



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. Preamble

- 1.1 The contractor accepts orders, sells and delivers exclusively on the basis of these Terms and Conditions of Sale and Delivery. The below conditions apply to all services provided by the contractor or another sub-contractor he may nominate within the scope of this agreement. A definite business order requires a written confirmation of order by the contractor. The contractor reserves the right to decline orders and assignments without having to give any reasons.
- 1.2 Orally agreed changes or additions to this Agreement shall only take effect, if they have been confirmed by the contractor in writing.
- 1.3 Any terms of business and delivery of the orderer shall be expressly excluded for this legal transaction and the entire business relation.
- 1.4 Offers are basically non-binding.
- 1.5 These Terms and Conditions of Sale and Delivery also apply as framework agreement for all further legal transactions between the contracting parties.

2. Delivery

- 2.1 The delivery shall be performed at orderer's risk and responsibility.
 - 2.2 Partial deliveries are possible.
 - 2.3 The orderer must report complaints due to transport damage to the transport company and the contractor in writing immediately on receipt of the goods, however, within 8 days at the latest.
 - 2.4 Storage measures and storage costs that become necessary due to reasons within the responsibility of the orderer shall be borne by the orderer.
 - 2.5 Justified and appropriate changes to the scope of services and deliveries of the contractor, especially reasonably exceeded delivery deadlines are deemed accepted in advance by the orderer.
- If no fixed-date purchase is agreed, announced delivery dates are deemed approximate estimations. Force majeure or any other unforeseeable obstacle within the environment of the contractor or his sub-contractors shall relieve the contractor of his duty to meet the agreed delivery times.
- 2.7 Operational disruptions or traffic hold-ups as well as incorrect deliveries by sub-suppliers shall also be considered as force majeure and shall relieve the contractor of the obligation to deliver for the time of the disruption or hold-up, or, at the discretion of the contractor, ultimately, without entitling the orderer to any claims due to the contractor's withdrawal. In case of delayed delivery, any and all kinds of claims for damages shall be excluded.
 - 2.8 If the stated date of delivery is exceeded by more than 30 days, the orderer shall be entitled to withdraw from the Agreement in writing and after granting a grace period of at least 90 days. The contractor shall also have the right to withdrawal, if the delivery becomes impossible due to force majeure, labour disputes or other obstacles unavoidable for the contractor, such as transport interruptions or production stops. In both cases, the contractor shall only be obligated to the interest-free reimbursement of down-payments received.
 - 2.9 It shall be at the discretion of the contractor to select the type of shipment of the goods as well as the means of transport.
 - 2.10 The place of performance for the delivery and payment shall be the company premises of the orderer.

3. Prices

- 3.1 The stated prices do not contain value-added tax.
- 3.2 The calculation of prices shall be in Euro.
- 3.3 For the calculation of prices, the prices valid at the day of delivery shall apply.
- 3.4 If labour costs should change due to regulations in any collective agreement of the relevant industry or due to inner-company agreements, or if other cost centres required for the calculation or for the performance of services should change, such as for materials, energy, transports, third-party services, financing etc., the contractor shall be entitled to make appropriate price increases or reductions.

4. Payment

- 4.1 Invoices shall be presented immediately after delivery, if possible.
- 4.2 Due to the lack of converse agreements, payments shall fall due immediately on receipt of invoices without any discounts and free of all charges. For urgent invoices, the payment conditions set out for the overall order shall apply analogously.

- 4.3 In case of orders comprising several units, the contractor shall be entitled to present individual invoices after each unit or service provided.
- 4.4. The orderer shall not be entitled to withhold payments due to incomplete deliveries, guarantee or warranty claims or defects.
- 4.5 Payments received by the contractor shall first settle compound interest, interest and ancillary expenses, pre-process costs such as costs of a contracted lawyer and debt collecting agency, then outstanding capital, stating with the oldest debt.
- 4.6 In case of a default in payment, the contractor shall charge interest on arrears. Default in paying two instalments in case of partial payment shall entitle the contractor to assume loss of due date and to call acceptances handed over due.

5. Right of ownership / reservation of title

- 5.1 Until complete payment (including interest and costs) the delivered goods shall remain the property of the contractor. For this time, the orderer shall ensure the correct maintenance (maintenance and repair) at his own costs. Pledging or assignment of securities before complete payment shall be excluded.
- 5.2 If the orderer does not appropriately comply with his obligations in this Agreement, the contractor shall be entitled at any time to recover his property at the expense of the orderer. The orderer shall be obligated to hand out such property.
- 5.3 In case of processing of products of the contractor, he shall receive co-ownership in the product created in this process, namely in relation of value of the delivered goods to the value of the newly created product.
- 5.4 The contractor grants resellers the revocable right to reselling in the normal course of business. This right shall expire in case of a suspension of payment.
- 5.5 If the property of the contractor is seized, the orderer shall immediately notify the contractor accordingly in a registered letter.

6. Assignment of receivables

- 6.1 In case of delivery based on a reservation of title, the orderer shall already assign his receivables to the contractor to the extent they are created by way of sale or processing of the delivered goods, until final payment of the receivables of the contractor. On request, the orderer shall name his contractors and notify them in time about the assignment. The assignment shall be pointed out to the buyer in the account books, delivery notes, invoices, etc.
- 6.2 If the orderer is in arrears with his payments to the contractor, he shall assign incoming sales revenues, and the orderer shall only hold them on behalf of the contractor, respectively. Any claims against any insurer are already assigned to the contractor within the scope of § 15 of the Austrian Insurance Act.
- 6.3 Claims against the contractor may not be assigned by the orderer without the expressed consent of the contractor.

7. Quotation

- 7.1 Quotations are prepared according to the best expert knowledge. However, no guarantee for their accuracy can be accepted.
- 7.2 All offers are non-binding. The costs for the preparation of a quotation, is any, shall be invoice to the orderer.

8. Dunning charges and debt collecting expenses

- 8.1 In case of a delay in payment, the orderer commits himself to reimburse dunning charges and debt collecting expenses created for as to the extent that they are necessary and reasonable for the purposeful legal prosecution. In particular, he shall be obligated to reimburse costs incurred by the intervention of a debt collecting agency and resulting from the decree of the Federal Ministry of Economy and Labour on the appropriate maximum rates of debt collecting agencies.
- 8.2 If the contractor himself leads the dunning process, the orderer commits himself to pay an amount of EURO 10.- for each reminder, as well as an amount of EURO 5.- for every half-year for maintaining debt records, plus any interest incurred and costs to be paid.
- 8.3 Moreover, the orderer shall pay for any further damage independent of any fault regarding the default in payment, in particular for damage resulting from non-payment of relevant higher interest on any due credit accounts of the contractor.



9. Warranty, guarantee and liability

- 9.1 Depending on the contractor's decision, warranty claims shall be settled by way of repair or exchange. The contractor shall grant appropriate price reductions in case of faults, if the repair or exchange would cause unreasonable efforts. Only in case of irreparable, non-minor faults, the client shall have the right of conversion.
- 9.2 The burden of proof that a fault already existed at the time of handover shall always be borne by the orderer.
- 9.3 The warranty period shall be 6 months; in case of immobile goods it shall be 1 year from the time of delivery/service. In any case, an immediate notification of defects as well as an immediate examination or check of the goods on delivery shall be an indispensable condition for warranty claims. The stipulation shall not apply for consumer purchases according to the KSchG (Consumer Protection Act).
- 9.4 Wear and tear parts and accessories (such as data carriers, typing wheels, etc.) as well as repair due to unauthorised interventions of third parties shall be excluded from the warranty. If the contractual items are used in connection with devices and/or programmes of third parties, the warranty for functional and performance faults of the contractual items shall only apply, if such faults would also occur without any such connections.
- 9.5 Additional warranty services beyond the scope of the warranty can be ordered. For these services, the same conditions shall apply. In case of any such guarantee, the contractor declares that the right of warranty of the orderer shall not be limited by this guarantee.
- 9.6 Given normal usage conditions of the delivered apparatus, the contractor provides a five-year guarantee, maximum ten-thousand primary air operating hours for the boiler casing; two years, maximum four-thousand primary air operating hours for ceramic combustion chambers, motors, gears, constructive faults and manufacturing faults from the time of handover.
- 9.7 No guarantee is accepted for parts not produced directly by the contractor.
- 9.8 It is a pre-condition for claiming the guarantee that no interventions of unauthorised persons and without the expressed consent of the contractor have been carried out, that the valid payment conditions have been complied with and that the contractor has been notified in time and accurately on any damage that has occurred.
- 9.9 If guarantee services are provided, the contractor shall only pay for the material used, however, not for any necessary times of assembly, travelling and stays or any return shipments etc.
- 9.10 Repair and/or guarantee replacement shall be on site or at the premises of the orderer, subject to decision by the contractor.
- 9.11 The guaranteed free-of-charge replacement service or repair shall not be provided, if damage was caused due to transport, operating disruptions, fire or similar damage or due to force majeure, or due to causes the contractor cannot prevent, such as accidents, external influences, poor maintenance or cleaning or similar reasons. The contractor shall not be liable for indirect damage, costs or losses of any kind.
- 9.12 Oral undertakings or agreements beyond this guarantee declaration shall not be valid.
- 9.13 Paint damage shall be excluded from the guarantee.

10. Cancellation of the Agreement

- 10.1 In case of delayed acceptance or other important reasons, in particular bankruptcy of the orderer or refusal of bankruptcy due to lack of assets, as well as in case of the client's default in payment, the contractor shall be entitled to cancel the Agreement, if it has not yet been fulfilled completely by both parties.
- 10.2 In case of a cancellation, the contractor shall have the choice to either claim a lump-sum damage of 15% of the gross invoice amount or the reimbursement of the actually created damage in case of a fault by the orderer.
- 10.3 In case of a default in payment of the orderer, the contractor shall be relieved of all further service and delivery obligations.
- 10.4 If the orderer withdraws from the Agreement without being entitled to do so, or if he requests its rescission, the contractor shall have the choice to either insist on the fulfilment of the Agreement or to consent to the rescission of the Agreement. In the latter case, the orderer shall be obligated at the discretion of the contractor to pay a lump-sum damage of 15% of the gross invoice amount or the actually created damage.
- 10.5 The contractor reserves the right to withdraw from the Agreement with regard to the part of the Agreement that has not yet been performed, if circumstances about the *economic situation* of the orderer become known after placement of the order, that make the receivables of the contractor seem no longer secured sufficiently.

11. Offset

- 11.1 Any offset of claimed counter receivables of the orderer against claims of the contractor shall be excluded, unless such counter claims have been determined by a court of law or have been acknowledged by the contractor in writing.

12. Force majeure / damages

- 12.1 Force majeure or another unforeseeable obstacle in the environment of the contractor shall relieve him of the compliance with the agreed obligations. Operating disruptions or traffic hold-ups in the area of the orderer shall also be deemed force majeure and shall relieve the contractor of the services to be provided for the time of this obstacle, without creating claims for price reductions for the orderer.
- 12.2 Apart from personal damage, the contractor shall only be liable, if gross negligence can be proven by the damaged person. The liability for damages shall become time-barred within 6 months from knowing about the damage and the damaging party, however, in any case within 10 years after delivery.
- 12.3 Claims for damages in cases of minor negligence shall be excluded. This shall not apply for personal damage or damage to things taken over for processing, if no exclusion of liability has been expressly agreed for these specific items.

13. Product liability

- 13.1 Recourse claims in the sense of § 12 of the Product Liability Act shall be excluded, unless the party entitled to a recourse claim can prove that the fault was caused in the area of the contractor and was at least due to gross negligence.

14. Place of jurisdiction and applicable law

- 14.1 Unless otherwise agreed, the legal regulations between full merchants shall apply.
- 14.2 For any disputes, the local jurisdiction of the factually competent court for the place of business of the contractor shall be deemed agreed.
- 14.3 Austrian substantive law shall apply. The applicability of the UN purchase law shall be excluded.
- 14.4 For all charges raised due to this Agreement against a consumer having his home residence, usual staying place or place of employment, the court of the district where the consumer has his residence, usual staying place or place of employment shall be the competent court.

15. Data protection / change of address / protection of intellectual property / technical values

- 15.1 The orderer gives his consent that personal data in the purchase agreement can be saved and processed with computer-aided systems by the contractor for the purposes of the performance of the Agreement.
- 15.2 The orderer shall be obligated to keep the contractor notified of changes of his residential or business addresses, as long as the contractual legal transaction has not yet been completely fulfilled by both parties. In case of failure to provide such notification, declarations shall also be deemed serviced, if the last known and notified address has been used for service.
- 15.3 Plans, sketches, quotations and other documents as well as brochures, catalogues, samples and the like shall remain the intellectual property of the contractor. Any use, especially the disclosure, copying and publication requires the expressed consent of the contractor.
- 15.4 The measures and weights stated in the brochures and technical documents of the contractor are approximations and therefore non-binding. Changes of shapes, deviations in constructions and with regard to presented samples reserved. Data in descriptions on performance, weight, operating costs etc. shall be considered as approximations.

16. Final stipulations

- 16.1 As regards sales to **consumers** as defined in the Consumer Protection Act, the above-mentioned stipulations shall only apply to the extent the Consumer Protection Act does not provide any other mandatory regulations.
- 16.2 The orderer shall immediately notify the contractor of any changes of his address.
- 16.3 If any individual stipulations of these Terms and Conditions of Business are or become invalid or ineffective, the validity of the other stipulations shall remain unaffected.