



Terms and Conditions of Delivery and Payment

1. Applicability and Legally Binding Effect

- 1.1 The following terms and conditions refer to all orders accepted and executed by us and shall be deemed accepted by our customer and binding upon placing of his order, even if we fail to expressly object to conflicting terms and conditions.
- 1.2 Unless expressly agreed otherwise in writing upon conclusion of a contract (also by means of a fax, e-mail as a PDF file or in a signed form), the following terms and conditions shall constitute a supplementary and material part of any contract concluded between us and the customer. This shall also apply to modifications and amendments or deviating promises, all of which shall require a confirmation duly signed on behalf of the company to be valid.
- 1.3 Our terms and conditions shall in any case prevail over General Terms and Conditions and/or Terms and Conditions of Purchase of our customer, if any.
- 1.4 As a matter of principle, our staff are not allowed to make promises that deviate from our terms and conditions. In such a case we expressly reserve the right to rescind the contract.
- 1.5 Not later than by placing the purchase order with us or acknowledging delivery of the subject-matter of the contract our customer shall declare that he agrees to these Terms and Conditions of Delivery and Payment and to applicability of the same to future transactions between us and the customer and to the fact that no separate reference shall have to be made to these General Terms of Delivery and Payment with regard to future transactions.

2. Offers

- 2.1 Our offers shall be subject to change and non-binding unless the offer expressly states the binding character of the same. The documents belonging to our offers, such as illustrations, drawings, samples and specimens as well as information on weight, measurements, performance and consumption, shall only constitute approximate information and shall not be deemed specifically agreed properties unless otherwise agreed. The right to make changes due to construction shall be reserved.
- 2.2 Orders accepted by us shall exclusively rely on the scope and contents of the purchase order, including specifications provided, if any.
- 2.3 The right to subsequently correct any errors shall be reserved.
- 2.4 Promises or side agreements made by us or our staff and, in general, any amendments or modifications whatsoever made orally or via phone (including e-mail) shall be valid only if they have been confirmed by us in writing, via fax or e-mail in a signed form or in the form of a PDF file.

3. Prices and Payment Terms - Offsetting

- 3.1 The price shall always be the list price applicable at the date of delivery. Prices shall apply ex works (EXW), including packaging (except for Euro pallets) and loading in the works, but excluding value-added tax.
- 3.2 Payments shall be made within eight days of the invoice date; if he pays within the stipulated period, the customer may deduct a 2% cash discount. We shall reserve the right to decide on the claims or portions of claims against which to offset payments by the customer. In principle, payments shall be credited to the oldest account receivable and with respect to the same first to interest and then to the invoice amount outstanding. Bank charges and money transfer charges shall in any case be borne by the customer.
- 3.3 If the payment date is not met, we shall charge 8% interest above the base rate published by Oesterreichische Nationalbank [Austrian central bank] for transactions between entrepreneurs. In addition, all costs of dunning, collection, investigation and information as well as the costs of a lawyer instructed by us shall have to be reimbursed.
- 3.4 Withholding of payments and/or offsetting against counter-claims of the customer which we dispute shall be excluded.
- 3.5 In the event of non-compliance with agreed terms of payment and/or occurrence of circumstances which raise doubts regarding the customer's creditworthiness we shall be entitled, in addition, to call for immediate payment of all our accounts receivable from our customers, to rescind all pending purchase contracts and/or supply contracts and to claim damages on account of non-performance. This shall not affect our right to claim damages from our customer irrespective of fault, including compensation for any expenses incurred in connection with contracts which we rescind in such a case.
- 3.6 In the event of default on the part of our customer we shall also be entitled to an emergency sale in accordance with the provisions of Austrian commercial law (including UN Sales Law).
- 3.7 No liabilities on our part vis-à-vis our customer may arise from exercise of such rights, in particular no claims for damages.
- 3.8 If the customer's registered office is situated outside of Austria, he shall be obliged to comply with the regulation of turnover tax of the European Union. This includes, in particular, notification of the VAT number without request. In addition, our customer shall be obliged, upon request, to furnish any and all information regarding his capacity as entrepreneur and regarding statistical registration duties.

4. Performance of Contract; Shipment and Delay

- 4.1 Within Austria, delivery shall be effected promptly and in any case within eight days of receipt of the purchase order by our work. In contrast thereto, deliveries abroad (EU Member States and non-EU countries) shall be effected according to specific agreement. The delivery period shall in any case be observed if the delivery item has left our works prior to expiration of the same or if we have notified readiness for delivery by that time.
- 4.2 All delivery periods shall be extended accordingly by unforeseen impediments of any kind beyond our control, such as, for example, failures, loss of staff on a large scale, labour disputes, delays in supply of essential raw materials or components and the like or by circumstances for which the customer is responsible to the extent such impediments and/or circumstances are substantial for us regarding exceeding of the delivery period. Such impediments shall offset the consequences of the same also during a delay for which we are responsible as long as they exist. Beginning and end of such impediments shall be notified immediately. Upon the occurrence of such impediments we shall be entitled to rescind the contract in whole or in part; in such a case claims for damages of the customer shall be excluded.

- 4.3 If agreed periods or periods extended in accordance with the foregoing paragraph are exceeded by more than eight weeks, the customer shall be entitled to rescind the contract after having granted a grace period of 14 day by registered letter; in that case claims for damages of the customer shall be excluded unless gross negligence on our part is proven.

- 4.4 If the customer suffers damage due to a delay for which we are responsible, he shall be entitled to compensation in the amount of 0.5% for each full week, but not more than 5% of the value of the part of the delivery which cannot be used in time or according to its purpose due to the delay; in case of other services the maximum compensation shall be 5% of the compensation for services rendered. However, we shall be subject to this obligation to pay damages only in case of gross negligence. Any other claims for damages shall be excluded. Moreover, any claim for damages based on delay on the part of our suppliers shall be excluded unless gross negligence can be proven.

- 4.5 Shipment shall be made at the risk and cost of the customer. We reserve the right to choose means of transport and shipping route. We shall be liable for damage only if gross negligence can be proven. We shall take out transport insurance and insurance against breakage only upon request and on the account of the customer.

- 4.6 We shall have the right to make partial deliveries.

- 4.7 Observance of the delivery period shall be subject to fulfilment of the customer's contractual obligations in all transactions which have not been concluded.

- 4.8 If shipment is delayed for a reason for which the customer is responsible, he shall pay all resulting additional costs, in particular storage costs, if any, in case goods are stored in our plant, but at least 0.5% of the invoice amount per month. Furthermore, we shall be entitled to grant customer a grace period of not more than 14 days and, upon fruitless expiration of the same, at our choice either to dispose otherwise of the delivery item and to supply the customer within a reasonably extended period or to rescind the contract and claim damages on account of non-performance. In the latter case we shall be entitled to demand 10% of the delivery charge as compensation without specific evidence; if adequate evidence is provided, we may also claim compensation of further damage.

5. Passing of Risk (Delivery)

- 5.1 The risk shall pass to the customer as soon as the delivery item has left our plant (delivery term: EXW). The same shall apply to partial deliveries or in the case that we have provided further services, such as payment of shipping costs or delivery.
- 5.2 If shipment is delayed for reasons for which we are not responsible, the risk shall pass to the customer at the time notice of readiness for delivery is given.
- 5.3 In the event that our assistance and support is requested in loading of the means of transport, our customer already at this point shall indemnify us and hold us harmless from and against any damage and disadvantages that may result therefrom.
- 5.4 Unless otherwise provided by agreements made on a case-by-case basis (such as, in particular, by way of Incoterms), risk and accident shall pass as soon as we have performed at the agreed place of performance (as a matter of principle, Clause 5.1 shall apply).
- 5.5 If, at the customer's request, we ship the delivery items to a place other than the place of performance risk and accident shall pass to the customer as soon as we have made available the goods to the forwarder, carrier or other person or undertaking determined to effect shipment, unless otherwise agreed (see Clause 5.1).

6. Retention of Title

- 6.1 We shall retain title to the delivery item until full payment of all claims to which we are entitled vis-à-vis the customer for whatsoever legal reason.
- 6.2 The customer may resell the delivery item only in connection with this business operation, which is aimed at this purpose, even if the delivery item has been processed. This right shall, however, be excluded if the resulting claims are assigned to third parties or are subject to an assignment prohibition, if the customer is insolvent or in delay of fulfilment of his contractual duties. Any other disposal by him shall be prohibited. He shall immediately inform us in the case of an attachment, seizure or other disposition by third parties. Our costs of intervention incurred in connection with enforcement of our title shall be borne by the customer.
- 6.3 The customer shall already at this point assign to us his claims and other rights under resale, letting or leasing transactions, even if the delivery item was combined or processed with other objects before. If the delivery item is sold or made available for use together with other objects without or after combination or processing, the claim shall be deemed assigned only in the amount of the purchase price owed. Any additional claims for damages shall not be excluded thereby.
- 6.4 The customer shall be entitled to collect accounts receivable and to claim the other rights only insofar as he fulfils his payment obligations vis-à-vis us and is not insolvent.
- 6.5 In the case the customer violates the contract, in particular in the event of delay in payment or other performance or in the event of insolvency, we shall be entitled, at our option, either to rescind the contract without granting a grace period or to take back the delivery item at any time while maintaining the contract, or to prohibit use of the delivery item. We shall, furthermore, be entitled to sell a delivery item which we have taken back by private contract; the proceeds shall be offset against our claims vis-à-vis the customer after 10% have been deducted as handling charge.

7. Warranty

- 7.1 We shall give no warranty for deviations of measurements, weight or quality that are customary in trade or tolerated by DIN or ÖNORM standards, nor for information about the suitability of the delivery item for the purpose envisaged by the customer or for any other specific purpose.
- 7.2 We warrant correctness of processing information in the information sheets published by us or intended for customer advice. However, the customer shall exclusively remain responsible himself for compliance with statutory or other provisions when using the delivery item as well as for testing of the delivery item for the envisaged purpose. We shall be liable for information that deviates from our written processing information only if we have confirmed the same in writing, by fax or e-mail.

- 7.3 The customer shall examine delivery items and/or services rendered immediately upon delivery of the same; defects shall be notified immediately (not later than within 4 working days) upon identification of the same, including number and date of the invoice and of the delivery note, in writing or by fax or e-mail; otherwise the goods shall be deemed accepted. The notice of defect shall state what delivery items and/or services have defects, what the defects are in detail and the circumstances in which they occurred. Costs incurred by unjustified notices of defect or notices of defect in violation of terms and conditions shall be reimbursed to us.
- 7.4 The warranty period shall be six months as from the time the risk passes (Clause 5); no assumption shall be made to the effect that defects turning up in the course of the warranty period already existed at the time when the risk passed.
- 7.5 To the extent that we give warranty we may, at our option, either replace the defective item or defective parts of the same by a non-defective item or non-defective parts or improve it/them subsequently, issue to the customer a credit note equal to price reduction or cancel the contract. Parts which have been replaced shall become our property. We shall not reimburse costs of a repair of defects made by the customer or a third party.
- 7.6 Upon our request the delivery item and/or the component of the same shall be immediately sent to us at the risk and cost of the customer; otherwise our warranty shall expire.
- 7.7 Warranty on our part shall be excluded if the operating instructions and/processing published by us and the installation instructions or operating instructions that may have to be provided by the customer are not observed or if the obligation to observe the same is not imposed on the user, if changes or other work is done to the delivery item without our consent, if the delivery item has been taken abroad without our consent or if it is used in contrast to our directions or for purposes for which it is not intended.
- 7.8 The customer shall exclusively be responsible himself for manufacturing of the product. For this purpose he shall strictly adhere to the operating instructions and requirements of operational standards furnished by us and also carry out his own quality control and document the same on an ongoing basis.
The customer is expressly advised to regularly review all manufacturing sequences regarding our products, starting from delivery of our products and ending with processing, for technical requirements, accuracy, operational reliability and completeness of our processing information and work instructions and to comply with all safety regulations. Any direct or indirect liability on our part based on the above shall, therefore, be expressly excluded.
- 7.9 In addition, the customer shall in any case be obliged to impose such requirements on his customers.
- 7.10 Unless expressly agreed otherwise the customer waives the special right of recourse under warranty law.
- 8. Liability**
- 8.1 We shall only be liable for damage to items belonging to our customers which have occurred directly in the course of performance and were caused by gross negligence or intent on our part (causality). Any other claims of our customer, in particular claims for any additional damages, including damage resulting from defects, if any, shall be excluded.
- 8.2 The delivery items delivered by us shall merely offer the safety that may normally be expected due to licensing requirements, operating and handling instructions, regulations of the manufacturer, delivery plant and/or producer and other information.
- 8.3 If we are instructed to solve construction tasks, we shall be subject to liability only if our customer proves that our delivery and/or service does not or did not comply with the general state of the art due to our fault.
- 8.4 Claims for damages vis-à-vis us which, according to mandatory statutory provisions, exist as to the merits shall be limited to the value of the item damaged or, if this should not be permissible, to the invoice amount or, if this again is not permissible according to mandatory statutory provisions, to the actual damage, excluding compensation for lost profit and excluding consequential damages, indirect damages or third-party damages.
- 8.5 Liability on our part for slight negligence as well as compensation for consequential damage and pecuniary damage and savings not made shall be excluded. Compensation for lost interest and/or losses resulting from claims of third parties vis-à-vis our customer shall be excluded.
- 8.6 In the event that our customer violates duties imposed on him by these Terms and Conditions of Delivery and Payment and in the event that we are held liable with respect to damage caused by such products which were put onto the market by our customer, our customer shall in any case and irrespective of fault be obliged to fully indemnify us and hold us harmless (including lawyers fees and costs of proceedings, if any). If our customer has paid compensation to a third party based on the provisions of the Austrian Product Liability Act regarding a product delivered by us [Produkthaftungsgesetz], rights of recourse vis-à-vis us shall be excluded in any case.
- 8.7 If we have manufactured the delivery item on the basis of construction details, drawings or models of the customer, our liability shall not extend to accuracy of the construction but to the fact that the item was manufactured in accordance with the customer's data.
- 8.8 If we are held liable by third parties regarding manufacture and delivery according to the drawings, samples, models or other documents provided by the customer, the customer shall indemnify us and hold us harmless.
- 8.9 Moreover, such claims may be asserted in court only within six months of occurrence of the damage and in any case only within two years of the time the risk passed (Clause 5).
- 8.10 Furthermore, the customer undertakes to immediately notify us of cases of liability and provide us with the necessary documents.
- 8.11 The customer shall advise us in writing in advance of changes he intends to make to the delivery item or to the operating mode of the same and allow investigations by persons instructed by us without restriction; otherwise all warranty claims (or claims under a specifically agreed guarantee) and claims for damages shall be lost.
- 9. Product Liability**
- 9.1 We shall be liable for bodily injury and damage to property within the scope of application of the Austrian Product Liability Act [Produkthaftungsgesetz//PHG].
- 9.2 We shall represent our customer's interests vis-à-vis the manufacturer conscientiously; however, in principle, we will have to refer our customer to the manufacturer(s) in this respect.
- 9.3 In the event that we are held liable under the Product Liability Act our customer shall be obliged, without being entitled to reimbursement of expenses, to make available to us immediately and free-of-charge all mentioned documentation and other means of evidence. In addition, our customer shall be obliged to support us in any way.
- 10. Industrial Property Rights and Copyright**
- 10.1 Working documents, such as, e.g. plans, sketches and other technical documents as well as samples, catalogues, brochures and illustrations shall always remain our intellectual property and shall be subject to the statutory provisions of the Federal Statute against Unfair Competition [Bundesgesetz über den unlauteren Wettbewerb/ UWG] and of the Austrian Copyright Act [Urheberrechtsgesetz/UrHG] each as amended from time to time.
- 10.2 Documents made available by us, including agreements concluded, shall neither be reproduced nor made accessible to third parties without our consent. We shall be entitled to demand that they be returned to us at any time and without giving reasons.
- 10.3 If a delivery item is manufactured by us on the basis of construction details, drawings, models or other specifications of the customer and/or if we are held liable by a third party due to such facts for a possible violation of patents, trademarks, design rights or copyrights, the customer shall be obliged to fully indemnify us and hold us harmless.
- 11. Rescission of Contract**
- 11.1 If our customer is in delay of payment agreed or other performance (contractual obligations), we may either
- > suspend fulfilment of our own obligations until payment of the arrears or other performance by our customer;
 - > make use of an adequate extension of the delivery period,
 - > ask for immediate payment of the total outstanding balance of the purchase price (compensation for work) (acceleration) and/or
 - > rescind the contract if a reasonable grace period is not observed by the customer.
- 11.2 We shall be entitled to rescind the contract
- > if execution of the delivery and/or commencement or continuation of performance is further delayed for reasons for which the customer is responsible or although he was granted a grace period,
 - > if concerns exist regarding the customer's solvency and he neither makes an agreed advance payment upon our request nor furnishes agreed suitable security prior to delivery,
 - > if the total extension of the delivery period due to the circumstances listed above is more than half of the originally agreed delivery period.
- 11.3 Rescission of contract may also be declared with regard to an outstanding portion of the delivery or performance for the above reasons.
- 11.4 If insolvency proceedings are opened over the assets of a contracting party or a petition for opening of insolvency proceedings is dismissed for lack of sufficient assets, the other party shall be entitled to rescind the contract without granting a grace period.
- 11.5 Notwithstanding our claims for damages, in the event of a rescission of contract services or partial services already rendered shall be invoiced and shall be due for payment. This shall also apply if the delivery or service has not been taken over by the customer and/or to advance services already rendered by us. We shall, however, also have the right to demand that items which have already been delivered be returned.
- 12. Data Protection**
- 12.1 Our customer expressly agrees that all data which is important to the business relationship may be stored.
- 12.2 The parties undertake to maintain absolute secrecy about the knowledge they have obtained in connection with the business relationship vis-à-vis third parties.
- 13. Place of Performance - Choice of Law**
- 13.1 For all contracts concluded the place of performance regarding delivery and payment shall be Loosdorf.
- 13.2 The contract and the Terms and Conditions of Delivery and Payment shall be governed by Austrian substantive law as amended at the time the contract is concluded.
- 14. Mediation Clause**
- 14.1 At first, the parties shall endeavour to amicably settle all disputes and/or conflicts arising out of or in connection with the contract or concerning breach of contract as such, termination or invalidity of contractual provisions by means of a mediation procedure conducted by an impartial third party (mediator).
- 14.2 The parties shall enter into an agreement with the mediator on the course of such procedure within a period of four weeks of the first mention of the conflict (see Clause 11.2).
- 14.3 During the procedure all dates and periods shall be suspended and strictest confidentiality and secrecy shall apply between the parties, which shall be agreed in writing.
- 15. Arbitration Agreement**
- 15.1 All disputes arising out of the contract or referring to violation, termination or nullity of the same shall be finally settled according to the Rules of Arbitration and Conciliation of the International Court of Arbitration of the Federal Economic Chamber Austria in Vienna (Vienna Rules) by an arbitrator appointed in accordance with the said Rules.
- 15.2 The place of arbitration shall be Vienna.
- 15.3 The language of the arbitration proceedings shall be German/English.
- 16. General Provisions**
- 16.1 If individual provisions of the contract or of these General Terms and Conditions are ineffective in whole or in part, the remaining provisions shall remain effective. In the event of partial invalidity the parties undertake to replace ineffective provisions by provisions which correspond to the purpose of the ineffective provision to the extent possible.
- 16.2 In the event that we draw up contracts and/or the Terms and Conditions of Delivery and Payment in a different language, the provisions in German shall always prevail. Our English-language General Terms and Conditions and our English-language Terms and Conditions of Delivery shall apply to contracts drawn up in English.

