

# Terms and Conditions

## Purchasing of Production Material

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Reading time ⌚ 9 minutes



This document is written in plain language.

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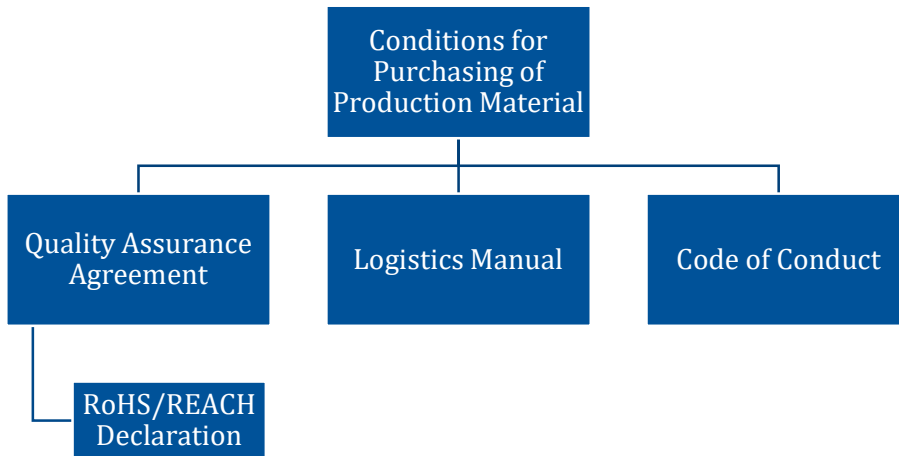
## Preamble

These Terms and Conditions apply to the purchasing of production material or services associated with production materials (hereinafter referred to as “**Product**”) by Stiya Advanced Products GmbH, FN 278416 k (hereinafter referred to as “**CUSTOMER**”). The enterprise manufacturing and/or supplying the production material and/or services is hereinafter referred to as “**Supplier**”.

These Terms and Conditions are valid in the version as amended at the time of ordering which is available at <https://www.stiwa.com/manufacturing/dokumente-agb>.

If the Supplier itself uses General Terms and Conditions (for example, Terms and Conditions of Sale), these are hereby excluded.

The following annexes are deemed to be agreed along with these Terms and Conditions.



Additionally, these Annexes may contain further references to special documents. They are also deemed to be part of the contract.

*These may include, for example, requirements in drawings particular to commodity groups.*

# 1. Contract Closing

**1.1.** The Customer may inform the Supplier about its forecast volume requirements of Products (the so-called “call-off preview”). Such a call-off preview is provided for information only and is not binding. The Customer may update or concretize this call-off preview as required.

**i** *This article of the contract is not applied under a Basic Agreement.*

**1.2.** The Supplier will submit its offer to the Customer. The offer must be binding and sufficiently particular. Unless otherwise agreed upon, the Customer will not bear any costs for offers or quotations.

**1.3.** The Customer may order the Products in writing (for example, by automated e-mail without signature). This order will reflect, among other things, the agreed prices, dates, and delivery terms. The contract becomes effective when the Supplier has received the order. The provisions applicable to the contractual relationship are agreed exclusively and finally with the Customer’s order.

*Sequence:*

- Non-binding call-off preview as applicable
- 1 | Offer +
- 2 | Order
- = Contract closing
- 3 | Informative confirmation of order

**1.4.** The Supplier will confirm the receipt of an order within 3 working days. Such a “confirmation of order” will only confirm the receipt of the order. However, for the purpose of information, it may also include the contents of the contract already agreed. If the confirmation of order contains any contents deviating from the order, these will be ignored, and the remaining content of the confirmation of order will remain unchanged.

**1.5.** At all events, any additions contained in these documents indicating more or something different than is regulated in the order are completely irrelevant. Such additions are not agreed with legal effect. This

applies, in particular, to automated additions made by an ERP system, such as references to general or other terms and conditions of a contracting party or other party.

## 2. Supplier's Performance

### 2.1. Manufacturing of Products and Services

#### 2.1.1. Specifications

2.1.1.1. The Supplier manufactures the Products according to the Customer's specifications. The Customer is responsible for ensuring that these specifications are correct. The Supplier shall inform the Customer if the Product cannot be manufactured according to these specifications (for example, if the specifications are wrong, inconsistent, or incomplete).

2.1.1.2. If the Customer wishes to modify its specifications after contract closing, it will inform the Supplier accordingly. The Supplier will check these wishes for feasibility and cost implications in a timely manner and present the result to the Customer within 5 working days from the date of the inquiry. The alteration of the contract becomes effective as soon as the contracting parties reach an explicit agreement on the matter.

2.1.1.3. The Supplier shall render its services according to the state of the art and shall comply with all laws and standards applicable in the country of manufacture. To this end, the Supplier uses qualified and suitable personnel as well as professional machining facilities. If the Customer informs the Supplier about certain legal or technical requirements for a market of use, the Supplier shall consider them at any rate.

2.1.1.4. The Supplier shall be responsible for ensuring that all special requirements in connection with the Product (such as EU directives and regulations) are met. If there are any obligations to be met by the Customer in this regard, the Supplier shall accordingly inform the Customer in a timely manner.

#### 2.1.2. Subcontracting

2.1.2.1. The Supplier may also commission others to perform the services ("**Subcontractors**"). The Subcontractor must be suitable for rendering the intended services. The Supplier must commit the Subcontractor in writing to compliance with all relevant contents of the contract (e.g., Quality Assurance Agreement, Confidentiality Agreement, ...). Notwithstanding the above, the Supplier shall remain responsible to the Customer for compliance with the contract and shall be liable for the Subcontractor's conduct as it is for its own.

*Customer's specifications must be complied with.*

*Product changes may be possible.*

*Subcontractors/ sub-suppliers are generally permitted.*

2.1.2.2. The Supplier shall inform the Customer which Subcontractor it intends to use for which services. In justified cases, the Customer may refuse the ordering of a certain Subcontractor.

2.1.2.3. The Customer may also specify a certain Subcontractor. The Supplier shall commission such Subcontractor unless it puts forward any reasonable grounds.

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## 2.2. Accompanying Services

### 2.2.1. Developments

2.2.1.1. If the Supplier is to accept any accompanying services (such as the constructive design of the Product), the contracting parties will generally conclude a separate (development) agreement in writing.

2.2.1.2. If, in the course of rendering the services, any patentable results and related know-how ("**Work Outputs**") are generated before a separate (development) agreement is concluded, the respective expenses are deemed to be covered by the agreed price. Moreover, the contracting parties agree as follows:

- ▶ Know-how, developments or inventions, as well as existing property rights and the further development thereof exclusively belong to the contracting party who already owned the existing know-how and/or the existing property rights ("*Background IP*").
- ▶ Work Outputs jointly achieved by the contracting parties belong to the contracting parties in equal parts. Any patent applications will be agreed between the contracting parties. In the event that a contracting party is not interested in an application, it shall inform the other contracting party thereof within 4 weeks after being requested to do so. In this case, the respective contracting party has the sole right to apply for a patent.
- ▶ To the extent that the Work Outputs concern the Products, and the Supplier fails to deliver them (for example, for reasons of an inability to deliver), the Supplier shall herewith grant the Customer a non-gratuitous but otherwise unlimited license regarding the manufacture of the Products (either on its own or by others). The license fee will be based on current market terms.

### 2.2.2. Rights of Use to Documents

The Supplier shall grant the Customer the right to use the documents relating to the Product without restrictions.

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## 2.3. Delivery of the Products

2.3.1. As regards the delivery of the Products, the contracting parties agree to comply with the Customer's Logistics Manual (**Annex ./2.3.1**).

**2.3.2.** Unless otherwise agreed upon, the following applies: deliveries are made DAP [point of reception as indicated in the order] Incoterms® 2020. If no point of reception is explicitly determined in the order, the Customer's address specified on the order is considered as the agreed point of reception.

**2.3.3.** For compliance with customs provisions, the agreed Incoterm® 2020 will apply. The contracting parties will support each other in the best possible way to make the desired delivery possible.

**2.3.4.** As agreed under item 2.1.2, the Customer can specify a certain Subcontractor for the delivery (carrier).

**2.3.5.** The Supplier will agree with the Customer if and how part deliveries (deliveries not containing the full quantity of Products ordered) are admissible.

**2.3.6.** The Supplier shall gratuitously take back and dispose of all Products that the Customer determines for disposal. If any receipts can be generated from the disposal of the Products, the Supplier shall pass them on to the Customer.

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## 2.4. Dates and Deadlines


**2.4.1.** Dates are binding unless expressly agreed upon otherwise. Generally, dates can be changed only by mutual consent.

**2.4.2.** If a delivery period has been agreed upon, it generally begins with the conclusion of the contract. Any other beginning must be agreed by mutual consent.

**2.4.3.** A delivery date is observed with legal effect if delivery takes place at the date fixed and at the place of delivery according to the agreed Incoterm®. As a rule, the Supplier is granted a certain time window for delivery. Deliveries taking place before or after this time window are not made in due time. Even an early delivery is taken over at the date fixed.

**2.4.4.** The Supplier shall notify the Customer if meeting the deadline seems at risk. It will explain the circumstances in detail and give new dates. In any case, the Supplier will use its best efforts to comply with the agreed delivery dates.

**2.4.5.** It may be that the cooperation of the Customer is required for the performance of service. Such a circumstance must be expressly and verifiably pointed out by the Supplier to the Customer. In the event of a delay occurring because of the lack of cooperation of the Customer in spite of the Supplier's warning, the dates concerned will be postponed by the duration of the delay.

 *Dates are binding and must be met.*

## 2.5. Liability for Defects Upon Handover (Warranty)

**2.5.1.** The Supplier must hand over the Products to the Customer free of defects. A defect exists if (i) the agreed or (ii) the objectively required properties of the Product are not present, or if (iii) the Product and/or a manufacturing process used encroaches upon the rights of other persons (deficiency in title).

*Free of defects means, that the Products must have the agreed /objectively required properties at the time of handover (§ 922 ff ABGB).*

**2.5.2.** The Customer is not obliged to perform a complete incoming goods inspection of the Products (see also Quality Assurance Agreement). However, it must check deliveries of Products for quantity, identity and visible transport damage. The Customer shall notify the Supplier of any such defects within a period of 10 working days from delivery. Beyond this, the Supplier shall waive the objection of a late notification of a defect (notice of defects).

✔ A defect exists, for example, if actual dimensions are outside the dimension specifications (incl. tolerance).

**2.5.3.** The Customer shall notify the Supplier of any such alleged defects within a period of 30 months from delivery. If the Product is intended for use in a vehicle, then this period does not start to run upon delivery but at the date of first registration of the vehicle. Thus, the period can be increased to no longer than 48 months.

**2.5.4.** The Supplier will analyze the notified defect immediately. The Customer may be involved.

**2.5.5.** If the notification is submitted within the specified period, it is assumed that the notified defect has already existed at the time of delivery. The Supplier may prove the opposite.

**2.5.6.** If a defect is present, the Customer may decide whether the Supplier

- (i) should remedy the defect by improvement (for example, by rework) or
- (ii) should exchange the defective Products (i.e., replace them with new Products).

If the defect is of such importance that the Customer cannot be reasonably expected to accept an improvement or exchange, or if the Supplier fails to remedy the defect twice or more often, the Customer may

- (iii) demand a price reduction or
- (iv) terminate or reverse the contract.

**2.5.7.** The Customer is allowed to repair the defect on its own after prior notification if the Supplier is not able to remedy the defect in due time. In this case, the Supplier shall reimburse the Customer for its expenditure.

**2.5.8.** In case of a defect, the Supplier shall also absorb any and all expenses related thereto. In particular, this also applies to freight charges, sorting costs, as well as costs for installation and dismantling.

**2.5.9.** The Supplier shall take back any deficient Products at its own expense.

**2.5.10.** The Supplier is not responsible for defects that can be exclusively attributed to material provided by the Customer or specifications of the Customer. This does not apply if the Supplier should have noticed the circumstances resulting in the defect.

**2.5.11.** It may happen that the type or cause of the defect suggests that it will probably concern all batches or a certain batch of Products delivered. In such a case, it is not necessary to establish or prove the defectiveness of each Product that may potentially be concerned. So if more than 5 % of the Products concerned are defective, the whole quantity of Products is deemed to be defective.

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## 2.6. Liability for Compensation

**2.6.1.** The contracting parties are generally liable to each other according to the statutory provisions. The contracting parties shall also be liable to each other for indirect or consequential damage, such as production downtime or loss of profit. Damage caused by breach of deadline (which may also arise at contracting parties of the Customer) is included, too.

**2.6.2.** If the Customer has released design drawings or other documents for production to the Supplier, the Customer is responsible for the suitability in the intended area of application and for possible disadvantages.

**2.6.3.** The contracting parties agree that, in certain cases, the Supplier shall pay a reasonable lump-sum reimbursement of expenses.

(i) If the Supplier violates one of the contractual obligations listed below, it shall pay a contribution amounting to EUR 100 in each individual case:

- ▶ Deviation from packaging / shipping instructions
- ▶ Breaches of deadline
- ▶ Defective delivery
- ▶ Overdelivery (deviation regarding the quantity delivered)

(ii) The contracting parties are at liberty to prove and claim a damage to a different amount specified.

**2.6.4.** When determining the amount of the claims for compensation to be met by the Supplier, the latter's economic circumstances as well as the type, scope, and duration of the business relationship will be taken into account. Likewise, any causation and/or fault contributions of the Customer are to be included. In general, compensation, costs and expenses must be in reasonable proportion to the value of the Products.

**2.6.5.** Moreover, the contracting parties will inform each other immediately about any circumstance that might result in a liability for compensation. The contracting parties will use their best efforts to support each other in doing so. If a Supplier has caused a Product fault, it will indemnify and hold the Customer harmless in this respect.

*Lump-sum reimbursement of expenses*

## 3. Requirements and Cooperation Obligations

### 3.1. Technical Documents

3.1.1. The Customer delivers to the Supplier technical documents and also a design drawing, as required. If these documents are incomplete or insufficient for the planned manufacture and/or service, the Supplier shall inform the Customer immediately.

3.1.2. Design drawings can also be modified later by mutual consent. If the Supplier (i) has helped to design the Product, or (ii) modifies a design drawing in coordination with the Customer, then the design must be released once again by the Customer in writing.

✔ Specifications and requirements must originate from the Customer or be approved by him.

## 4. Consideration of the Customer

### 4.1. Price

4.1.1. The price of the Products will be expressly agreed between the contracting parties.

4.1.2. The information regarding the valid bank account of the Supplier is provided in the form sheet "Confirmation of Bank Data" (**Annex 4.1.2**). Any change of the bank account is possible only by transmission of an updated and signed form sheet. The Customer will make payments by bank transfer to the valid bank account.

### 4.2. Terms of Payment

4.2.1. Unless otherwise agreed, the Customer will pay the Supplier's invoices within

- ▶ 60 calendar days with 3 % discount, or
- ▶ 90 calendar days without any discount.

4.2.2. The period allowed for payment starts after a delivery free of defects upon the arrival of the invoice at the Customer's.

4.2.3. The Supplier may offset its own outstanding accounts against outstanding accounts of the Customer only if the latter have been acknowledged in writing or established as final and absolute.



4.2.4. In the event of a delay in payment, the statutory interest on arrears will apply. A delay in payment of the Customer does not release the Supplier from its contractual obligations (to supply).

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### 4.3. Retention of Title

4.3.1. The Products remain the property of the Supplier until payment of the price.

4.3.2. Material provided by the Customer (for example, tools, raw material, devices, ...) remain the Customer's property. The Supplier may use these materials provided only for the business relationship with the Customer. The Supplier shall identify such equipment as foreign property according to the Customer's specifications and store it separately from its own property. Material provided shall be insured by the Supplier against all conceivable risks (for example, elementary events) at replacement value.

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### 4.4. Termination of Service Provision

4.4.1. Contracts concluded cannot be terminated properly.

4.4.2. The Customer may terminate any further service provision by the Supplier at any time. In this case, the Customer shall reimburse the Supplier for the following amounts ("*cancellation fee*"):

- ▶ Agreed price for Products already manufactured;
- ▶ Material costs for material already procured for the specific order that cannot be used otherwise;
- ▶ Costs for any (special) tools ordered that cannot be used otherwise.

4.4.3. The contracting parties are entitled to terminate a contract in the event of good cause. Good cause exists, in particular, if

- a) one contracting party or one of its Subcontractors violates the provisions of these Terms and Conditions, and such violation is not remedied within 30 days from written notification;
- b) the other contracting party ceases business operations, if it is unable to pay its debts when due, or if enforcement proceedings are instituted or threatened against it, if a receiver is appointed for a part of its asset, or if it passes a valid resolution to discontinue business operations;
- c) if the Supplier's company undergoes major changes in terms of legal and economic control, e.g., when the majority of the shares is sold (even if the decisive change does not happen at once). The Supplier is obligated to notify the Customer immediately of any such changes in the legal or economic control ("*change of control*").

## 5. General Provisions

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### 5.1. Foreign Trade Legislation and Export Control

Products may be subject to certain requirements under foreign trade legislation or export control. The Supplier shall inform the Customer in writing about any authorization requirements as well as prohibitions and restrictions in this field before contract closing.

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### 5.2. Principles of Conduct

The Supplier undertakes to comply with a STIWA Code of Conduct which is available online at <https://www.stiwa.com/compliance>.

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### 5.3. Insurance

**5.3.1.** The Supplier undertakes to maintain a reasonable liability insurance (including coverage for product liability and product recall) throughout the duration of the business relationship. This insurance must cover any and all damage scenarios imaginable under the business relationship with the Customer.

**5.3.2.** On the Customer's request, the Supplier shall submit a confirmation of the insurance company.

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### 5.4. Secrecy

**5.4.1.** As long as the contracting parties have not concluded a non-disclosure agreement, the following provision shall apply.

**5.4.2.** The contracting parties must not disclose confidential information to anyone else. They will do their best to ensure that only absolutely necessary people have access to confidential information.

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### 5.5. Force Majeure

Force majeure, labor disputes, riots, official measures, pandemics or epidemics and other unforeseeable, unavoidable and serious events shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of their effect. This shall also apply if these events occur at a time when the contractual partner concerned is in default. The contracting parties are obliged to provide the necessary information without

delay within the bounds of what is reasonable and to adjust their obligations to the changed circumstances in good faith and trust.

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## 5.6. Data Protection

5.6.1. It may happen that the Supplier processes personal data for or on behalf of the Customer.

5.6.2. In doing so, the Supplier shall observe all statutory provisions regarding data protection (above all the [General Data Protection Regulation \(EU\) 2016/679](#) of the European Parliament and of the Council dated 27 April 2016 [GDPR] and the [Data Protection Act](#)).

5.6.3. To the extent requested by the Customer, the Supplier shall conclude with it a data processing agreement pursuant to Article 28 of the GDPR.

## 6. Final Provisions

6.1. Any changes or amendments to this contract or its annexes must be made in writing. This also includes any changes to the written form requirement proper.

6.2. In the event that individual provisions of this contract are or become invalid or unenforceable in whole or in part, the validity of the remaining provisions will not be affected.

6.3. This contract is subject to the substantive law of the Republic of Austria, excluding (a) the United Nations Convention on Contracts for the International Sale of Goods of 11.03.1980 (UN sales law, CISG) and (b) all non-mandatory conflict of law rules of international private law, and shall be interpreted in accordance therewith.

6.4. All disputes or claims arising from or in connection with this contract will be settled by the court having jurisdiction *ratione loci* and *ratione materiae* for the Customer's registered office.

## Annexes

./2.3.1 .....Logistics Manual

./4.1.2 ..... Confirmation of Bank Data

Agreement on Quality

## Code of Conduct