

# CONDITIONS OF PURCHASE (Version: June 2021)

## **1. General points**

1.1 All orders issued by ADLER-Werk Lackfabrik, Johann Berghofer GmbH & Co KG (hereinafter referred to as "ADLER") are subject to the following conditions of purchase, even if no reference is made to them in some individual cases.

1.2 In the following, we also use the description "contractor" to refer to persons with whom ADLER negotiates terms for the performance of a service (delivering goods and/or services) via the conclusion of a contract.

1.3 The use of the contractor's General Terms and Conditions, of whatever kind, is excluded, with the exception of cases where they have been expressly recognised in writing by ADLER. Neither actions in fulfilment of the contract nor the maintaining of silence on the matter by ADLER imply recognition of the contractor's General Terms and Conditions. An appeal from the contractor for their General Terms and Conditions to be used is excluded, even in the case that these Terms and Conditions do not differ in content from ADLER's own conditions of purchase.

1.4 Agreements deviating from these conditions, collateral agreements, assurances and changes to these conditions of purchase may only be agreed upon if they are set out in writing and shall only be considered to apply to the particular case in question.

1.5 Declarations or statements issued by ADLER to the contractor shall be considered to have been effectively delivered if they have been sent to the postal or email address most recently provided by the contractor.

## **2. Tenders from contractors**

2.1 The specifications for the goods/services to be provided that have been supplied to / by ADLER shall be considered as warranted characteristics. This also applies to any details in brochures, certificates and test reports that formed the basis for the contract.

2.2 All tenders submitted to ADLER shall be considered binding for the contractor, in each case for a period of at least three months from their receipt by ADLER, and do not imply any entitlement to receive either an order or payment, regardless of any preliminary work that may have been required to submit the tender to ADLER.

## **3. Placing an order and order confirmation**

3.1 ADLER only considers orders to be binding if they have been issued on ADLER order forms with an order number and have been signed by an authorised representative of ADLER.

3.2 Provided no express agreement to the contrary has been made, an order confirmation is to be sent to ADLER within two working days, in particular confirming the price and delivery date. If this is not done, ADLER shall no longer be bound to their order.

3.3 Order confirmations are to be sent to the following email address [einkauf@adler-lacke.com](mailto:einkauf@adler-lacke.com)

## **4. Provision of goods/services by the contractor**

4.1 The contractor is to use flawless materials and is to guarantee professional execution of the task in hand in accordance with the drawings provided, using construction methods that are appropriate for the purpose and faultless assembly. The contractor is to guarantee that all raw materials delivered as such, or raw materials in blends and preparations, have been pre-registered in compliance with REACH and have been registered with REACH in accordance with the contractor's annual production quantities.

4.2 If the contractor wishes to make a change in terms of the upstream suppliers that have previously been approved by ADLER, or has plans to award contracts for the execution of an order, either in whole or in part, to sub-contractors, this requires express written agreement from ADLER. If this rule is not complied with, ADLER is entitled to withdraw from the contract, within a period of 90 days of having gained knowledge of these circumstances. This period of time is to be granted if the declaration from ADLER is sent to the address most recently provided by the contractor within this period of time.

## **5. Prices**

5.1 The agreed prices are to be considered fixed prices up until the completion of the order. Retrospective price increases, for whatever reason they may be made, will not be recognised.

## **6. Deadline for completion of the order**

6.1 The deadline set by ADLER for completion of the order is to be complied with - punctuality is expected. Partial deliveries or premature deliveries require ADLER's prior agreement.

6.2 In the case of delays in completion or incomplete deliveries, ADLER is entitled, without granting a grace period, to withdraw from the contract or to insist on the delivery being made. As soon as it becomes clear to the contractor

that they will not be able to deliver on time or will only be able to make a partial delivery, they are to notify ADLER without delay, providing details of the reasons and the anticipated duration of the delay, and they are to obtain ADLER's agreement to an extension for the provision of the goods/service, within a period to be set by ADLER.

6.3 In the case that there is a delay in the provision of the goods/service, ADLER is entitled to enter into business with another contractor to cover their requirements, in analogous application of section 376 of the Austrian Commercial Code. This also applies in the case of a delay in providing replacement goods/services.

## **7. Packaging, transport and shipping instructions**

7.1 The price to be paid by ADLER is as a matter of principle to be considered to be "inclusive of packaging". In the case that there is any other agreement, the packaging is to be calculated at cost price and is to be indicated separately.

7.2 Any costs arising from damage caused by the use of unsuitable packaging shall be borne by the contractor.

7.3 Prices are in general to be set as DDP Schwaz in accordance with the version of the Incoterms applicable at the time when the contract was signed.

7.4 In exceptional cases where there is a good reason, the costs for transport, packaging, insurance and other costs that arise in connection with the delivery of the goods to the place of performance specified by ADLER are to be agreed in writing.

7.5 For deliveries of raw materials and packaging materials, no ARA (Austrian scheme for the recycling of waste materials) surcharges will be accepted as a matter of principle, as the packaging material used is not fed into the ARGEV collection system.

7.6 The complete order number and the specified unloading site are to be entered on the consignment notes, on the shipping documents intended for the recipient and on the package itself, ensuring that it is clearly visible. In the case of deliveries from non-EU countries, all the delivery documents are to bear the customs tariff number, the net weight and the country of origin of the goods.

7.7 In the case that ADLER is paying the full costs or partial costs of the freight, the conditions listed below are to be complied with. If the contractor sends the goods without any express shipping instruction from ADLER or in contradiction to such instructions, then ADLER shall be indemnified by the contractor against any disadvantages that may arise for ADLER in respect of obtaining the cheapest possible type of delivery.

7.8 Provided the contractor is not given any other instructions by ADLER, shipments sent by rail or post are to be sent in compliance with the customs tariff regulations that are associated with the cheapest method of freight. The ADLER order numbers and item numbers are to be shown on the package itself and on all the shipping documents.

7.9 If no other instruction has been issued, the items for freight are to be sent to ADLER at the correct address (ADLER-Werk, 6130 Schwaz, Hermine-Berghofer-Strasse 56, Austria).

## **8. Accepting the delivery**

8.1 Goods will be formally accepted on condition that the delivery is found to be satisfactory by ADLER's incoming goods inspection, even if receipt of the goods has been confirmed by ADLER or the invoice has already been paid. The contractor shall allow a period of 90 working days for approval of the goods, during which ADLER may refuse acceptance of the goods on account of defects in the goods delivered.

8.2 The fact that the incoming goods inspection has found the goods to be satisfactory does not affect ADLER's right to issue a later notification of defects within the period of time cited in point 14.6 or to ask for a warranty or compensation.

8.3 In the case of deliveries of complete truckloads, the weight determined on our calibrated truck weighing bridge shall be considered authoritative.

8.4 The opening times for our incoming goods section are Mondays to Thursdays 7:00 - 11.45 am and 12.45 - 3.30 pm, and Fridays 7:00 - 11:00 am.

8.4.1 Road tankers must arrive at the ADLER-Werk, 6130 Schwaz, Hermine-Berghofer-Strasse 56, Austria by 2:00 pm from Mondays to Thursdays and by 9:00 am on Fridays. Otherwise no assurance can be given that the unloading process will be completed on the same day.

8.5 Test certificates must be sent in advance to the following email address: [we.labor@adler-lacke.com](mailto:we.labor@adler-lacke.com).

8.6 If the delivered goods do not meet the agreed standards or do not correspond to the reference sample, ADLER is entitled to arrange for the goods to be returned at the contractor's expense and to demand immediate replacement with perfect goods.

8.7 In handing over of the goods, the contractor transfers full ownership to ADLER, without reservation, and at the same time declares that no third party rights exist. Reservations in this regard on the part of the contractor are in all cases invalid, i.e. even without objection from ADLER.

8.8 The contractor is to deliver any storage or operating instructions along with the goods without this being specifically requested and, where necessary, is to draw attention to any further required measures in regard to the handling of the delivered goods. If this requirement is not complied with, the contractor shall assume liability for any damages or follow-up costs that may ensue.

### **9. Additional rules with regard to the performance of services**

9.1 The type, scope and costs of the services will be described in detail in a service specification/order. In addition to this, the following rules shall also apply.

9.2. Services are to be invoiced either with fixed prices/according to the actual work done, or on an hourly basis. In the latter case, a maximum is to be agreed for the total of the hours that can be billed (cost ceiling). For services that are invoiced on an hourly basis, only the actual hours for which the service was performed are to be included in the invoice. Payment will be made on the basis of hourly rates that have been authorised by the ADLER project management team.

9.3 The contractor is to ensure that they perform the service to the best of their knowledge, taking the utmost care and using the latest technology. The warranty conditions in accordance with point 14 of these conditions of purchase shall be considered to apply with regard to the results of these services.

9.4 The contractor is to provide assurance that they will only use personnel with the appropriate qualifications and skills for the fulfilment of the service. The personnel who will be involved in the performance of the service are to be listed in the service specification. The contractor will not replace any members of staff without good reason. Prior written consent is to be obtained from ADLER in all cases.

9.5 The contractor undertakes to personally ensure that those members of his staff who are to be involved in the project have been made aware of the obligations that arise from this agreement to an adequate extent, in particular with regard to confidentiality.

9.6 The deadlines cited in service specifications/orders are in all cases binding.

9.7 The use of silicone that has not been approved by ADLER or of products containing silicone that have not been approved by ADLER is prohibited in all interior areas.

### **10. Invoices and assignment of receivables**

10.1 The invoice is to be sent via email in PDF format to the following email address: [rechnung@adler-lacke.com](mailto:rechnung@adler-lacke.com), citing all the details of the order, immediately after the goods have been sent or once the service has been performed in full, or it may be sent as part of a collective invoice, citing the various ADLER order numbers. If it is not possible to send the invoice by electronic means, the invoice should be sent by separate post to ADLER-Werk Lackfabrik, Johann Berghofer GmbH & Co KG, Bergwerkstrasse 22, 6130 Schwaz, Austria.

10.2 The contractor undertakes to issue the invoice documents in accordance with the legal regulations relating to VAT that are applicable in each case, in particular those of the EU. In particular, the required information with regard to deliveries within the EU, reverse charge regulations and tripartite trade are to be included.

10.3 Invoices for work performed and assembly work are to be accompanied by time sheets that have been confirmed by ADLER.

10.4 Invoices that have been drawn up such that they do not comply with ADLER's conditions of purchase, in particular with regard to the order details and order numbers, will not be considered valid.

10.5 For shipments that are sent outside of the EU's external borders, two invoices are to be enclosed with the freight documentation as customs papers and goods transport certificates/proof of country of origin, or sent in good time to the recipient's address labelled "For the customs authorities" so that they are already there when the goods arrive.

10.6 Assignments of receivables from ADLER require prior written agreement from ADLER.

### **11. Payment**

11.1 Provided no other special agreement has been reached, payment for goods and services that have been accepted without any objections or claims will be effected either within 14 days from receipt of the invoice and the receipt of the goods by ADLER with a deduction of 3% discount, or within 90 days net after receipt of the invoice and goods at ADLER; the choice of payment terms shall be made by ADLER. The decisive date with regard to compliance with the relevant payment terms in accordance with sentence 1 shall be the date when the order for a bank transfer was issued to the bank.

11.2 In the case that goods are provided at an earlier date than arranged, the payment period shall start from the deadline originally agreed, at the earliest.

11.3 Any payment made does not imply acknowledgement of the proper and correct nature of the goods/service provided and therefore has no influence on claims made by ADLER in the context of the fulfilment of the contract, for example claims for compensation, the right to withdraw from the contract, etc.

11.4 Fluctuations in exchange rates and currency, as well as bank charges, shall be covered by the contractor.

11.5 ADLER is entitled to withhold payment until the contractor has remedied any defective goods. ADLER's entitlement to discount remains unaffected in this case.

11.6 If the issued invoice documents contain formal defects in terms of their compliance with Austrian VAT law or the relevant EU directives, then the payment period in accordance with point 11.1 shall not start until ADLER is in receipt of the correct invoice documents.

## **12. Machinery and equipment**

12.1 Machinery and equipment must be fitted with the prescribed safety features and must comply with the safety regulations that are currently applicable. With the setting up of electrical systems or the delivery of electrical engineering products, the contractor is to undertake to comply with the specifications provided by ADLER with regard to dimensions, quality and execution, as well as with all safety regulations related to electrical engineering.

12.2 It is important in particular that compliance is ensured with the applicable version of the Austrian Electrical Engineering Law with the associated Electrical Engineering Directive in the most recent applicable version, and all regulations based on these, as well as with the applicable version of the rules of the Austrian Electrical Engineering Federation (ÖVE) and the applicable rules of the Federation for Electrical Engineering, Electronics and Information Technology (VDE), as well as the Austrian "Ö" standards and established engineering practice.

12.3 In cases where EU guidelines, laws, directives or regulations prescribe CE labelling, then carrying out the procedure stipulated in the rules for the attachment/application of the CE symbol is an essential requirement for the fulfilment of the contract.

## **13. Rules, safety and environmental regulations**

The contractor shall guarantee that the goods/services to be provided comply with the applicable EU guidelines, laws, directives and regulations and, in the case that these regulations are not complied with, undertakes to fulfil any conditions stipulated by the authorities or any other public office with regard to ADLER at their own cost and to bear the cost of any penalties. On account of the storage requirements and methods required for dealing with hazardous substances and preparations, strict safety and environmental regulations are in place and these are applicable across the entire premises of the factory. The contractor undertakes to comply with the ADLER Guidelines for External Companies, which are given to the contractor on a one-off basis in the course of the contract being awarded and which the contractor must accept in writing, and also undertakes to pass on all the relevant information to their employees and subcontractors. The current version of the Guidelines for External Companies can be viewed at any time on our website ([www.adler-lacke.com](http://www.adler-lacke.com)). If ADLER should incur any costs through the provision of defective goods/services that can be attributed to the contractor, the contractor is to compensate them for such costs.

## **14. Warranty and notification of defects**

14.1 The warranty period shall be 24 months and starts from the point when delivery of the goods is taken within the meaning of point 8.1 or from the point of completion of the services or proper and correct commissioning.

14.2 The contractor is to acknowledge the fact that it is only possible for ADLER to inspect raw materials and ancillary materials to a limited extent and by means of random checks prior to processing, and that it is not until they are used in production that a more thorough inspection of the raw materials and ancillary materials can be done to ensure that they are free of defects.

14.3 If it is established on carrying out random tests that parts of the delivered goods/services do not comply with ADLER's guidelines or with the standards that are customary in the industry, then it may be necessary for the entire delivery to be made available for inspection.

14.4 Defects in the delivered goods/services are to be remedied by the contractor at the contractor's own cost, free of charge to the point of use. If defects do not become obvious until the goods are being processed or are in use, ADLER has the right to demand compensation for costs that have been incurred to no avail.

14.5 ADLER is entitled to a period of 12 months for the notification of defects, starting from the end of day of delivery. This period does not apply to defects that were not found during the course of a proper inspection. ADLER is to notify the contractor of any such hidden defects within 30 days of the point in time when ADLER becomes aware of the defect.

14.6 Once the rectification of defects has been completed, then the terms for warranties and guarantees shall start again from the beginning.

14.7 If no shipping instructions are received from the contractor with regard to the defective goods within 14 days after submission of the notification of defects, then ADLER is entitled to send back the rejected goods to the contractor's address and the contractor shall bear both the costs and the risks of the shipment.

14.8 Acceptance of the goods in the contractor's factory does not release the contractor from the terms of the warranty.

## **15. Liability**

15.1 The contractor is liable for any damages that are suffered by ADLER, or by companies in which ADLER has a shareholding, which arise from the unsatisfactory execution of the order or due to culpable breach of the contractor's obligation to disclose information during the precontractual phase. In the case that the goods/services are provided by a subcontractor, the contractor remains the sole contractual partner and point of contact for ADLER.

15.2 In the case of disputes with third parties that have arisen from the provision of goods on the basis of intellectual or industrial property rights, the contractor is to indemnify and hold ADLER harmless and is to ensure the unrestricted use of the delivered goods.

15.3 The contractor is to hold ADLER harmless from all claims made by third parties arising from the Austrian Product Liability Act and is to compensate ADLER for all damages arising in this context, including in particular the cost of returning goods, loss of interest and lawyer's fees, unless the contractor can provide evidence that a defect in accordance with the Product Liability Act had been caused by ADLER.

15.4 If the delivered goods are defective, in particular if they are not in conformity with the sample or fail to comply with the quality specifications, packaging and shipment instructions and regulations for labelling materials, the contractor is to reimburse ADLER for any costs that arise in carrying out goods inspection, in the determination of the defects, in sorting out the defective goods and in retooling, among other things, following assignment of the costs. All other legal entitlements remain unaffected.

## **16. Property rights and confidentiality**

16.1 Rights related to drawings, samples and models that are made available to the contractor remain with ADLER.

16.2 The contractor must maintain confidentiality on a long-term basis with regard to any information that ADLER, or a company in which ADLER has a shareholding, discloses, or that the contractor becomes aware of in the course of their collaboration, in particular with regard to development, inventions, manufacture, purchasing, accounting, engineering, marketing and sales policy, sales, new product planning and goals, strategies, recordings, designs, samples, models, drawings, sketches, systems, processes, production plants, the content and fact of the business relationship, key contracts, values, etc. (collectively referred to as "confidential information") and the contractor shall not use or exploit this information in a commercial context, for whatever reason, or disclose the information to any third party, or use it for their own advantage or for the advantage of a third party, without having gained prior written consent from ADLER. The contractor is to ensure and guarantee that all persons that they engage to work with such information (corporate bodies, employees, consultants, suppliers, etc.), as well as any other persons to whom they grant access to the confidential information, are likewise required to maintain confidentiality to the same extent in their dealings with ADLER.

16.3 The only information that is not subject to a confidentiality agreement is information that is publicly available and information that the contractor can provide evidence of already having had access to prior to being given access by ADLER.

16.4 At the request of ADLER, the contractor must immediately return all written documents and any documentation that contains confidential information, including copies thereof that the contractor may be in possession of, regardless of whether such copies were made by the contractor, by ADLER or by a third party.

16.5 The restrictions and obligations contained in this agreement shall remain in place, even after the expiry, termination or annulment of the business relationship and the contractor and their legal successors shall continue to be bound by them.

## **17. Drawings, tools, moulds**

17.1 In the case that drawings, aids, tools, moulds and such like have been provided by ADLER for the execution of the order, these shall remain the property of ADLER; it is not permitted for third parties to be given access to them and they may not be used for the contractor's own purposes. They are to be returned to ADLER in perfect condition at ADLER's request.

17.2 Tools, moulds and such like that the contractor produces entirely or partially at ADLER's expense, become the property of ADLER once they have been made. These, as well as the tools provided by ADLER, are to be stored carefully by the contractor, who should also maintain them in good condition and if necessary replace them.

17.3 After every order for which the tools, moulds and such like are to be used, ADLER is entitled to request that the contractor immediately hands over and surrenders all tools, moulds and such like at no charge.

17.4 The contractor must grant access to ADLER, or to a person acting on the authority of ADLER, and is to ensure that the person in question is not hindered in any way during the removal of the tool. The tool is to be handed over in an undamaged, secured condition, ready for further use.

## **18. Provision of materials**

18.1 Materials that have been provided remain the property of ADLER and are to be labelled as such by the contractor and stored and administered separately. In the case of a decrease in value or loss, the contractor is to provide compensation.

18.2 Materials that have been provided may only be used for ADLER orders. In the case that these materials are processed, ADLER becomes the direct owner of the newly reworked item. Settlement of accounts for the materials provided is to be done in the form prescribed by ADLER.

### **19. Place of fulfilment**

19.1 The intended destination cited by ADLER shall be considered to be the place of fulfilment for goods/services and the place where the transfer of risk takes place.

### **20. Picking up goods**

20.1 The picking up of goods by ADLER against an outstanding invoice may only be done by persons who can show proof of being authorised to do so by ADLER.

### **Cash-on-delivery shipments**

21.1 Cash-on-delivery shipments will only be accepted by ADLER if an express agreement has been made in this regard.

### **22. Social responsibility and environmental protection**

The contractor and their upstream suppliers are to comply with the relevant legal regulations in regard to the way they deal with their employees and concerning environmental protection and health and safety at work, and are to make efforts to reduce the impact that their activities have on people and on the environment. For this purpose, the contractor is to set up and continue to develop a management system in accordance with ISO 14001, to the extent that this is feasible. Furthermore, the contractor is to undertake to observe and comply with the principles of the United Nations Global Compact Initiative ([www.unglobalcompact.org](http://www.unglobalcompact.org)). These concern in particular the protection of international human rights, the right to collective bargaining, the abolition of forced labour and child labour, the elimination of discrimination when hiring new employees and during employment, responsibility for the environment, and the prevention of corruption. If there is a breach of these standards, ADLER is entitled to withdraw from the contract without giving notice.

### **23. Conflict materials**

23.1 The contractor undertakes to ensure that no "conflict materials" from the Democratic Republic of the Congo or the neighbouring countries (affected countries) are purchased that provide direct or indirect finance or support to the armed conflict in the affected countries.

23.2 The contractor must ensure that they know the identity of all the organisations that are part of the supply chain (from raw materials through to the end product that is delivered to ADLER) and must ensure that all relevant paperwork with regard to the documentation of the origin of any conflict materials is retained.

23.3 These "conflict materials" comprise the following: columbite-tantalite (coltan), cassiterite (tin), gold, wolframite (wolfram) or any of their products. The definition may, however, also be extended to cover other minerals and their products that, in the opinion of the U.S. Secretary of State, are being used to finance the armed conflict in the affected countries.

### **24. Use of the brand ADLER**

24.1 Without prior written consent from ADLER, the contractor is not entitled to include the brand "ADLER", the "ADLER" logo or any other brands belonging to ADLER in their list of references or in any other communications materials or to publicly make reference to their business relationship with ADLER in any other way. In the case of an infringement in this respect, the contractor shall be liable to pay a penalty of € 10,000.00, which the contractor must pay to ADLER without delay at the first request. Any claims for compensation or the use of other legal remedies shall remain unaffected by the payment of the penalty.

### **25. Exclusion of the option to contest the contract on account of errors**

25.1 The contesting or amendment of the contract by the contractor on account of an error (including errors in calculation) is excluded.

### **26. Partial invalidity**

26.1 Should it be the case that one of the terms in the contract ceases to have a legal basis or becomes invalid, this shall not affect the remaining provisions of the contract. The provision in question is in this case to be interpreted within the framework of what is legally permissible in such a way that the economic and legal purposes for which it was originally intended shall be achieved to as great an extent as possible.

## **27. Applicable law and jurisdiction**

27.1 In the case of any disputes, the law that shall apply is Austrian substantive law. This applies both to reaching an agreement and to any claims that may result from such an agreement.

27.2 The use of the UN Convention on Contracts for the International Sale of Goods is excluded.

27.3 For disputes within the meaning of point 26.1, it shall be agreed that the responsibility is to lie with the competent court in Innsbruck.