

General terms and conditions

I. General

1. The following General Conditions of Purchase (GCP) are the sole terms and conditions valid for the commercial relationship between ourselves and our customers. We do not accept terms and conditions laid down by our customer which contradict or deviate from our own General Conditions of Purchase, even if we do not expressly object to them. Our General Conditions of Purchase are also valid for all future business with the customer.
2. Technical data and descriptions of the items to be delivered as given in quotations, brochures and other information are non-binding, as long as not otherwise stipulated in the order confirmation. Orders, contracts, amendments or additions to contracts, as well as all other agreements and statements, including any guarantees are only binding on our part once we have expressly confirmed them in writing (see regarding delivery dates II.2 below).
3. We retain title and copyright on images, drafts, calculations and other documents. In order to forward them onto third parties or to prepare copies, the customer requires our express permission in writing. If the customer does not accept the quotation, then the customer has an obligation to immediately destroy all documents which have been given to him–or otherwise put at his disposal (including documents in electronic form)
4. Should any single provision from these General Conditions of Purchase and/ or the contract be invalid or become invalid, then the validity of the remainder of the provisions is not affected. In this case, such a provision will be take as having been agreed between the parties, which is closest to the parties' commercial intentions.
5. Unless otherwise agreed, the place of fulfillment for all payments and other contractual obligations is the legal domicile of Amada GmbH.
6. Sole jurisdiction for all legal disputes is the legal domicile of Amada GmbH.
7. The law of the Federal Republic of Germany applies, with the exception of the UN Convention on Contracts for the International Sale of Goods (CISG). This provision shall be valid even if the customer's legal domicile is abroad or if the delivery is carried out abroad.
8. Neither our commercial agents and appointed dealers, nor our sales consultants are authorised to make agreements or binding declarations on our behalf, except as confirmed by us in writing.
9. Even after the contract has been concluded, we reserve the right to make constructive amendments arising from technical developments to the products for delivery, as long as this does not interfere with the legitimate interests of the customer.
10. The rights of our customer arising from the contract are non-transferable, unless we have agreed to such transfer of rights in advance and in writing.
11. These General Conditions of Purchase are laid down in the German and English languages. If there are any deviation or contradictions between the German and English versions, then the German version shall prevail.
12. The scope and the technical details of our deliveries are subject to our order confirmation. Our products correspond to the applicable European standards.

II. Delivery, Transfer of Risk and Delay

1. Delivery is carried out Ex Works (INCOTERMS), either from one of our storage facilities or as through freight from our logistics facility abroad.
2. Any delivery deadlines and/or delivery dates which we give in our offer are only approximate. Only our order confirmations contain binding delivery deadlines. In particular, these deadlines or dates are subject to our receiving deliveries in a timely, proper and adequate manner from our own suppliers. In the case of delays, we undertake to inform our customers as soon as possible of the foreseeable delivery delay. Unless otherwise agreed expressly and in writing, the delivery date is calculate from the date that the order confirmation is sent. In any event, it is required for the delivery date to be met that all documents to be provided by the customer are received in good time and that the customer meets the payment conditions agreed (e.g. advance payment) and any other obligations. Should this not be the case, then the delivery date shall be extended accordingly, unless we are responsible for the delay. Partial deliveries are permitted and may be invoiced separately.
3. In the case of delays to deliveries for which we are not responsible, especially in the case of extraordinary circumstances which are beyond our control or the control of our own suppliers, the delivery date shall be extended by a reasonable period. Extraordinary circumstances as understood hereunder include Force Majeure and all events which are outside of our control and which impede, complicate or delay the production, delivery or transport of the goods on an on-going or partial basis. This means in particular war, events similar to war, unrest, interventions by public authorities or abnormal price increases for raw materials, modes of transports or workforce, transport disruption, shipwreck or other damage to the mode of transport, whether in the land of origin, transit land or destination, and strike or lock-out. If it is impossible for us to provide deliveries to the customer due to the circumstances given above, then we nonetheless have the right to appropriate compensation for the expenditure arising until that time for products already in place.
4. If the delivery is delayed for reasons that we are responsible for and the customer can evidence that this resulted in damage for the customer, the customer is entitled to demand a compensation as liquidated damage amounting to 0.3% of the purchase price, but 3% of this purchase price at the maximum, after having granted us a grace period of 2 weeks.
5. In the case of export transactions, we may withdraw completely or partially from the contract, in as much as we are not granted the licences required.
6. If the customer delays on payment or defaults on other material contractual obligations or on these General Conditions of Purchase or if we become aware of circumstances which impair the customer's creditworthiness, especially suspension of payments, or the beginning of insolvency proceedings, we have the right, notwithstanding any withdrawal from the contract, to demand payment for all receivables and to hold back outstanding deliveries or only to carry out deliveries against pre-payment or security. Furthermore, in certain cases we may demand that unpaid goods are sent back by the customer at his own cost. If we reclaim the goods, we have the right to claim damages.
7. If the customer defaults with ordering, accepting delivery of items to be delivered or the collection of goods or if the customer is responsible for a delay in dispatch or delivery, then we are entitled to the following claims without prejudice to other rights and claims we may have.
 - a) after giving notice of at least two weeks, to withdraw from the contract up to the sum of that part of the goods that has not been accepted and to demand compensation for damages , or
 - b) to store the goods at the customer's cost and at the customer's risk either at our own premises or at those of a third party and to charge the customer storage costs to the sum of at least 0.25 % of the invoice sum due for the part of the goods that has not been accepted for every week of storage commenced, or
 - c) after the end of an appropriate extended period of notice set by ourselves, to sell the part of the goods that has not been accepted to another party; in this case, the customer is liable for the difference between the price agreed and proceeds from the sale to another party.
8. In the case of recourse to clauses on cost and delivery, unless otherwise provided for by these General Conditions of Purchase, the terms and definitions of INCOTERMS apply in their current valid version.
9. If claims are lodged against us as a result of loss or damage during transit, then the customer may only assert such a claim if:
 - the customer proves that they have checked the goods for damages or loss immediately after receipt, and
 - the customer arranges for a proper statement of loss and/or statement of damage to be entered in the shipment documentation before paying for the shipment; and
 - the customer informs us of such loss or damage immediately after becoming aware of the damage or loss and has the delivered items along with all packaging ready for our inspection, if applicable.
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10. We will take out transport services, a transport insurance and special packaging at the express request and cost of the customer only. Our standard packaging and material for outer packaging will be free of charge for the customer and shall be disposed of by the customer at his own cost. This shall also apply to salvages such as special waste, oil, lubricants etc.

III. Prices, Conditions for Payment, Security

1. Deliveries are made for the price given in the order confirmation (plus the value added tax applicable in each case). If an order confirmation is not issued, then the prices given in the invoice shall apply.
2. Unless it is otherwise expressly agreed in writing, in the case of subsequent increases in or introduction of duties, taxes or other charges made on the goods, in particular EU duties and anti-dumping or countervailing duties or similar, as well as changes in currency parity, we have the right to increase the purchase price agreed accordingly.
3. Unless otherwise arising from the agreement between the two parties, the purchase price is due on receipt of the invoice, but 8 calendar days after the invoice date at the latest. Payment is to be made without discount by bank transfer. In case of bank transfer, the payment is considered as having been made once the corresponding invoiced amount has been credited to the bank account which we have indicated for this purpose.
4. All payments are to be made to ourselves only. Sales consultants, visiting sales representatives and representatives are only authorised to accept payment if they are in possession of written power of attorney.
5. If the customer has several open accounts of a similar kind, the customer does not have the right to decide which debt he will pay. Rather we may deduct incoming payments from the customer's open accounts, along with costs and interests.
6. The offsetting of counterclaims, other than those which are undisputed and ascertained on legal grounds, is not admissible. In this respect, right of retention is also excluded.

IV. Retention of Title

1. We reserve the title on the goods until we have received all payments from the delivery contract.
2. The customer is not entitled to process, resell, pledge or transfer the goods as a security before they have paid the items in full. Furthermore, the customer shall take good care of the delivered items up to this point in time. In case of a pledging or confiscation or other acts of disposal, the customer shall immediately inform us, stating the address of the third party involved.
3. If we withdraw from the contract due to payment default on the part of the customer, then the customer is to allow the goods sold subject to retention of title to be removed and is to allow access to his offices and business premises for this purpose.
4. In the case of legal action arising from retention of title, we reserve the right to take a customer from abroad to court in the customer's own country and to take recourse to domestic law of the customer's country. If the provision on retention of title is not legally valid according to the domestic law of the customer's country, then that provision on retention of title is considered as having been agreed upon, which is closest in commercial terms to the retention of title agreed here.

V. Customer's Claim arising from Defect

1. The customer's rights with regard to defect require that the customer fulfils the inspection requirements and requirements to give notice of defects. When issuing notification of defect, the customer is to describe the defects reported in detail and in writing and in particular, to inform us in what way and under what circumstances the defect has arisen and has been found.
2. It is our responsibility that at the point of transfer of risk, the goods demonstrate the qualities given in the order confirmation/contract.
3. In as much as a defect of the goods exists, we have the right to carry out repairs or send a replacement delivery, as we see fit. We are to be allowed the necessary time and opportunity to do so, otherwise we are exempted from liability for the resulting consequences. Only in urgent cases where health and safety at work is at risk or in order to guard against disproportionately greater damage – regarding which we are to be informed immediately – does the customer have the right to eliminate the defect himself or to do so via a third party and to demand compensation for the necessary expenditure. In the case of the elimination of defects, we bear all necessary costs for the purposes of eliminating the defects, unless these have increased due to the fact that the defective goods have been transported to a location other than the place of fulfilment.
4. In particular, there is no warranty claim in the case of unsuitable or improper use, incorrect installation or putting into operation by the customer or by an unauthorised third party, natural wear and tear, incorrect use or negligent handling, lack of maintenance or incorrect maintenance, as long as this is not caused by ourselves and we are not responsible for it. This shall apply mutatis mutandis for used goods, except if we expressly stipulated a warranty in our order confirmation.
5. The customer has the right to withdraw from the contract, to reduce the price or to demand compensation only if the cure of the contract is not successful. This is particularly the case if we refrain from the cure of the contract, if this is unreasonable for the customer, if we do not respond with a reasonable time period of at least three weeks, a supplementary performance is not carried out successfully or the replacement delivery is also defective and we have been notified by the customer once again, in accordance with V. 1. Withdrawal from the contract and compensation instead of the complete fulfilment of the contract may otherwise only be demanded by the customer if the defect is not inconsiderable.
6. Claims arising from defect are subject to a period of limitation of 12 months from the time of acceptance, but 15 months from the delivery date of the goods at the latest. The period of limitation for used goods is 6 months if we expressly stipulated this period in our order confirmation. Claims for damages, if not related to a defect, are subject to a period of limitation of one year (for used goods: 6 months if expressly convened) following the end of the year in which the claim arose and the customer became aware of the circumstances underlying the claim or should have become aware thereof without gross negligence. This does not apply if a claim for malicious breach of duty or breach of duty through gross negligence results from our actions.

VI. Liability

For damages that did not happen to the good itself, we are only liable for whatever legal ground for:

- intent,
- gross negligence of our organs or officers,
- culpable damage to life, body or health,
- defects maliciously hidden by us, and
- defects to the goods if responsibility applies according to the product liability act for damage to persons or privately used property.

In case of culpable breach of essential contractual obligations, we are also liable for gross negligence of non-officers and slight negligence, the latter, however, limited to the typical damages of this nature in comparable business dealings, which are reasonably foreseeable at the time of exchange of contracts or at the latest, at the time the breach of duty was made. Further claims are expressly excluded.

Additional terms and conditions for spare parts and tools

I. General

Our general terms and conditions also apply to spare parts / tools orders. Unless otherwise specified therein, the following additional terms and conditions apply.

II. Technical details of the delivery

Our deliveries are subject to the applicable European specifications and standards exclusively.

III. Guarantee

We guarantee that the goods delivered are free of defects in accordance with the respective state of the art and our general terms and conditions (specifically paragraphs V and VII)).

IV. Procedure in the event of complaints/notices of defects

1. Notices of defects, if made by phone, are to be immediately sent to AMADA in written form.
2. Rejected spare parts and tools are only accepted if sent to us within 4 weeks upon receipt of the goods:
 - in their original packaging and sealed
 - unused
 - undamaged
3. A use of the spare part is deemed verified if the original packaging has been obviously opened or damaged in such way that the respective part could be readily removed from its packaging.
4. In the cases indicated in paragraph 2, the customer is granted a credit. Simultaneously, a lump-sum processing fee of € 50.00 per processing case (maximum 5 positions) is charged.
5. In any case, the filled-in AMADA return document is to be attached to any return deliveries as no credits can be granted without this document. The costs of such return delivery are to be borne by the customer.
6. Warranty parts, i.e. spare parts / tools which we deliver to the customer in exchange for a defective spare part / tool, will, in general, be invoiced to the customer upon delivery. If the defective part is returned within 10 days after delivery of the exchanged part and if the defect is confirmed by our inspection, we will provide a credit note.

V. Special order

Special order, i.e. goods which we do not have in stock and order on a customer-specific basis are excluded from a cancellation of the order and a return acceptance by AMADA.