

**General Terms and Conditions of Purchase  
of Companies of the Wienerberger Group**  
last updated 19 September 2005



**1. General**

(1) Orders of **Wienerberger AG** and any of its affiliated companies ("Companies of the Wienerberger Group" or "Customer") for goods or services (hereinafter also referred to as "Delivery Item") as well as conclusion of contracts for works shall be concluded exclusively on the basis of these Terms and Conditions of Purchase unless explicitly agreed otherwise in the order or the contract for works. Contradicting or deviating terms and conditions or other limitations on the part of the supplier shall not become part of the contract unless the Customer has expressly agreed to the same in writing on a case-by-case basis.

**2. Offer**

(1) Every supplier shall exactly comply with the request received from the Customer and in case of deviations shall expressly point out the same.  
(2) Offers shall be made free of charge and shall not establish any obligations on the part of the Customer.

**3. Orders**

(1) Orders and modifications of orders shall be made in writing (which includes fax and/or e-mail). The contents of orders placed and modifications of orders made orally or via phone shall only be binding if confirmed by the Customer in writing.  
(2) Each and every order and modification of an order shall be acknowledged by the supplier in writing, and such acknowledgement shall be received by the Customer within 8 days. Upon expiration of the period the order shall be deemed accepted on the Customer's terms unless the supplier has rejected the order by written notification.  
(3) Passing on of orders to third parties in whole or in part shall be subject to the Customer's written consent. The supplier shall in any case be liable for the deliveries and services of his subcontractors or sub-suppliers and shall be responsible for fulfilment of the same.

**4. Product requirements**

(1) Deliveries and services must exactly comply with the quality requirements, in particular with the requirements specifications. If and to the extent that an order contains no particular quality requirements, the Delivery Item shall at least be of a quality customary in trade and have the properties normally assumed and comply with the statutory and administrative provisions applicable at the place of destination, at the place of the supplier's registered office and at the place of the Customer's registered office (in this order), such as, in particular, provisions on safety, employees' protection and accident prevention, as well as the applicable standards (such as, e.g., Austrian Standards [Ö-Normen], German Industrial Standards [DIN] and in-house standards) and guidelines, observing the state of the art and the generally accepted rules of technology and all requirements based thereon. The standards and drawings stated in the orders refer to the issue last published and valid at the date of the order unless expressly stated otherwise in the order. All requirements of the Customer shall be requested by the supplier unless they have not been made available already.  
(2) The supplier shall inform himself to a sufficient degree about use of the Delivery Item and the requirements resulting therefrom.  
(3) If import or export permits or other official permits or approvals or consents of third parties are required for execution of the order, the supplier shall obtain the same on time.  
(4) All relevant EU directives regarding CE labelling that are applicable to the product (in cases where EU-law is not applicable also all other national and international legal norms to that end which are applicable) shall be observed. The respective declaration of conformity including the relevant documentation (in case of non-EU suppliers) shall be part of the delivery.  
(5) Upon the Customer's request, the supplier shall be obliged to send a certificate of preferential origin. Deliveries from non-EU countries shall be in compliance with preferential origin rules as provided in the relevant EU preference agreement.  
(6) In addition, the supplier shall be obliged to enclose with the Delivery Item all documents, instructions, drawings and other documentation necessary for use (installation, application, etc.) of the Delivery Item in accordance with its purpose which the Customer requires for use, setting-up, assembly, processing, storage, operation, maintenance, inspection and repair of the Delivery Item, without request and completely. In addition, the supplier shall immediately advise the name of the relevant manufacturer, importer or upstream supplier upon request.  
(7) If in a plant of the Wienerberger group assemblies, maintenance work, inspections, repairs, etc. are carried out, the location-related safety guidelines for third-party companies that process orders within the plants of the Wienerberger Group shall apply.  
(8) The supplier shall provide all components and services for fulfillment of the requirements demanded by the Customer which are already included in the price, even if they are not explicitly stated in the order.  
(9) If tests are planned for the Delivery Item, the supplier shall bear all related costs of material and of his staff. The supplier shall notify the Customer of readiness for testing in writing at least one week in advance and shall agree with him on a test date. If the Delivery Item is not presented at that date, the Customer's staff costs related to the test shall be borne by the supplier.  
(10) If repeated or additional tests are necessary because of identified defects, the supplier shall bear all related costs of material and staff.  
(11) For materials verification of feedstock the supplier shall bear the costs of material and staff.

**5. Provision of materials, Instructions, Lists of Spare Parts and Assemblies**

(1) Exclusive title to tools, films, printing models and other facilities exclusively produced or obtained by the supplier for execution of the order shall pass to the Customer not later than upon payment, even if they remain in the possession of the supplier. Such items shall be delivered to the Customer upon request.

(2) All documents and facilities which are made available to the supplier by the Customer for the purpose of manufacturing the Delivery Item shall remain the property of the Customer and shall not be used, reproduced or made available to third parties by the supplier for other purposes. Upon request they shall be surrendered to the Customer together with all copies and reproductions of the same.

(3) The supplier shall deliver lists of spare parts in the local language of the place of performance and at the Customer's request also in German and English not later than at the time of delivery.

**6. Special Provisions for Deliveries of Hardware and Software**

(1) The supplier guarantees that delivered hardware and software contains no copy protections, expiration dates or similar restrictions of use and is free from rights of third parties. The delivery shall in any case contain a comprehensible and complete documentation in the local language of the place of performance of the delivery; if that is not possible it shall be in German or English.  
(2) The supplier grants the Customer a transferable right to use and exploit the delivered software which shall be unlimited geographically and in time. The supplier shall be obliged to offer maintenance services for hardware and software and for spare parts for a period of 7 years as of performance in conformity with the contract and to inform the Customer of the most recent hardware and software released from time to time.

**7. Pricing and Terms of Delivery**

(1) Unless otherwise stated in the order, prices shall include packaging and transport insurance and shall be free place of performance (DDP), discharged and fixed prices.  
(2) The place of performance shall be the place of destination as per the order; if no place is indicated, the place of performance shall be the place of the Customer's registered office. However, the Customer shall be entitled, as an option, to take delivery also ex supplier's works, with transportation costs being deducted. If the Customer exercises such option, he shall timely notify the supplier thereof. In that event benefit and risk shall pass to the Customer upon delivery.  
(3) If terms of delivery are stated in the order, they shall be interpreted in accordance with the INCOTERMS 2000. The supplier shall be obliged to send a dispatch advice to the relevant receiving department.  
(4) The supplier shall pack, mark and dispatch dangerous products in accordance with applicable national and international provisions.  
(5) The supplier shall take back reusable packaging that is customary in trade at his cost.  
(6) The supplier shall be responsible for compliance with terms of delivery by his sub-suppliers, including carriers commissioned by him. All shipments which cannot be accepted shall be stored at the cost and risk of the supplier. The Customer shall be entitled to ascertain the contents and the condition of such shipments.  
(7) If, during the period between order and delivery, the supplier reduces his prices and/or improves his terms, the prices and terms applicable on the day of delivery shall apply. Price increases and excess deliveries shall be accepted only if the Customer has agreed in writing before receipt of the invoice. Otherwise the invoice amount shall be reduced.

**8. Delivery Notes and Invoices, Certificate of Origin**

(1) A delivery note which shall bear the order number shall be enclosed with every delivery. In case of carriage by sea the shipping documents and invoices shall state the name of the shipping company and of the vessel.  
(2) Invoices shall not be enclosed with the shipment. Invoices which do not state the order number may be rejected.  
(3) Invoices shall correspond to the order as regards language, order of the text, items and prices. Extra services or shortfalls in services shall be stated separately in the invoice.  
(4) In the event that invoices do not comply with paragraphs (2) and (3), the Customer may demand that a new proper invoice be sent to him. Until receipt of the proper invoice the invoice shall not become due.  
(5) In case of shipments within the EU every invoice shall contain the HTS number and the commodity's net weight as well as the VAT numbers of the contracting parties.

**9. Delivery Period and Default in Delivery**

(1) If a delivery period has been agreed, such period shall commence on the date the order is placed (mailing date). Delivery dates or completion dates required by the Customer and/or agreed shall be fixed dates and mean that the Delivery Item must be available to the Customer at the delivery date stated and at the delivery address stated during normal local business hours.  
(2) As soon as the supplier can anticipate that he will not be able to effect delivery on time, he shall give immediate written notice thereof to the Customer together with a statement of the reasons and of the expected period of delay.  
(3) If the agreed delivery period is not observed, irrespective of whether this is due to the supplier's fault or not, the supplier shall, in addition, be obliged to pay a contractual penalty of 0.3% of the order sum for each week of the delay in delivery commenced, up to a maximum amount of 10% of the order sum to the Customer. In addition, the Customer shall be entitled to rescind the contract in case of default in delivery, after having granted a reasonable grace period and notwithstanding any other statutory or contractual claims of his. Any other claims for damages shall not be affected thereby.  
(4) In the event of early delivery the Customer reserves the right to charge the supplier with resulting additional costs, such as costs of storage.

**10. Payment and Prohibition to Assign**

(1) Payment periods shall commence at the date fixed, but not earlier than upon receipt of the goods and invoices and fulfilment of the conditions on CE labelling and declaration of conformity as per Clause 4 (2). If goods and invoices are not received at the same time, the payment period shall only commence at the later date. In case of complaints the period shall commence only after complete settlement of the same. Unless otherwise agreed, the payment period must equal 45 days.

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(2) Assigning of invoice amounts shall only be possible upon the Customer's prior written consent. Payment shall not mean acceptance of proper delivery and, thus, no waiver of claims to which the Customer is entitled.

(3) Payment shall not mean acceptance of conditions and prices and shall not affect the supplier's warranty rights or other rights resulting from defectiveness of performance.

(4) If the Customer is in default of payment, the parties agree on default interest in a maximum amount of 5% p.a. from the due date.

**11. Acceptance and Warranty**

(1) An acknowledgement on the receipt and/or a receipt of delivery of the goods by the Customer shall always be subject to reservation, i.e. the goods shall only be deemed accepted if subsequent inspection does not reveal any shortfalls in quantity and/or defects.

(2) The warranty period for movable items shall be 2 years and shall commence on the day on which the Delivery Item is finally accepted by the Customer. In any case, final acceptance shall only be effected if the conditions regarding CE labelling (if applicable, otherwise labelling in accordance with applicable national and international requirements) and declaration of conformity as per Clause 4 (2) have been fulfilled. If the Customer is held liable for warranty by his customer, the Customer shall be entitled to assert warranty claims against the supplier also after expiration of the two-year period within 6 months of fulfilment of the warranty claims on his part.

(3) The supplier warrants that the Delivery Item fulfils the quality requirements described in Clause 4 (1) of these General Terms and Conditions of Purchase. In addition, the Delivery Item shall in all respects be in accordance with a specimen or sample given, if any, and with any description and shall be free from any third-party rights. The Delivery Item and its basic materials shall also be in compliance with statements of the supplier and of the manufacturer made in public, in particular in brochures and product descriptions. This shall also apply to statements of all members of the manufacturing or distribution chain as well as to public statements of a person who describes himself as a manufacturer by affixing his name, his trademark or any other identification mark. The supplier's warranty obligation shall also extend to parts manufactured by sub-suppliers.

(4) If the Delivery Item has one or several defects as defined in Clause 4 (1), the Customer may, at his option, demand repair of the defect or delivery of a Delivery Item that is free from defects (subsequent performance), reduce the price to an appropriate amount (price reduction) or cancel the contract (cancellation); in all cases an out-of-court declaration of the Customer shall be sufficient. The right to claim price reduction or cancellation of the contract shall also exist if the Customer has demanded subsequent performance and the supplier refuses the same, does not effect the same within a reasonable period of time (not more than 14 days), if an attempt of subsequent performance fails or further measures to effect subsequent performance are unreasonable for the Customer. No right to cancel the contract shall exist if cancellation of the contract were unreasonable for the supplier in view of the particularly minor significance of the defect.

(5) All costs and risks of subsequent performance shall be borne by the supplier.

(6) The Customer shall give notice to the supplier of defects in the Delivery Item (notice of defects) without unnecessary delay but warranty claims and all other rights of the Customer based on defectiveness of the Delivery Item shall not be affected by acceptance of the Delivery Item by the Customer nor in the event that notice of defect is not or not timely given.

(7) Regarding defects which, during the warranty period, can not even be identified with financially reasonable and usual efforts, the Customer shall be entitled to give notice of defects after expiration of the warranty period for at least 3 months as of identification of the defect, and the supplier shall be subject to warranty also with regard to such defects.

(8) If the defect was notified to the supplier within the warranty period, expiration of the period is suspended provided that the claims arising from such defectiveness are raised without unnecessary delay. If the delivery item is totally replaced, the warranty period shall commence anew; in case of a partial replacement this shall only apply to the replaced parts.

(9) The Customer may repair a defect himself or may have it repaired by third parties and claim reimbursement of the necessary expenses after fruitless expiration of a reasonable period for subsequent performance. The Customer shall have this right also if subsequent performance failed or is unreasonable for the Customer for well-founded reasons lying in the person of the supplier; if the supplier seriously and finally refuses repair of the defect; if repair of the defect is not effected or cannot be effected at a date agreed in the contract or within a certain period; or if special circumstances exist which, when weighing the mutual interests, justify immediate self-performance. The Customer may request from the supplier an advance payment for expenses necessarily to be incurred for the repair of the defect. The supplier's warranty for deliveries where defects that have occurred are repaired by the Customer or third parties shall continue to exist.

(10) If a defect is identified only in the course of processing the Delivery Item by the Customer, the Customer shall, as claim for damages, in any case also be entitled to reimbursement of the expenses incurred in connection with use of the defective material. The supplier shall fully indemnify and hold the Customer harmless from and against all warranty claims and/or claims for damages caused by the delivered goods.

(11) For the duration of the warranty period the Customer may retain 10% of the total order value as liability cover amount, which shall not bear interest.

(12) There shall be no security rights of third parties to the Delivery Item whatsoever at the time of acceptance by the Customer.

**12. Liability for damage caused by defects, product liability and insurance**

(1) The supplier shall be liable without limitation for damage caused by a defect of the Delivery Item to other legally protected interests.

(2) Regarding the products delivered by the supplier, which includes sub-products, the supplier undertakes to compensate the Customer for any and all damage under product liability and to indemnify and hold the Customer harmless from and against all product liability claims of third parties, including both physical injury and damage to property.

(3) If the supplier subsequently becomes aware of facts which might lead to product liability claims, the supplier shall be obliged to report the same immediately and to reimburse the Customer all expenses incurred by him and to compensate him for all damage suffered by him in connection with recalling of defective products and/or which third parties have to be compensated for.

(4) If legal disputes should arise in product liability cases, the supplier shall hand over all expedient means of evidence to the Customer on time, use his best efforts to support the Customer and reimburse reasonable costs of such legal disputes.

(5) Any claims for damages of the supplier on grounds of non-timely provision shall be excluded.

(6) For the rest, the statutory provisions on liability shall apply.

(7) The supplier shall take out sufficient liability insurance at his cost for damage caused by himself, his staff or agents in connection with the Delivery Item. The amount of coverage per event of damage shall be evidenced to the Customer upon request.

(8) Liability of the Customer for loss of or damage to machines, equipment, tools, etc. provided by the Customer to the supplier shall be excluded except in cases of willful intent or gross negligence.

**13. Secrecy**

(1) The supplier undertakes to maintain secrecy about information of which he obtains knowledge in connection with the order unless it is in the public domain or otherwise lawfully known to him. The supplier shall use data of which he has obtained knowledge exclusively for the purpose of processing the order. The supplier shall also maintain secrecy about drawings, samples, models, moulds and other production documents and aids handed over to him and of which the Customer may freely dispose, which shall remain physical and intellectual property of the Customer. The supplier shall protect all such information and documents against access by third parties and cause his staff dealing with the same to likewise maintain secrecy. The provisions on secrecy and data protection shall continue to apply after complete performance of the order and termination of all contractual relationships with the supplier.

(2) The supplier's data from the relevant transaction shall, in principle, only be processed automatically for purposes of completion of the contract, in particular for administrative and accounting purposes.

(3) However, the supplier agrees that data related to the order may be processed by the Customer and transmitted within the Wienerberger Group.

(4) The supplier shall treat the enquiry and the order as confidential. The supplier shall be liable for any and all damage or loss suffered by the Customer from non-compliance with this obligation.

**14. Advertising Material / Customer Reference**

The supplier shall only be permitted to refer to the business relationship in information and advertising material with the express written consent of the Customer.

**15. Infringement of Industrial Property Rights**

The supplier shall be liable for any infringement of patents, licences or third-party proprietary rights caused by delivery or use of the Delivery Items and shall bear all resulting costs and damages and shall fully indemnify and hold the Customer harmless.

**16. Termination of Contract**

(1) Notwithstanding any other rights of his, the Customer shall be entitled to terminate the contract with immediate effect, in particular if

- bankruptcy proceedings are opened over the supplier's assets or opening of bankruptcy proceedings is dismissed for lack of assets to cover the costs and/or if composition proceedings are allowed or if any similar event occurs in another jurisdiction;
- circumstances have occurred which obviously render further proper performance of the order impossible.

(2) In the event of a justified rescission of the contract, the Customer may, at his discretion, either retain goods already delivered to him against payment of the pro-rata price or send them back at the supplier's cost. In the event of a rescission of the contract due to the supplier's fault the supplier shall also reimburse the Customer those additional costs which result from the fact that the order has to be passed on to a third party, if applicable.

**17. Applicable Law, Partial Invalidity and Construction of Clauses**

(1) These Terms and Conditions of Purchase and all legal relationships between the Customer and the supplier shall be subject to Austrian law; however, the UN Convention on the International Sale of Goods (UN Sales Law) and the conflict of laws rules of private international law shall be excluded.

(2) If any of the provisions of these General Terms and Conditions is ineffective, a provision shall apply which comes as close as possible to the ineffective provision. Ineffectiveness of individual provisions shall not affect the validity of the remaining provisions.

**18. Legal Venue**

For all disputes directly or indirectly arising from the contractual relationship the court having jurisdiction over the subject-matter and the place of the Customer's establishment shall have exclusive jurisdiction. If the supplier's registered office is situated outside the EU, all disputes arising out of the contract or referring to violation, termination or nullity of the same shall be finally settled according to the Rules of Arbitration and Conciliation of the International Arbitral Centre of the Austrian Federal Economic Chamber (Vienna Rules) by three arbitrators appointed in accordance with the said Rules. In any case the Customer shall have the right to sue the supplier also at the place of the supplier's establishment.