP infringes the conditions listed in this clause, it will hold umdasch harmless with respect to all claims of third parties.
- 14.4. If job processing in the sense of Art. 28 DSGVO takes place, the BP shall draw the attention of umdasch to the necessity for the conclusion of a corresponding contract.

## 15) Place of Performance and Place of Jurisdiction

- 15.1. It is agreed that the place of jurisdiction for all legal disputes which may arise in connection with the business relationship shall be 3300 Amstetten, Austria.
- 15.2. It is agreed that Austrian law shall be applicable for the entire business relationship. The validity of all national collision norms, and the conditions of UN purchase law, shall be excluded in their entirety.
- 15.3. In case the country, where the BP has their registered seat or where the contract is fulfilled, would not recognize or enforce a decision passed by the according to the in 15.1 competent court, the following arbitration clause shall apply:  
In the event of a dispute arising out of or relating to the contractual relationship with the customer, including any question regarding its existence, validity or termination, the parties shall first seek settlement of that dispute by mediation in accordance with the Mediation Rules of the DIFC LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. If the dispute is not settled by mediation within 30 days of the commencement of the mediation, or such further period as the parties shall agree in writing, the dispute shall be referred to and finally resolved by arbitration under the Arbitration Rules of the DIFC-LCIA Arbitration Centre, which Rules are deemed to be incorporated by reference into this clause. The language to be used in the mediation and in the arbitration shall be English. The governing law of the contractual relationship shall be the substantive law of the Dubai International Financial Centre / DIFC. In any arbitration commenced pursuant to this clause, the number of arbitrators shall be one; and the seat, or legal place, of arbitration shall be the Dubai International Financial Centre.