



General Terms and Conditions of Purchase

1. GENERAL REMARKS

- 1.1 The following General Terms and Conditions of Purchase shall apply to all orders placed by Tyrolit Schleifmittelwerke Swarovski KG, Tyrolit Construction Products GmbH and Tyrolit AG (hereinafter referred to as "TYROLIT"), unless the order expressly specifies otherwise. Until they are modified, these Terms and Conditions of Purchase shall be applicable also to all further orders, even if no particular reference is made to this fact. The applicability of the Supplier's general terms and conditions of business, irrespective of their nature, including without limitation terms and conditions mentioned in the Supplier's offer or order confirmation, shall be excluded in any case, even if they are not inconsistent with these Terms and Conditions of Purchase and even if they were not expressly objected to, unless they were explicitly accepted by TYROLIT in writing.
- 1.2 Performance or silence on the part of TYROLIT shall not signify acceptance of the Supplier's general terms and conditions of business. Divergent agreements, side agreements, confirmations and modifications of the Terms and Conditions of Purchase may only be made in writing and shall be valid exclusively on a case-by-case basis.
- 1.3 If individual provisions of these Terms and Conditions of Purchase turn out to be invalid or unenforceable, the remaining provisions shall retain their validity to the full extent. In such a case, the invalid or unenforceable provision shall be replaced by a provision that comes as close as possible to the economic purpose of the invalid or unenforceable provision.
- 1.4 The Supplier is aware of the fact that persons employed by TYROLIT or third parties whose services are used by TYROLIT are not entitled to give promises which differ from the contractually agreed principal obligations (such as delivery agreements, commitments regarding quality or quantity).
- 1.5 TYROLIT reserves the right to change these Terms and Conditions of Purchase at any time. The revised Terms and Conditions of Purchase apply from the date of publication on the website www.tyrolit.at.
- 1.6 TYROLIT is entitled to correct obvious errors, such as errors in spelling or calculation in orders, acceptances of offers and similar documents at any time.

2. OFFERS AND PURCHASE ORDERS

- 2.1 All offers submitted to TYROLIT shall be binding on the Supplier for at least four (4) weeks from the date of their receipt by TYROLIT, and regardless of the actions taken by the Supplier in order to prepare and submit an offer, shall not constitute grounds for remuneration or reimbursement.
- 2.2 Purchase orders shall be in written form (fax or email) or be transmitted by means of electronic data exchange (EDI) and must include an individual TYROLIT purchase order number. Our purchase orders are valid without signature if the orders are issued on TYROLIT paper and if the email is sent by a buyer of TYROLIT.
- 2.3 The Supplier is obliged to confirm the purchase order by EDI or email within five (5) working days. If the order confirmation does not arrive on time, TYROLIT shall be entitled to revoke the purchase order. If the Supplier objects to any detail of the purchase order, TYROLIT shall have the right to revoke the purchase order in whole or in part within twenty-one (21) calendar days from the confirmation date.
- 2.4 Should TYROLIT be unable to accept delivery of any products/services as a result of force majeure, such as strikes, lockouts, fire and natural disasters, then TYROLIT shall be entitled to terminate the applicable assignment/purchase order upon written notice to Supplier, without Supplier being entitled to claims for damages of any kind as a result.

3. DELIVERY, TAKING DELIVERY, ACCEPTANCE

- 3.1 Unless otherwise stipulated in an order by TYROLIT, deliveries shall be made delivered at place ("DAP" Incoterms 2020). Agreed delivery and performance dates and periods are binding for the Supplier. The date or period of delivery mentioned in the purchase order refers to the receipt of the delivery at the delivery address specified by TYROLIT. TYROLIT is not obligated to take delivery of the goods before the agreed date of delivery or before the commencement of the agreed period of delivery. Unless otherwise agreed expressly and in writing, the Supplier shall not be entitled to make partial deliveries or advance deliveries. In case of premature delivery, the period for payment shall only begin to run on the agreed date of delivery or at the start of the agreed period of delivery.
- 3.2 The Supplier shall immediately inform TYROLIT in writing of any anticipated delivery delays, stating the reasons for such delays and their duration. In case of delayed delivery, even if the Supplier has fulfilled its obligation to inform TYROLIT, TYROLIT shall have the right to terminate the contract or to insist on delivery. In such a case, TYROLIT shall also be entitled to terminate the contract only with regard to any part of the delivery. TYROLIT shall also be entitled to claim compensation for delay amounting to 0.5% of the total contract value per commenced day in delay, however in total not more than 10% of the total contract value. The assertion of a claim for damages exceeding this limit and other claims shall remain unaffected.
- 3.3 Delivery of goods is possible on Monday to Thursday from 6.30 to 12.00 a.m. and from 1.00 to 3.30 p.m. as well as Friday from 6.30 to 12.00 a.m. and 1.00 to 2.00 p.m.
- 3.4 The delivery shall be carried out with the proper accompanying documents (but no invoices, see item 7.1), on which the order number, the name of the Supplier, article name and quantity must be included. Without proper accompanying documents, the delivery shall not be considered fulfilled according to the contract and shall therefore not be accepted, but, at TYROLIT's option, be either stored or returned, in both cases at the Supplier's risk and expense.
- 3.5 Deliveries shall be packed properly and dispatched in accordance with the relevant forwarding instructions of TYROLIT, if any. Any damage resulting from non-compliance with such regulations shall be borne by the Supplier. Supplier shall on its own initiative include storage and operating instructions to deliveries and, if necessary, expressly point out any specific measures that may be necessary for proper handling and storage of the goods delivered.
- 3.6 The legally valid acceptance of the delivery and the passing of the risk shall only take place after examination and clearing by TYROLIT's incoming goods inspection department. Any previous confirmation of delivery or payment of the invoice shall not constitute acceptance on the part of TYROLIT, so that, in such a case, the right of later refusal of the delivery shall be reserved.
- 3.7 Supplier may not subcontract any of its obligations under the purchase contract without TYROLIT's written approval.
- 3.8 Any change of sources of raw materials needed for the execution of the order, quality related process changes and every change of the place of mining or production requires TYROLIT's express written consent. In case of non-compliance with this rule, TYROLIT shall not be obligated to accept deliveries or services and the consequences of non-performance shall take effect. Supplier shall also be liable for all direct and indirect damages that TYROLIT may suffer.

4. MACHINERY, TECHNICAL EQUIPMENT AND SPARE PARTS

- 4.1 The Supplier of machines and technical equipment is obliged to comply with the state of the art, the applicable safety regulations and the technical specifications agreed in the order for his deliveries. Furthermore, at the time of delivery, he undertakes to deliver the technical documentation on the basis of the currently valid EU directive. Details on the guidelines and scope of the documents required by TYROLIT for new and used machines can be found in [the relevant appendix](#).
- 4.2 The Supplier shall guarantee availability of all spare parts required for the function of the delivery/service for a period of ten (10) years from delivery. If the Supplier is no longer able to meet this obligation then it shall, within two (2) weeks, give written notice of this situation to TYROLIT. If the Supplier violates its obligation to make spare parts available then TYROLIT shall be entitled to copy the part that is no longer available. The Supplier shall assist TYROLIT in all respects, such as by making production drawings available and obtaining any industrial rights that may be required.

5. SERVICE DELIVERY

- 5.1 Supplier warrants the supply of the deliveries/services ordered by TYROLIT as well as any auxiliary services to the best of his knowledge and belief, and in accordance with best industry standard and latest state of the art.



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6. PRICES

- 6.1 The agreed prices are fixed prices and include packaging costs. Fluctuations in exchange rates and currency, as well as bank charges, shall be borne by the Supplier.
- 6.2 Insofar as prices and terms are not already stipulated in the order, but are only mentioned by the Supplier at a later date, they shall not be effective unless they are expressly accepted by TYROLIT in writing.
- 6.3 The costs of transport, insurance and other costs arising in connection with the delivery of the goods to the place of delivery indicated by TYROLIT shall be agreed in writing on a case-by-case basis.

7. INVOICES AND PAYMENT

- 7.1 All invoices must comply with pertinent VAT regulations and must contain (i) the purchase order number and (ii) an itemized description of the delivered products/services. Invoices shall be sent individually as a PDF document to the following email addresses:
TYROLIT Schleifmittelwerke Swarovski KG: Invoice-AT0150@TYROLIT.com
TYROLIT AG: Invoice-AT1090@TYROLIT.com
TYROLIT Construction Products GmbH: Invoice-AT0470@TYROLIT.com
Invoices concerning services or assembly work shall be accompanied by time sheets approved by TYROLIT. Only invoices that meet the above criteria, are considered to have been prepared according to the contract, will be processed by TYROLIT and cause the invoiced amount to become due for payment.
- 7.2 Insofar as no special agreement is made, the payment for accepted goods and services shall be made, at TYROLIT's option, either within 14 days after TYROLIT has received the invoice and the goods, with 3% cash discount, or within 90 days after TYROLIT has received the invoice and the goods. The payment does not signify any acknowledgement of the correctness of the delivery and therefore does not have any effect whatsoever on TYROLIT's claims in connection with the performance of the contract, such as, for instance, claims for compensation, right of termination, etc.
- 7.3 The Supplier shall under no circumstances be entitled to set off its obligations to TYROLIT against any claims it may have against TYROLIT.
- 7.4 In case of down payments, Supplier has to present an appropriate security (e.g. bank guarantee) on request. Payments made by TYROLIT shall be considered to have been agreed as being of stable value and therefore always represent a proportional payment of the total order value with reference to the date of the order.
- 7.5 Any assignment of Supplier's claims against TYROLIT shall be invalid without TYROLIT's express written consent.
- 7.6 In case of a delay in payment on the part of TYROLIT for any reason whatsoever, default interests in the amount of 5% per annum, calculated from the 90th day after the receipt of invoice and goods, shall be considered as agreed. Any further claims for payment for this reason is excluded, except a lump sum of € 40.00,- for proven damages.

8. PRODUCTION DOCUMENTATION, DRAWINGS, FORMS, TOOLS

- 8.1 Samples, models, drawings, forms, tools, printing plates, plans and other auxiliary material shall remain TYROLIT's intellectual and material property of which TYROLIT shall be free to dispose at will. The Supplier may use such auxiliary material exclusively for carrying out TYROLIT's orders and it shall not be made accessible or handed over to persons not employed in the Supplier's plant or to third persons. The Supplier shall take all imaginable measures required in order to comply with these obligations of secrecy.
- 8.2 Samples, models, drawings, forms, tools, printing plates, plans and other auxiliary material created by or on behalf of the Supplier in connection with a delivery order given by TYROLIT shall also be the property of TYROLIT. All processing or converting of goods or materials by the Supplier shall be carried out in the name of TYROLIT; the Supplier already declares at this point that will be holding such goods or materials for TYROLIT until they are delivered to TYROLIT. The Supplier shall be obligated to hand over to TYROLIT, of its own accord, all vouchers and documents required in order to supply evidence of title to third persons.
- 8.3 All samples, models, drawings, forms, tools, printing plates, plans and other auxiliary material owned by TYROLIT, including without limitation those mentioned in items 8.1 and 8.2, shall be returned to TYROLIT, at the Supplier's expense and risk, after the delivery or service in question has been effected, unless otherwise agreed in writing. If insolvency proceedings (bankruptcy, settlement proceedings, etc.) are instituted or a petition in bankruptcy is dismissed due to lack of sufficient assets to cover the costs of the proceedings, the Supplier shall be obligated to inform TYROLIT within five (5) working days of such a circumstance, and to take all necessary and useful measures in order to enable TYROLIT to enforce its rights to the separation and recovery of assets not belonging to the bankrupt's estate.

9. WARRANTY

- 9.1 The Supplier shall be fully liable for the execution of the delivery as agreed in the order and for compliance with all relevant statutory provisions and standards, in particular with regard to the regulations applying within the European Communities. The Supplier shall equally be liable with regard to the products or product parts and/or services delivered or processed by the Supplier and for those products or product parts and/or services that it has not created itself. The deliveries and services rendered shall have the usually expected and the stipulated qualities as well as the qualities mentioned in the directions for use, explanations, folders, advertisements and other information media that are accessible to the general public or to TYROLIT and shall be suitable for use in accordance with the nature of the transaction and the agreement in question.
- 9.2 The warranty period shall be two years. It begins to run on the date of acceptance of the goods in accordance with item 3.6 of these Terms and Conditions of Purchase. However, in case of goods destined for further processing or conversion by TYROLIT, the warranty period shall only start on the date on which the goods are processed. If TYROLIT does not exercise its right to terminate the contract in case of an unauthorized change of a Supplier of raw materials, the warranty period shall be extended by 12 months. The defectiveness of goods and services shall be assumed, subject to refutation, to have existed already at the time of delivery if the defect is discovered during the warranty period. TYROLIT shall notify the Supplier, orally or in writing, of any defects that have not been notified already on acceptance, at the earliest when noticed and at the latest within the agreed warranty period. The obligation to give notice of defects (§ 377 UGB Austrian Commercial Code) is expressly waived.
- 9.3 In case of defects, irrespective of their nature and extent, TYROLIT shall have the right to claim from the Supplier, at TYROLIT's own option, replacement of the goods, rescission of the contract, reduction of the purchase price or - in case of reparable defects - removal of the defect. All costs incurred in connection with the repairs, additional delivery or return of defective goods as well as the relevant risk shall be borne by the Supplier. In case of a request for repairs, a maximum period of 4 weeks shall be regarded as reasonable, unless TYROLIT expressly stipulates otherwise in writing. If the Supplier fails to repair the defect within the period granted for that purpose, TYROLIT shall have the right to claim, at its option, either rescission of the contract or reduction of the purchase price. In urgent cases and in case of a delay in repairing the defects on the part of the Supplier, TYROLIT shall have the right, without granting any additional period of time, to effect the repairs at the Supplier's expense (substituted performance).
- 9.4 The Supplier shall be liable for the consequential damage resulting from the defect even if it is not at fault.
- 9.5 The Supplier shall be liable for the completeness and correctness of the data or information contained in certificates or test reports. The Supplier confirms that the relevant TYROLIT standards as well as all laws and other rules and regulations in connection with the delivery or service are known to it.
- 9.6 Upon request, the Supplier shall assign to TYROLIT any warranty claims it may have against its predecessors, provided that the defects are based on such defective preliminary work. The warranty claims against the Supplier remain unaffected.



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10. LIABILITY

- 10.1 The Supplier is liable for all damages and its consequences.
- 10.2 The Supplier is aware of the fact that an examination of raw materials before their conversion is only possible to a very limited extent at TYROLIT's works and that it is only at the point of checking the finished product that it can be ascertained whether flawless raw materials, auxiliary materials etc. have been delivered.
- 10.3 Therefore, if products of inferior quality are manufactured due to a defect in quality of the goods delivered, TYROLIT shall have the right – irrespective of whether the Supplier is at fault for the defect or not – to take, at its own option, one of the following measures:
- a) either to deduct from the invoiced delivery the amounts granted by TYROLIT as an additional discount by comparison with flawless products when selling off products of inferior quality;
 - b) or to return the raw or finished products to the Supplier at the Supplier's expense; in such a case, the Supplier undertakes to reimburse TYROLIT for the production costs incurred, plus loss of profit;
 - c) or, in case the defect is discovered during the manufacturing process as a result of spot checks, either to continue production and sell off the products as products of inferior quality, demanding compensation for the difference in price from the Supplier, or to interrupt production and charge the Supplier for the resulting loss of output, hours of standstill and loss of profit.
- 10.4 Should TYROLIT find itself unable to fulfill its contractual obligations due to the inferior quality of the goods or services provided by the Supplier, the Supplier shall indemnify and hold TYROLIT harmless in that respect.
- 10.5 If, in spite of spot checks carried out before delivery to the customer, defects are not discovered by TYROLIT, but only become known to TYROLIT as a result of complaints from TYROLIT customers, and if TYROLIT is liable for damages to such customers as a result, the Supplier shall be obligated to indemnify and hold TYROLIT harmless.
- 10.6 At the request of TYROLIT, the Supplier shall, at the time of accepting the order, submit evidence of having taken out a third-party liability insurance policy in a sufficient amount and corresponding to the extent and the possible consequences of such liability. If the Supplier fails to submit such evidence, TYROLIT shall have the right to cancel the order, in full or in part, without granting a grace period.

11. INDUSTRIAL PROPERTY RIGHTS

- 11.1 The Supplier shall indemnify and hold TYROLIT harmless with regard to all patent law and other disputes in connection with the deliveries made by the Supplier, particularly in connection with industrial property rights, and the Supplier shall compensate TYROLIT for all costs, expenses and other disadvantages resulting from the restricted use of the goods delivered, irrespective of whether the Supplier is at fault or not.
- 11.2 All rights to and associated with TYROLIT materials and other information transmitted to Supplier by or on behalf of TYROLIT, including copyrights, trademarks, patents, designs, utility models, and all other proprietary rights, as well as the right to register any of the foregoing, and all rights to and associated with all results of work performed within the scope of an assignment/purchase order from TYROLIT, shall be and remain the exclusive property of TYROLIT.

12. COMPLIANCE, REACH, CLP AND ROHS

- 12.1 The Supplier shall strictly comply with TYROLIT's Code of Business Conduct for Suppliers („TYROLIT Code of Conduct for Suppliers“) available at: www.TYROLIT.at/en/special-pages/footermenu/supplier-information.html
- 12.2 The Supplier shall ensure on its own responsibility that the goods comply with the provisions of Regulation (EC) No. 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals ("REACH") as currently amended. In particular, the substances contained in the goods shall be registered as required under REACH. The Supplier shall provide TYROLIT with safety data sheets and further information in accordance with REACH without solicitation. In particular restrictions and/or prohibitions of substances respectively applications and possible concentrations of substances of the Candidate List (SVHC) shall be notified to TYROLIT. Supplier of goods which contain substances on the Candidate List in a concentration above 0.1% (w/w) have to provide sufficient information to allow safe use of the goods. The Candidate List is constantly being updated and latest information can be found on the website of the European Chemicals Agency (www.echa.europa.eu).
- 12.3 Chemical substances shall be classified, labelled and packed according to Regulation (EG) No. 1272/2008 (CLP / EU-GHS) as currently amended.
- 12.4 Moreover, the Supplier shall ensure on its own responsibility that the goods it is to supply or any part thereof fully comply with the requirements of the RoHS Directive 2011/65/EU ("RoHS") as currently amended, and the national legislation implementing this Directive within the European Union, and are suitable for RoHS-compliant manufacturing processes.
- 12.5 The Supplier is obligated to indemnify TYROLIT from any liability relating to the Supplier's non-compliance with the above directives or to compensate TYROLIT for damages and costs TYROLIT incurs due to the Supplier's non-compliance with the directives or damages that are related to this non-compliance.

13. ADVERTISING

- 13.1 The Supplier is obligated not to inform third parties of its status as a Supplier to TYROLIT without prior consent in writing from TYROLIT, particularly where this involves the inclusion of TYROLIT in a list of references or referring to the business relationship with TYROLIT in advertising materials. In the event of an infringement, the Supplier is obliged to pay a penalty in the amount of € 10,000.00. Any claims for damages or other legal remedies remain unaffected by the payment of the penalty.

14. PLACE OF DELIVERY, APPLICABLE LAW AND PLACE OF JURISDICTION

- 14.1 The place of delivery for the goods or services shall be the address set out in the order; in case no such address is given, the place of delivery shall be Schwaz, Austria.
- 14.2 Substantive Austrian law shall apply exclusively. The (Austrian) "IPRG" (Act on Private International Law) and other conflict of laws provisions are expressly excluded. The UN Convention on Contracts for the International Sale of Goods ("UNCISG") shall not be applicable.
- 14.3 The place of jurisdiction for all disputes arising in connection with the business relationship between the Supplier and TYROLIT, in particular disputes out of or in connection with these Terms and Conditions of Purchase shall be the competent court at Innsbruck, Austria. At TYROLIT's option, however, TYROLIT shall have the right to file suit against the Supplier with any other court having jurisdiction over the Supplier, either in Austria or abroad.