



YOUR PARTNER FOR PRELOADING TECHNOLOGY

Terms and Conditions of Sale and Delivery

These terms and conditions of sale and delivery are basically designed for legal transactions between companies. Should they exceptionally also be used as a basis for legal transactions with consumers within the context of §1 para. 1 (2) of the Consumer Protection Act, Federal Law Gazette (*Konsumentenschutzgesetz, BGBl.*) 49/1979, they shall apply only to the extent that they do not conflict with the provisions of the first main section of this Act. The United Nations Convention on Contracts from International Sale of Goods of 11 December 1980, Federal Law Gazette 1988/96, is expressly excluded.

1. Preamble

1.1 These terms and conditions of sale and delivery shall apply unless the contracting parties have expressly agreed otherwise in writing.

1.2 The following provisions on the delivery of goods shall also apply mutatis mutandis to services.

1.3 For assembly work, the assembly conditions of the Austrian Association of the Mechanical Engineering and Steel Construction Industry shall additionally apply.

2. Conclusion of contract

2.1 The contract shall be deemed to have been concluded if the Seller has sent a written order confirmation after receipt of the order and the Buyer has not demonstrably objected to this within 10 days.

2.2 Amendments and supplements to the contract shall require the written confirmation of the Seller to be valid. The Buyer's terms and conditions of purchase shall only be binding for the Seller if they are separately acknowledged by the Seller.

2.3 If import and/or export licenses or foreign exchange permits or similar authorizations are required for the performance of the contract, the party responsible for obtaining them shall make all reasonable efforts to obtain the required licenses or permits in a timely manner.

3. Plans and documents

3.1 The information contained in catalogues, brochures, circulars, advertisements, illustrations, and price lists etc. concerning weight, dimensions, capacity, price, performance, etc., shall only be authoritative if express reference is made to them in the offer and/or the order confirmation.

3.2 Plans, sketches, cost estimates and other technical documents, which may also be part of the offer, as well as samples, catalogues, brochures, illustrations, and the like shall always remain the intellectual property of the Seller. Any exploitation, duplication, reproduction, distribution and handing over to third parties, publication and demonstration may only take place with the express consent of the owner.

4. Packaging

4.1 In the absence of any agreement to the contrary

- a) the indicated prices do not include packaging;
- b) the goods shall be packaged in a manner customary in the trade to avoid damage to the goods on their way to the specified destination under normal transport conditions, at the expense of the Buyer, and shall only be returned by agreement.

5. Transfer of risk

5.1 Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).

5.2 In all other respects, the INCOTERMS shall apply in the version valid on the date of conclusion of the contract.

6. Delivery time

6.1 In the absence of any agreement to the contrary, the delivery period shall commence on the latest of the following dates:

- a) Date of order confirmation;
- b) Date of fulfilment of all technical, commercial and financial preconditions incumbent on the Buyer by agreement;
- c) Date on which the Seller receives a down payment to be made prior to delivery of the goods and/or a payment guarantee to be issued or otherwise opened.

6.2 The Seller is entitled to make partial and advance deliveries.

6.3 If the delivery is delayed due to circumstances occurring on the part of the Seller which constitute a reason for relief within the meaning of article 14, a reasonable extension of the delivery period shall be granted.

6.4 If the Seller is responsible for a delay in delivery, the Buyer may either demand performance or declare withdrawal from the contract after specifying a reasonable period of grace.



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6.5 If the period of grace provided for in article 6.4 has not been used through the fault of the Seller, the Buyer may, through written notice, rescind the agreement in respect of all goods not yet delivered. The same shall apply to goods already delivered but which cannot reasonably be used without the goods still outstanding. In this case, the Buyer shall be entitled to a refund of the payments made for the undelivered goods or for the goods that cannot be used. In addition, if the delay in delivery was caused by gross negligence on the part of the Seller, the Buyer shall also be entitled to compensation for justified expenses which he had to incur up to the dissolution of the agreement and which cannot be used further. The Buyer shall return to the Seller goods that have already been delivered and cannot be used.

6.6 If the Buyer does not accept the goods provided in accordance with the contract at the contractually agreed place or at the contractually agreed time and if the delay is not the fault of the Seller, the Seller may either demand performance or withdraw from the contract, specifying a reasonable grace period. If the goods have been separated, the Seller may store the goods at the Buyer's expense and risk. The Seller shall also be entitled to reimbursement of all justified expenses which they had to incur for the performance of the contract, and which are not included in any received payments.

6.7 Claims of the Buyer against the Seller on the grounds of the Seller's default other than those referred to in article 6 are excluded.

7. Acceptance test

7.1 If the Buyer requests an acceptance test, this must be expressly agreed with the Seller in writing at the time the contract is concluded. Unless otherwise agreed, the acceptance test is to be carried out at the place of manufacture or at a place to be determined by the Seller during the Seller's normal working hours. The general practice for acceptance testing in the relevant industry sector shall apply. The Seller shall notify the Buyer of the acceptance test in good time so that the Buyer or an authorized representative can be present at the test. If the delivery item proves to be in breach of contract during the acceptance test, the Seller shall immediately resolve any defect and restore the delivery item to its contractual condition. The Buyer may demand a repeat inspection only in cases of substantial defects. Following an acceptance test, an acceptance report shall be produced. If the acceptance test shows that the delivery item is in conformity with the contract and in perfect working order, this shall be confirmed by both contracting parties. If the Buyer or an authorized representative is not present at the acceptance test, despite timely notification by the Seller, the acceptance report shall be signed only by the Seller. The Seller shall in any case provide the Buyer with a copy of the acceptance report, the correctness of which the Buyer may not dispute even if they or their authorized representative was unable to sign it due to lack of presence. Unless otherwise agreed, the Seller shall bear the costs of the acceptance test carried out. The Buyer, however, shall in any case bear the costs incurred by them or their authorized representative in connection with the acceptance test, e.g. travel and living expenses and reimbursement of expenses.

8. Price

8.1 Unless otherwise agreed, the prices are ex works of the Seller without loading.

8.2 The prices are based on the costs at the time of pricing, unless otherwise agreed. Should the costs change before delivery, these changes shall be for the benefit or at the expense of the Buyer.

9. Payment

9.1 Payments shall be made in accordance with the agreed terms of payment. If no terms of payment have been agreed, a 35% down payment is due after written order confirmation, and 65% net before delivery at the latest on receipt of goods. Irrespective of this, the sales tax included in the invoice must be paid no later than 30 days after invoicing.

9.2 The Buyer is not entitled to withhold payments due to warranty claims or other counterclaims not recognized by the Seller.

9.3 If the Buyer is in default with an agreed payment or other performance, the Seller can either insist on performance of the contract and

- a) postpone the fulfilment of its own obligations until the outstanding payments or other benefits have been settled,
- b) make a reasonable extension to the delivery period,
- c) declare entire outstanding purchase price due,
- d) if there is no reason for exoneration on the part of the Buyer within the context of article 14, charge interest on arrears from the due date in the amount of 12.5% above the respective base interest rate of the European Central Bank (see Directive / EC on combating late payment in commercial transactions of 29 June 2000), or declare withdrawal from the contract, granting a reasonable period of grace.

9.4 In any case, the Buyer shall compensate the Seller for the reminder and collection costs incurred as further damage caused by the delay. Furthermore, they shall reimburse the Seller for the storage costs caused by any delay caused by them. For this purpose, the Seller may either claim the costs incurred by them through storage with third parties, or € 0.20 net per day and per pallet space (1.2 x 0.8 m) occupied by the retained or non-accepted goods.



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9.5 If, upon expiry of the grace period pursuant to 9.3, the Buyer has not made the payment or other performance owed, the Seller may withdraw from the contract by written notice. Upon Seller's request, the Buyer shall return to the Seller any goods already delivered and shall compensate the Seller for any depreciation in the value of the goods as well as reimburse the Seller for any justified expenses incurred by the Seller in the performance of the contract. With regard to goods not yet delivered, the Seller shall be entitled to make the finished or processed parts available to the Buyer and demand the corresponding share of the sales price for this.

9.6 Payment obligations, in particular the specified monetary values, shall be deemed to have been agreed in euros, unless otherwise agreed. The conversion shall be made in all cases on the basis of the officially fixed conversion rate.

10. Retention of title

10.1 The Seller reserves the right of ownership of the object of purchase until the complete fulfilment of all financial obligations of the Buyer. The Seller is entitled to make their ownership externally recognizable on the delivery item. The Buyer shall comply with the formal requirements necessary to preserve the retention of title. In the event of seizure or other claims, the Buyer shall be obliged to assert the Seller's right of ownership and to notify the Seller without delay.

11. Warranty

11.1 The Seller shall be obliged to resolve, in accordance with the following provisions, any defect affecting the fitness for purpose which is due to a defect in design, material or workmanship. Likewise, the Seller shall be liable for defects in expressly stipulated properties.

11.2 This obligation shall only apply to such defects which have occurred during a period of one year in the case of single-shift operation from the time of transfer of risk or, in the case of delivery with installation, from the time of completion of installation.

11.3 The Buyer can only invoke this article if they immediately notify the Seller in writing of the defects that have occurred. The presumption rule of § 924 General Code of Civil Law (ABGB, *Allgemein Bürgerliches Gesetzbuch*) is excluded. The Seller, after being informed, shall, if the defects are to be remedied by the Seller in accordance with the provisions of this article, at their option:

- a) rectify the defective goods on the spot;
- b) have the defective goods or the defective parts returned to them for the purpose of rectification;
- c) replace the defective parts;
- d) replace the defective goods.

11.4 If the Seller has the defective goods or parts returned to them for the purpose of repair or replacement, the Buyer shall, unless otherwise agreed, bear the costs and risk of transport. Unless otherwise agreed, the return of the repaired or replaced goods or parts to the Buyer shall be at the expense and risk of the Seller.

11.5 The defective goods or parts replaced in accordance with this article shall be at the disposal of the Seller.

11.6 The Seller shall only be liable for the costs of any rectification of defects carried out by the Buyer if the Buyer has given written consent to this.

11.7 The Seller's warranty obligation shall apply only to defects that occur under the intended operating conditions and normal use. In particular, it does not apply to defects caused by: poor installation by the Buyer or a representative, poor maintenance, poor repairs or modifications carried out without the written consent of the Seller by a person other than the Seller or a representative, normal wear and tear.

11.8 For those parts of the goods which the Seller has obtained from a sub-supplier engaged by the Buyer, the Seller shall only be liable within the scope of the warranty claims to which they are entitled against the sub-supplier. If goods are manufactured by the Seller on the basis of design specifications, drawings or models provided by the Buyer, the Seller's liability shall not extend to the correctness of the design, but to the fact that the workmanship was carried out in accordance with the Buyer's specifications. In such cases, the Buyer shall indemnify and hold the Seller without liability in the event of any infringement of industrial property rights. In the event of the acceptance of repair orders or in the event of modifications or conversions of old and third-party goods as well as in the event of the delivery of used goods, the Seller shall assume no warranty.

11.9 From the start of the warranty period, the Seller assumes no liability beyond that stipulated in this article.

12. Liability

12.1 It is expressly agreed that the Seller shall not be liable to the Buyer for damages for injury to persons, for damage to goods which are not the subject matter of the contract, for other damage and for loss of profit, unless the circumstances of the individual case show that the Seller is guilty of gross negligence. The reversal of the burden of proof according to § 1298 General Code of Civil Law (ABGB, *Allgemein Bürgerliches Gesetzbuch*) is excluded.

12.2 The object of purchase only offers the safety that can be expected on the basis of approval regulations, operating instructions, regulations of the Seller on the handling of the object of purchase - in particular with regard to any prescribed inspections and other instructions given.



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12.3 In the event of slight negligence on the part of the Seller, unless article 12.1 applies, the compensation for damages shall be limited to 5% of the order amount, to not exceed 727,000 euros.

12.4 All claims for damages arising from defects in deliveries and/or services must - if the defect is not expressly acknowledged by the Seller - be asserted in court within one year of the expiry of the contractually stipulated warranty period, otherwise the claims shall lapse.

13. Consequential damage

13.1 Except as otherwise provided in these conditions, the Seller shall not be liable to the Buyer for any production stoppage, loss of profit, loss of use, loss of contract or any other consequential economic or indirect loss.

14. Grounds for exemption

14.1 The parties shall be released from the timely performance of the contract in whole or in part if they are prevented from doing so by events of force majeure. Events of force majeure are exclusively events that are unforeseeable and unavoidable for the parties and do not originate from their sphere. Strikes and industrial disputes shall, however, be deemed to be events of force majeure. If the Buyer is hindered by an event of force majeure, they may, however, only invoke the existence of force majeure if they immediately, but no later than within five calendar days, inform the Seller of the beginning and foreseeable end of the hindrance by sending a registered statement confirmed by the respective government authority or chamber of commerce of the country of delivery on the cause, the expected effect and duration of the delay. In the event of force majeure, the parties shall make every effort to eliminate or reduce the difficulties and foreseeable damage and shall keep the other party informed thereof, otherwise they shall be liable to pay damages to the other party. Dates or deadlines that cannot be met due to the effects of force majeure shall be extended by a maximum of the duration of the effects of the force majeure or, if applicable, by a period to be determined by mutual agreement. If a force majeure circumstance lasts longer than four weeks, the Buyer and the Seller shall seek a negotiated settlement of the technical consequences. If no amicable solution can be reached, the Seller may withdraw from the contract in whole or in part.

15. Data protection

15.1 The Seller is entitled to store, transmit, modify and delete personal data of the Buyer during the course of business.

15.2 The parties undertake to maintain absolute secrecy vis-à-vis third parties with regard to the knowledge they have acquired as a result of the business relationship.

16. Place of jurisdiction, applicable law, place of performance

16.1 The place of jurisdiction for all disputes arising directly or indirectly from the contract is the Austrian court with local jurisdiction for the registered office of the Seller. However, the Seller may also bring an action before the court having jurisdiction over the Buyer.

16.2 The parties may also agree on the jurisdiction of an arbitral tribunal.

16.3 The contract is subject to Austrian law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980, Federal Law Gazette 1988/96.

16.4 For delivery and payment, the place of performance shall be the registered office of the Seller, even if the handover takes place at another location as agreed.