

## **TERMS AND CONDITIONS FOR THE SALE AND DELIVERY OF GOODS**

Last update on 22 July 2015

### 1. Scope of Application

These Terms and Conditions for the Sale and Delivery of Goods ("Terms") shall govern all our deliveries of goods, even if these are executed without reliance on or express reference to these Terms. The buyer acknowledges these Terms by placing the order or by receiving the goods at the latest. Any amendments or side agreements are valid only if we have confirmed these in writing and are applicable only in a particular case. We expressly state that we do not acknowledge any deviating terms and conditions of the buyer.

Our offers are entirely without engagement and non-binding. The buyer shall be bound to its orders two weeks after we have received these orders (these represent an offer in a legal sense). These orders are accepted only if we have issued a written acknowledgment of order or are delivering the goods. We are also entitled to accept only parts of an order or to reject orders altogether without any reason.

### 2. Prices

Unless otherwise agreed, our prices include customary packaging, but are quoted exclusive of value added tax, transport costs and any ancillary services ex works/warehouse (EXW pursuant to Incoterms 2010). The prices quoted in our price lists are non-binding. We will charge the price quoted on the delivery date.

### 3. Delivery, Delivery Schedule

Goods are shipped in average packaging which is normally fit for shipment. Unless a specific form of shipment was agreed, we will choose the specific shipping method. The buyer agrees that goods may be shipped via forwarding agent or postal services (in each case by car, rail, boat or aircraft).

If the place of delivery is not located in Austria, the buyer undertakes to pay for all customs duties for the import and export of the goods, as well as taxes and levies and additional insurance expenses. At the same time, the buyer shall obtain all approvals and consents which are legally necessary for the export of the goods from Austria and their import into another country. At our request, the buyer will produce these approvals and consents and will issue relevant declarations.

The indicated delivery dates are non-binding. The buyer may exercise its legal rights in case of our non-compliance with delivery dates only if and when we do not deliver the goods despite an at least four-week grace period granted by written notice. Whenever delivery is impossible due to circumstances outside the parties' control, such as late delivery by sub-suppliers, events of force majeure, unforeseeable business interruptions, government intervention, delays

in transport and customs clearance, damage during transport, shortage of energy, materials and raw materials, defective quality of important production parts and labour disputes, the delivery times will be extended as long as that impediment prevails.

The buyer is obliged to take over the item or service immediately after the buyer was notified that it is available. Should the buyer be in delay in taking over any service or item, he shall be liable to pay storage fees, without prejudice to any other rights we may be entitled to. We are entitled but not obliged to withdraw from a specific contract and also from other contracts and to commit the goods to any other use, subject to a reasonable notice period of at least 7 days. Alternatively, we may also insist on performance of a contract. If the goods were shipped to the buyer and the buyer is in default of acceptance and we decide to use the goods otherwise, the costs of returning the goods to our premises or to another destination of our choice shall be borne by the buyer.

Partial deliveries which are possible are also legally permitted. Every partial delivery represents a separate transaction which we may bill separately.

If we take back goods as a gesture of goodwill, we may charge a reasonable handling fee to the buyer. The buyer will be informed of that fee when agreeing the return of the goods. Return shipments must be made on a delivered basis at times to be agreed with us in advance.

#### 4. Performance and Transfer of Risk

Unless otherwise agreed, the risk transfers to the buyer when the goods are delivered to the forwarding agent or carrier, but no later than once the goods leave the factory or warehouse. On-call deliveries shall be deemed called at least one year after placing the order. Unless the buyer has specifically instructed otherwise, we will deliver the goods at our best discretion, but do not guarantee for having selected the fastest and least expensive shipping method.

#### 5. Warranty

We will warrant that the goods are fit for a specific purpose only if we have expressly agreed to do so. Our goods may be consumed only until their date of minimum durability and may be put into circulation only until that date of minimum durability, unless otherwise stated. Notwithstanding the above, warranty claims as well as hidden defects shall be asserted in court within six months after delivery.

Complaints relating to the quality or defects of the goods (§ 377 UGB) must be made within 5 business days after delivery. That notice must disclose the type and extent of a shortcoming or defect, the precise name of the item, the date of minimum durability stated on the item, the delivery date, the date and number of the invoice in detail, and the GTIN (Global Trade Item Number) as well as the batch number, if available. The buyer must return to us the labels on the goods or, should that be impossible, send us a corresponding photograph.

Our warranty is limited to delivery of the same kind and quantity of substitute goods or to rectification of shortcomings or defects. If goods and/or services are provided on the basis of specifications and instructions of the buyer, we only warrant that performance has been made in accordance with the agreed terms.

The warranty period shall not commence anew on account of the delivery of substitute goods and/or the rectification of defects.

The buyer will lose its right to enforce warranty claims if it subjects the goods to processing or inappropriate treatment. Similarly, the buyer will lose its right to enforce warranty claims and we shall not be liable if the goods were not properly stored and especially if the buyer has not adhered to our pertinent recommendations and instructions.

## 6. Liability and Damages

We do not accept liability for simple and simple gross negligence, although we are liable to the buyer for intent or blatant gross negligence on the part of our decision-makers, employees or vicarious agents. Except in case of intent, we are not liable for indirect damage, consequential damage, lost profit or loss of savings. These limitations of liability do not apply in case of a person's death, bodily injury, damage to health, or in case of liability pursuant to the Product Liability Act.

The buyer may not enforce against us any claims in reliance on Section 933b of the Austrian Civil Code (*ABGB*).

All damage claims shall be statute-barred, unless enforced in court within 6 months after the eligible party could identify the damage and the damaging party, and no later than within 3 years after the damage has occurred.

## 7. Terms of Payment

Our invoices are payable according to the terms of payment stated on the invoice, regardless of the arrival of the goods or the date of processing. The date of payment shall be deemed to be the day on which we are able to dispose of the money. In case of late payment, we will charge default interest at a rate of 12% p.a., unless we have incurred higher costs. The costs of necessary and reasonable reminders, inquiries, and other costs arising in connection with the collection of such debts shall be borne by the buyer. We will accept checks as a form of payment only if that was separately agreed, with the buyer having to pay for all charges. We do not accept bills of exchange as a form of payment.

The buyer may only set off or exercise a retention right in respect of undisputed or finally established claims.

Whenever the buyer is in default with payment or any other performance, we are entitled to withhold our deliveries until the agreed counter-performance has been made (while preserving the period still allowed for delivery), or to cancel the contract after a reasonable grace period has elapsed and demand damages for non-performance, without prejudice to any other rights we may have. In the latter case, we are entitled to demand and/or retain the agreed down-payment, but not less than 15% of the price, as a minimum penalty. At any rate, in such a case, all outstanding claims will immediately be due for payment and we are entitled to make delivery only in exchange for payment in advance.

## 8. Reservation of Title

We will retain title to any item purchased and/or the goods until full payment of

the purchase price and all related costs and expenses. We are entitled to collect the goods even if the buyer is only in default with part of a payment.

The buyer agrees that we may enter buyer's premises at any time in order to inspect the goods for which we have expressed reservation of title. If the buyer is in default with his payment obligations, if insolvency proceedings are applied for or opened in respect of buyer's assets, or if the buyer breaches any other contractual obligations, we may demand the surrender of the goods for which we have expressed reservation of title, collect such goods and/or collect claims which have been assigned as security.

#### 9. Force Majeure

If any event of force majeure occurs we may discontinue our deliveries as long as the impediment prevails and during a reasonable lead time after it has ceased to exist, or we may withdraw from any part of or the whole contract. If a delivery is more than 3 months late due to force majeure, the buyer may withdraw from the respective part of the contract.

Events of force majeure include, but are not limited to circumstances such as forces of nature (earthquakes, floods, landslides, lightning, frost, hail etc), expropriation, sabotage, fire, strikes, sanctions and government intervention or delays in the supply of energy or major raw materials, as well as other unpredictable events beyond our control.

#### 10. Trademarks

The customer may not use our trademarks and signs, except with our express prior written consent which is valid only in a particular case. The customer undertakes not to do anything and not to support any action of a third party which could jeopardize the validity of our trademarks and signs. The customer will not use or apply for registration or assist a third party in using or applying for registration identical or similar trademarks or signs in Austria or abroad. If the customer becomes aware of any infringement of our intellectual property rights by a third party, the customer shall notify us without delay. We will choose the further course of action at our own free discretion. The customer shall reasonably assist us in the enforcement of our rights.

#### 11. Governing Law, Place of Performance, Place of Jurisdiction

The legal relationship with the buyer and the validity or termination of a contractual relationship shall exclusively be governed by and construed in accordance with the substantive law of Austria. The UN Sales Convention for the International Sale of Goods and the international conflict of law rules shall not be applicable. Place of performance in respect of all obligations arising from this contract shall be Vienna.

All disputes or claims directly or indirectly arising out of or in connection with this contract including disputes relating to its validity, breach, termination or nullity shall be finally settled by the Austrian court having local and subject-matter jurisdiction for our corporate seat (1131 Vienna, if the buyer's corporate seat is within the EU, Switzerland or Liechtenstein, however, we may also refer a case

to another court within the buyer's jurisdiction.

For buyers with corporate seats in other countries as the EU, Switzerland or Liechtenstein all disputes or claims arising out of or in connection with this contract including disputes relating to its validity, breach, termination or nullity shall be finally settled under the Rules of Arbitration of the International Arbitral Centre of the Austrian Federal Economic Chamber in Vienna (Vienna Rules) by one arbitrator appointed in accordance with the said Rules. The language to be used in the arbitral proceedings shall be German.

## 12. Other Provisions

The rights arising from the contract executed with us may not be transferred to third parties, except with our written consent. Should any provision of these Terms and Conditions for the Sale and Delivery of Goods be legally invalid, this shall not affect the residual provisions hereof and the contracts concluded in reliance thereon. The invalid term shall be replaced by a valid term which closest reflects its meaning and purpose. The buyer shall notify any change of address in writing. We may send any correspondence or notice to the recent address notified in writing.