

Terms and Conditions of Purchase

1. Order

- 1.1 We order exclusively according to the following Terms and Conditions of Purchase. Other conditions, in particular deviating, contradictory or supplementary conditions of the Contractual Partner (hereinafter referred to as Contractor or Seller) will not become part of the contract, unless *cunova* Special Products & Solutions GmbH (hereinafter referred to as Purchaser or *cunova*) confirms these conditions in writing. This also applies even if *cunova* does not expressly contradict any other conditions. If *cunova* accepts the ordered item without express objection, the contractor can in no way deduce that the Purchaser would have accepted deviating conditions of the Contractor. Verbal arrangements require written confirmation by the Purchaser. Individual agreements made with the Vendor in a particular case have in any case priority over these Conditions of Purchase. The content of such agreements is only valid if it has been confirmed in writing by *cunova*.
- 1.2 The order documents may not be disclosed to third parties or used for advertising without the prior consent of *cunova*.
- 1.3 The contract will be fulfilled by *cunova* provided that there are no obstacles to its fulfilment due to national or international regulations of foreign trade law, embargoes and/or other sanctions.

2. Acceptance of Order

- 2.1 Upon receipt of the written order, the Contractor is to return the duly signed confirmation of order to the Purchaser within 10 calendar days.
- 2.2 Delay in acceptance of order is considered a new offer and requires acceptance by *cunova*.

3. Modifications

- 3.1 The Purchaser may demand changes to the item ordered after conclusion of the contract, provided that such changes are reasonable for the Contractor. In case of any modification/addition or supplement to the order, the Contractor is to inform the Purchaser within 14 days of any increase or decrease in price as well as effects in connection with deadlines. The Contractor shall determine new prices on the calculation basis of the order. The new prices as well as the effects in connection with alterations of the fixed dates are subject to approval by the Purchaser. If the Contractor does not provide information on prices and dates within the period stipulated in sentence 2, the amendment shall be deemed to have been accepted by the Contractor under the previous terms and conditions, provided that the increased or decreased costs only constitute minor deviations.
- 3.2 The Purchaser is entitled to change unilaterally the payment terms of a running order, if the Purchaser argues that justifiable doubt exists concerning the credit worthiness of the Contractor.
- 3.3 Coordination discussions conducted between the Contractor and any party involved are to be reported in written form by the Contractor and sent to the Purchaser for approval. If necessary, intended modifications to the technical concept of the Purchaser - even if no additional or reduced costs are incurred - are to be highlighted in the report and, in any case, require binding agreement from the Purchaser. No modifications are to be implemented without written approval by the Purchaser.

4. Scope of Delivery and Performance

4.1 Terms of Delivery

The items ordered are to be delivered to the place of receipt indicated by *cunova* in the purchase order.

In addition, the following conditions apply:

DELIVERY is to be effected to the shipping address specified, in the prescribed manner, at the delivery times listed under point 7;
 METHODS OF DISPATCH up to 31.5 kg: as parcel in the case of "carriage forward"; more than 31.5 kg: Dispatch note, delivery indicating our order-no. and the respective dates, to be sent to *cunova*'s forwarding department by fax acc. to point 7.

FORWARDING NOTES are to be sent to our works on the day of despatch at the latest;

DELIVERY NOTES in duplicate, easy to find, attached to the goods;

INVOICES in duplicate, to be sent directly to the Purchaser, if possible electronically - please see point 7. Value added tax is always to be indicated separately.

All paperwork must show the order-no. of *cunova*, otherwise *cunova* may refuse acceptance.

For purposes of calculation, weights determined by *cunova* are binding.

- 4.2 The contract scope shall include all the documentation which may be required for the starting-up, operation and maintenance of the contract goods.
- 4.3 The goods ordered are to be supplied state-of-the-art and under application of the version of standards valid at the time the order was placed. *cunova* is to be notified about changes in technological standards, including the effects on the ordered goods, and applied in connection with the ordered goods following written confirmation by *cunova*.
- 4.4 Unless otherwise stipulated below, the statutory provisions shall apply regarding the rights of the Purchaser in the event of defects of quality and defects of title of the items ordered (including incorrect and short delivery as well as improper assembly, defective assembly, operating or instruction manuals) and other breaches of duty by the Contractor. In accordance with the statutory provisions, the Contractor is liable in particular for ensuring that the ordered items have the agreed quality at the time of the transfer of risk to *cunova*. In any case, those product descriptions, which - in particular by designation or reference in the order - are the subject matter of the respective contract or have been incorporated into the contract in the same way as these Terms and Conditions, shall be deemed to be an agreement on quality. Whether the product description originates from *cunova* or the Contractor is irrelevant.
5. **Delivery Times, Delays, Duty to Inform about Defects**
- 5.1 The Contractor is obliged to adhere to agreed dates. These dates are binding. If a delay in delivery becomes apparent, the Purchaser must be informed immediately. If the Contractor does not perform its obligations or does not perform its obligations within the delivery period agreed or if the Contractor is in default, *cunova* shall be entitled to claim rights - including the right to claim rescission of contract and the right to recover damages - according to the statutory legal provisions.
- 5.2 Pre-schedule deliveries are subject to agreement by the Purchaser.
- 5.3 The acceptance or approval of deliveries or services received late or with material or legal defects (including incorrect and short delivery as well as improper assembly, operating and instruction manual) does not mean a waiver of the contractual or legal claims of the Purchaser. Deliveries/services will be checked by the Purchaser on the basis of the delivery documents for wrong or short deliveries as well as for obvious transport damage. No further inspections have to be performed by the Purchaser. In case any defects or deviations are detected, the Contractor is to be informed immediately in writing. The Purchaser is to be informed immediately and in writing about any other defects/quality deviations as soon as they are detected within the scope of regular business operation and production process; in this respect the contractor waives the objection of the late notice of defects.
6. **Transport Insurance**
 Special insurance costs, or costs arising in this connection, are not to be taken into account, for *cunova* is generally insured against all transport risks.

7. Delivery Addresses

cunova GmbH		
		Invoices via email: invoices@cunova.com
a	Postal Address	Postfach/P.O.B. 3320 49023 Osnabrück Germany
b	Delivery by Lorry Time of Delivery	49074 Osnabrück Schlachthofstraße 11 Mo. - Fr. 06:00 - 12:30
c	Station of Destination for Rail Wagon	Osnabrück Anschlussgleis
d	Shipping Notice E-Mail	avis@cunova.com

8. Acts of God/Force majeure

8.1 Events unforeseeable and unsusceptible, such as natural disasters, acts of war, blockades, embargoes and strikes rendering impossible or substantially impeding wholly or in part the punctual execution of the contractual obligations, exempt the Contractor from his contractual obligations for the duration and the extent of their consequences. The contractual partners commit to providing the necessary information within the scope of what is reasonable and to adjusting their obligations accordingly in good faith.

The Contractor shall, to the best of his ability, make every endeavour to eliminate the disturbances obstructing execution of the contractual obligations. If, due to such events, the Contractor is unable to fulfil the order for a continuous period of 2 months, the Purchaser will be entitled to terminate the contract wholly or in part without the obligation for damages.

9. Progress Checks, Testing, Inspections

9.1 The Purchaser and/or his authorised representative(s) as well as, in so far as stipulated in individual contracts between the contractual parties, the customers of the Purchaser and/or his authorised representative(s) shall be entitled to inspect the progress of production and compliance with contractually stipulated requirements for the quality of the ordered items in the business premises of the Contractor and his subcontractors. This applies to the condition of the ordered items and to all the materials used for the manufacturing of the ordered items as well as for the completeness and correctness of the contractual documentation. The Contractor shall provide, at his own expense, all assistance, labour, materials, electricity, fuels, media, apparatus, instruments etc. necessary for the proper execution of the inspections and tests. If, due to Contractor's fault or negligence, the inspection cannot be performed satisfactorily, and/or if a desired inspection of the acquisition sources cannot be performed satisfactorily due to Contractor's fault or negligence, all the costs resulting from the re-inspection (e.g. personnel, travel and material costs) shall be borne by the Contractor.

10. Dispatch of goods

The dispatch is to be effected strictly according to the indications of the Purchaser.

11. Invoicing

The Contractor is to issue a final invoice after fulfilment of its contractual obligations following the acceptance procedure regulated in section 13.1. Subject to individual contractual provisions, partial invoices may also be issued, which will be replaced in total by a final invoice.

12. Assignment; Setting off of Claims

12.1 An assignment of claims against the Purchaser by the Contractor is only permitted if the Purchaser has given his prior written consent.

12.2 *cupova* is entitled to claim the rights of set-off or the rights of retention as well as the defence of non-performance of the contract to the extent permitted by law. In particular, *cupova* is entitled to withhold due payments, as long as *cupova* is still entitled to claims against the Contractor arising from incomplete or defective services. The Contractor shall have a right of set-off or a right of retention in case of counter-claims which have been legally established or are undisputed. The Purchaser is entitled to offset against claims, to which he is entitled, against a company in which the Contractor has a direct or indirect shareholding of at least 50%.

13. Acceptance

13.1 The procedure of acceptance is to be carried out in accordance with the "Conditions for Acceptance" fixed in the order. It can be requested at earliest upon successful starting-up of the goods ordered.

13.2 Acceptance of the item ordered does not constitute a waiver by the Purchaser of any rights to which it is entitled, in particular warranty claims, damage claims arising from delay, contractual penalties etc. Section 341, para. 3, BGB (German Civil Code) will not apply.

13.3 The Purchaser is entitled to use the item ordered - upon receipt of the operating instruction, on a trial basis, upon end of starting-up and prior to acceptance - for test purposes under production conditions. The same shall also apply correspondingly for purposes of damage minimisation with the Purchaser in case that the acceptance of the goods ordered cannot yet be carried out for reasons attributable to the contractor. This does not constitute a total or partial acceptance and has no effect on the period or extent of the Contractor's warranty obligations.

14. Transfer of Ownership and Risk

14.1 Transfer of ownership to the Purchaser coincides with handing over/delivery on-site of the plant. The transfer of ownership does not imply acceptance.

14.2 Unless agreed otherwise, the risk passes upon acceptance.

15. Securities

In the case of agreed payments prior to delivery and, if stipulated in individual contracts, to secure the warranty obligations, the Contractor shall provide, in favour of the Purchaser, directly enforceable and unconditional guarantees from a major German bank, which exclude the rights of the guarantor under sections 768, 770 BGB (German Civil Code) and the other content of which is to be agreed with the Purchaser. The costs for the provision of guarantees are to be borne by the Contractor.

16. Warranty Claims

16.1 Unless otherwise stipulated below, the statutory provisions shall apply regarding the rights in the event of defects of quality and defects of title of the supplies and services (including incorrect and short delivery as well as improper assembly, defective assembly, operating or instruction manuals) and other breaches of duty by the Contractor.

16.2 In accordance with the statutory provisions, the Contractor is liable in particular for ensuring that the ordered items have the agreed quality at the time of the transfer of risk to the Purchaser. In any case, those product descriptions, which - in particular by designation or reference in the order - are the subject matter of the respective contract or have been incorporated into the contract in the same way as these Terms and Conditions, shall be deemed to be an agreement on quality. Whether the product description originates from *cupova* or the Contractor is irrelevant.

16.3 If the quality and/or workmanship of any items ordered are not in conformity with the agreed specifications and/or if any defect arises within the limitation period for buyers in actions for breach of warranty in conformity with clause 16.5, the Purchaser may immediately, without prejudice to any other rights, demand subsequent performance from the Contractor. Subsequent performance is to be effected for the Purchaser - packed franco place of installation, transportation at Purchaser's choice - including dismantling and reassembly.

16.4 Where the goods ordered, even upon effected subsequent performance, fail to meet the requirements of the order, or in case of Contractor's failure to fulfil his subsequent performance obligation promptly and with all possible speed, or if there is a particular emergency (= in particular, an impending production stoppage at the Purchaser's premises which would result in the inability to adhere to delivery deadlines), the Purchaser shall have the right, after informing the Contractor in writing, to carry out the necessary work itself or have it carried out at the expense of the Contractor and to demand reimbursement of the necessary expenses. This shall be without prejudice to the Purchaser's right to demand rescinding of the contract, reduction of the purchase price or claim damages.

If the contract is rescinded, the goods received by the Purchaser shall be returned to the Contractor at the place of installation. Anything which the Contractor received from the Purchaser shall be restored to the latter at the latter's registered place of business.

16.5 The warranty period shall be 24 months after delivery or acceptance of the item ordered (whichever is applicable). For construction work, steel construction and documentation, however, the warranty period shall be 5 years. The statutory provisions shall apply regarding the limitation period. As regards replaced/renewed and/or improved parts, the warranty period shall be 24 months after installation, but shall end at the earliest upon expiration of the warranty period of the item ordered.

The warranty period for spare parts which are specially marked or identified as such in individual contracts, shall be 24 months from the date of installation, but shall end at the earliest upon expiry of the warranty period of the item ordered.

17. Prohibition of Heavy Metals

The Contractor commits to supply *cupova* exclusively with products that comply with EU Directive 2000/53/EC of 18.09.2000 under consideration of the decision of the European Commission of 27.06.2002 (2002/525/EC). Insofar as the Contractor supplies products in which materials are processed that fall within the scope of the aforementioned EU Directive, the Contractor undertakes to expressly inform *cupova* about these materials.

18. REACH Regulation

The Contractor undertakes to *cupova* to fulfil its obligations according to the provision in Regulations (EC) No. 1907/2006 concerning the registration, evaluation, authorisation and restriction of chemical substances. The Contractor undertakes in particular, upon delivery, to provide *cupova* with a safety data sheet according to the provisions set out in Regulation (EC) No. 1907/2006.

The Contractor, furthermore, undertakes to *cupova* to provide the information required according to articles 32 and 33 of the Regulation without any specific request having to be made.

The Contractor undertakes to expressly inform *cupova* if he supplies a substance which has not been registered contrary to the obligation under Article 6 of Regulation (EC) No. 1907/2006.

The same shall apply if he supplies a preparation containing one or more substances that have not been registered, contrary to the obligation under Article 6 of Regulation (EC) No 1907/2006.

If the Contractor supplies one or more substances included in Annex XIV of Regulation (EC) No. 1907/2006 or a preparation containing such substance(s), he shall expressly inform *cupova* in writing of the reasons within the meaning of Art. 56 of Regulation (EC) No. 1907/2006 that permit placing the substance on the market.

If the Contractor advises against the use of a substance, he is to do so in writing, in a clear and prominent manner. If *cupova* is obliged to compile a Chemical Safety Report in accordance with Art. 37 of Regulation (EC) No. 1907/2006 and therefore requires information from the Contractor regarding the substances supplied, the Contractor is obliged to provide the requested information within a period of 30 days of receipt of such request.

19. Energy Management

The Purchaser has introduced an energy management system. Accordingly, the contractor, in connection with his services and deliveries to the Purchaser, is obliged to comply with the current EC/EU directives concerning energy efficiency, national laws and standards and in particular the regulations of DIN EN ISO 50 001.

20. Provisions on Export Control and Foreign Trade Data

The Contractor is to comply with all requirements of the applicable national and international customs and foreign trade law. He is to provide cunova in writing, at the latest two weeks after the order has been placed, and immediately in the event of changes, with all information and data required by cunova to comply with foreign trade law in the case of export, import and re-export, in particular:

- all applicable export list numbers including the Export Control Classification Number according to the U.S. Commerce Control List (ECCN);
- the statistical goods number according to the current commodity classification of foreign trade statistics and the HS (Harmonised System) Code; and
- country of origin (non-preferential origin) and, if requested by cunova, supplier declarations of preferential origin (for European suppliers) or certificates of preference (for non-European suppliers).

If the Contractor violates his above-mentioned obligations, the Contractor shall bear all expenses and damages incurred by cunova as a result, unless the Contractor is not responsible for the violation of obligations.

21. Provision of Materials / Access by Third Parties

Material provided by cunova is kept separated from other materials by the Contractor and marked as cunova property; it is to be stored with the care of a responsible businessman. The Contractor is obliged to prevent access by third parties and to inform cunova immediately of changes in quantity and condition of the materials provided.

22. Patent and other Industrial Rights

- 22.1 The Contractor shall be liable for ensuring that no patents or other third parties' industrial rights are infringed through the application, utilisation or operation of the item ordered.
- 22.2 In the event of Contractor's own industrial rights being affected, in conjunction with the execution of the order, the Contractor is to grant to the Purchaser the irrevocable right to unconditional use of these patents or industrial rights in connection with the subject of the order. The right of use is paid for with the price of the order.

23. Secrecy, Protected Rights

- 23.1 All drawings, data systems, operating procedures, figures, illustrations and so on, irrespective of nature and origin, forwarded to or coming to the knowledge of the Contractor shall be treated strictly confidentially and remain the property of the Purchaser.
- 23.2 All drawings and documents which the Contractor prepares in connection with the order are subject to the unlimited rights of possession and disposal of the Purchaser for his personal use.
- 23.3 In no way will the verification and/or the release of drawings by the Purchaser establish any claims against him, this applies especially to any claims for joint responsibility. Any alterations made by the Purchaser are to be verified in connection with the technical execution and will not release the Contractor from his obligation to ensure the correctness of the dimensions, design, calculation and function of the item ordered.

24. Publications

The Contractor may not make or arrange for publications in connection with an order or an overall project without the prior written consent of the Purchaser.

25. Place of Fulfilment

Place of fulfilment concerning deliveries and services is the place where the subject of the order is to be sent according to the Purchaser's instructions (place of receipt at the location of receipt). This shall also apply to any subsequent deliveries. For deliveries of documentation and for payments place of fulfilment shall be the Purchaser's domicile.

26. Partial effectiveness, loop holes in the contract

In the event that for any reason one or more provisions of these Terms and Conditions should be or become ineffective or void, the validity of the other provisions shall not be affected by this. In such an event, the contracting parties shall replace the ineffective or void provisions with valid provisions which come as close as possible in meaning and purpose to the ineffective ones whilst not reducing or annulling by the use and/or purpose of the subject of the order as originally intended.

27. Jurisdiction, Applicable Law

All points of law arising out of this contract shall be governed by the law of the Federal Republic of Germany. The agreement of the United Nations dated April 11th, 1980 concerning contracts for the international sale of goods does not apply. Place of jurisdiction in the case of business transactions with independent merchants/traders and legal persons under public law is the Purchaser's head office in Osnabrück. The Purchaser is also entitled instigate legal proceedings at the location of the Contractor's head office.

28. Code of Conduct

With the binding conclusion of the legal transaction on which these GTC are based, the contractor also recognizes the content of the "Code of Conduct for Business Partners" of cunova GmbH - available at www.cunova.com/support/downloads - in full.