

# GENERAL SALES AND DELIVERY TERMS

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The general sales and delivery terms include important provisions with regard to the rights of our employees, processing regulations, prices, reservation of title, delivery, warranty, damage compensation, and similar.

## 1. General

**1.1.** All of our delivery transactions and all current and future legal relationships between us and the customer shall be subject exclusively to our general sales and delivery terms. Agreements deviating therefrom, as the case may be, shall only be binding if confirmed by us in writing. Purchasing or other business conditions of our contractual partners shall not be binding to us, even if we do not explicitly decline these in individual cases. Upon ordering, the customer accepts our general sales and delivery terms exclusively. Explanations, advice that deviate from our technical guidelines and agreements with regard to price, delivery time, and payment conditions that are provided by our employees shall only become binding following our written order confirmation, provided these are confirmed therein. The customer must check our order confirmation immediately after receipt. If no written objections are received within 8 days, the conditions contained therein shall qualify as completely accepted by the customer.

**1.2.** The authority of our sales representatives is nevertheless limited in that they shall not be entitled to collect outstanding claims.

**1.3.** The data required for order completion and accounting such as customer name, address, order, and accounting data shall be saved in our IT systems. The saved data shall only be used by us within the scope of legal regulations.

## 2. Description of services

**2.1.** The object of delivery agreements (purchasing agreements or contracts for services) shall exclusively be the delivery of physical goods according to valid specifications.

**2.2.** The object of delivery agreements shall not include checking by us with regard to whether the goods ordered are suitable for a specific intended application, and this shall also not represent a contractual secondary obligation.

## 3. Customer service and processing

**3.1.** All technical processing guidelines, if applied by us, must be observed, and it shall be the responsibility of the customer to request these guidelines from us. Failure to observe our processing guidelines shall void liability. The same shall include the indicated technical knowledge up to a year prior to contract completion and shall also be laid out again as required.

**3.2.** The technical advice provided by our employees shall remain essentially non-binding and limited to solving simple manual processing guidelines. Technical advice going beyond this may only be provided with our written approval. Our customers shall not be able to claim technical advice.

**3.3.** Recommended designs and other suggestions, drafts, drawings, other technical documents, samples, catalogues, brochures, illustrations, cost recommendations, and similar shall remain our property at all times and may not be provided to third parties. All utilisation, reproduction, distribution, publication, and presentation may only take place with our explicit approval. We shall reserve the right to demand the return of all of the previously indicated documents, samples, and similar if this provision is violated. Drawings and samples provided to us, even those that have not led to an order, shall be available to the customer. If such documentation is not retrieved within six weeks following offer submission or order completion, we shall be entitled to destroy it.

## 4. Contract completion

Our offers, price lists and quotations are non-binding. Our quotations are subject to payment. All descriptions of the delivery object and technical information are non-binding.

We shall be free to consider modifications and additions desired by the customer following contract completion as we deem fit. As required, these shall be invoiced separately according to actual costs in terms of working time and materials.

## 5. Contract withdrawal and delays

**5.1.** We shall be entitled to withdraw from previously completed contracts if our customer's creditworthiness seems dubious or if we are not capable of providing the service due to operating difficulties, difficulties in purchasing materials, transportation disturbances, or similar events. In case of withdrawal for the reasons indicated above, our customers shall not be entitled to enforce damage compensation claims or other claims. In case of doubt with regard to the ability to pay or the creditworthiness of the customer, we shall also have the choice of demanding immediate payment or provision of a security amounting to the complete order sum prior to delivery instead of withdrawing from the contract.

**5.2.** If the customer does not accept the goods, we shall be entitled to withdraw from the contract upon 14 days notice and/or to demand damage compensation due to non-fulfilment. In any case, if we declare withdrawal due to circumstances that lie within the responsibility of the customer, then we shall be entitled to either demand 30% of the agreed order sum without proof of damages, or compensation for damages actually incurred.

**5.3.** If an agreed delivery deadline is exceeded by more than 6 weeks, then our customer shall be entitled to set a grace period for delivery of 6 weeks. In case this delivery grace period expires without success, the customer shall be entitled to withdraw from the contract if he

has threatened withdrawal when setting the delivery grace period. If the customer's grace period has not been observed for reasons beyond our control, then the right to withdraw shall not be granted. In this case, the customer may withdraw from the contract 4 months after exceeding the original delivery deadline at the earliest. Damage compensation claims on behalf of the customer due to delayed delivery or non-fulfilment shall be excluded. Previously provided partial services must be accepted by the customer and paid for. Partial deliveries and partial invoices shall be permitted, although partial deliveries must be paid for by the customer according to the specified payment conditions.

## **6. Prices**

**6.1.** The prices listed in our price lists or order confirmations are exclusive of statutory VAT.

**6.2.** If the delivery is completed later than 3 months following order receipt, that delay being caused by reasons beyond our control, we shall be entitled to raise the agreed price accordingly, provided we increase our general prices as a result of increased cost factors following expiry of a 3 months deadline.

**6.3.** Invoices shall be due for payment within 30 days from invoice date without deduction.

**6.4.** In case of delayed payment (additional claims notwithstanding), legal or standard bank interest, yet at least amounting to 9.2% above the current basic interest rate of the ECB shall be applied; we must also be compensated for all resulting reminder and collection expenses.

**6.5.** In case of numerous payment liabilities on behalf of the customer, we shall be entitled to apply incoming payments completely or partially to cover individual liabilities.

**6.6.** Our customers shall not be entitled to withhold payments for any reason, especially due to quality complaints or damage compensation claims, or to offset our claims with counter-claims. If the customer should be entitled to withhold payment for a delivery or service, then this right shall always be limited to the amount of capital required to cover the costs of improvement.

**6.7.** Bills of exchange and cheques are only accepted in lieu of payment and basically shall not affect our claims. If we are ready to accept bills of exchange or cheques, we shall charge the regular discount rate, exchange taxes, and banking expenses to our customer. Any credits issued in this context are subject to actual receipt.

**6.8.** In case of orders without special price agreements, prices shall apply as per the price list applicable on the day the order is awarded.

**6.9.** Unless otherwise agreed or provided in our price lists, our prices are calculated ex works, including loose loading of goods.

## **7. Reservation of title and withholding rights**

**7.1.** The delivered or processed/integrated goods shall remain our property until full payment of all of our claims resulting from the business transaction (invoice amount plus any interest, expenses, and costs due) and until payment of the complete claims resulting from the business relationship with the customer.

**7.2.** Deliveries completed for specific construction plans, even if ordered, delivered, and invoiced in segments, shall qualify as a contiguous order. In this case, reservation of title involving all goods shall only expire once all of our claims resulting from this contiguous delivery have been settled.

**7.3.** The customer shall be credited for goods recovered after exercising reservation of title at a rate of the purchase price less minimum 50% and less damaged goods. We reserve the right to make changes to invoices.

**7.4.** Our customer may sell and/or process the delivered goods within the scope of regular business activities. The customer hereby assigns his claims against third parties to us, provided these result from further sale or processing of our goods, until all of our claims against him have been fulfilled. He shall be committed to place a corresponding note in his company ledgers and to inform us regarding all relevant data upon request. The customer must inform us immediately regarding any impairment of our rights to items reserved as our property.

**7.5.** In case of connection or incorporation of the reserved goods into other items, we shall be entitled to ownership of the new item to the degree of the reserved goods proportionally to the value of the other item at the time of connection or incorporation. If the newly created item is sold, then the customer shall assign the aliquot purchase price resulting from further sale to us within the context of the previously indicated provisions. If the reserved goods are processed within the scope of a contract for services in such a manner that a third party acquires ownership, then our customer shall assign to us his claims to the aliquot compensation within the context of the previously indicated provisions.

**7.6.** If the customer gets in default of payment or if he violates one of the obligations resulting from the agreed reservation of title, the entire outstanding claim shall be due immediately. In this case, we shall be entitled (without declaring withdrawal from the contract) to demand release of the items under our ownership, picking them up at the customer's or a third party's premises, in which case the customer shall refrain from withholding such items for any reason whatsoever. The customer shall be committed to bear the costs of returning the goods subject to our reservation of title, or to compensate us for such costs.

## **8. Delivery times**

The delivery deadlines listed or agreed upon in the contract are not fixed deadlines. Deadlines designated as "tentative" are only indicated as approximate and are not binding. Agreed delivery deadlines may be extended by a maximum of three months, provided we are not capable of timely delivery due to company reasons that are not subject to due diligence required by a prudent businessperson.

## **9. Fulfilment, delivery and acceptance**

**9.1.** Delivery shall be carried out by us exclusively at the risk and expense of our customers. Upon transfer of the goods to the forwarding agent or freight carrier, and upon separation of the goods in the event of delayed acceptance by the customer, risk shall transfer to our customers. This shall also apply to partial deliveries, even if these were initiated by us or if we have accepted the delivery costs.

**9.2.** We shall only consign the goods according to the instructions of our customer or his agents or the freight carrier and shall not accept

liability for overloading. Damage resulting over the course of loading and incompleteness of the load must be reported immediately, otherwise rights resulting therefrom shall be lost. The goods shall only be insured by us against transport damages upon explicit written instructions and for the account of the customer.

**9.3.** In case of transport damage, certification of the damages discovered must be included on the freight carrier's confirmation of receipt.

**9.4.** The customer shall be committed to check the goods thoroughly upon receipt, in which case random samples must be taken as required. Defects, no matter what kind, and the delivery of an obviously different item than the goods or quantity ordered must be reported immediately upon receipt and no later than within 3 days in writing or specified via a registered letter. Also in case of a complaint, the customer shall be committed to accept, unload, and correctly store the goods at his own expense. Defects, no matter whether involving quantity or quality, that are not immediately detectable upon initial inspection, must be reported immediately after their discovery in the same way. In case of complaints that are not submitted in due form or within this deadline period, the goods shall qualify as completely approved with regard to quantity and quality, and all claims against us are therefore excluded.

## **10. Warranty**

**10.1.** We provide a warranty according to the extent of the law and within the context of the following provisions, provided no other agreements have been made individually. The warranty period shall amount to 6 months after provision of the service, in which case claims must be legally enforced or they shall lose their validity. The provisions of Section 924 of the Austrian Civil Code concerning assumption of defects shall be excluded. The burden of proof regarding defects that we were responsible for upon delivery or transfer shall exclusively be within the responsibility of the customer. The warranty period shall not be extended due to correction of defects. Provided our customer has not fulfilled his contractual obligations, we shall not be committed to remedy any defects, especially with regard to follow-up improvement or subsequent delivery. If the delivered goods are altered by the customer, or treated or processed incorrectly, all warranty and damage compensation claims shall expire. We shall only be responsible for costs resulting from correction of defects completed by the customer if we have issued written approval thereof.

**10.2.** With regard to the suitability of the goods or the processed materials, we shall only provide a warranty that these may be used within the context of our provisions and regulations. The customer must ensure that the delivered goods are used correctly and exclusively within the context of our processing guidelines and according to any instructions that may be included in the shipment.

**10.3.** Only those properties that have been confirmed by us explicitly and in writing shall qualify as ensured. Industry-standard and/or technical production-related deviations in terms of dimensions, equipment, materials, and similar shall not entitle to a complaint.

**10.4.** The customer shall be entirely responsible for the materials of whatever nature provided by him being fit for the required processing. Liability on our behalf in case of complete or partial failure, or the occurrence of damage resulting from the materials provided shall be excluded. Provided the customer does not inform us in writing in any detail regarding the exact application (type, location of use, scope of use, and similar) of the materials transferred for processing, of the goods delivered or of the services to be provided by us, we shall not be liable for damages or other consequences that result from special use.

**10.5.** If we are committed to provide our customer a warranty, we shall be free to decide on follow-up improvement or a replacement delivery. If such a warranty claim does not result in a contractually stipulated service within a suitable period of time, then our customer may demand a price reduction, especially if correction is not possible or would entail unreasonably high costs. All warranty claims shall be limited to the amount of value of the defective product delivered by us. We shall not be responsible for subsequent damages arising in connection with a warranty claim, e.g. following processing that has already been carried out.

## **11. Damage compensation**

**11.1.** Damage compensation claims, e.g. due to delayed delivery, withdrawal from the contract, defective delivery or services provided, for whatever reason and especially in connection with the provisions of the product liability act, may only be enforced against us if we are found to be grossly negligent or to have acted with intent. Similarly, other damage compensation claims, especially those due to positive contractual violation or due to culpability upon contract completion, shall be excluded, unless we have acted with intent or gross negligence.

**11.2.** Damage compensation claims shall only include the sole correction of the damages involved, however not subsequent damages, lost profits, and similar. Such claims shall expire, provided expiry does not occur earlier, within 6 months following knowledge of the damage or 2 years at the latest following delivery.

**11.3.** If the customer declares a dispute by way of a legal case affecting him and we join this case on his side, the customer must remunerate all costs for legal representation involving this purpose, provided such costs have not in fact been refunded by the opposing party within 14 days following completion of the case. However, such a refunding obligation shall not apply to the customer if the opposing party is exempt from its refunding obligation towards us due to culpable illegal behaviour on our part, which would require us to be proven guilty of gross negligence or intent.

**11.4.** In contrast to the provisions of Section 1298 of the Austria Civil Code, the customer must provide evidence that we are responsible for gross negligence when enforcing damage compensation claims resulting from a contractual violation.

## **12. Place of fulfilment, court of jurisdiction, final provisions**

**12.1.** The court of jurisdiction for all direct and indirect legal disputes resulting between us and the customer shall exclusively be the materially responsible court at A-4600 Wels, Austria. The place of fulfilment shall be A-4661 Roitham, Austria. Exclusively Austrian law shall apply to the contractual relationship. UN sales law shall be excluded in this case.

**12.2.** If one or more of these specifications of these provisions are invalid and/or incomplete or become so, then the invalid provision shall be replaced by a legally valid provision that comes as close as possible to the intended commercial effects. The invalidity or incompleteness

of the provision shall not affect the validity of the other provisions and the contract.

Version: February 2016

J Grabner GmbH