

Scope and Incoterms

1. These General Terms and Conditions of Sale and Delivery ("Terms") form an integral part of all our contract offers and contract conclusions. These terms and conditions apply exclusively to all present and future transactions. Any terms and conditions of the customer that conflict with or deviate from these Terms and Conditions will not be recognised unless we have expressly agreed to their validity in writing.
2. If clauses of the Incoterms are mentioned in our offers or our sales confirmations, these will apply in the latest version.
3. These terms and conditions apply exclusively to entrepreneurs within the meaning of section 1 of the Austrian Consumer Protection Act (KSchG).

Offers and orders

Our offers are subject to confirmation. Orders of the buyer and verbal subsidiary agreements only become binding for us upon our written or printed confirmation or delivery.

Calculation of the purchase price

1. Unless otherwise stated in the sales confirmation, our prices are ex works.
2. Our prices valid on the day of delivery plus the statutory value added tax are decisive for the calculation of the purchase price.
3. Should we generally increase our prices for the product to be delivered between the conclusion of the contract and delivery, the buyer is entitled to withdraw from the contract with regard to the quantity not yet delivered within seven working days after notification of the price increase.
4. The calculation of the purchase price is based on the quantities, weights and/or dimensions determined by us at the place of dispatch.

Payment, exclusion of set-off

1. The purchase price is payable "net cash" and due upon delivery.
2. If the buyer is in default of payment, we are entitled to claim interest on arrears in the amount of 9.2 percentage points above the base interest rate. This does not affect the assertion of any further damages due to the delay in payment.
3. Payment of the purchase price is only deemed to have been effected when the amount is finally available in one of our accounts. Bills of exchange or cheques are only accepted on account of payment. Bank charges, bill of exchange costs, etc. must be borne by the buyer.
4. The offsetting of counterclaims other than those which are undisputed or have become legally binding as well as the exercise of rights to refuse performance and rights of retention are expressly excluded.

Delivery

1. Our obligation to deliver is subject to correct and timely delivery by our own suppliers.
2. We are entitled to make partial deliveries, provided that these account for at least 25% of the order quantity.
3. Short deliveries or excess deliveries of up to 10% of the contractually agreed quantity are permissible.
4. Delivery dates are only fixed dates if they are expressly agreed as such.
5. If "prompt" has been agreed as the delivery date, the delivery period is 14 calendar days, not including the day of conclusion of the contract.
6. In the event of a delay in delivery, the buyer must grant us a reasonable grace period of at least two weeks.
7. The risk passes to the buyer as soon as the goods have been handed over to the carrier or, in the case of collection by the buyer, when the goods are made available. This also applies if we bear the transport costs.
8. Unless otherwise agreed, our goods are intended for processing in the buyer's own company.
9. The goods will be delivered at the buyer's expense, unless expressly agreed otherwise.

Obstacles to delivery

Wars, strikes, lock-outs, shortages of raw materials or energy, operational or traffic disruptions, acts of authorities and all other cases of force majeure which prevent, delay or render uneconomical the manufacture or shipment of the goods release us from our obligation to deliver for the duration and to the extent of the disruption. If the disruption exceeds a period of three months, we are entitled to withdraw from the contract. In the event of partial or complete loss of our sources of supply due to force majeure as defined above, we are not obliged to obtain supplies from other suppliers. In this case, we are entitled to distribute the available quantity of goods, taking into account our own requirements and our delivery obligations.

Quality of the goods, samples, technical consultation, use

1. Unless otherwise agreed, the quality of the goods is determined exclusively by our product specification. Insofar as we sell products of other manufacturers, the product specification of the manufacturer applies in each case.
2. The samples provided by us as well as our technical and chemical specifications serve only as a general description of the goods. They do not contain any guarantee of characteristics or durability and do not exempt the buyer from examining each individual delivery.
3. The technical application advice we provide to the best of our knowledge is non-binding and does not release the buyer from the obligation to check the suitability of each individual delivery for the intended use before processing. The buyer is solely responsible for the application, use and processing of the goods supplied by us and for compliance with the applicable safety regulations.
4. Unless we have agreed otherwise in writing in advance after checking our risks in individual cases and subject to compliance with all applicable regulations, the following restrictions or prohibitions on use apply. The products sold and/or supplied by us are not intended
 - i. for the manufacture of medical devices of risk class III according to EU Directive 93/42/EEC,
 - ii. for implants which remain in the body for more than 30 days (permanent implants), irrespective of which risk class they fall under,
 - iii. for medical devices which have a life-sustaining effect,
 - iv. for use in the manufacture of weapons or other objects designed to kill or injure human beings, and
 - v. for the construction of aircraft or installation in aircraft, unless the delivery is made for the manufacture of products used for the interior fittings of aircraft.

Notification of defects, claims for defects

1. The buyer must inspect the goods immediately after delivery and notify us in writing of any material defects, incorrect deliveries or deviations in quantity immediately, but no later than one week after delivery. In the case of partial deliveries, this obligation of the buyer applies to each individual partial quantity.
2. The buyer must notify us of any hidden defects immediately after the defect has been discovered, but at the latest within twelve months after delivery.
3. A notification of defects does not entitle the buyer to withhold payments due or to refuse acceptance of further deliveries.
4. If a notification of defects is not made in due time, the buyer may no longer assert claims for warranty (sections 922 et seq. of the Austrian Civil Code (ABGB)), for damages due to the defect itself (section 933a subsection 2 ABGB) or due to a mistake as to the defect-free nature of the item (section 871 et seq. ABGB).
5. In the case of timely and justified notifications of defects, the buyer's claims for defects are initially limited to the right of subsequent performance.
6. Within the scope of supplementary performance, we are entitled to choose between new delivery and rectification of defects.
7. If we fail to remedy the defect, the buyer may reduce the purchase price or, if the defect is not merely minor, withdraw from the contract. Claims for damages according to Item 9 of these terms and conditions remain unaffected.
8. The warranty period is one year from delivery of the item, unless mandatory statutory provisions provide for a longer limitation period.
9. The limitation period in the event of supplier recourse remain unaffected.
10. We do not warrant that the goods are free from patents or industrial property rights of third parties.
11. In the case of goods which have been sold as agreed as non-type goods (NT goods), secondary goods, regenerated goods or similar, the buyer is not entitled to any warranty claims due to material defects.
12. In the event of resale of the delivered goods by the buyer, any and all claims against us under the title of warranty will lapse. The right of recourse pursuant to section 933b ABGB is expressly excluded.
13. Should the buyer himself be held liable on the basis of the Austrian Product Liability Act (Produkthaftungsgesetz) or comparable foreign provisions, he expressly waives any right of recourse against us, in particular that within the meaning of section 12 of the Austrian Product Liability Act.

Liability

1. Contractual and non-contractual claims for damages by the buyer arising from a slightly negligent breach of duty by us, our executives or our other vicarious agents are excluded. This does not apply if an obligation has been breached which is essential for achieving the purpose of the contract. In this case, however, our liability is limited to the foreseeable damage typical for the contract.
2. We are only liable for indirect damage and damage that was not foreseeable at the time the contract was concluded in the event of gross negligence.
3. The above limitations do not apply to damages resulting from injury to life, limb or health. Mandatory statutory liability provisions remain unaffected.

Retention of title

1. The goods delivered remain our property until all our claims arising from the business relationship with the buyer have been settled in full.
2. If the goods subject to retention of title are processed, we are deemed to be the manufacturer and acquire ownership of the newly created products.
3. If the goods subject to retention of title are processed, combined or mixed with goods owned by third parties, we acquire co-ownership of the resulting products in the ratio of the invoice value of the goods subject to retention of title to the invoice value of the other materials. If the goods subject to retention of title are processed, combined or mixed with a main item owned by the buyer, the buyer hereby transfers to us his ownership or co-ownership rights to the new item.
4. In the event of the sale of the goods subject to retention of title to a third party by the buyer, the third party is informed by the buyer that we retain title to the goods and the buyer's purchase price claim against the third party passes to us up to the amount of our claim against the buyer (extended retention of title).
5. Any other assignment, including within the scope of factoring, is inadmissible.
6. The buyer is obliged to store the goods subject to retention of title at his own expense with the care of a prudent businessman and to insure them against the usual storage risks. The buyer hereby assigns his claims from the insurance contracts to us.
7. As long as the buyer duly fulfils his obligations towards us, he is entitled to dispose of the goods that are subject to retention in the ordinary course of business and to collect claims from the resale of the goods that are subject to retention. However, the buyer is not entitled to pledge the goods that are subject to retention or the assigned claim to third parties or to transfer them by way of security. The authorisation to resell does not apply if the buyer excludes the assignability of the claim from the resale with his customer. The buyer must inform us immediately after becoming aware of any third party access to the goods that are subject to retention or the assigned claims.
8. In the event of default in payment on the part of the buyer, we are entitled to demand the surrender of the goods that are subject to retention without setting a grace period and without withdrawing from the contract. In addition, the buyer must provide us with all necessary information and documents on the inventory of the goods that are subject to retention and the assigned claims at our first request and inform his customers of the assignment of claims without undue delay.
9. If the value of the securities exceeds the sum of our claims by more than 10 %, we will release the excess securities at our discretion at the request of the buyer.

Final provisions

1. Place of performance for payment is Vienna.
2. The court with subject-matter competence for Vienna is the exclusive place of jurisdiction. However, we are entitled to take legal action against the buyer at the buyer's general place of jurisdiction at our discretion.
3. Austrian law applies to the exclusion of its international conflict-of-law rules and the UN Convention on the International Sale of Goods.
4. Should any of the above conditions prove to be invalid in whole or in part, this does not affect the validity of the remaining conditions. The invalid condition is to be replaced by a valid one which comes closest to its meaning and purpose.