

General Terms and Conditions of Delivery and Payment of abatec GmbH effective as of October 2018

1. General provisions

Sales and deliveries by abatec shall be exclusively subject to the following terms and conditions, which shall apply to all current and future sales contracts. Any deviating purchase conditions or other general terms and conditions of the customer shall not apply, even if the customer declared them to be the basis of the contract. Any modifications and collateral agreements must be agreed upon separately in writing before the customer prompts any performance by abatec. Any ineffective provision shall be replaced by an effective provision which comes as close as possible to the economic intent of such ineffective provision.

2. Offers

Our offers are without engagement unless otherwise stated in writing in the individual offer. Our offers shall not be deemed accepted unless abatec issues an order confirmation at its principal place of business.

2.1. Forecast

Together with abatec offer, the customer shall receive a proposal for an annual forecast (Excel sheet) which is to be filled in by the customer with the support of abatec respective sales representative. Such forecast shall include a "frozen window", in which the customer must not make any changes. If the customer fails to provide abatec with such forecast, the term of delivery stated in the offer shall apply to each call, i.e. the full term of delivery for the materials plus a production time of two weeks.

3. Orders

The customer shall be bound by any orders placed for a period of 4 weeks. The customer shall be entitled to cancel such orders if abatec fails to send an order confirmation within such 4-week period. Any earlier cancellation shall be subject to our approval. We shall not be bound by any order unless we sent a written order confirmation. Such order confirmation or any refusal to accept the order shall be sent within 4 weeks upon receipt of the order by abatec. In case of immediate deliveries, the invoice shall be deemed to be the order confirmation.

3.1. Frame orders / call orders

Unless otherwise agreed upon, the customer shall be obliged to accept any frame orders within a period of 12 months upon order confirmation. In case not all of the delivery dates for a call order are stipulated as of the time of order confirmation, the parties agree that the customer shall accept the entire order within one year after the date of the order confirmation. We shall confirm any agreements deviating therefrom in writing together with the order confirmation.

3.2. Postponing and/or scheduling call-offs

Within the agreed upon period of delivery, call-offs may be postponed flexibly, except for the scheduled deliveries stipulated in the "frozen window" of the annual forecast. Any earlier call-offs, however, shall be subject to an agreement with the respective sales representative and to the reimbursement of all additional costs and expenses incurred.

4. Procurement of components

4.1. Allocation of components

If we know at the time the order is placed that components must be procured, the delivery time and prices of which are uncertain, we shall at first employ our best efforts to procure such components. If we succeed, we shall procure the other materials, but if we fail to do so, the customer shall be obliged to list alternative components. Until a final agreement on the procurement of such components is reached, the entire order shall not be taken into consideration for production planning purposes, including the procurement of all other components for such particular order.

4.2. Purchase of components from brokers

As a general rule, any purchases from brokers of components which are difficult to procure or any purchases from brokers made due to any allocation shall be subject to the customer's approval. Purchases of components from brokers are subject to the customer's written order. abatec shall not be able to verify the quality of such products, therefore, such products shall be procured at the customer's risk, and abatec shall not assume any liability for any damage caused by such components.

4.3. Change requests by the customer

As a general rule, the customer's change requests, if any, must be in writing and are subject to a written confirmation by abatec in order to become effective.

Until abatec issues such written confirmation of a change of the order, the entire order shall not be taken into consideration for production planning purposes, including the procurement of all other components for such particular order.

4.4. Changes of the bill of materials

Any costs arising from any change request made by the customer, including but not limited to additional expenses, all components which cannot be cancelled any more, etc. shall be borne by the customer. The customer shall be obliged to accept any delays in delivery resulting from changes to the bill of materials.

5. Term of delivery

The term of delivery shall commence as of the first working day on which all commercial and technical pre-conditions for the execution of the order are fulfilled, any required approvals are obtained and we received the agreed upon down payment or payment in advance, as the case may be. We shall not assume any liability for any delay in delivery or non-delivery if this results from the fact that we or one of our sub-suppliers suffer from an interruption of operations or interruption of production, difficulties in procuring materials, lack of workers, strikes, riots, lock-outs or cases of force majeure. In case of any such occurrence, we shall be entitled to rescind the contract in whole or in part, and the customer shall not be entitled to assert any claims for damages in connection therewith. Any changes requested by the customer might lead to an extension of the term of delivery. The term of delivery shall be deemed complied with if - as of the time the term of delivery expires - the item to be delivered left the company or the customer was informed that the item is ready for despatch.

6. Changes of technical specifications

We reserve the right to change the technical specifications without prior announcement, provided such change is a consequence of technical progress.

7. Orders from mail order suppliers and mail order distributors

If goods or components that abatec does not have on stock could be delivered at an earlier date by mail order suppliers and mail order distributors, the customer shall give us the written instruction to order from such suppliers. Any additional costs incurring shall be borne by the customer.

8. Surplus quantities

Together with abatec offer, the customer shall receive a list containing any surplus quantities resulting from minimum order quantities or packing units of components. The customer shall be obliged to accept such surplus quantities as components. Should no follow-up order be placed for such components, we shall deliver the remaining materials relating to such components to the customer ex works and invoice such materials at a price which is 10 % above the cost price paid by abatec.

9. Cancellation

Any cancellation shall be subject to abatec prior written consent. The customer shall then be invoiced for any work performed by abatec until the time of cancellation on a pro rata basis. In addition, the customer shall be obliged to pay for all components and items on stock and for all components and items ordered from suppliers which cannot be cancelled any more. Any additional expenses resulting therefrom shall also be borne by the customer.

10. Materials provided by the customer

In case any materials to be provided by the customer are delivered at a later time than stipulated or in quantities lower than ordered by abatec, any damage and/or expenses resulting therefrom (machine standstill, setup costs, etc.) shall be borne by the customer. If we do not receive an order confirmation including dates of delivery within 10 working days upon our order for materials to be provided by the customer, we shall be entitled to exclude the relevant order from the production planning. Any additional costs resulting therefrom (including but not limited to storage costs, pre-financing costs, machine standstill, etc.) shall be entirely borne by the customer.

11. Prices

As a general rule, abatec calculates its prices based on the prices of distributors, suppliers (except for mail order suppliers or mail order distributors) and manufacturers. Unless otherwise agreed upon, our prices are stated net, ex works and excluding packaging, transport and VAT. Pricing and invoicing shall be in €. Should any cost changes occur or should the customer exceed the time limit for any call order after the conclusion of the contract, we reserve the right to a corresponding price modification.

11.1. Metal surcharges

Metal surcharges shall be calculated based on the current daily metal price on the date of delivery and invoicing by the supplier. For call-offs of frame orders, the surcharge shall be re-calculated based on the current daily metal price. In case of any deviation of + 3 %, we reserve the right to modify the prices accordingly.

11.2. Price fluctuations

Our prices are based on the current daily exchange rates. In case of any deviation of + 3 %, we reserve the right to modify the prices accordingly.

12. Termination of project protection by manufacturers

abatec prices shall be subject to price changes by manufacturers. Should any manufacturer change a project price without any fault on abatec part, abatec shall be entitled to pass on such price change to the customer. Any other additional costs in relation thereto shall be borne by the customer.

13. Shipment, packaging and insurance

Shipment shall be effected in the seller's discretion and the seller shall not guarantee that the cheapest method of transport will be selected. The risk shall pass to the customer upon shipment. Partial deliveries shall be admissible. We may take out transport insurance at the customer's expense. Unless otherwise agreed upon, offers shall remain valid for a period of 30 days after the date of such offer. The prices stated shall only be valid if the customer requests a date of delivery within three months from the date the order was placed.

14. Payment

Our invoices shall be due as follows: amount of invoice net cash without any deductions, free of postage and expenses after receipt of invoice. No discount shall be granted unless expressly stated upon invoicing. Payments shall be deemed made at the time the full amount is at our free disposal. In case of any delay in payment, we shall charge default interest amounting to 5 % above the relevant bank rate. If the customer is in delay of payment or should any doubts about the customer's creditworthiness arise or should any material deterioration of the customer's financial circumstances occur, we shall be entitled to revoke any terms of payment granted and to effect further deliveries against payment in advance or cash on delivery exclusively. In addition, any terms of payment granted shall become void and all of our claims shall become due immediately, if the customer is in default of performance, does not honour cheques and other notes, revokes any direct debit authorisations granted to us or files for bankruptcy or offers to make a compromise. In such cases, as a matter of precaution, we shall be entitled to get back goods already delivered at the customer's expense without being obliged to terminate the contract or to set an additional grace period.

15. Retention of title

The goods shall remain our property until full payment of the purchase price. In case of payment made by cheques or bills of exchange which we did not expressly accept in discharge of the relevant claim, the retention of title shall remain valid until such cheques or bills of exchange are honoured. The customer shall be entitled to re-sell the goods subject to retention of title in the ordinary course of business. Any claims resulting from such re-sales shall be assigned to us up to an amount corresponding to our entire claims from the business relationship. We shall be entitled to request at any time that the customer discloses its purchaser's name to us and we shall be entitled to inform the purchaser of the assignment of the claim and to collect the debt directly from the purchaser in case of any delay in payment by our customer. For the duration of the retention of title, the customer shall not be entitled to pledge the relevant goods or to transfer them by way of security. An extended retention of title shall apply if the delivered goods are processed. The supplier shall be the exclusive owner of such newly produced item and the title to such item shall not be assigned to the customer until payment of the entire outstanding invoice amount.

15.1. Documents

We reserve the title and copyright to all cost estimates, drawings and other documents. Such documents may not be used for any other purpose, copied or disclosed to third parties and such documents do not entitle the holder to recreate individual parts. All documents and samples which form part of the offer must be returned without a request being required.

16. Obligation to inspect and obligation to make a complaint in case of any defect immediately upon receipt

The customer shall be obliged to inspect the goods immediately upon receipt and make any complaints due to defects in quality, wrong delivery and/or deviations in quantity immediately and in writing, however, not later than 7 days after receipt of the goods at the place of destination. Such period shall be deemed complied with if the written complaint with an exact description of the relevant defect and indicating the order number and number of the bill of delivery is sent in due time. In case any notices of defects or complaints are not sent in due time, the delivery shall be deemed accepted if the customer is a businessman. In order to enable us to verify the complaint, the customer shall be obliged to send us the defective goods and/or components immediately and free of charge upon request. Any complaints about hidden defects must be made immediately after detection of such defect.

17. Warranty, limitation on liability and repairs

Our liability for defects shall be limited to the extent any reimbursement is paid by the relevant supplier. Any deviations for warranty purposes shall not be valid unless agreed upon in writing. The agreed warranty shall be restricted, in our sole discretion, to repair, replacement or spare part delivery, assignment of any claims we may have against our subsupplier or to the issue of a credit note.

Liability shall be excluded if the customer fails to assert any claims due to defects immediately and in writing. Defects caused by the fact that persons not authorised by us to do so made any changes to components / equipment delivered shall be excluded from warranty. In such case, we shall in particular not be liable for any damage due to incorrect installation, operating errors and external influences. Any agreed warranty shall be void in case the serial number of any component / equipment delivered is obliterated or if relevant safety warnings were removed or damaged. Parts which due to their properties or due to the type of their use, are subject to heavy wear and tear, such as indicator lamps, fuses, switches and push buttons as well as any damage resulting from extraordinary strains such as electric arcs, radiation exposure, electrostatic and electromagnetic interference fields, environmental impacts and operating conditions etc. shall be excluded from warranty. We shall only be bound by the agreed warranty if the purchaser fulfilled its obligations, including but not limited to the payment of the purchase price. Claims for consequential damages, irrespective of the legal grounds thereof, shall be excluded to the extent such damage is not caused by wilful intent or gross negligence. In case of any delay in delivery, the customer shall be obliged to set a reasonable grace period; thereafter, the customer shall only be entitled to rescind the contract. Any other claims, including but not be limited to claims for consequential damages, shall be excluded.

If the customer asks for a cost estimate before we effect any repairs, the customer shall be obliged to expressly request it. The costs for such cost estimate shall be borne by the customer. Costs for shipment and packaging shall be borne by the customer. We shall not accept any shipments sent carriage forward unless agreed upon in advance and in writing.

Defects shall not entitle the customer to rescind the contract unless there is evidence that such defects are based on abatec failure to perform and provided that abatec is not able to reasonably rectify such defect or to otherwise fulfil its warranty obligations, in each case within 90 days upon receipt of a written notice (see paragraph 1).

18. The customer's right of set-off and right of retention, prohibition of assignment

The customer shall only be entitled to set off its own claims against abatec claims if the customer's claims were recognised by a court. Any right of retention shall be excluded. Without the supplier's prior written consent, the customer shall not be entitled to assign its rights and obligations arising out of these conditions to any third party in whole or in part.

19. Data protection

We shall store personal and company data for the purposes of the business relationship and shall process such data within our company.

20. Choice of law, place of performance, place of jurisdiction

All contractual agreements shall be subject to Austrian law. Place of performance and exclusive place of jurisdiction shall be the seat of abatec GmbH.