

## **1. Scope of application**

These Terms and Conditions of Sales and Delivery apply to all business, in particular to all future business between the contracting parties, unless divergent agreements have been made. Upon ordering or at the latest upon acceptance of the goods, the buyer recognises these General Terms and Conditions of Sales and Delivery. Modifications or ancillary understandings require our written confirmation for their validity and only apply to that specific business case. The buyer's divergent contract terms are explicitly contradicted. The buyer transacts his business in connection with his enterprise and is therefore not a consumer within the meaning of the Consumer Protection Act.

## **2. Prices**

Our offers and price lists are entirely subject to change. Our prices, unless otherwise agreed, are to be understood as including conventional packing and shipping costs, but not any eventually incurred statutory value-added tax or comparable taxes on sales in other countries (e.g., sales tax) and without any other consumption taxes. The price charged is the one applicable on the order date.

## **3. Delivery / delivery date / delay in acceptance**

Orders are only accepted by our written order confirmation or by delivery. We are entitled to accept orders in part only or to reject them without indicating any reasons.

Delivery is made carriage-free within Austria and Germany upwards of a delivery quantity of 275 kg. For smaller delivery quantities, a flat-rated freight cost charge of € 20.00 is charged. For all other countries the agreed special arrangements apply.

The indication of delivery or loading dates occurs without any obligation. We are entitled to carry out partial deliveries or early deliveries and to treat them as independent deliveries regardless of the nature of the order. Failure to comply with the delivery date only entitles the buyer to assert his entitled statutory rights if we, despite a written setting of a substitute delivery date of at least four weeks, fail to carry out the delivery. The delivery deadline is extended by all circumstances independent of the intention of the parties, such as late supply by our suppliers, cases of force majeure, unforeseen operational disturbances, regulatory interventions, lateness in shipping and customs clearance, shipping damages, lack of energy, supplies and raw materials, exclusion of important production parts and labour disputes.

In case of default of acceptance, we are, at our option, entitled to either store the goods (with risk passing to the buyer upon transfer to storage) and to charge 2% of the goods per month in storage and financing costs or, where there is immediate danger of the goods spoiling or becoming unsalable, to dispose of them at the

expense and risk of the buyer or to withdraw from the contract and, in such a case, to demand an indemnity fee in the amount of 50% of the purchase price, with the right reserved to demand damage compensation going beyond that.

The buyer is obliged to take over the goods immediately upon delivery and to sign the delivery document. Any eventual complaints must be noted on the delivery document.

#### **4. Performance and passing of risk**

Risk passes to the buyer, unless otherwise agreed, upon acceptance of the goods and signing of the delivery document.

#### **5. Payment terms / delay in payment / reminder fees**

Our invoices, unless otherwise agreed in writing, are due payable on the terms stated on the invoice. However, the buyer is not entitled to early payment discount if the buyer is in arrears for other invoices.

Any delay in payment on the part of the buyer entitles us to defer additional deliveries up to the corresponding clearance and/or to demand advance payments for further deliveries.

In the event of delay in payment, the buyer is obliged, as of the date of payment due, to pay late payment interest in the amount of 7% above the three-month euro money market rate (EURIBOR) or at least 14% per annum, plus value-added tax. We are moreover entitled to demand a flat fee of € 10.00 for reminders we produce as well as, in addition to that, to demand compensation for all necessary and appropriate reminder and collection fees.

If the purchase price is paid by bank transfer or cheque, the authoritative payment receipt for us is the date on which we take control of the cash equivalent. The acceptance of drafts is not provided for in our payment terms.

#### **6. Retained title**

The goods delivered remain our property up until complete payment of the purchase price and all associated costs and expenses. In case of even partial delay in payment, we are entitled to repossess the goods from the buyer even without the latter's consent.

To inspect the goods with retained title, the buyer ensures us access to its business at any time. Any onward disposal of the retained title goods to third parties may only occur in proper business operations while protecting our rights. We acquire co-title to processed retained title goods.

If the buyer comes into arrears with its payment obligations, if insolvency proceedings are applied for or initiated against its assets or if the buyer breaches any other payment obligations, then we are, at our option while maintaining the

contract, entitled to demand surrender of the retained title goods, to repossess the same and/or for security to call in ceded claims.

The buyer guarantees and holds us correspondingly harmless that it does not make or has not made any provisions contradicting this retained title reservation in its general terms and conditions of business or elsewhere.

## **7. Force majeure**

Cases of force majeure entitle us to postpone deliveries for the duration of the hindrance and for an appropriate start-up period after its cessation or to withdraw from the entire contract or parts thereof. If delivery is delayed for more than three months due to force majeure, then the buyer has the right to withdraw from the corresponding part of the contract.

Cases of force majeure are in particular circumstances such as natural disasters (earthquakes, floods, landslides, lightning, frost, hail, etc.), confiscation, sabotage, fire, strikes, sanctions and government interventions or delays in delivery of energy or essential raw materials as well as other unforeseeable hindrances beyond our control.

## **8. Liability, damage compensation**

We are not liable for slight or simple gross negligence. We are however liable to the buyer for deliberate intent or blatant gross negligence on our part or that of our decision makers, employees and agents.

Except for deliberate intent, we are not liable for indirect damages, consequential damages, lost profits or missed savings. Such liability restrictions do not apply in case of human mortality, bodily injury, damage to health or for liability under the Product Liability Act.

The assertion of claims against us on the basis of section 933b of the General Civil Code is barred. All damage compensation claims must be asserted in the courts within six months of the entitled party having become aware of the damages or the damager, or could have done so, but at the latest within two years of the occurrence of the damage. Otherwise they are time-barred.

## **9. Warranty**

We only provide warranty for suitability for a specific use in case of specific assurances to that effect.

Our goods may only be processed and consumed up through the minimum durability date and also, unless otherwise indicated, at maximum, marketed up through the minimum durability date. For any usability of our goods after the end of the minimum durability date, we do not provide any warranty. Any eventual warranty claims must be asserted in the courts within six months from delivery or, if the minimum durability date is more than six months after delivery, within four weeks after the minimum

durability date after which claims will be time-barred. This also applies to hidden defects.

Visible defects must be reported in writing immediately after acceptance of the goods. If the buyer later recognises defects, then it must report them to us at the latest within five working days of their recognition.

In case of any warranty claim for which we are liable, we will, at our option, and provided nothing else has been agreed with the buyer, replace the goods at our expense or reduce the price.

For assertion of a warranty claim, the buyer is obliged to report the nature and extent of the defects, the precise designation of the goods, the minimum durability date indicated, the delivery date, the date and number of the invoice in detail as well as (if visible on the goods) the GTIN (global trade item number) and the batch number. In case of quality flaws, a corresponding sample must be enclosed with the complaint.

If the buyer fails to make the defect complaint or the report, then it may no longer assert claims to warranty (sections 922ff of the General Civil Code), to damage compensation for the defects themselves (section 933a, paragraph 2 of the General Civil Code) as well as due to a mistake about the object's freedom from defects (sections 871 f of the General Civil Code).

The warranty period does not begin to run again upon delivery of replacement goods or upon improvement.

Non-approved handling or inappropriate processing of the goods entails the loss of warranty claims. The buyer forfeits its warranty claims and we are not liable if the goods are not properly stored or processed, in particular, if our relevant recommendations and instructions have not been followed.

## **10. Labelling**

The buyer is not entitled without our prior explicit written consent, applicable in each case only for the specific instance, to use our trademarks and labels. The buyer must oblige itself to desist from any action and not to support any action by a third party that could jeopardise the validity of our trademarks and labels. The buyer will, neither within the national jurisdiction nor abroad, use or register identical or similar trademarks or labels or support any third party in so using or registering them. If the buyer should become aware that third parties may be infringing our industrial property rights, then it must immediately notify us. We decide at our own free discretion on how to proceed further. The buyer must, if possible and to an appropriate extent, support us in asserting our rights.

## **11. Applicable law, venue of performance, venue for judicial action**

Substantive Austrian law is applicable to legal relations with the buyer, including in regard to the validity or termination of any contractual relationship, with the UN Convention on the International Sale of Goods (CISG) and the non-mandatory

referral norms barred. Venue of performance for all obligations stemming from any contractual relationship between ourselves and the buyer shall be Vienna.

All legal disputes under or in connection with a contractual relationship between ourselves and the buyer, including the issue of valid establishment of the contract, its performance and termination as well as its pre-contractual and post-contractual effects are to be decided by the court with jurisdiction for 1140 Vienna or, at our option, by another court with substantive jurisdiction over the buyer if the buyer has its registered office within the EU, Switzerland or Liechtenstein.

If the buyer has another registered office, then all legal disputes under or in connection with a contractual relationship between ourselves and the buyer, including the issue of valid establishment of the contract, its performance and termination as well as its pre-contractual and post-contractual effects will be definitively decided according to the arbitration code of the International Arbitration Court of the Chamber of Commerce of Austria (Viennese Rules) before an arbitrator appointed in accordance with said rules. The language to be used in the arbitration proceedings is German.

## **12. Miscellaneous**

Any transfer to third parties of rights under the contract signed with us is not allowed without our written consent. In case any specific points in the Terms and Conditions of Sales and Delivery are void, the remaining provisions and the contracts signed on their bases will remain in force. The void provision will be replaced by a legally valid one most closely approximating it in its sense and purpose. The buyer must notify us of any eventual changes of address. We are entitled to send all correspondence or services of process to the address most recently reported in writing.