

# GENERAL CONDITIONS OF PURCHASE



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## 1. General information

- 1.1. These conditions of sale form an integral part of all quotations and business agreements. Unless confirmed in writing, verbal arrangements are not legally binding.
  - 1.2. The application of the general terms of business of the supplier is precluded, even if no objection is raised on Banner's part, or the supplier only wishes to deliver subject to its own terms. At the latest, the completion of the order is regarded as acceptance of these terms of purchase.
  - 1.3. As agreed, Austrian law applies, excluding the UN right of purchase, for all disputes arising from a contractual relationship, as well as claims relating to bills of exchange and e.g. product warranty law. From the Banner side, the right of regress from the product warranty law can also be applied with regard to importers. Sole jurisdiction is held by the competent court Linz/Donau, Austria.
  - 1.4. In the case of a permanent business relationship, our conditions of purchase shall apply to subsequent and verbally allocated orders, even when this is not specifically restated.
  - 1.5. The order number, letter designation and the date of the preceding communication shall be given on all correspondence, as in the case of doubt, communications lacking this information are regarded as not having been received. Inquiries may only be directed to our Purchasing Department.
- In general, statements of legal significance may be communicated electronically between the contractual partners. However, should lengthy statements of this type from the supplier be received outside our business hours, these are first regarded as having been received with the subsequent begin of business hours. Business hours are: Mon-Thurs from 7.00 a.m. to 3.45 p.m., Fri from 7.00 a.m. to 12 noon.
- 1.6. Tenders presented to us are free of charge, irrespective of the preparations involved.
  - 1.7. The allocated order may be neither partially nor entirely passed on to subcontractors without our consent.

## 2. Orders and order confirmation

As a rule, Banner orders are communicated electronically (via e-mail) and in exceptional cases by fax, which means that they are also valid without a signature. As the dispatch of all documents of relevance to the order takes place automatically, immediately after internal preparation, the date of the documentation is also regarded as the date of receipt by the supplier. Therefore, the daily processing of incoming mail shall be guaranteed and changes (of e-mail address, fax and telephone numbers, address, etc.) shall be immediately made known to our Purchasing Department.

A confirmation of our order with binding delivery dates and prices shall be provided. If this is not received within 5 working days of the date of our order, we are no longer bound by our order. Should the order confirmation deviate from the order in a technical or commercial regard, this will only be regarded as legally binding, when confirmed by us in writing. Otherwise the order is regarded as valid in accordance with our order following the commencement of completion.

## 3. Prices and packaging

Unless otherwise stated in our order, the prices given are regarded as fixed with delivery free of charge to Linz (including unloading). Unless otherwise agreed, deliveries shall be made in accordance with Incoterms 2000.

The prices are seen as including standard, faultless packaging unless packing on loan has been specially agreed.

Price alterations are only permitted following separate agreement and if they are made known at least 4 months prior to the planned coming into effect. The return of packaging takes place at own risk.

Price unit – PU:	0= 1 unit
	1= 10 units
	2= 100 units
	3= 1000 units
	4= 10000 units

## 4. Delivery period

- 4.1. The prescribed delivery period is to be maintained.
- 4.2. The delivery or service is to be provided at the place of performance on the prescribed date (see Item 6.1). The receipt of delivery times are either to be stated separately, or are otherwise identical with our business hours (see Item 1.5). In the case of early delivery, which may take place with our approval, the payment period first commences with the agreed deadline. Should delivery occur outside the agreed delivery period, any storage costs that we may incur are to be reimbursed. Should you be unable to meet the delivery deadline, you must inform us in writing without delay. In the case of a failure to adhere to the delivery date for whatever reason, we have the right to withdraw from the contract without naming a period of grace for the order.
- 4.3. In the case of a delivery delay, total or partial failure to fulfil your delivery liability, you are liable for all damages arising from the non- or inadequate completion of the order contract. In addition, until the delivery/service has been completed in full, the supplier is obliged to pay a penalty of 5% of the overall order value for every week commenced. However, the penalty may not exceed 15% of the total order value. The right to enforce damages in excess of this figure is retained.

## 5. Dispatch, delivery documents

The supplier expressly accepts the dispatch instructions and the regulations for the completion of the delivery documents (see order text). Without the appropriate delivery documents, the delivery will not be accepted as the fulfilment of the order, or further processed, but stored at the risk and cost of the supplier.

In addition, the freight papers for deliveries from abroad shall include a commercial invoice (in duplicate) and a valid preference document (movement certificate, certificate of origin, etc.). In the case of sea freight

deliveries, the 3 original B/Ls shall immediately be sent following completion. Additional costs derived from late provision of the documentation will be charged to the supplier.

## 6. Risk transfer and place of performance

- 6.1. For supply and payment, unless otherwise agreed, the place of performance is Banner GmbH, Salzburger Strasse 298, 4021 Linz / Austria.
- 6.2. All risks relating to the delivery are first transferred to Banner following proper acceptance at the place of performance. This is also the case when freight-free delivery has not been agreed.

## 7. Warranty and guarantee

- 7.1. As our supplier, you shall guarantee the supply of faultless goods, appropriate design, perfect function and top finish and in particular, ensure that the delivery/service demonstrates the standard characteristics and those guaranteed in the contract, as well as corresponding with the basic models. The supplier accepts responsibility for freedom of defects for a period of 24 months from the date of acceptance or the start-up of the goods.

Recourse according to § 933 b ABGB remains unaffected. This can take place within 6 months of the fulfilment of our warranty obligation and also due to employer claims. Machinery is first regarded as accepted when a 1-month period of trial operation has been completed successfully.

- 7.2. Should faults occur, we are entitled to take recourse to the warranty at any time during the guarantee period. We have the right to select from the free substitution of defective parts, or free delivery of replacements, free repairs, or in the case of defects that cannot be corrected within a short period, to immediately withdraw from the contract, or as an alternative, to opt for the right to a price reduction. In the case of the repair of defects by the supplier, following acceptance of the correction, the warranty period commences again for the entire delivery/service affected by the defect. Within the scope of the warranty/guarantee, you are also responsible for assembly or reassembly work relating to the defect. Standstill and resultant costs are to be borne.
- 7.3. There is no obligation on our part to immediately examine the delivery/service upon delivery or to provide notification of any defects (commercial defect notification). In addition, having provided you with written notification, we are entitled to carry out replacement by a third party at your expense.
- 7.4. Despite the warranty claims listed above, the right to make claims for damages due to loss of production, or the failure of contracts with third party to materialise due to the supply of defective goods, is retained.
- 7.5. Irrespective of your professional behaviour, you are liable for adherence to all patent legislation, other intangible goods legislation and legal standards and directives and, in the case of any resulting conflicts, should indemnify us. In particular, you guarantee us the unlimited use and full power of disposal concerning the delivered item.
- 7.6. Furthermore, you will guarantee that apart from the legal requirements, the goods that you are to deliver shall correspond with the state-of-the-art and allow the fulfilment of the performance, operating conditions and other characteristics, etc. as stated in the order.
- 7.7. Similarly, you shall guarantee those goods, components and services that do not originate from your own production, but which you supply.
- 7.8. You have to demonstrably and voluntarily provide us with all relevant storage and operational regulations concurrent with the delivery, as otherwise you are liable for any damages that may occur due to a lack of knowledge of these stipulations.
- 7.9. Should conflicts occur, this does not entitle you to withhold or stop any outstanding deliveries and/or services.

## 8. Product warranty

You are fully liable for damages as defined by product liability law. Limitations of any type on our rights to damages and those of any final users in accordance with this law or other regulations will not be recognised.

## 9. Invoicing

Invoices shall be submitted in duplicate with a copy of the delivery note. The order number and the letter designation shall be clearly shown on the invoice. In addition, performance invoices shall be supplemented by an acknowledgement receipt.

## 10. Production information / Secrecy

Samples, models, drawings, plates and other information provided by us to the supplier for the fulfilment of contractual obligations will remain our physical and intellectual property and shall be at our free disposal at any time. This information may only be employed for the completion of our orders and shall neither be made accessible nor given to third parties without our consent. Following the completion of the order the documentation must be returned free of charge.

## 11. Payment

The agreed term of payment first commences following the complete delivery and receipt of a correct and auditable invoice. However, delivery and invoice receipt shall take place at least 10 working days prior to the respective date of payment.

Banner dates of payment are the 15th and last day of each month respectively.

In the case of goods or invoice receipts during the annual company vacation, which is made known in writing on the orders, the term of payment commences with the next 15th or 30th day of the month following the respective company vacation. Missing delivery documents, incomplete data or incorrect deliveries delay processing and thus the due date of your invoice.

## 12. Partial invalidity

Should individual terms of this contract become invalid, this does not result in the invalidity of the remainder of the contract.