

Conditions of Purchase

**Carbo Tech Industries GmbH and
Carbo Tech Composites GmbH,**

both at A-5020 Salzburg, Eugen-Müller-Str.
herein referred to as "Carbo Tech"

1. General

These Conditions of Purchase apply to all purchase, work and service contracts concluded by Carbo Tech, whatever these might be called in particular, as well as to subsequent orders, without having to refer to them separately.

The herein called "Supplier" is the contracting party assigned by Carbo Tech for supply, work and service performance.

2. Conclusion of Contract, Orders, Invoicing

The legal relationships with the Supplier shall be exclusively governed by these Conditions of Purchase as well as by any written individual agreements /contracts. Such individual agreements / contracts shall supersede the present Conditions of Purchase.

Other General Terms and Conditions of the Supplier shall not be valid even if we have not explicitly objected to them in individual cases.

Our orders shall be legally binding for both parties if they are placed in writing and the Supplier does not object in writing within 48 hours of arrival or accepts in writing in a defined modified form. In the case that the order can only be accepted in a modified form, this constitutes a new offer by the Supplier for Carbo Tech and requires examination and a new acceptance by Carbo Tech.

On invoices and all other documents relating to an order / supply, the Supplier shall state our order number; otherwise Carbo Tech cannot process the invoice and is entitled to consider it not been received.

3. Delivery, Delivery Date, Force Majeure

All shipments shall be subject to Incoterms 2000; if in the individual case no other specific Incoterm clause was agreed on, DDP Salzburg Incoterms 2000 will apply. The goods have to be insured by the Supplier up to the place of unloading.

The Supplier shall provide correct and proper packing for each shipment. Costs for shipment, packing and transport insurance shall be borne by the Supplier.

All shipments shall enclose appropriate shipping documents, in particular precise declaration of contents with product designation, quantity, weight and the like according to the order documents; otherwise we shall have the right to reject delivery.

All delivery of goods and services shall take place on the date agreed, at the receiving centre and during the commissioning periods stated by Carbo Tech.

The receipt of goods at the delivery address or proper acceptance is relevant. We are not obligated to the acceptance of part- or over-delivery and deliveries before the agreed date.

If the agreed delivery dates, which are fixed dates according to § 919 Austrian Civil Code, are not adhered to, we have the right to withdraw from the contract. Even if we insist on completion of the contract, we shall have the right to claim compensation for all damages, including all indirect financial losses as well as the loss of profits.

The Supplier shall inform us immediately upon realising an anticipated delay in delivery, its duration and reason. In such case Carbo Tech is entitled to withdraw from the contract without awaiting the agreed upon date and without extension of time.

Furthermore, in the case of delay in delivery, the Supplier shall pay a contract penalty of 2% of the total order value for each week of delay or part thereof, the maximum being 10% of the total order value, the minimum €500 per week until complete delivery / performance has been carried out.

We reserve the right to claim any damages exceeding such contract penalty.

The contract penalty shall not be subject to a court's right of mitigation.

In the event of force majeure (e.g. but not exclusively strike, war, fire, flooding), we shall be released of the obligation of acceptance for the duration and shall be entitled to withdraw from the contract without any claims arising against us for the Supplier.

The Supplier in principle guarantees upon request to carry out training, maintenance and repair work as well as subsequent supply of wear and spare parts for a period of 15 years from delivery.

4. Subcontracting / Pre-Suppliers

Subcontracting, either complete or in part, is not allowed, unless express written consent is given by Carbo Tech. All pre-suppliers and any changes have to be reported to us. Under no circumstances will a legal relationship result between Carbo Tech and subcontractors or pre-suppliers.

The Supplier is not authorized to vest rights and duties from this contract in whole or in part to a third party. An assignment requires our previous express consent with both singular and universal succession. However, Carbo Tech is entitled to assign the rights and duties from the contract to third parties by means of singular succession with a debt-discharging effect.

5. Dispatch Regulations, Place of Performance

The Supplier is liable in full for any damage and cost arising from non-compliance with shipping requirements or agreed shipping conditions (e.g. extra trip, extra freight, demurrage).

In the absence of shipping regulations or conditions, the type of delivery most favourable for us shall be selected.

The items to be delivered and the packing shall be marked in accordance with our regulations and any relevant documentation requirements in such a way that origin and date of production (e.g. by part number, drawing number, order number, designation of parts) can be detected without any doubt. Unless stipulated otherwise, the place of performance for delivery and payment shall be the above mentioned company address.

6. Prices

All agreed prices are fixed prices, delivered to the place of destination according to the stated incoterms and include all expenses of the Supplier e.g. for packing, quality management, function and quality inspection, necessary documentation and if needed licenses and insurances.

Offers and related documents of the Supplier are free of charge for Carbo Tech, no matter to what extent preparatory work is necessary.

In the cases of serial and subsequent supplies, the Supplier has to deliver to us goods and services during the duration of the supply / service contract which are competitive with respect to price, quality and delivery times. If we should notice that the Supplier does not deliver according to competitive terms, after another possible supplier offers the production and supply of the object of the contract for more favourable terms, without the supplier meeting these terms, we will discuss the possibilities with the Supplier to reach these terms. In case that there will be no agreement within 30 days, Carbo Tech has the right to cancel all or some parts of the contract within 30 days' notice. Regardless of the contract termination, the Supplier is obliged to fulfil the orders / call-off orders mailed before contract termination.

7. Invoicing, Payment

Invoices have to be transmitted after delivery or performance to the ordering enterprise if not stipulated differently. In addition to the order number, invoices shall show all order data, type of shipment, and delivery note. Invoices shall contain all legally required details for our tax purposes and conform to customs regulations.

The period of payment shall commence at the time of receipt of invoice or goods or upon completion of services or final acceptance, whichever is the later. In case delivery happens earlier than agreed, the period of payment shall start at the agreed date at the earliest.

Unless otherwise agreed, the terms of payment for accepted deliveries or services shall be 14 days 2%, 60 days net.

Our payment shall not automatically constitute acceptance of the delivery item or service or acknowledgement of the delivery or service conforming to the contract.

The supplier is not entitled to offset claims by us as far as these claims are not acknowledged, are in dispute or are without legal capacity.

Carbo Tech shall have the right to offset counterclaims, including those of group companies, against the claim of the Supplier. The Supplier shall not be entitled to a retaining lien. The assignation of claims of the Supplier against us is not permitted unless our express written consent is given.

8. Quality

The Supplier guarantees that his deliveries and services conform to

the technical specifications agreed upon,
the features promised,
state-of-the-art technology,
safety and quality standards and
legal and other regulations.

In order to ensure the quality performance with all deliveries expected by Carbo Tech, the Supplier shall install, maintain and regularly prove to use an appropriate quality management system (minimum EN ISO 9000 ff or similar, ISO TS 16949, VDA 6.1 (Association of the Automotive Industry).

Carbo Tech shall be entitled to check the effectiveness of the quality management system of the Supplier also by means of visits and audits on site, e.g. in accordance with VDA 6.1. "QM System Audit".

The Supplier has to check the items to be delivered constantly during production and delivery.

According to VDA publications, the Supplier, in the case of series deliveries, shall only start serial production upon receiving our written approval of the initial sample. For inspections of initial samples and the form of documentation, please refer to VDA-Issue 2 "Sicherung der Qualität vor Lieferungen-Lieferantenauswahl, Bemusterung, Qualitätsleistung in der Serie" ("Safeguarding the quality prior to deliveries- selection of suppliers, sampling, quality performance for series deliveries") unless another capable serial production is agreed upon with Carbo Tech in an individual case.

In case of contractual, legal or commercial documentation requirements for delivery items or services (e.g. with safety components and such), the Supplier shall keep appropriate and complete quality records, retain the inspection documents / data / samples / documentations for 15 years after completing the last delivery and present them to us upon request. Subcontractors, if any, shall be bound by these obligations by the Supplier. The minimum requirement is described for guidance in VDA Issue 1 "Leitfaden zur Dokumentation und Archivierung von Qualitätsforderungen und Qualitätsaufzeichnungen" ("Guideline for documentation and archiving of quality requirements and quality records").

The Supplier shall furnish us unrequested and prior to delivery with safety data sheets or accident instruction sheets conforming to legal regulations applying to materials and things which, due to their nature, qualities, or state, may be harmful to human life and health, the environment, and things, which therefore are subject to regulations requiring special treatment in terms of handling, packing, transportation, storage and waste disposal.

9. Warranty

If not stipulated differently in an individual contract, the Supplier shall guarantee conformity of delivery of goods or services with the order, compliance with all relevant legal and official regulations, state-of-the-art construction, quality of execution, all promised features and the use of faultless materials for a period of 36 months for movable goods, and for a period of 60 months for immovable goods or goods that are intended for installation in or use with immovable goods.

Warranty shall become effective upon acceptance of the delivery item by our final customer or, in the case of use at our premises upon acceptance of free of defect goods or services by us.

Our inspection upon receipt shall be limited to defects that are obvious such as e.g. faulty packing damage in transit, wrong delivery, over- or short-delivery. We shall report such defects to the Supplier within 14 days as of delivery.

There shall expressly be no further obligation for Carbo Tech to inspect the goods/services promptly upon delivery and to give notice of defects in this regard.

In fact, Carbo Tech shall be entitled to claim warranty for any defects that occur during the warranty period at any time.

In a case of warranty, Carbo Tech shall have the right to demand at its own choice improvement at no cost or replacement of the defective supply, having the defect corrected by a third party at the Supplier's expense, rescinding the contract forthwith or claiming an appropriate reduction of price.

In the case of a complaint concerning a developing defect on deliveries, we are entitled to bill the Supplier for a lump sum expense of €50 per complaint. All our further claims shall remain unaffected.

The warranty period shall start anew after defects are corrected by the Supplier and after the correction is accepted by Carbo Tech and shall apply to the entire product/service affected by the defect.

Any claims for damages by Carbo Tech shall be without any prejudice to the warranty thus described.

10. Indemnity

The Supplier shall be liable for any and all damage we incur due to late or defective delivery of goods or services resulting from his negligence or that of his assistant.

In the case of damages of the delivery item caused by a defect, alleged or real, if such allegation cannot be rejected without comprehensive inspection, violation of the supply or service level agreement or any other illegal conduct caused by the Supplier, the Supplier shall indemnify and hold harmless us and our representatives, assistants, directors and other corporations that sell or process goods or products in which the delivery items are integrated as well as their customers from and against any claims, costs, damages and expenses including costs for prosecution.

If Carbo Tech is held liable by a third party under the regulations of the Product Liability Act, the Supplier shall prove that a defect of his product delivered is not existent in the legal sense of the product liability provisions.

The Supplier shall be furthermore obliged to fully inform us concerning this matter and to support us in any litigation with third parties and hold us harmless and indemnify us from and against any and all claims of third parties. This shall apply even if the delivery item represents only part of services rendered by us to third parties.

The Supplier shall indemnify and hold harmless us and our representatives, assistants, directors and other corporations that sell or process goods or products in which the delivery items are integrated as well as their customers from and against any claims, costs, damages and expenses including costs for prosecution arising from or due to a recall if such recall was necessary because of the delivery item or the service rendered by the Supplier.

The Supplier shall take out and keep up insurance at his own expense which covers his liability against Carbo Tech and third parties to the necessary extent and upon our request shall produce the current supporting documents.

By accepting the order, the Supplier explicitly guarantees that the delivery item is not covered by any rights, particularly any property rights of any third party. In the case of claims of third parties, he agrees to indemnify and hold Carbo Tech harmless.

11. Means of Production, Ownership, Secrecy

Means of production are considered to be equipment, production facilities, moulds, tools, swages, testing and measuring tools, gauges, specimen, components, samples, models, drawings, printing plates or other devices which are if necessary required for the production and the check of the delivery items.

If Carbo Tech provides any means of production to the Supplier to fulfil his contractual obligations, those shall remain our absolute tangible and intellectual property.

The same applies to all means of production built according to Carbo Tech's order, which were paid by Carbo Tech. These means of production shall be permanently labelled as clear property of Carbo Tech and shall exclusively be used to execute our orders. They shall not be made accessible or entrusted to external third parties. They shall be returned to us upon completion of the order or termination of the respective contract free of charge, unless otherwise agreed upon.

The Supplier shall at his own cost assume proper storage, upkeep and maintenance of our means of production in such way that damages, loss or destruction, including force majeure, are impossible.

The Supplier commits himself to dealing with all commercial and technical situations that become known to him during the business relationship and are not general knowledge as a business secret. The objects, data and documents entrusted to him remain the property of Carbo Tech and shall be kept secret from third parties and shall not be copied nor made accessible or entrusted to external third parties without Carbo Tech's consent. Subcontractors, pre-suppliers and employees of the Supplier shall be bound accordingly.

The obligation of keeping Carbo Tech's company and business secrets confidential shall extend indefinitely also to the time after the ending of the business relationship. For each and every violation of the obligation to secrecy we can demand a contract penalty, the amount of which will be determined at our equitable discretion. Further legal claims by Carbo Tech shall in any case remain unaffected.

The Supplier is only allowed to refer to business relations with us in his advertising after our written consent.

12. Court of Jurisdiction, Applicable Law , Miscellaneous

For interpretation and settlement of disputes, this contract shall be governed by Austrian law. Application of the UN Sales Convention shall be explicitly ruled out. The competent courts in Salzburg, Austria, shall have the exclusive jurisdiction over any legal disputes. However, Carbo Tech shall be entitled, at its discretion, to sue the Supplier at any other court which can be assigned jurisdiction according to the law in force.

If any provisions in the contracts shall be void or invalid, this shall not in any way affect or impair the validity of the remaining provisions and the contract as a whole.

The headings used for the individual subject matters in the present Conditions of Purchase are for illustration purposes only and shall not be used for interpretation.

Modifications and additions to contractual agreements shall only be valid when in writing.