

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

1. Applicability and Form

1.1. These General Terms of Sale and Delivery apply to all present and future orders placed with the seller, regardless whether such orders are confirmed in writing or not. In case of contradiction, written agreements between the buyer and the seller supersede the provisions of the General Terms and Conditions of Sale and Delivery.

1.2. These General Terms and Conditions of Sale and Delivery, including this provision, can be altered or amended only by way of a written instrument signed by both parties. This clause also applies to each particular case.

2. General Terms and Conditions of Trade on the Side of the Buyer: General terms and conditions of trade on the side of the buyer are not applicable if in contradiction with these General Terms and Conditions of Sale and Delivery, or with an agreement referred to under item 1.1. supra. When the present order is confirmed, any general terms and conditions of trade on the side of the buyer shall be deemed rejected with regard to the order at hand, and with regard to all future orders.

3. Offer and Conclusion of Contract

3.1. Unless a different term has been stated in the offer, the seller shall be bound to its offer for a term of one month from the date of the offer.

3.2. The sales contract is concluded when the confirmation of the order is dispatched. Certain Characteristics of the merchandise shall not be part of the contract unless expressly stated in the confirmation of the order.

3.3. The content of the confirmation of the order is deemed approved unless the buyer objects within 24 hours after receipt thereof.

3.4. If the buyer wrongfully repudiates the contract, or refuses to fulfil the contract, the seller shall be entitled to a contractual penalty of one third of the invoice value less the VAT, regardless of fault. Such penalty shall not be subject to judicial mitigation. Additionally, the seller shall be entitled to any and all other remedies, e.g. fulfilment, overdue interest, or damages in excess of the penalty.

4. Incoterms: In absence of an agreement to the contrary, the terms and clauses employed herein shall be construed according to the Incoterms issued by the International Chamber of Commerce in Paris in the version being in effect at the date of the conclusion of the respective sales contract.

5. Price: If the basis for calculation on the side of the seller rises prior to the day on which the merchandise is allocated for delivery, the seller shall be entitled to raise the prices accordingly, regardless of whether or not advance payments have been made.

6. Exchange Rate: Prices in foreign currency are based on the mean rate at the Vienna Stock Exchange on the day of the issuing of the confirmation of the order. If the exchange rate varies to an extent exceeding 5 % with regard to the Euro, the seller is entitled to repudiate the contract.

7. Delivery and Passing of the Risk:

7.1. Terms and dates of delivery given by the seller are not binding. However, the seller will make all reasonable efforts to meet such terms and dates, depending on the geographical position of the customer.

7.2. Unless the place of the passing of the risk is determined by duly agreed Incoterms, the risk shall pass to the buyer with the allocation of the merchandise for delivery.

7.3. Premature delivery by the seller is admissible.

7.4. If the buyer considers a delivery faulty or not effectuated at all, the buyer must notify the seller with recommended mail, granting a reasonable period of grace of at least 30 Austrian business days from receipt of such notification by the seller. If the buyer has to collect the merchandise, it has to do so at the stated date of delivery. The collection must be notified to the seller at least two Austrian business days prior to the day of collection, stating the name of the carrier, the number of the track, and the amount to be collected. The truck must report ready for loading within the collection hours determined by the seller at the respective time. A respective collection order duly signed by the buyer must be presented. The seller shall not be responsible in any respect with regard to the employed vehicles. In case of faulty collection, the seller is entitled to charge the buyer with reasonable storage costs for the merchandise, and to claim any and all damages in excess thereof. However, the seller shall have no obligations as a depositary.

7.5. If it is agreed that the merchandise shall be delivered in partial amounts upon request of the buyer, default on the side of the buyer with respect to the request of delivery of a partial amount shall, without regard to any fault on the side of the buyer, entitle the seller at its discretion to repudiate the contract with regard to the respective partial amount, or with regard to all open amounts, without granting a grace period.

8. Notification of Defects, Remedy of Defects, and Liability

8.1. Notifications of defects are effective only if notified to the seller immediately after arrival of the merchandise at the contractually agreed site, however no later than eight calendar days thereafter. Defects which cannot be discovered within the term of eight days despite of careful examination must be notified immediately upon disclosure, however no later than four weeks after arrival of the merchandise. Notifications shall be deemed in time if received by the seller in writing within the terms stated above. Notifications of defects have to state the specified defect in nature and scope. Notifications of defects shall be void unless the seller or its agents are given reasonable opportunity to examine the criticized merchandise.

8.2. If no notification of defects is made within the terms stated above, or if a provision stated under item 8.1. supra is violated, all claims shall expire, regardless on which legal grounds they rest, e.g. warranty or damages.

8.3. If the parties do not reach a friendly settlement, the buyer must institute an action with respect to its alleged claims within six months from arrival of the merchandise, otherwise such claims become extinct.

8.4. The criticized merchandise must not be returned to the seller without the seller's prior written consent.

8.5. The seller does not give any warranty with respect to merchandise which does not match the standard qualities of the seller.

8.6. The seller does not warrant defective packaging, certain delivery terms, or a special delivery date.

8.7. In case of rightful notification of defects, the seller may at its discretion reduce the price, exchange the merchandise, or refund the purchase price.

8.8. In excess thereof, the seller is liable only under cogent law. This applies to liabilities of each kind, including liabilities under product liability law. If the seller is held liable directly by a third party, the buyer shall hold the seller harmless to the extent as to which the seller is free of liability under this provision. **Any and all damage claims of the buyer shall be limited to the invoice value. Claims exceeding this amount are not admissible.** Item 8.1. through 8.6. supra apply accordingly.

9. Payment

9.1. The invoices of the seller, including invoices with respect to partial deliveries, are to be paid in cash without deduction on the due date in such way as to ensure that such payment shall be

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credited to the bank account of the seller without any deduction on or before the fourth Austrian business day after the due date.

9.2. Checks and bills of exchange will be accepted by the seller only pursuant to a special agreement, and pending full discharge of the debt. The buyer shall bear all costs thereof. The seller is not obliged to use, redeem, protest etc. the checks or bills.

9.3. In case of delay in payment, regardless of any fault on the side of the buyer, the seller is entitled to overdue interest in the amount of eight percent above the base rate of the central bank of the country in which's currency the purchase price has been stated on the invoice. If no such rediscount rate exists, it shall be replaced by an economically equal interest rate.

9.4. In case of delay in payment, regardless of any fault on the side of the buyer, the buyer shall also reimburse the seller for any and all collection costs, e.g. expenses of reminding the debtor, costs of investigators, attorney's fees, legal fees, etc.

9.5. The seller is not obliged to make any delivery on grounds of any open contract, before all overdue invoices have been paid in full including overdue interest and collection expenses. The seller can also require collateral security for the purchase price before delivery.

9.6. In case of delay in payment, any and all bonus agreements shall become void. In case of credit entries or rebates with respect to goods, the seller has the right to claim an amount equal to the sale price less VAT at the time of the conclusion of the contract for which the credit entry or rebate has been granted.

9.7. The buyer is obliged to make payment even if it has made a notification of defects, or if it had no opportunity to examine the merchandise before the due date. The buyer may not discharge claims of the seller by way of counter claim. Withholding of payments by the buyer is not admissible.

9.8. In case of delay with payments to be made by the buyer to the seller with regard to the present order or any earlier or later order, regardless of fault, all claims of the seller fall due immediately in full, and payment thereof can be demanded without reminder and granting of a grace period. The same shall apply if a proceeding in bankruptcy is instituted with respect to the buyer, or a motion to institute such proceeding is denied for lack of sufficient funds, or if the preconditions for the institution of such proceeding or the denial of such motion are present, or if the buyer ceases to make payments or does not honor checks or bills of exchange given by him at their respective due date. In such case, the seller is also entitled to repudiate any and all contracts, and to claim damages for non-fulfilment.

10. Reservation of Proprietary Rights

10.1. The delivered merchandise shall remain the property of the seller until full payment of the purchase price and all subsidiary claims.

10.2. Likewise, the seller reserves proprietary rights to any and all merchandise already paid for by the buyer and still in the buyer's custody with respect to any and all open claims of the seller, subject to applicable cogent law.

10.3. Until the claims of the seller have been fully discharged, a resale of the merchandise is admissible only in the normal course of business. Therefore, the merchandise may neither be pledged or assigned as security by bill of sale, nor may such merchandise be otherwise disposed of in any extraordinary way.

10.4. Moreover, the buyer assigns to the seller his purchase price claims with respect to each resale, be it admissible under item 10.3. supra or not, until full discharge of the seller's claims, and the buyer will take all necessary steps to ensure that such assignment is effective also with respect to third parties. Such claims shall be deemed assigned to the seller at the time when they first come into existence for the buyer.

10.5. In case of processing, mixing, or connecting of merchandise, the seller acquires co-ownership. The scope of such co-ownership corresponds to the relation of the invoice value of the merchandise delivered by the seller and the invoice value or the other material.

10.6. If merchandise or claims which belong to the seller under these provisions shall be seized or otherwise subjected to any third party rights, the buyer shall immediately notify the seller thereof and supply the seller with all information to enable the seller to assert it's rights. The buyer shall bear any and all costs in connection therewith.

10.7. In case of delay of payment, regardless of fault on the side of the buyer, the seller has the right to reclaim the merchandise to which it has reserved proprietary rights. The seller also has the right to repossess the merchandise without the buyer's consent. The buyer waives any claims in this respect, especially on grounds of forbearance or disturbance of possession. A taking back of the merchandise is only for security reasons and does not constitute a repudiation of the contract on the side of the seller.

11. Force Majeure: Acts of God (force majeure) discharge the seller from its contractual obligations for a term of two months after their ending. The seller has the right to repudiate the contract as long as force majeure is in effect. If the delivery is delayed for more than three months as a result of such circumstances, the buyer has the right to repudiate the contract with respect to the affected part of the delivery. Force majeure applies if circumstances prevail which the seller has not caused by its own fault, and which make the complete fulfilment of the order impossible. The seller is free in using any residual capacity, and in making deliveries.

12. Severability: If any provisions of these General Terms and Conditions of Sale and Delivery or of the purchase contract should be found to be illegal or unenforceable in a jurisdiction, this shall not affect such provisions in other jurisdictions. In any case, all other provisions shall not be affected. It is the intention of the parties that such provision shall not thereby be terminated but shall be deemed amended to the extent necessary to render it valid and enforceable.

13. Governing Law: These General Terms and Conditions of Sale and Delivery, the purchase agreement, and the whole business relation between the buyer and the seller shall be governed by and construed in accordance with the laws of Austria, however UN sales law shall not apply.

14. Place of Performance: The place of performance for the delivery is determined by the agreed Incoterms. In absence of an agreement, the place of performance shall be the place from where the merchandise is shipped by the seller. In any case, Waidhofen/Ybbs, Austria, shall be the place of performance for payment.

15. Jurisdiction/Forum: The competent courts of **Waidhofen/Ybbs**, Austria shall have exclusive jurisdiction to hear and determine any suit, action, or proceeding, and to settle any disputes which may arise out of or in connection with this agreement, including any disputes concerning the valid conclusion of purchase agreements, and the effects of contracts in advance and afterwards. In addition thereto, the seller has the right to bring an action against the buyer in any place where the buyer has a registered office, a business establishment, or assets.