

Terms and Conditions of Purchase of the direct services Gütersloh GmbH

direct services Gütersloh GmbH
An der Autobahn 300
33333 Gütersloh

Registered Office: Gütersloh
Local Court Gütersloh HRB 3827
Directors: Axel Hentrei and Dirk Kemmerer
Valid from: 01. March 2017

1. Scope of Application

These Terms and Conditions of Purchase apply to all legal transactions between the companies specified in Section 14 - hereinafter the "Customer"- or to other national legal entities of arvato if they include these Terms and Conditions of Purchase.

Any of the Supplier's own general terms and conditions that are in conflict with these Terms and Conditions of Purchase are hereby expressly excluded, even in cases where the Supplier requires exclusions to be expressed in a particular form. The acceptance of deliveries and services does not in any way constitute recognition of the Supplier's general terms and conditions. This also applies in cases where the Supplier states his/her desire to deliver only under his/her own terms and conditions. If an exclusion is ruled out, the statutory provisions shall replace the contradictory terms and conditions.

2. Orders

2.1 Orders and delivery requests constitute legally binding requests on the part of the Client for the Supplier to provide a product or service.

2.2 All orders, delivery-requests, as well as any alterations or additions to the same must be done in writing. The accepted means of submission in writing are transmission by fax, e-procurement system, email and EDI. Orders submitted by the Client must be accepted by the Supplier within 14 calendar days. Any delivery requests made by the Client shall be binding for the Supplier unless objected to within two working days of their receipt. The timeliness of all statements made by the Supplier shall be defined when they are received by the Client.

2.3 The Client is entitled to make alterations to deliveries or agreed services, provided said alterations are considered reasonable by the Supplier. The effects of such alterations must be taken into account accordingly, especially in terms of differences in cost and deadline alterations.

2.4 Wherever possible, all written correspondence from the Supplier must specify the SAP order number and be addressed to the member of the Client's staff responsible for processing the purchase, as detailed on the order.

3. Prices

All prices include all additional costs (transport, packaging and customs duty) and delivery, excl. VAT. If, after conclusion of the contract but prior to delivery, the Supplier makes general reductions to his/her prices, the Client shall also benefit from said reductions. Quotations are binding and shall not be remunerated unless another arrangement has been expressly agreed.

4. Delivery, Packaging, Proof of Origin, Services

4.1 Supplier is only entitled to make deliveries before the agreed date with Customer's consent.

4.2 Supplier hereby agrees to use environmentally friendly products and procedures for its deliveries and services. The applicable technological regulations and European and German laws and legal provisions, plus any other laws and provisions applicable at the place of performance, in particular regulations pertaining to environmental protection, fire safety, hazardous materials, hazardous goods and accident prevention, must be observed. Generally recognized rules for occupational health and safety must be complied with.

4.3 Supplier shall include all the necessary delivery documents with the delivery. The delivery documents must list the delivery address, quote the SAP order numbers, if any, list the item numbers on the order, name the member of the Customer's purchasing department, and state the delivered quantity, the weight of the shipment and other information relevant to the delivery. Incorrect or incomplete delivery documents constitute sufficient grounds for the Customer to reject a delivery. If a machine is delivered in accordance with the Machine Directive (RL 98/37/EU), the risk assessment in accordance with the Directive must also be provided to the Customer.

4.4 The supplies must be properly packed in accordance with standard commercial practice using exclusively environmentally friendly packaging materials. If the Customer stipulates special packaging instructions, the Customer is entitled to reject the delivery if said instructions are not observed. Transport packaging must be taken back by the Supplier at his / her own cost. Product packaging must be sourced in such a way that it can be disposed of by Customer at no extra cost. Re-usable or recyclable packaging must be used wherever possible. If such packaging is used, this must be clearly stated and marked accordingly on the packaging by the Supplier. Recyclable packaging materials shall be provided and returned at the cost and risk of the Supplier. The Customer can return specially invoiced packaging to the Supplier carriage paid for a remuneration equal to 2/3 of the invoiced cost of the packaging, providing said packaging is in a reusable state.

4.5 On goods intended for export, the Supplier must provide a written declaration of the origin of the goods in accordance with customs laws and using the proper forms. This declaration must be forwarded to Customer

together with the first delivery at the latest. The Supplier shall ensure that delivered goods comply with all relevant legal provisions and in case of deliveries to countries other than the country of origin, regulations of the country of destination.

4.6 Delivered goods become the property of the Customer when handed over to the Customer. Any delayed and/or extended property rights are hereby expressly excluded.

5. Personnel

5.1 Supplier shall always use its own personnel to provide the agreed deliveries and services. In accordance with the applicable legal provisions, the Supplier shall only employ staff with a valid work permit for the Federal Republic of Germany to supply the agreed service. Alternatively, if the service is to be provided outside of Germany, the staff employed by the Supplier to do so must each be in possession of a valid work permit for the country of manufacture/service in question. Furthermore, the Supplier shall only employ staff to provide the service who are properly registered with the German social security authorities or those of the country of manufacture/provision, and whose contributions are paid correctly, including the applicable contributions for tax and other purposes. Supplier shall pay applicable taxes and social security contributions in full and on time to the responsible collection offices (e.g. social security authority, tax office etc.). The employees have a valid contract of employment with Supplier and shall be paid for their work in accordance with the applicable provisions. The Supplier shall instruct his/her employees to adhere strictly to the regulations pertaining to occupational safety, the protection of young people at work and the applicable legal and official restrictions. The Supplier shall constantly monitor his/her employees to ensure their compliance with the aforementioned regulations.

5.2 Supplier may only sub-contract a service and / or delivery, be it in part or in its entirety, to suitable and reliable subcontractor with the prior written consent of the Customer. . In such situations, the sub-contractors must agree in writing to maintain confidentiality and data privacy in accordance with the provisions agreed by and between the Customer and the Supplier. The Customer's consent shall neither limit the obligations of the Supplier nor constitute a basis for rights on the part of the sub-contractor.

6. Delays, Contractual Penalty

Agreed dates and deadlines must be observed. Failure to do so on the part of the Supplier shall be subject to a contractual penalty equal to 0.5% of the order value per week or part thereof, up to a maximum of 5% of the order value. Any additional claims arising from delays shall remain unaffected by this provision.

Foreseeable delays must be reported immediately to the Customer.

The unconditional acceptance of and payment for a delayed delivery or service does not imply a waiver of any claims the Customer is entitled to make due to the delay in delivery or provision of the service..

7. Limitation Period, Quality Assurance, Guarantee, Duty to inform

7.1 The statutory period of limitation for all claims and rights of Customer in respect of defects in deliveries and performance – regardless of the legal reason in question – shall be 3 years. This period shall also apply if the claims are not in connection with a defect. The statutory period of limitations in respect of a defect that requires subsequent performance shall start to run again from the time that the subsequent performance measures are completed. Any longer statutory periods of limitation shall remain unaffected by this clause as shall any further provisions pertaining the suspension of expiry, suspension and recommencement of limitation periods.

7.2 Any costs relating to supplementary performance that arise due to the object of the contract being transported to another location by the Customer following the hand-over must be borne by the Supplier.

7.3 In particularly urgent cases, Customer is entitled to carry out the supplementary performance himself / herself, or have it carried out, at the cost of the Supplier, if the Supplier does not agree to carry out the supplementary performance immediately (within a maximum of three working days).

7.4 If occupational health and safety provisions need to be taken into account in relation to deliveries and / or services, the Supplier must provide written notification to this effect.

7.5 Persons working on the Customer's premises must comply with the provisions of the applicable company regulations, as well as the instructions issued in the applicable site safety information or by the responsible staff of the Customer.

8. Invoicing and Terms of Payment, Setoff

8.1 Supplier's invoices must be issued in duplicate, quoting the item number on the order, the name of the member of the Client's staff responsible for processing the purchase in Customer's purchasing department, the quantity being delivered and the price, as well as the respective SAP order number, if any. All payments shall be withheld by Customer subject to the provision of an invoicing accordance with the German Value Added Tax Act (UStG). Upon request from the Customer, the requirement for an invoice can be ignored in favour of a credit note procedure in accordance with the provisions of UStG.

8.2 For contractual relationships that result in more than 10 invoices per year, the Supplier hereby agrees to invoice the Customer via the service provided gotomaxx Software GmbH, providing this is technically feasible. The technical feasibility of this procedure must be determined by gotomaxx.

Alternatively, Supplier may use its own e-invoicing services provider, provided however that the e-invoicing service provider cooperates with gotomaxx ("Roaming") so that Customer still obtains invoices from gotomaxx. Any other electronic formats or transmissions will not be accepted.

If Supplier does not agree to the obligation to use e-invoicing procedure despite issuing a sufficient volume of invoices to do so, Customer is entitled to

deduct a processing fee (currently 5.00 euros per invoice) from the total before tax stated on the invoice.

8.3 Unless agreed otherwise, payments shall be made in accordance with commercial conventions within 14 days with a 3% discount or within 60 days net. Place of performance is at the Customer's principal place of business.

8.4 Customer is entitled to offset all claims from companies that are affiliated to the Customer in accordance with §§ 15 ff. AktG against the claims of the Supplier.

9. Liability, Force Majeure

9.1 In case of force majeure, lawful industrial actions, wildcat strikes, riots, official action and other unforeseeable, extraordinary and unforeseen circumstances the contracting parties shall be relieved from their duties for the duration of the disturbance in question. This shall also apply if the aforementioned events occur at a time when the party in question is experiencing a delay. The contracting parties shall, within reason, notify one another accordingly of such situations and adapt their obligations in good faith to the changes in circumstances. Should the force majeure continue for a significant period of time, the Customer is entitled to withdraw from the contract in case of a significant reduction in his/her requirements.

9.2 Customer shall be released from its obligation to accept or reject deliveries/services and entitled to withdraw from the contract should he / she no longer be able to make use of said deliveries and services due to delays caused by force majeure or industrial action.

10. Security of Supplier Chain

10.1 Supplier declares, to the extent necessary, that it is a certified Authorized Economic Operator (AEO) and shall submit a copy of the official certification to Customer as evidence at the latest by the time that the contract is signed.

10.2 If Supplier is not a certified Authorized Economic Operator he / she is hereby to sign the customs security declaration (www.zoll.de) and to comply with the provisions and regulations stipulated herein.

10.3 Should the Supplier violate any of the provisions and/or regulations of the customs security declaration, either in part or in their entirety, or fill in the "Security declaration" document incorrectly, the Customer is entitled to terminate the contract in question without notice.

10.4 In addition, Supplier indemnifies Customer to the extent permitted by law against any and all third party claims – regardless of the legal reason in question – which may arise in connection with the non-compliance or partial non-compliance by Supplier of its obligations as agreed in the customs security declaration, in particular in respect of authorities, regardless of the legal basis of said claims. Any further entitlement to damages and all other claims and / or rights shall remain unaffected by this provision.

10.5 Furthermore, the Supplier shall bear all costs incurred by the Customer that arise from the Supplier's failure to fill in the relevant documents correctly or the Supplier's partial or complete failure to fulfil his/her obligations in accordance with the customs security declaration, including the costs of termination without notice.

11. Minimum Wage

11.1 The Supplier hereby agrees to pay his/her employees the statutory minimum wage. Upon request from the Customer, the Supplier shall provide evidence that he/she has paid his/her employees the minimum wage for the entire term of the contract and up to six months following the termination of the contractual relationship. This request must be complied with within 14 days following the fulfilment of this duty, and the relevant evidence must be submitted in the form of appropriate documents (in particular documents in accordance with Section 17 (1) of the German Minimum Wage Act (MiLoG), certificate of good standing from the responsible social security benefits office or leave fund, etc.).

11.2 The Supplier hereby indemnifies the Customer from responsibility for any claims made by third parties (especially employees of the Supplier, clients of the Customer and the German Federal Employment Agency (Bundesagentur für Arbeit) in relation to violation of the obligation to pay the minimum wage on first demand.

11.3 The Supplier hereby agrees to tie any sub-contractors to agreements obliging them to demonstrably pay the statutory minimum wage and indemnify the Customer of any obligations to third parties to the same extent as the Supplier himself/herself is obliged to do so under Sections 11.1 and 11.2. If the sub-contractor on his/her part engages further sub-contractors, the Supplier must ensure that all sub-contractors are bound to the same obligations.

11.4. Supplier shall be liable for any claims brought against the Customer by third parties arising from a violation on the part of a sub-contractor of the duty to pay the statutory minimum wage.

12. Code of Conduct

Supplier shall comply with all applicable local, state, federal, and foreign laws including but not limited to laws regarding health and safety at work, employee and environment protections. Moreover, without prejudice to other rules and regulations the Supplier shall comply with the Supplier Code of Conduct of the Bertelsmann S.E. & Co. KGaA that can be found on the following websites:

<http://www.bertelsmann.de/verantwortung/compliance/>
<http://www.bertelsmann.com/corporate-responsibility/compliance/>

13. Final Provisions

13.1 The contracting parties undertake to treat all business and technical details that are not general knowledge, as well as any other information to which they become privy during the business relationship, as business secrets and confidential, and in particular not to pass on such information to third parties. The same shall apply to all other information and documentation. Any sub-contractors must also agree in writing to these provisions. Third parties in the sense used above are defined as companies not affiliated with the Customer in accordance with Sections 15 et seq. of the German Companies Act (AktG). The aforementioned documents must be returned to the Customer immediately following termination of the contract, at the sender's own cost.

13.2 Supplier may only assign contractual rights and obligations, excluding claims as stated in § 354a of the German Commercial Code (HGB), to third parties with Customer's written consent.

13.3. These Terms and Conditions of Purchase are governed exclusively by the law of the Federal Republic of Germany. Should one or more of the provisions of these Terms and Conditions of Purchase be or become invalid, either in part or in their entirety, this shall not affect the validity of the remaining provisions. Invalid provisions must be replaced with appropriate provisions that come as close as possible to representing the economic intentions of the contracting parties at the time the original provision was drawn up. The same shall apply to any loopholes found in these Terms and Conditions of Purchase.

14. Companies in the arvato services Group (Germany)

- Campaign Services Offenbach GmbH
- Campaign Services Neckarsulm GmbH
- direct services Gütersloh GmbH
- arvato direct services GmbH
- arvato direct services Wilhelmshaven GmbH
- AZ Direct GmbH
- AZ fundraising services GmbH & Co. KG
- rewards arvato services GmbH