



---

## GENERAL TERMS AND CONDITIONS SWITZERLAND

---

### 1. SCOPE

- 1.1 These General Terms and Conditions of Sale and Delivery (hereinafter "GTC") constitute both the basis and an integral part of the mutual contractual relationship between an Aenova Group company, with its legal seat in Switzerland (such company hereinafter referred to as "AENOVA") and the Customer. A specific inclusion of these GTC into individual agreements is not necessary. These GTC shall apply, as amended from time to time.
- 1.2 Should the Customer and AENOVA conclude a written agreement which sets forth the conditions of the agreement between the Customer and AENOVA in detail, such provisions of a written Agreement shall take precedence over these GTC in the event of any contradictions.
- 1.3 These GTC shall take precedence over any conflicting terms and conditions of sale or delivery of the Customer, unless AENOVA has expressly agreed to the Customer's terms and conditions in writing. This shall also apply if AENOVA makes reference to any document containing or making reference to the general terms and conditions of the Customer or those of a third party.
- 1.4 Offers, deliveries and services provided by AENOVA, as well as these GTC, are solely intended for persons who use such deliveries and services exclusively for professional, commercial or public law purposes. Personal or family member use of the deliveries and services by the Customer is excluded.

### 2. CONCLUSION OF CONTRACT (INVITATION TO MAKE AN OFFER – OFFER – ACCEPTANCE)

- 2.1 The presentation of goods and services by AENOVA does not constitute a binding offer on the side of AENOVA. It is only intended as an invitation to the Customer to submit an offer. Any documentation enclosed with the invitation to make an offer issued by AENOVA, such as images, drawings, mass and weight specifications, sizes and samples, are only included in the invitation to offer insofar as they are expressly specified as binding. Deviations from the specifications are expressly reserved if the delivered products fulfil the same function and feature the same quality.
- 2.2 Orders placed by the Customer with AENOVA on the basis of the invitation to make an offer constitute an offer by the Customer. They only become binding on AENOVA once AENOVA has confirmed the order in writing or in text form (i.e. without signature and text only reproducible by electronic means such as e-mail shall suffice), i.e. the agreement is concluded only upon confirmation of the order by AENOVA (acceptance). The Customer shall be bound by any offer it has made for a period of 14 calendar days.
- 2.3 Amendments and special agreements after sending an order confirmation are only valid if confirmed by AENOVA in writing. No oral supplementary agreements have been made.
- 2.4 If AENOVA, in deviation from section 2.2., submits a concrete offer in text form, an agreement is only concluded upon receipt of the offer, personally signed by the Customer, by AENOVA. Transmission by other means of telecommunications (i.e. facsimile or scanned agreement via email) is sufficient.
- 2.5 If the Customer withdraws its order, it shall immediately inform AENOVA of its reasons for doing so. In the event of such withdrawal, the Customer shall compensate AENOVA for work already performed by it and shall fully indemnify AENOVA. The costs for the work performed and the

indemnification to be paid to AENOVA shall amount to a lump sum of 10% of the amount owed to AENOVA according to the agreement. AENOVA may claim the actual costs and damages incurred subject to the submission of evidence.

### 3. PRICES / PAYMENT TERMS / PROHIBITION OF SET OFF

- 3.1 Unless otherwise expressly stipulated by AENOVA in writing, prices are in CHF and "ex works". The Incoterms 2010 shall apply.
- 3.2 The prices do not include statutory value-added tax (VAT). VAT shall be included as a separate item on the invoice at the statutory rate applicable on the day the invoice is issued. Charges for customary shipment and freight packaging may also be charged separately.
- 3.3 Any changes in costs and/or additional charges incurred in the course of customs clearance as a result of product-specific VAT shall be borne by the Customer. In the case of further processing and/or resale of the delivered product, the Customer shall be responsible for calculating VAT.
- 3.4 Invoices are payable within 30 calendar days of the invoice date. No cash or early payment discount or other reduction applies (30 calendar days net). In case of payment via bank transfer, the date on which the purchase price is credited to AENOVA's bank account shall be definitive for determining the timeliness of such payment. Deviating payment terms shall only be applicable subject to explicit confirmation by AENOVA. If payment is not made within the deadline provided, the Customer shall automatically be in default without notification. In such case, default interest at a rate of 8% for the year shall be calculated and be due for payment. AENOVA expressly reserves the right to claim further damages. If the Customer defaults on any claim of AENOVA, then all claims of AENOVA against the Customer shall become immediately due and payable.
- 3.5 Payments made shall first be set off against incurred costs, then against accrued interest and finally against the principal claim.
- 3.6 Failure to make payments and late payments release AENOVA from its duties to deliver and to adhere to delivery dates and deadlines.
- 3.7 In the event of a significant increase in material and production costs by the time of delivery, AENOVA and the Customer shall jointly agree to amend the prices stated in the order confirmation.
- 3.8 The Customer may only set off its claims against claims of AENOVA if the Customer's counterclaims have not been disputed by AENOVA or a court ruling thereon has become final and non-appealable (res iudicata). The Customer shall not be entitled to any rights of retention unless its counterclaim is based on the same legal relationship. This also applies in case of a substantial deterioration of AENOVA's financial situation.
- 3.9 The Customer shall promptly inform AENOVA of any significant deterioration in its financial situation which occurs after an order has been confirmed. In such case and/or if AENOVA otherwise becomes aware of facts or circumstances from which said deterioration is apparent after order confirmation, AENOVA shall be entitled, at its discretion, to request either pre-payment or an appropriate security. Security may, in particular, be furnished by way of a contract of surety (Bürgschaft) in the amount of the order volume by a first-rate large Swiss bank.

### 4. SCOPE OF DELIVERY/ DELIVERY DATES

- 4.1 The scope of delivery is specified in the order confirmation, which is binding (section 2.2.). Deviations from the agreed scope of delivery are permissible and contractual up to a tolerance limit of +/- 10% if delivery is by AENOVA. The delivery price increases or decreases accordingly.



4.2 Unless otherwise agreed, AENOVA shall be entitled to provide partial deliveries. In the case of partial deliveries, partial invoices may be issued and a separate payment period specified for each partial invoice.

4.3 Materials provided by the Customer: Where raw materials or packaging materials are to be provided for an order by the Customer, the Customer will receive a request from AENOVA upon order confirmation to supply these materials to a specified place and on a specified date. Materials provided by the Customer must be delivered free of charge (DDP Incoterms 2010) at the specified place and time. The Customer shall be responsible for the timely delivery of materials provided. AENOVA assumes no liability for damages or delays caused by materials not being supplied at the agreed time.

AENOVA and/or the AENOVA Group company responsible for order execution shall only carry out a visual inspection of materials provided by the Customer. The Customer shall be liable for any deviations in quality or quantity. The Customer shall also be liable where defective materials provided by the Customer affect the final product, or cause damage to equipment or cause production stoppages and related additional costs (consequential damage caused by a defect) to be incurred by AENOVA or the respective AENOVA Group company. Where the materials provided by the Customer are a delivery of raw materials, AENOVA shall grant a rate of yield of 90%. In case of a lower yield, AENOVA shall provide a reimbursement of costs regarding the difference between actual yield and the 90% yield subject to the submission of supporting documentary evidence of costs by the Customer.

4.4 AENOVA assumes no liability for the accuracy of values, requirements, conditions and assumptions provided to AENOVA by the Customer.

4.5 Terms of delivery: Specifications of delivery dates in order confirmations are always non-binding unless a binding delivery date (fixed date) has been stipulated. In such case, the delivery period shall commence at the end of the day on which the written order confirmation is received and after supply of the basic materials to be provided by the Customer and/or receipt of all technical specifications, manufacturing instructions, recipes/formulas and documents to be provided by the Customer. The provision in section 4.6 shall remain unaffected. The delivery period shall be deemed met as soon as AENOVA has informed the Customer that the order is ready for shipment. Where the scope of delivery includes documentation, this shall be sent separately. The time of receipt of documentation is irrelevant for the purposes of observance of the delivery period.

4.6 AENOVA only accepts liability for delays of deliveries or services in cases of gross negligence or intent. Claims resulting from such delays only arise after fruitless expiry of a grace period of at least 30 calendar days having been granted to the Customer by AENOVA. In such case, the Customer may claim compensation for its costs from AENOVA, up to a maximum amount of the order value.

4.7 Tools which are either offered or procured by AENOVA for the manufacture of the products or their packaging shall remain the property of AENOVA even where the procurement costs have been paid partially or in full by the Customer.

## 5. DISPATCH / TRANSPORT / PACKAGING

5.1 Unless expressly agreed otherwise, transfer of risk occurs upon collection "ex works" (EXW) Incoterms 2010. Accordingly, the Customer shall collect or have the goods collected at AENOVA itself. In the event that the Customer defaults as regards the collection of the goods (herein "delivery"), the transfer of risks shall pass upon notification being provided of readiness for collection.

5.2 In the event that the Customer defaults, AENOVA shall charge storage costs of 1.5% of the invoice amount of the goods per full week of storage.

5.3 All dispatch, transport and packaging costs shall be borne by the Customer.

5.4 The Customer shall be responsible for taking out insurance for goods in transit. AENOVA may determine the taking out and the details (type, scope, transportation route) of an insurance policy for goods in transit if no instruction to the contrary is received from the Customer. The costs incurred in connection with said insurance policy shall be borne by the Customer. Claims for damages by the Customer due to a failure to observe an instruction regarding transportation are excluded except in cases of gross negligence and intent.

5.5 The Customer shall be responsible for the selection of appropriate packaging material and the type of freight packaging. If the Customer fails to provide specifications, AENOVA shall use customary freight packaging.

## 6. INSPECTION / ACCEPTANCE

6.1 Deliveries from AENOVA must be stored by the Customer immediately upon receipt in suitable premises or under the storage conditions specified by AENOVA and must be inspected immediately.

The Customer must notify AENOVA of apparent defects immediately – at the latest seven calendar days from receipt – in writing (acceptance report). In case of damage or loss of the delivery in transit, the Customer must immediately initiate a recording of facts with the responsible freight company at its own expense.

If the Customer fails to inspect the goods, the delivery is deemed to have been accepted.

6.2 Hidden defects must be notified to AENOVA immediately in writing, one year after delivery, at the latest.

6.3 Where the Customer requests joint acceptance inspections or performance certification, these shall be undertaken within a term to be specified for this purpose, 30 calendar days after delivery at the latest. The associated costs shall be borne by the Customer. Where such acceptance inspections cannot take place within the specified time for reasons for which the Customer is responsible, the goods are deemed to have been accepted.

6.4 In the event of any defects discovered in the course of the joint acceptance inspections, which are immaterial in relation to the delivery amounts, acceptance shall nevertheless occur upon completion of the joint inspections. However, AENOVA shall remedy the defects found within an appropriate period of time. If material defects are found, the Customer shall grant AENOVA a reasonable period of time to remedy the defects (no less than 30 calendar days). This shall be followed by a new joint acceptance inspection.

## 7. DEFAULT OF THE CUSTOMER

7.1 In the event that the Customer is in default with the collection or payment of the goods, AENOVA shall be entitled, at its discretion, to take the following action upon the expiry of an appropriate grace period:

- demand performance and claim for damages due to delay
- forego subsequent performance and claim damages for non-performance.
- withdraw from the agreement and claim damages.

7.2 In addition, AENOVA shall be entitled to stop production until the Customer is no more in default.

## 8. WARRANTY

8.1 AENOVA's warranty is limited to defects in materials and source materials that AENOVA is obligated to provide according to the specified scope of the order. The warranty expires at the latest after expiry of one year from the time of delivery. If the delivery is delayed due to reasons for which



AENOVA is not responsible, the warranty shall expire at the latest one year from the point at which readiness to dispatch was communicated to the Customer. Preconditions for warranty claims are in all cases a previous written notification of defects, the absence of shipping damage and appropriate handling of the supplied goods by the Customer (section 6.1.).

- 8.2 The type of remedy employed in the event of any defects identified is at the sole discretion of AENOVA (substitute performance, subsequent improvement, rescission or reduction). Warranty claims are excluded for damages resulting from
- material provided by the Customer,
  - material that AENOVA ordered from suppliers of the Customer
  - incorrect or incomplete documentation of the Customer or
  - incorrect or incomplete information in such documentation.
- 8.3 In addition, warranty claims are excluded if customary breakages or losses have occurred in materials or source materials provided by the Customer during subsequent processing and/or there are minor deviations and the intended use of the manufactured goods by the Customer is not affected.
- 8.4 In the case of minor deviations in individual products that have had further effects on other – originally sound – goods, warranty claims shall only be valid with regard to actually affected goods.

## 9. LIABILITY

- 9.1 AENOVA's liability is excluded to the extent permitted by law. In particular, no liability whatsoever is assumed for minor or moderate negligence or for associates. AENOVA shall not be liable for either indirect or consequential damage. Consequential damage such as production loss, loss of orders, lost profit, claims of third parties, as well as other consequential or indirect damage are accordingly excluded insofar as legally permissible. In addition, AENOVA assumes no liability for delays or other disruptions to its services, which are caused by the Customer or that lie within its sphere of influence. AENOVA's liability is also expressly excluded for damages caused by an event of force majeure. Furthermore, AENOVA's liability is limited to the amount of the order.
- 9.2 The Customer shall fully indemnify AENOVA against any claims resulting from product liability that are asserted against the AENOVA by buyers of the end products. As regards liability between AENOVA and the Customer, section 9.1 is applicable.

## 10. OWNERSHIP/ RETENTION OF TITLE / ASSIGNMENT

- 10.1 AENOVA shall retain title to the goods supplied by it until such time as it has received full payment. By entering into a contract, the Customer authorises AENOVA, at the Customer's expense, to secure claims by initiating registration of the retention of title in the official register and to complete all the formalities.
- 10.2 Until full payment is received, the Customer may not pledge the delivered goods or transfer them as security to third parties without AENOVA's express written consent.
- 10.3 By way of processing the goods received, Customer will not retain ownership; any processing by Customer will occur on behalf of AENOVA free of charge. Should, for any reason, AENOVA's retention of title lapse, then AENOVA shall, upon the processing, retain ownership of the processed goods, which Customer shall remain custodian of the goods free of charge. If the goods delivered are processed together with materials which are still owned by third parties, then AENOVA shall acquire co-ownership of the new goods, its share of ownership being commensurate to the value of the delivered goods (AENOVA's invoice for the goods), relative to the amount invoiced for the other materials. This remains subject to Art. 727 para. 2 of the Swiss Civil Code according to

which a minor component is owned by the owner of the primary component.

- 10.4 Furthermore, the Customer shall take all reasonable measures to ensure that AENOVA's title to property is not compromised.
- The Customer shall, at its own expense, ensure the maintenance of the delivered objects for the duration of the retention of title and insure the delivered objects, with AENOVA as the beneficiary, against theft, damage, fire, water and other risks.
- 10.5 In cases of changes in the registered place of business or domicile, the Customer shall immediately, and at its own expense, initiate proper registration of the retention of title in the appropriate official register.
- 10.6 Official deletion of the retention of title may be initiated by mutual written declaration by both parties and/or by appropriate application by AENOVA.
- 10.7 Customer may resell the goods owned by AENOVA as part of its ordinary course of business, be they received from AENOVA or processed out of goods received from AENOVA. In this case, AENOVA confers revocable authority to the Customer to collect the claims from such sales to third parties, which claims are also owned by AENOVA. This authority terminates automatically, without AENOVA having to revoke, if Customer fails to pay any and all amounts due to AENOVA, which includes, by way of example, Customer's default.

- 10.8 Extended retention of title: If the Customer sells the goods under retention, be it goods received from AENOVA or processed out of goods received from AENOVA, the Customer irrevocably, already at this point, transfers all claims against the buyer to AENOVA. If a processed good does not contain property of a third party other than AENOVA and the Customer, then Customer assigns all claims against its buyer in full to AENOVA. If a processed good also contains materials delivered by other suppliers to Customer under retention of title and corresponding assignment of claims, then Customer shall assign to AENOVA a portion of such claims against its buyers commensurate to the pro-rata share of AENOVA's invoice to Customer in the accumulated invoices of the suppliers of the other materials contained in the processed goods.

## 11. ASSIGNMENT OF RIGHTS

- 11.1 The Customer may not assign its contractual rights from the contractual relationship with AENOVA to third parties unless AENOVA expressly grants its approval thereto in writing. This includes, in particular, any claims arising from this contract.
- 11.2 AENOVA may, at any time, at its sole discretion, and without the need of Customer's approval, assign its claims against Customer, in whole or in part.

## 12. DUTY OF CONFIDENTIALITY AND COPYRIGHT PROTECTION

- 12.1 The Customer may not disclose to third parties information provided by or received from AENOVA (in particular manufacturing or trade secrets) that is not publicly available. The Customer shall take all reasonable measures to prevent third parties from accessing such information. Express reference is made to the legal provisions regarding breaches of manufacturing and trade secrets (Art. 162 of the Swiss Criminal Code (StGB) and Art. 6 of the Swiss Law against Unfair Competition (UWG).
- 12.2 AENOVA shall refrain proprietary rights to all documentation including but not limited to, drawings, images, recipes/formulas, etc.; said items are protected by copyright and may not be made available to third parties or competitors and may only be used within the scope foreseen in the contract.
- 12.3 Any party retains its intellectual property rights.
- 12.4 Newly created intellectual property rights resulting from the fulfilment of the order belong to the inventing party.



12.5 The Customer confirms that the ordered goods do not infringe intellectual property rights of third parties.

### **13. PLACE OF JURISDICTION AND APPLICABLE LAW**

The place of jurisdiction for all disputes arising from the contractual relationship is the commercial court of St. Gallen / Switzerland. AENOVA reserves the right to bring an action against the Customer at the Customer's registered place of business. This agreement is governed exclusively by Swiss law excluding applicable international treaties such as the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 and the conflict of law rules of international private law.

### **14. FINAL PROVISIONS**

Should any of the provisions in these GTC or any provisions in the relevant specific contract be invalid, the validity of remaining provisions hereof/thereof shall remain unaffected thereby. The invalid provision shall be replaced by a provision that comes as close as possible to the commercial content of the original provision. This shall also apply to the filling of any gaps.

April 2017