

I. Scope/Offers

1. These General Terms and Conditions of Delivery and Payment are applicable to all - also future - contracts with enterprises, legal persons of public law and public-law special funds for supply of goods and other services, including contracts for work, consulting, proposals and other ancillary services. Terms and Conditions of Purchase of Purchaser will not be recognized, even though we did not expressly object these upon receipt.
2. Our offers, as well as any information in connection with deliveries are non-binding and will not result in any liability from our side. This is not applicable to physical injuries, or damages of the body or of health resulting from an intentional or gross negligent violation of obligations through or from an intentional or gross negligent violation of an obligation of one of our legal representatives or vicarious agent. Oral agreements, representations, assurances and warranties of our employees in connection with the conclusion of the contract will only become binding through our confirmation in the form of text (Order Confirmation from the ERP Enterprise-Resource-Planning System).
3. In case of doubt, the respectively valid version of the Incoterms shall be decisive for the interpretation of trade clauses.
4. Any and all data such as dimensions, weights, illustrations, descriptions, assembly sketches and drawings in sample books, price-lists and other printed matters are only specified approximately, but as exact as possible, but insofar non-binding for us. The same applies to data of the plants. Models and drawings will remain our property.
5. "Purchaser" within the meaning of these terms is also the "Ordering Party" in case of contracts for work.

II. Prices

1. Prices are stated ex work or warehouse, plus freight, customs and value-added tax.
2. If charges or other external costs, which are included in the price agreed upon, will change later than four weeks after the conclusion of the contract or if such charges or costs will newly arise, we will be entitled to a price change to the relevant extent.
3. We reserve the right with respect to quantities not yet delivered to increase the price agreed upon, if circumstances will occur due to a change of the raw material situation /economic situation, which significantly increase the production and / or purchase of the respective product as compared to the date of the price agreements. In this case, Customer will be entitled to cancel the orders affected by the increase within four weeks after the notification of the price increase.

III. Payment and Offsetting

1. The invoicing will be effected in written form by email with each delivery. This is also applicable to partial deliveries.
2. Unless anything else has been agreed upon or is stated in our invoices, the purchase will be due immediately after delivery without discount and in a way, so that we are able to dispose of the amount on the due date. Costs incurred for payment transactions will be borne by Purchaser. Purchaser will be entitled to a right of retention and a power of set-off only insofar as its counter-claims are undisputed or have been established as final and absolute.
3. When exceeding the term of payment or in case of a delay, we will charge interest in the amount of 9 % points above the respective basic interest rate, unless higher interest rates have been agreed upon. We reserve the right to enforce a further damage caused by delay.
4. Purchaser will get into delay at the latest 14 days after the due date and after the receipt of the invoice / payment schedule or after the due date and receipt of the service. Purchaser will not get into delay as long as the performance has not been made due to circumstances, for which Purchaser is not responsible.
5. If it will become apparent after the conclusion of the contract, that our claim for payment will become threatened due to the lack of capacity of Purchaser, or if the payment of invoices due or of instalments agreed upon will not be made in due time, immediate maturity is regarded as agreed upon. In this case, we will also be entitled to demand the immediate payment of all receivables not subject to a statute of limitation under the current business relations with Purchaser. Furthermore, such rights will cover all other outstanding deliveries of material and services to be rendered under the business relations with Purchaser. In addition, we will be entitled in such cases to withdraw subject to a period of grace. If we will withdraw from the contract due to the reasons stated before, we will be entitled - irrespective of any other further claims - to request a contractual penalty in the amount of 10 % of the order amount resulting in the withdrawal.
6. A discount agreed upon always relates to the invoice value, exclusive of freight and customs duties, and is subject to the complete payment of all liabilities due from Purchaser at the date of applying the discount.
7. Any claims assigned to us by Purchaser towards insurers of Purchaser or other debtors will be exclusively used in fulfilment of an obligation.
8. Bills of exchange and cheques are excluded as means of payment.
9. If we have indisputably delivered partially defective goods, Purchaser shall still be obliged to effect the payment for the defect-free portion. The delivery of the complete volume as partial deliveries is allowed.

IV. Performance of Deliveries, Periods and Dates of Delivery, Acceptance

1. Partial deliveries are allowed.
2. Our obligation to deliver is subject to the reservation of correct self-delivery in due time, unless we are responsible for such incorrect or delayed self-delivery.
3. The data on periods of delivery are approximate. Periods of delivery will start with the date of our order confirmation and shall only be valid under the condition of the clarification of all details of the order in due time and of the time fulfilment of all obligations of Purchaser, such as, for example, the provision of all administrative certificates, the provision of letters of credit and guarantees or the payment of down-payments.
4. The time of shipment ex works or warehouse is decisive for the fulfilment of periods and dates of delivery. These are regarded as fulfilled upon the notification of readiness for shipment, if the goods cannot be shipped in due time without a fault from our side.
5. Any events of force majeure will entitle us to postpone the delivery by the period of time of the impediment and an adequate start-up period. This also applies, if such events will occur during an existing delay. The following events will rank at the same level as events of force majeure: monetary measures, measures of trade politics and other sovereign measures, strikes, lock-outs, disruptions of operation, for which we are not responsible, (e. g. fire, breakage of machinery and rollers, lack of raw materials and energy), impediment of the traffic routes, delay of the import/customs clearance as well as all other circumstances whatsoever, which essentially aggravate or render the deliveries impossible, for which we are not responsible. In this case, it is irrelevant, whether such circumstances will occur at our premises, at the plant of delivery or at a sub-supplier. If the execution of the contract will become unreasonable for one of the parties to the contract due to the events mentioned above, in particular if essential parts of the execution of the contract will be delayed by more than 6 months, this party may declare the cancellation of the contract.
6. Our deliveries will be made ex works ("exw" pursuant to the Incoterms of 2010). A loading is not owed by us. If a truck loading will be carried out through our staff, the risk of accidental loss and of an accidental deterioration of the goods will pass on to Purchaser at the beginning of the loading process. We will not be liable after the start of the loading process. These restrictions are not applicable in case of a culpable violation of essential contractual obligations, insofar as the achievement of the contractual purpose is at hazard and if the damage is a damage foreseeable at the conclusion of the contract and contract-typical, in cases of compulsory liability in accordance with the Product Liability Act, in case of physical injuries, damages to the body and health; and also even not in those cases, if and insofar as we have fraudulently concealed defects of the item or warranted the non-existence. The regulations on the burden of proof shall not be affected.
7. Purchaser is obliged to collect the goods immediately, at the latest, however, within 14 days after the notification of completion through us.
8. Purchaser is obliged to return the signed delivery note upon the receipt of the delivery within 7 days, if the goods are defect-free. When signing the delivery note, the goods are deemed accepted. If the signed delivery note will not be returned in due time and if no notice of defect is submitted, the goods are regarded as accepted. This will, in particular, also apply, if Purchaser will allegedly state, that Purchaser had not received a delivery note after the delivery has been made.

9. If creditor will not collect the goods in due time or if delivery is made in accordance with the delivery date of the order confirmation system, creditor will get into delay. Our claim for payment will become due from the date of delay irrespective of an acceptance. If a damage will be incurred by us due to the event of delay, Purchaser shall be liable, unless we are responsible for the delay. In the case of a delay from the side of the creditor, we will be entitled to store the goods with us or with a third party at the expense of Purchaser. We are entitled to charge from Seller / Purchaser a contractual penalty in the amount of 0.3 % of the overall gross order value of the delivery in case of a delay of the Purchaser from the date of the delay of the creditor, namely for each working day commenced. The overall contractual penalty shall not exceed, however, 25 % of the overall gross order value of the delivery for the complete period of delay. We expressly reserve the right to claim further damages. We are not responsible for a negligent violation of obligations during the delay of the creditor.
- V. Reservation of Title**
1. All goods delivered by us will remain our property (reserved goods) until the fulfilment of all claims, in particular also those balance demands due to us within the scope of the business relations (balance reservation) and the claims, which are unilaterally established by the liquidator by way of the choice of satisfaction. This is also applicable to claims arising in the future or contingent claims, e.g. from acceptor's bills of exchange and shall apply if payments are to be made on separately indicated claims. This balance reservation shall finally lapse with the compensation of all claims, which are still outstanding at the time of payment and are covered by this balance reservation.
 2. Treatment and processing of the conditional goods by the customer are always carried out on our behalf without creating any liability on our part. The goods treated and processed are regarded as conditional goods within the meaning of para. 1. When processing, combining and mixing the conditional goods with other goods by Purchaser, we acquire the title to the new goods in the proportion of the net invoiced value of the conditional goods to that of the other materials. If our title will lapse through the combination or mixing, Purchaser already now will assign the titles due to Purchaser at the new stock or item to the extent of the invoice value of the conditional goods and will store these goods free of charge for us. Our co-ownership rights are regarded as conditional goods within the meaning of para. 1.
 3. Purchaser shall only be allowed to sell the conditional goods in the course of normal business transactions under its standard terms and conditions of sale as long as Purchaser will not be in delay, provided that the claims due to the resale acc. to para. 4 and 6. will be assigned to us. Purchaser will not be entitled to any other disposals of the conditional goods.
 4. The claims with respect to the resale of the conditional goods will already now be assigned to us, together with any and all securities, which are acquired by Purchaser for the receivable. These will serve as a security to the same extent as the conditional goods. If the conditional goods will be sold by Purchaser together with other goods not sold by us, the claim with respect to the resale will be assigned to us in proportion to the invoice value of the conditional goods to the invoice value of the other goods sold. When selling goods, in which we have a co-ownership right pursuant to para. 2, a portion will be assigned to us corresponding to our co-ownership portions. If the conditional goods will be sold by Purchaser to fulfil a contract for work, the claim under the contract for work will be assigned to us to the same extent in advance.
 5. Purchaser is entitled to collect claims with respect to the resale. This authorization for collection will lapse in case of our revocation, at the latest, however, in case of a delay of payment, dishonour of a bill of exchange or the application for insolvency proceedings. We will only exercise our right of revocation, if it becomes apparent after the conclusion of the contract, that our claim for payment under this contract or under other contracts with Purchaser will be at hazard due to the lack of financial capacity of Purchaser. Purchaser is obliged, upon our request, to immediately inform its customers about the assignment to us and to hand over to us the documents required for the collection.
 6. An assignment of claims with respect to resale is not allowed, unless such assignment is made by way of a true factoring, which is indicated to us and where the factoring proceeds will exceed the value of our claim secured. Our claim will be come due immediately upon the crediting of the factoring proceeds.
 7. Purchaser shall immediately notify us with respect to a seizure or other impairment through third parties. Purchaser will bear all costs to be incurred for the release of the seizure or for the return transport of the conditional goods, unless such costs are reimbursed by third parties.
 8. If Purchaser will get into delay of payment or will not honour a bill of exchange upon presentation, we will be entitled to take back the conditional goods and to possibly enter the premises of Purchaser for this purpose. The same shall be applicable, if it becomes apparent after the conclusion of the contract, that our claims for payment under this contract or under other contracts with Purchaser will be at hazard due to the lack of financial capacities of Purchaser. The repossession is not a withdrawal from the contract. The regulations of the insolvency code shall not be affected.
 9. If the invoice value of the existing securities will exceed the claims secured, including ancillary claims (interest, costs etc.) by altogether more than 50 %, we will be obliged, upon the request of Purchaser, to insofar release securities at our discretion.
- VI. Right of Lien**
1. Purchaser will grant to us a contractual right of lien with respect to all claims under the business relationship, namely with respect to those items in our possession.
 2. The contractual right of lien may also be enforced with respect to claims for works carried out, replacement deliveries and other services rendered before.
- VII. Qualities, Dimensions and Weights**
1. Grades and dimensions are defined in accordance with the standards agreed upon - when lacking an agreement, pursuant to the standards valid as of the date of the conclusion of the contract; in case of missing standards, in accordance with those pursuant to commercial custom, reference to standards or to their components, e.g. material sheets, test certificates and test standards as well as data on grades, dimensions and weights and usability are no representations or guarantee; this is also applicable to conformity declarations, declarations of manufacturers and respective designations.
 2. With respect to the primary material processed by us (in particular, porcelain stone ware etc.), only the DIN standards and quality standards and quality benchmarks stated by the supplier of the primary material will be applicable.
 3. With respect to weights, the weighing carried out by us or by our supplier of the primary material will be decisive. We are entitled to determine the weight without weighing according to standards (theoretical) plus 2 1/2 % (commercial weight). Piece numbers, bundle quantities or others stated in the notice of shipment are non-binding for goods calculated in terms of weight. Unless a single weighing will be carried out, which is not customary, the respective total weight of the shipment will be applicable. Any differences as compared with the mathematical individual weights will be proportionally distributed.
- VIII. Shipment, Transfer of Risk, Packaging, Partial Deliveries in case of an Obligation to Send**
1. If we owe the shipment of the goods in accordance with the respective agreement, the following shall be applicable.
 2. We will determine the shipping route and means as well as the forwarding agent and the carrier.
 3. If the transport will be impossible or significantly aggravated on the route planned or to the place intended within the specified time without a fault from our side, we will be entitled to delivery via a different route or to another place; the additional costs incurred shall be borne by Purchaser. Purchaser will have an opportunity before to make a respective comment.
 4. The risk will pass on to Purchaser upon the transfer of the goods to the forwarding agent or carrier, at the latest, however, upon leaving the warehouse or the delivery plant; this also includes a seizure of the goods, namely with respect to all business transactions, also in case of delivery "carriage-paid" or "free place of destination". We will only provide for an insurance upon the instructions and expense of Purchaser. Obligation and costs of unloading shall be borne by Purchaser.

5. Unless anything else has been agreed upon, the goods will be packed with a plastic wrapping on wooden or plastic pallets in cardboard boxes. We do not supply any moisture protection. We will provide for packaging, protection and transporting means in accordance with our experience at the expense of Purchaser. These will be accepted upon return to our warehouse; we will not assume any costs of Purchaser incurred for the return transport or for an own disposal of the packaging.
6. We are entitled to adequately exceed or fall below the delivery quantities agreed upon. The information on an "approximate" quantity will entitle us to an exceeding or falling below and to a respective invoicing of up to 10 %. Partial deliveries are regarded as agreed upon.
7. We will not be liable for transport damages. These restrictions will not apply in case of a culpable violation of essential contractual obligations, insofar as the achievement of the purposes of the contracts will be at hazard and if it concerns a damage foreseeable at the time of the conclusion of the contract typical for such a contract, in compulsory cases, liability pursuant to the Product Liability Act, for damages to life, of the body or of health and even not in those cases, where and insofar as defects of the items had been fraudulently concealed or where the non-existence had been guaranteed. The regulations about the burden of proof shall not be affected.
8. Furthermore, the Incoterms 2010 - Clause DAP will apply.

IX. Call and Long-Term Orders

1. In case of call orders, the goods notified as ready for shipment have to be immediately collected, at the latest, however, within 14 days; we will otherwise be entitled to ship the goods at our discretion and after a reminder at the expense and risk of Purchaser or to store the goods, at our discretion, and to immediately invoice the goods.
2. In case of contracts with a continuous delivery, we shall be instructed with calls and distribution of grades for nearly the same quantities each month; otherwise, we will be entitled to determine the regulations at our discretion.
3. If the individual calls will exceed the overall contractual quantity, we will be entitled but not obliged to deliver the surplus quantity. We will be entitled to invoice the surplus quantity at the prices valid at the time of the call or delivery.
4. If no binding quantity has been ordered, we will base our calculation on the non-binding order quantity (target quantity) expected by Purchaser. If Purchaser will purchase less than the target quantity, we will be entitled to adequately increase the price per unit.
5. Contracts not limited in time can be terminated with a notice period of 6 months.
6. Partial performance out of the overall order volume are allowed.

X. Liability for Material Defects

1. The warranty period amounts to six months after delivery of the goods.
2. Material defects of the goods shall be notified immediately, at the latest seven days, namely in text form by email. Material defects, which cannot be detected within this period of time even with a most careful inspection, shall be notified immediately after detection, at the latest before the expiration of the limitation period agreed upon or of the statutory limitation period in text form by email; a processing or treatment shall be stopped immediately. Our liability for material defects will not be applicable in case of an insignificant reduction of the value or of the fitness of the goods. If goods have already been resold, processed or modified, Purchaser will only be entitled to reduce the purchase price.
3. The obligation to notify defects exists separately for each partial delivery.
4. Furthermore, § 377 UGB 5 (Austrian Business Enterprise Code) is applicable to the notification of defects. After the performance of an acceptance of the goods through Purchaser agreed upon, the notification of material defects, which had been detectable during the type of acceptance agreed upon, will be excluded.
5. The defectiveness of the goods at the time of the handing-over must be proven by the customer; the regulations of § 924, para. 2 ABGB (Austrian Civil Code) (or of a comparable foreign legal regulation) are excluded.
6. Upon the justified and timely notification of a defect, we can - at our discretion - either eliminate the defect or supply defect-free goods (supplementary performance). In case of failures or objections to a supplementary performance, Purchaser may reduce the purchase price or withdraw from the contract after setting and after the unsuccessful expiration of an adequate deadline. If the defect is not substantial, Purchaser will only be entitled to reduce the price.
7. All rights due to material defects will lapse, if Purchaser will not give us - upon request - the immediate opportunity to convince ourselves of the material defect, in particular failing to immediately make available to us the goods claimed or samples thereof.
8. We will only pay for any expenditure incurred in connection with the supplementary performance, insofar as this will, in the individual case, be adequate in relation to the purchase price of the goods, but - in no case - more than 150 % of the value of the goods. Costs incurred in connection with the assembly or disassembly of the defective item as well as costs incurred by Purchaser for the self-elimination of a defect are excluded, unless the statutory conditions exist in this respect. We will not assume any expenditure incurred due to the fact that the goods sold have been transported to a place other than the registered office or branch of Purchaser, unless this would correspond to the contractual use.
9. A warranty for a specific purpose or for a specific suitability of the goods will not be granted by us, unless anything deviating has been expressly agreed upon in writing; furthermore, the risk of use and applicability will exclusively rest with Purchaser.
10. If we are obliged to supply in accordance with drawings, specifications, samples etc. of Purchaser, Purchaser will assume the risk of suitability for the intended purpose.
11. The materials processed by us, in particular the jointing material, may show a discolouring in case of an incorrect use or cleaning, which will not affect the function. Such joint discolouring will not represent a defect and will not trigger warranty rights.
12. With each partial delivery made, the limitation period of material defects will separately commence for the relevant partial delivery.

XI. General Limitation of Liability

1. We will only be liable with respect to the violation of contractual or non-contractual obligations due to impossibility, delay, fault during the initiation of contracts and unlawful act - also for our officers and other vicarious agents - in cases of wilful intent and gross negligence, restricted to the contract-typical damage foreseeable at the time of concluding the contract.
2. These restrictions will not be applicable to the culpable violation of substantial contractual duties, insofar as the achievement of the target of the contract will be at hazard, restricted to the contract-typical damage foreseeable at the time of concluding the contract, in cases of a compulsory liability pursuant to the Product Liability Act, with respect to damages to life, to body or to health and also not, if and insofar as we have fraudulently concealed defects at the item or if we have warranted the non-existence of such defects. The regulations with respect to the burden of proof shall not be affected.
3. Unless anything else has been agreed upon, contractual claims incurred by Purchaser towards us for reasons of or in connection with the delivery of the goods shall be statute-barred one year after the delivery of the goods, unless these include the compensation for physical or health damages or for a typical foreseeable damage or based on wilful intent or gross negligence of Seller. This shall not affect our liability under wilful or gross negligent violations of duties as well as the limitation period of statutory recourse claims. In cases of a supplementary performance, the limitation period will not commence again. X No. 1 shall not be affected.

XII. Insolvency

1. If insolvency proceedings will be opened up and if the right pursuant to § 21 IO (Insolvency Code) with respect to the assets of the customer will be exercised, or if the opening-up will be rejected due to a lack of assets, we will be entitled - irrespective of our other rights - to withdraw from the contract pursuant to the statutory regulations.

XIII. Forum Contractus, Place of Jurisdiction and Applicable Law

1. Forum contractus for our deliveries is our registered office. The place of jurisdiction is, at our discretion, the registered office of our company or the registered office of Purchaser.
2. With respect to any and all legal relations between us and Purchaser, Austrian law shall be exclusively applicable - as a supplement to these Terms and Conditions - (with the exclusion of the IPRG ("Conflict-of-laws Act") and of other conflict of laws). The provisions of the Convention on Contracts for the International Sale of Goods (CISG) dated April 11, 1980 shall not be applicable.

XIV. Miscellaneous

1. The correspondence between the parties to the contract shall be made in text form by email, unless any other form is compulsorily defined in the contract. Oral correspondence does not have any legally binding effect, unless the parties will agree something else or in case of danger ahead with respect to the mutual economic interests or to the legal interest of the parties. This does not apply to correspondence compulsorily subject to the text or written form under the contract. The consent to communicate by email will be granted upon the conclusion of the contract, without any further regulatory needs.
2. Purchasers from non-member countries are obliged to pay the purchase price / fee in advance. The Incoterms 2010 Clause "EX Works" shall be applicable, unless anything else has been agreed upon.
3. If a Purchaser domiciled outside the Federal Republic of Austria (foreign buyer) or its representative will collect or transport or ship goods to a foreign country, Purchaser will be obliged to submit to us the proof of export required under tax law. If such a proof will not be provided, Purchaser shall pay the value-added tax applicable on the invoice amount with respect to deliveries inside the Federal Republic of Austria.
4. In case of deliveries from the Federal Republic of Austria to another EU Member State, Purchaser will be obliged to inform us about the ID-No. for VAT before the delivery, under which Purchaser carries out the taxation of purchases within the EU. Otherwise, Purchaser will be obliged to pay the amount of value-added tax statutorily owed by us in addition to the purchase price.
5. When settling accounts for deliveries from the Federal Republic of Austria to other EU Member States, the respective regulations for value-added tax of the respective Member States of the consignees will be applicable, if either Purchaser is registered for value-added tax in another EU Member State or if we are registered for value-added tax in the Member State of the consignee.
6. If any of the provisions of the contract with Purchaser, including these General Terms and Conditions of Delivery and Payment, should be or become fully or partially invalid, this shall not affect the validity of the other provisions. The provision fully or partially invalid shall be replaced by a provision coming as close as possible to the economic success of the invalid provision.