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## **ASTORtec AG**

### **General Terms & Conditions – Edition May 1st, 2020**

#### **1. General / Scope**

- 1.1 These General Commercial Terms & Conditions (hereafter called "GCTC") are based on Swiss law and shall be applicable worldwide for the contract relationship between ASTORtec AG, Zürichstrasse 59, CH-8840 Einsiedeln (hereafter called "ASTORtec") and its customers (hereafter called "customer" or "customers"). By placing an order, the customer acknowledges these GCTC. Other terms and conditions as well as general terms and conditions of the customer shall only be valid if they have been expressly accepted by ASTORtec in writing.
- 1.2 All agreements and legally relevant declarations of the contracting parties shall require the written form to be valid. Only orders issued in writing shall be binding for us. Orally agreed arrangements shall require written confirmation by ASTORtec AG to be effective.
- 1.3 All documents named hereinafter shall be the basis of the contract between ASTORtec and the customer. They shall be applicable in the order of priority hereinafter. In case of conflicts, the higher-ranking provision shall take precedence over the lower ranking. The order of priority shall be:
  - a) the written purchase contract as provided in our order confirmation for the respective purchase,
  - b) the order confirmation,
  - c) our written price offer on which the purchase contract is based on and, if such was not delivered, the current price list of ASTORtec AG,
  - d) these GCTC,
  - e) the data protection declaration available on the ASTORtec website,
  - f) the other documents referred to in these general conditions, where relevant.
- 1.4 If the customer provides materials for further processing (materials provided by the customer), these must be delivered free to ASTORtec's factory and must comply with the specifications required for processing. The parties agree that the customer shall bear all procurement, insurance, transport and unloading costs. Once processing is complete, the customer will take back any residual materials at his own expense, otherwise ASTORtec reserves the right to destroy or dispose of the goods. Disposal costs are borne by the customer.
- 1.5 If multi-language versions of the GCTC exist, the German version shall be the sole deciding version.
- 1.6 Should any provision of this contract be or become ineffective, or should the contract contain a loophole, the legal effectiveness of the other provisions shall be unaffected thereby (severability clause). Instead of the ineffective provisions, an effective provision that comes as close as economically possible to the intent of the parties shall be deemed to be agreed from the beginning. The same shall apply in the case of a loophole in these GCTC.

#### **2. Entry into contract and price offers**

- 2.1 An offer submitted to the customer is non-binding, unless expressly stated otherwise in the offer. A contract is not concluded until ASTORtec has confirmed the order in writing in accordance with Section 2.2 below.
- 2.2 The contract is deemed to have been concluded when ASTORtec has confirmed its acceptance in writing after receipt of the order. The order confirmation is decisive for determining the scope and execution of the contractual services. After receipt of the order confirmation, changes to the order or its cancellation are only possible with the written consent of ASTORtec.
- 2.3 Properties of samples and specimens are only binding after explicitly written agreement. The information and data contained in data sheets, brochures or other advertising and information material concerning the properties of the goods, including notes on product stability, shall be regarded as a guideline and shall only become a binding part of the contract if this has been expressly agreed in writing or is noted in these General Terms and Conditions.
- 2.4 Likewise, the documents belonging to the offer, such as brochures, drawings, illustrations, weight and other information, unless expressly designated as binding in writing in the relevant contract or in these GTC, shall likewise only serve as guidelines and shall not become part of the contract. The right to amendments due to technical further developments and process improvements shall be reserved to ASTORtec.
- 2.5 Guarantees are only given by ASTORtec in the event of a special written agreement. Any reference to ISO standards or other standards and product specifications in the contractual documents serves only to describe the goods and does not constitute a guarantee. Details of quality and shelf life shall only be deemed to be a guarantee if they are expressly designated as such. The same applies to the transfer of the procurement risk.
- 2.6 The shelf life of a product is either specified on the product supplied (e.g. adhesives) or must be requested from ASTORtec. The expiry date specified on the product supplied or given by ASTORtec on request is a binding part of the contract. Similarly, any information on storage conditions specified on the product or given by ASTORtec on request or otherwise is a binding part of the contract.
- 2.7 Certificates of Analysis (CoA) will be made available on request. The effort for such documents will be charged or become part of a sales contract.

### **3. Prices**

- 3.1 The information in price lists and brochures shall be non-binding and shall be considered as guideline prices. Information provided by telephone are without obligation, too.
- 3.2 The prices stated in the order confirmation are valid for 3 months. For deliveries after the expiration of 3 months, counted from the date of the order confirmation, ASTORtec reserves the right to adjust the prices to changed raw material or third-party supplier prices before shipping the goods.
- 3.3 Unless otherwise agreed, ASTORtec's prices are net, "FCA Einsiedeln, Switzerland" (Incoterms® 2020) for deliveries outside Switzerland and "EXW Einsiedeln" (Incoterms® 2020) for deliveries within Switzerland, including packaging, without transport, without insurance and excluding the statutory value added tax (VAT) or mandatory sales tax.

### **4. Payment terms**

- 4.1 Unless otherwise agreed, the payment period is 30 days net from date of invoice.
- 4.2 The place of fulfilment for all payment obligations is CH-8840 Einsiedeln, Switzerland. Payments are to be made by the customer without deduction of cash discount (sconto), expenses, taxes and fees of any kind. Differently phrased payment terms shall be specially agreed and must be in writing.
- 4.3 In the event of late payment, ASTORtec is entitled to claim statutory interest on arrears at the rate of 5% per annum. The reminder fee is CHF 30 / EUR 30 for each reminder. ASTORtec AG shall expressly reserve the right to assert further claims.
- 4.4 In the event of late payment or if it must be feared that the customer will not be able to meet his payment obligations, ASTORtec reserves the right to immediately suspend planned deliveries. If the advance payment is not received within 14 days of the claim being made, ASTORtec is entitled to withdraw from the relevant contract in whole or in part. Further claims in this connection shall remain expressly reserved.
- 4.5 All costs in connection with the collection of overdue payments, including interest on arrears and reminder fees, shall be borne in any case by the purchaser.
- 4.6 ASTORtec also reserves the right to supply customers only against advance payment.

### **5. Set-off**

- 5.1 Claims of the customer, even if they originate from the same contract, may only be off-set with the written consent of ASTORtec.

### **6. Delivery Dates**

- 6.1 The delivery dates are confirmed with the order confirmation.
- 6.2 The delivery date will be adapted reasonably by ASTORtec if
  - a) the clarification of technical questions by the customer does not take place in time;
  - b) the particulars needed for the execution of the order are not received by ASTORtec in time, or if they are subsequently modified by the customer;
  - c) payment deadlines are not met, letters of credit are opened too late, or any necessary permits or approvals to be provided by the customer are not received by ASTORtec in due time;
  - d) a provision of material by the customer has been agreed - see clause 1.5 of these GTC -, this material does not arrive at ASTORtec on time or does not have the necessary and/or agreed properties;
  - e) the customer does not or late fulfil other obligations to cooperate;
  - f) hindrances occur which ASTORtec is unable to avert despite exercising due care, irrespective of whether these arise at ASTORtec, at the customer or at a third party. Such hindrances are incidents of force majeure, for example epidemics, mobilisation, war, riots, considerable operational disruptions, power and internet interruptions, accidents, industrial disputes, delayed or faulty delivery of the required raw materials, semi-finished or finished products, scrapping of important workpieces, official measures or omissions, fire, water or natural phenomena.
- 6.3 An adjustment of the delivery date according to clause 6.2 does not constitute a delay on the part of ASTORtec. In the event of a postponement of the delivery date based on clause 6.2 a) - e), the customer must compensate ASTORtec for all costs incurred by ASTORtec due to the postponement of the delivery date. ASTORtec reserves the right to make further claims.
- 6.4 ASTORtec is entitled to make partial deliveries insofar as these are reasonable for the customer.
- 6.5 Unless otherwise agreed, the delivery period shall be deemed to have been met if, by the end of it, the goods have been handed over to the agreed carrier for deliveries outside Switzerland ("FCA Einsiedeln, Switzerland", Incoterms® 2020) and, for deliveries within Switzerland, have been made available for collection ("EXW Einsiedeln", Incoterms® 2020).

### **7. Scope of supply, shipping and transportation**

- 7.1 The order confirmation is decisive for the scope and execution of the supplies and services. Material or services not included therein will be charged additionally.
- 7.2 In principle, ASTORtec AG shall deliver the exact quantities in accordance with the order confirmation. Excess or short quantities of up to  $\pm 10\%$  are permissible and will be taken into account accordingly, when the invoice is issued or either deducted or invoiced.

- 7.3 ASTORtec may make changes to the order confirmation after consulting the customer.
- 7.4 The terms of delivery agreed with the customer are stated in the order confirmation. If no agreement has been made, the delivery will be "FCA Einsiedeln" (Incoterms® 2020) for foreign deliveries and "EXW - Einsiedeln" (Incoterms® 2020) for deliveries within Switzerland.
- 7.5 If the goods are collected by the customer, the benefit and risk of the goods shall pass to the customer upon collection. In the case of goods to be shipped or delivered, the benefit and risk in the goods shall pass to the customer when the goods have been handed over to the carrier for shipment or delivery.
- 7.6 Shipping of the ordered goods is always at the expense and risk of the customer, even in the case of carriage-paid delivery. The packaging material will not be taken back.
- 7.7 Complaints in connection with the transport must be recorded by the customer in writing on the freight documents in accordance with section 9.4.
- 7.8 In the case of contractual delivery to an EU Member State, varying documents are required, depending on the applicable legislation, to prove that the transport from one EU Member State to another EU Member State has taken place. In the case of contractual delivery "FCA Einsiedeln" (Incoterms® 2020), these documents are obtained by the customer. The customer agrees to submit the relevant documents to ASTORtec on request to prove that the goods were delivered to another EU member state. This documentation may include the following:
- a) Contract for the international carriage of goods by road (CMR),
  - b) registration number of the transportation vehicle,
  - c) invoice of the carrier,
  - d) insurance documents,
  - e) written declaration that the recipient with registered office in another EU member state has received the goods,
  - f) name of the ferry or of the carrier, number of the airline company and, if necessary, number of the trailer or container in which the goods were transported.
- 7.9 The customer agrees that - should he be unable to provide conclusive proof of transport to another EU member state - the consequence may be that ASTORtec AG shall bill for the statutory sales tax and if applicable interest on arrears as well as fines to be paid additionally by the customer, if the relevant tax authority levies them. In all other respects, clause 10 applies accordingly.

## **8 Transport of Dangerous Goods**

- 8.1 For the collection of products which are classified as dangerous goods, the vehicle must be equipped in accordance with the Regulation on the Transport of Dangerous Goods by Road (SDR/ADR), the driver must be appropriately trained and in possession of the respective ADR permit.
- 8.2 As ASTORtec as the supplier is liable in the event of non-compliance with the dangerous goods transport regulations, ASTORtec is entitled to refuse loading in the absence of a valid ADR permit or in the case of vehicles equipped in violation of the regulations.

## **9. Late delivery**

- 9.1 Subject to clause 6.2, the customer is entitled to claim compensation for delayed deliveries, provided that a delay is proven to have been caused intentionally or through gross negligence by ASTORtec and the customer can prove damage as a result of this delay. If the purchaser is helped by a replacement delivery, the claim for compensation for late delivery shall be cancelled.
- 9.2 Compensation for late delivery shall amount to a maximum of 0.5% for each full week of delay, but not more than 5% in total, calculated on the contractual price of the delayed part of the delivery. The first two weeks of the delay shall not give rise to a claim for compensation for late delivery.
- 9.3 The purchaser shall not have any rights and claims for late delivery of the supplies or services other than those expressly mentioned in sections 9.1 and 9.2.
- 9.4 Complaints due to transport delays, incorrect reports or transport damage must be made immediately by the customer to the forwarding agent or carrier and ASTORtec must be notified in writing. Section 13.5 applies accordingly.

## **10. Default of Acceptance and Violation of Other Obligations to Cooperate**

- 10.1 If the customer is in default of acceptance or violates other obligations to cooperate, ASTORtec is entitled to demand compensation for the damage it has suffered, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the goods is transferred to the customer at the point in time at which the customer defaults on acceptance. If the customer violates duties of cooperation, ASTORtec is also entitled to adjust the delivery date appropriately in accordance with section 6.2.

## **11. Regulations in the Country of Destination and Foreign Trade Law**

- 11.1 The customer must draw ASTORtec's attention to all regulations and standards of the country of destination relating to the execution of the deliveries and services, operation and the prevention of disease and accidents, at the latest when placing the order.
- 11.2 Should ASTORtec be prosecuted as a result of failure to comply with the aforementioned duty of notification, the customer is obliged to indemnify ASTORtec in full.
- 11.3 With regard to the goods purchased from ASTORtec, the customer is obliged to comply with all applicable laws and other regulations of foreign trade law, in particular the regulations on export control and the applicable trade embargos. This includes both national and foreign regulations, in particular, but not exclusively, the regulations of the US Export Administration and EU

regulations. Products purchased from ASTORtec may not be resold, exported, re-exported, distributed, transferred or otherwise disposed of, directly or indirectly, without first complying with all restrictions, obtaining all necessary administrative approvals and complying with all formalities that must be observed or are required under the aforementioned laws, regulations and other rules.

- 11.4 The customer is also obliged to inform ASTORtec at the earliest possible time, but at the latest when the contract is concluded, whether the use of products purchased from ASTORtec in the military goods or armaments industry or any other military use by the customer or a third party is intended or cannot be excluded. Failure to inform in this regard is considered an assurance by the customer that no such military use of the products purchased from ASTORtec will occur.

## **12. Retention of Title**

- 12.1 ASTORtec AG shall reserve ownership of the entire supply until its purchase price has been paid in full.
- 12.2 On conclusion of the contract, the customer authorises ASTORtec to make the registration or reservation of the retention of title in accordance with the relevant national laws in all public registers, books or similar at the expense of the customer and undertakes to cooperate to the extent necessary and to fulfil all formalities in this respect.
- 12.3 For the duration of the retention of title, the customer is obliged to take all necessary measures to protect the property of ASTORtec and to maintain the delivered goods at his own expense. He is liable to ASTORtec for theft, breakage, fire, water damage and other risks. Furthermore, he will also take all measures to ensure that ASTORtec's ownership claim is neither impaired nor cancelled.
- 12.4 If a regulation comparable to the retention of title in Switzerland is not existing in the customer's country, ASTORtec may demand a bank guarantee or similar security in the amount of the respective order when confirming the order and refuse delivery until the aforementioned original security has been provided.

## **13. Warranty**

- 13.1 ASTORtec endeavours to ensure that the products supplied by it are free of manufacturing and material defects and comply with the contractual specifications.
- 13.2 Warranted properties are the specifications explicitly agreed as warranties in the order confirmation or in the contract. Sections 2.3 - 2.6 apply.
- 13.3 Claims for defects shall not exist in the case of only insignificant deviations from the agreed quality and/or only insignificant impairment of usability.
- 13.4 Subject to shorter shelf life periods (see Section 2.6), claims for defects shall become statute-barred one (1) year after delivery. This also applies to services intended for a building. In the case of goods intended for private use, warranty claims shall become statute-barred two (2) years after delivery, subject to shorter durability periods (see clause 2.6).
- 13.5 Warranty claims of the customer presuppose that he has duly fulfilled his legal obligations to examine and give notice of defects. The customer must inspect the goods immediately, but at the latest within one (1) week after delivery, and in the event of detectable defects or incompleteness of the goods, the customer must immediately complain about the defect in writing, stating the defect and the order or invoice number. If a defect or short delivery can only be detected later, the customer must complain in writing immediately, but at the latest within one (1) week after detection, stating the defect and the order or invoice number. In the event of a complaint, the customer must grant ASTORtec access to the goods for the purpose of inspection and at their request or, if requested by ASTORtec, return a representative quantity of goods. If requested to do so by ASTORtec, the documents, samples and/or the entire defective goods must also be returned to ASTORtec at the expense of ASTORtec.
- 13.6 Claims of the customer due to defectiveness or incompleteness of the delivery are excluded if he does not meet the obligations mentioned in section 13.5. Claims by the customer due to defectiveness or incompleteness of the delivery are also excluded if the customer or third parties do not immediately take all suitable measures to reduce the damage and give ASTORtec the opportunity to remedy the defect.
- 13.7 If product defects should come to light, ASTORtec may, at its discretion, make a replacement delivery or rectify the fault. Any further warranty claims by the customer are excluded to the extent permitted by law.
- 13.8 If the product defect is not remedied within a reasonable period of time (60 days) by replacement delivery or otherwise by ASTORtec, the customer may demand a reduction in the contract price or cancellation of the contract.
- 13.9 If the customer is entitled to demand a reduction in the contract price or cancellation of the contract in accordance with clause 13.8, he must declare within a reasonable period (1 week) at the request of ASTORtec whether and how he will make use of these rights, otherwise he forfeits them.
- 13.10 Claims for compensation for damages of any kind that arise as a result of improper handling (e.g. non-compliance with storage conditions or other specifications) or use (e.g. use according to expiry date), improper processing steps, assembly and/or handling of the goods, as a result of incorrect advice or as a result of changes by the customer or third parties, are excluded.
- 13.11 Excluded from the guarantee and liability of ASTORtec are damages that can be proved to have been caused by poor material, poor workmanship or other reasons for which ASTORtec is not responsible. Subject to any mandatory statutory provisions, ASTORtec accepts no liability whatsoever for manufacturing or material defects in goods purchased from third-party manufacturers.
- 13.12 Any guarantee and liability on the part of ASTORtec is excluded for sample goods provided, regardless of whether these were issued for a fee or not, subject to mandatory statutory provisions.

#### **14. Liability**

- 14.1 ASTORtec has unlimited liability in cases where a guarantee has been expressly assumed. ASTORtec also has unlimited liability in cases of injury to life, body or health. Subject to intent and gross negligence and subject to liability on the basis of mandatory legal regulations, in particular the Product Liability Act, all other contractual and non-contractual liability on the part of ASTORtec is excluded.
- 14.2 The contractual and non-contractual liability of ASTORtec for consequential damage (e.g. consequential damage caused by defects, indirect and indirect damage, loss of profit or claims by third party customers of the customer) is excluded, unless mandatory legal provisions, in particular product liability provisions, conflict with this. If ASTORtec awards compensation for consequential damage as a gesture of goodwill in individual cases, this will always be without prejudice and without recognition of any legal obligation.
- 14.3 All cases of contract violations and their legal consequences as well as all claims of the customer, regardless of the legal basis, are conclusively regulated in these conditions. In particular, all claims not expressly mentioned are excluded.
- 14.4 The above limitations of liability also apply in terms of reason and amount in favour of the legal representatives, employees or other vicarious agents and/or assistants of ASTORtec.

#### **15. Ownership of Tools, Moulds and Equipment**

- 15.1 All tools (e.g. for die-cutting) and moulds used for the manufacture of the products are the property of ASTORtec, even if their production costs have been fully or partially borne by the customer. Lending of the tools and moulds to the customer or to third parties is excluded. ASTORtec commits, however, not to use tools, moulds and equipment that have been fully financed by the customer and, unless otherwise agreed, not to produce for third parties using this equipment.
- 15.2 If no repeat order is placed within three years, ASTORtec is entitled to dispose freely of the tools, moulds and equipment, in particular to shred them or use them for production for third parties.

#### **16. Data Protection**

- 16.1 ASTORtec uses the personal data provided by the customer to fulfil and process orders or inquiries, to issue invoices, to maintain ongoing customer relations, to guarantee operation and maintain operational safety, to fulfil legal obligations and for marketing purposes. To the extent permitted by law and if deemed appropriate by ASTORtec, it may, in the course of its business activities, disclose the personal data it has collected to third parties in Switzerland and abroad (e.g. service providers, suppliers and other contractual partners of ASTORtec) for processing for the use of ASTORtec or for their own purposes. In particular, the data will be passed on to the shipping company commissioned to deliver the goods (insofar as this is necessary for the delivery of goods), to processors of order data at home and abroad called in by ASTORtec, and to the group companies of ASTORtec at home and abroad. As a customer, you expressly agree to this use of your data. In addition, reference is made to the ASTORtec data protection declaration which can be accessed on the website < [www.astortec.ch](http://www.astortec.ch) >. By placing an order, the customer confirms that he has taken note of this data protection declaration and that he agrees with the provisions of the data protection declaration.

#### **17. Applicable Law**

- 17.1 All legal relations between the customer and ASTORtec are subject to Swiss substantive law, excluding the UN Convention on Contracts for the International Sale of Goods (CISG or Vienna Sales Convention).

#### **18. Place of jurisdiction**

- 18.1 All disputes between the customer and ASTORtec are subject to the jurisdiction of the ordinary courts at the registered office of ASTORtec, CH-8840 Einsiedeln. Nevertheless, ASTORtec also has the right to take legal action against the customer before the competent court at his place of business.