

Standard terms of sale, delivery and payment

I. General – scope of application

1. Deliveries and performances shall be exclusively subject to the following standard terms of sale. The latter shall also apply to all future transactions between the contracting parties without separate further reference. They shall also apply if we do not expressly refer to such in subsequent contracts, in particular even if we unconditionally provide deliveries or performances to the purchaser in awareness of the purchaser's conflicting terms of business or terms deviating from our standard terms of sale.
2. We do not recognise any conflicting terms of business of the purchaser or terms deviating from our standard terms of sale, not even by means of the unconditional performance of the contract.
3. Our standard terms of business are known to the purchaser by means of pricelists, invoices, e-mails and Internet publications.

II. Quotations and conclusion of contract, content of performance

1. Our quotations to the purchaser shall be without obligation. The order alone shall be deemed to be a binding offer. This offer shall be accepted, at our choice, by the sending of a confirmation of order or the unconditional provision of the ordered deliveries or performances.
2. The technical data and descriptions in our product information or advertising materials and technical datasheets, and details provided by the manufacturer or its vicarious agents within the meaning of Section 1313 a of the Austrian General Civil Code (ABGB) shall not be guarantees of the quality or durability of the goods to be supplied by us unless the details are agreed in the individual contract. Identified uses relevant for the goods according to the European Chemicals Regulation REACH shall constitute neither an agreement of a corresponding contractual quality of the goods nor a use presupposed according to the contract.
3. In the case of sales according to model or sample, the latter shall merely describe adequate correspondence with the sample, but shall not constitute a guarantee of the quality or the durability of the goods to be supplied by us.
4. We shall provide technical advice as to use according to our best knowledge. All details and information about the suitability and application of our products shall not release the purchaser from making its own inspections and trials with respect to the products' suitability for the intended purposes.

III. Prices, terms of payment, payment default

1. The prices agreed at the time of the conclusion of the relevant contract shall apply, in particular the prices specified in the order form or the confirmation of the order. If the price has not been expressly specified, the prices applicable at the time of conclusion of the contract according to our pricelist shall apply. The calculation of the prices shall be based on our calculation of the volumes, weights and quantities unless the purchaser objects immediately after receipt of the goods.
To these prices (net contract value) must be added the value added tax at the statutory rate applicable on the date of delivery, and – to the extent agreed – the costs for transport insurance. In the case of deliveries abroad, other country-specific levies may also apply. The resulting amount shall be the final invoice amount (including value added tax).
2. We reserve the right to adjust our prices appropriately if after conclusion of the contract changes in costs occur as a result of the conclusion of collective agreements, price increases of sub-suppliers or fluctuations in exchange rates. These price changes shall be notified in writing at the latest four weeks before entry into effect of the new prices. If the purchaser fails to object to the new prices within 14 days after notification, they shall be deemed to be accepted. This shall not apply if a fixed price has been agreed.
3. Unless a different payment deadline has been agreed, invoices shall be payable 30 days after the date of invoice without deduction. After expiry of the due date notified on the invoice, the purchaser shall be in default. If we grant our customers a discount, the discount amount shall be based on the final invoice amount (including value added

Standard terms of sale, delivery and payment

tax) less a lump-sum amount of 8% for freight costs, any costs for transport insurance and, in the case of deliveries abroad, other country-specific levies.

4. The purchaser shall only be entitled to a right to offset if its counter-claims have been determined with final legal effect, are undisputed or have been acknowledged by us. Moreover, it shall be entitled to exercise a right of retention to the extent that its counterclaim is based on the same contractual relationship.
5. If the purchaser fails to pay due invoices or exceeds the payment deadline granted, or if after conclusion of the contract the purchaser's financial situation deteriorates, or if after conclusion of the contract we receive unfavourable information concerning the purchaser that casts doubt on the solvency or creditworthiness of the purchaser, we shall be entitled to call in the purchaser's entire outstanding debts and, in amendment of the agreements concluded, demand payment in advance or collateral or, after delivery has been made, immediate payment of all receivables that are based on the same legal relationship. This shall apply in particular if the purchaser ceases making payments, if a cheque from the purchaser is not honoured, insolvency proceedings are applied for or commenced with respect to the purchaser's assets or if insolvency proceedings are not commenced for lack of sufficient assets.

IV. Delivery and performance time, performance default

1. Delivery deadlines shall be deemed to be approximate unless a fixed transaction has been expressly agreed in writing. The details of the delivery date shall as a matter of principle be subject to the contractual participation of the purchaser.
If agreed delivery times are nevertheless exceeded for reasons for which we are responsible, the purchaser, after unsuccessful expiry of a reasonable grace period set by the purchaser, which shall amount to at least 15 working days, shall be entitled to withdraw from the contract. Withdrawal shall be effected in writing. Deliveries on Saturdays are only possible by special agreement and in return for a surcharge.
2. We shall only be in default after expiry of a reasonable grace period set by the purchaser, which shall be of at least 15 working days. In the event of force majeure and other unforeseeable extraordinary circumstances for which we are not responsible, e.g. interruption to operations by fire, water and similar circumstances, failure of production facilities and machinery, delivery dates not met or delivery failures by our suppliers, or business interruptions resulting from shortages of raw materials, energy or labour, strike, lockout, difficulties in procuring transport, traffic interruptions, official interventions, we shall, to the extent that we are prevented by the said circumstances without fault on our part from the timely performance of our performance obligations, be entitled to postpone the delivery or performance for the duration of the impediment plus a reasonable start-up time. If as a result the delivery or performance is delayed by more than one month, both we and the purchaser shall be entitled, subject to the exclusion of any claims for damages whatsoever, to withdraw in writing from the contract with respect to the quantity affected by the delivery impediment, subject to the conditions pursuant to Section VIII. 1-5 of these terms of sale.
3. In any event of default, our liability for damages shall be limited in accordance with the provisions in Section VIII. 1-5.
4. We shall be entitled to effect part-deliveries and part-performances within the agreed times for delivery and performance if such can be reasonably expected of the purchaser.
5. Compliance with our obligations to supply and perform shall be subject to timely and proper performance of the purchaser's obligations. We reserve the right to raise the defence of non-performance of the contract.
6. Any claims for standing time or handling costs shall, if valid, in any event only be refunded up to the amount of the freight costs of the delivery in question.
7. If the purchaser is in default with call-off, acceptance or collection or if a shipment or delivery delay is due to circumstances for which it is responsible, we shall be entitled, without prejudice to more extensive claims, to charge a flat rate payment to the amount of the usual local storage costs, irrespective of whether we store the goods ourselves or with a third party. The purchaser shall be entitled to prove that no loss or a smaller loss has been incurred.

Standard terms of sale, delivery and payment

V. Transfer of risk, transport and packaging costs

1. Shipment shall always be at the risk of the purchaser or the recipient, hence even if the price is agreed as carriage-paid destination station or carriage-paid site. We shall not be obliged to insure the goods. If the purchaser is in acceptance or payment default, the risk of any accidental loss or accidental deterioration of the goods shall transfer to it. The same shall apply in the event of an infringement of obligations to participate. If we carry out loading and/or unloading and/or transport on the basis of individual contractual provisions, such shall be on the basis of the Standard Terms of Business of Forwarding Agents (AÖSp) or the carriers applicable to the relevant loading or transport. Claims for damages can only be filed against us in the event of gross fault (intent, gross negligence). The prices shall be deemed to be with standard packaging, carriage-paid destination, not unloaded, in complete unit load devices, unless a different type of transport is expressly agreed.
2. If packaging other than standard is provided at the purchaser's request, this shall be charged at cost.
3. If the goods are shipped on Euro-pallets, these shall be charged; in the event of prepaid return of the Euro-pallets in undamaged condition to one of our works/delivery warehouses, they shall be refunded by means of credit note, after deduction of a handling fee that shall be agreed individually.
4. If the goods are unloaded using the truck's own crane, such shall be at the cost and risk of the purchaser.

VI. Purchaser's obligations/securing of reservation of title

1. The goods supplied shall remain our property until the purchase price has been paid in full. The inclusion of the purchase price claim against the purchaser in a current account and the recognition of a balance shall not affect the reservation of title.
2. The purchaser shall be obliged to treat the purchased goods carefully until complete acquisition of title.
3. The purchaser shall be entitled neither to pledge nor to assign as collateral the goods subject to our title. However, subject to the following provisions, the purchaser shall be entitled to re-sell the goods supplied in the ordinary course of business. The aforementioned entitlement shall not apply if the purchaser has – validly – assigned or pledged the claim against its contractual partner resulting from the resale of the goods in advance to a third party, or agreed a prohibition of assignment with it.
4. As collateral for the satisfaction of all our claims specified in Section VI. 1, the purchaser now hereby assigns to us all – including future and conditional – receivables resulting from a resale of the goods supplied by us with all collateral rights to the amount of 110% gross of the value of the goods supplied, ranking before the remainder of its receivables. We hereby accept this assignment.
5. As long as and to the extent that the purchaser complies with its payment obligations to us, it shall be entitled to collect its customer receivables assigned to us within the framework of the ordinary course of business. It shall not, however, be entitled to agree a current account relationship or prohibition of assignment with its customers with respect to these receivables, or to assign or pledge them to third parties. If in conflict with sentence two a current account relationship applies between the purchaser and the acquirer of our goods subject to reservation of title, the receivable assigned in advance shall also relate to the recognised balance and, in the event of the acquirer's insolvency, the then available balance.
6. Upon our demand, the purchaser shall provide individual evidence of the receivables assigned to us and notify its creditors of the assignment, requesting them to effect payment to us up to the amount of our claims against the purchaser. We shall be entitled ourselves to notify the purchaser's creditors about the assignment and collect the receivables. However, we shall not make use of these rights as long as the purchaser duly complies with its payment obligations without default, and as long as an application for the commencement of insolvency proceedings with respect to the purchaser has not been filed and as long as the purchaser has not ceased to make payments. If one of the aforementioned cases arises, on the other hand, we can require the purchaser to notify us of the assigned receivables and the corresponding creditors, to provide all details necessary for the collection of the receivables and to deliver the corresponding documentation.

Standard terms of sale, delivery and payment

7. The purchaser shall notify us immediately in writing of any attachments or other interventions by third parties.
8. If goods supplied by us subject to reservation of title are processed or mixed or combined with other objects not belonging to us – with the exception of immovables – we shall acquire co-ownership of the new item in the proportion between the value of the goods supplied by us (final invoice amount including value added tax) and the other objects at the time of processing/mixing or combining. The item resulting from the processing shall for the rest be subject to the same conditions as the purchased item delivered subject to reservation of title. If the processing, mixing or combining takes place in such a way that the purchaser's item is regarded as the main object, it shall be deemed to be agreed that the purchaser transfers to us pro-rata co-ownership. The purchaser shall be entitled to dispose of the new products resulting from the working or processing or conversion or combining or mixing in the ordinary course of business without pledging or assignment, as long as it fulfils its obligations resulting from the business relationship with us in good time. The purchaser shall as security assign to us in advance its receivables from the sale of these new products, to which we shall have rights of title, to the extent of our share of title to the goods sold. If the purchaser combines or mixes the goods supplied with a principal object, it hereby in advance assigns to us its claims against the third party up to the value of our goods. We hereby accept these assignments.
9. As security for our receivables, the purchaser shall also assign to us, up to the value of our goods, the receivables against a third party that arise as a result of a combination of our goods with a piece of land.
10. We undertake to release the collateral to which we are entitled at our choice upon demand by the purchaser to the extent that the marketable value of our collateral exceeds the purchaser receivables by more than 20%.
11. In the event of conduct by the purchaser in breach of contract, in particular in the event of payment default by more than 10% of the invoice amount for a not insignificant period of time, we shall – notwithstanding our further claims (to damages) – be entitled to withdraw from the contract and to demand the return of the goods supplied by us. After the return of the goods supply by us, we shall be entitled to realise them. The realisation proceeds shall be offset against the purchaser's liabilities to us, less reasonable realisation costs.

VII. Warranty and notification of defects

1. Obvious material defects, incorrect deliveries and quantity discrepancies shall be notified to us in writing by the purchaser immediately, but at the latest 3 days after receipt of the goods by the purchaser. Concealed defects shall be notified to us in writing within a period of eight days following their discovery. The purchaser shall be obliged to verify, if necessary by processing a sample, whether the goods supplied are free of defects and suitable for the intended use. This shall also apply if they are processed in systems that have not been acquired from us. If any defects are only identified during processing, the work shall be suspended immediately and the unopened unprocessed original containers shall be secured. They shall be made available to us for inspection upon demand. In the event of a notification of a defect made late or not duly according to Section VII. sentences 1 to 6, the purchaser shall forfeit its claims to warranty, damages on the grounds of the defect itself, reimbursement of the consequential losses resulting from the defect and claims resulting from a mistake concerning freedom from defects of the goods supplied, subject to the provision of Section VIII. 1 to 5 of these terms of sale.
2. In the event of defects in the goods supplied by us, we shall at our choice be obliged only to remedy or to supply fault-free goods (subsequent performance). If we are not willing or not able to effect subsequent performance, in particular if this is delayed beyond a reasonable deadline for reasons for which we are responsible, or if the subsequent performance fails in another manner, the purchaser shall at its choice be entitled to withdraw from the contract or to demand a reduction of the purchase price. A remedy shall be deemed to have failed after the second attempt unless the contrary follows from the type of object or other circumstances. If the purchaser has suffered a loss as a result of defects in the goods supplied by us, our liability for such shall be determined according to Section VII. 1, Section VIII. 1 to 5 and Section IX.

VIII. Damages

1. Our enterprise shall only be liable for losses – for whatever legal reason – if the loss is due to a grossly negligent or deliberate breach of duty by us or one of our vicarious agents.
This shall also apply to loss that has been caused by advice or information not separately charged.

Standard terms of sale, delivery and payment

2. Our liability for damages is restricted to the foreseeable typical damage. We shall not be liable for the purchaser's lost profits and other purely financial losses and for foreseeable consequential losses, including for losses incurred to the purchaser as a result of the assertion of contractual penalty claims by third parties. The above limits on liability pursuant to sentences 1 and 2 shall apply similarly to losses that are caused as a result of gross negligence or intent by our employees or authorised agents.
3. The limits on liability as specified above in Section VIII. 1 to 2 shall not apply if our liability is binding as a result of the provisions of the Product Liability Act or if claims are asserted against us on the basis of an injury to life, body or health, or for damage to property of which we have taken custody for safekeeping.
4. We shall not be subject to a more extensive liability for damages than that provided for in Section VIII. 1-3, irrespective of the legal nature of the claim asserted.
5. We shall not be liable in the event of impossibility or delay of fulfilment of delivery obligations if the impossibility or delay is based on the due compliance, arranged by the purchaser, with public law obligations in connection with the European Chemicals Regulation REACH.
6. Where liability for damages is excluded or limited pursuant to Section VIII. 1-4, this shall also apply with respect to the personal liability for damages of our employees, workers, staff, representatives, vicarious agents and independent contractors.

IX. Expiry of claims

1. The purchaser's warranty claims on the grounds of defects in goods supplied by us shall expire one year after delivery of the goods. The purchaser's claims for damages on the grounds of a performance provided by us in breach of duty shall expire one year after acquisition by the purchaser of knowledge of the loss and the person causing the loss.
2. If the purchaser is an entrepreneur and if it or another purchaser in the chain of supply as an entrepreneur satisfies consumer warranty claims as a result of defects in newly manufactured products supplied by us that are also supplied to the consumer as newly manufactured products, the purchaser's warranty claims against us shall expire at the earliest two months after the time when the purchaser or another purchaser in the supply chain as entrepreneur satisfies the consumer's warranty claims, unless the purchaser could successfully have relied on the defence of time limitation as against its customer/contracting partner. The purchaser's warranty claims against us on the grounds of defective goods supplied by us shall in any event expire if the warranty claims of the purchaser's customer/contracting partner against the purchaser based on goods supplied by us to the purchaser have expired, at the latest however five years after the time at which we supplied the goods in question to our purchaser.
3. The provisions concluded in Sections 1 and 2 shall not apply to the expiry of claims based on an injury to life, body or health and to damage to property that we have taken into custody for safekeeping, or to the expiry of claims under the Product Liability Act and or claims to legal defects in the goods supplied by us that consist of a third party's in-rem right by virtue of which the surrender of the goods supplied by us can be demanded. Nor shall they apply to the expiry of claims by our purchaser/customer based on the fact that we deliberately or with gross negligence concealed defects in the goods supplied by us or on the fact that we deliberately or with gross negligence infringed a duty. In the cases specified in this present Section IX. 3, such claims shall be governed by the statutory expiry period.

X. Returns

The return of fault-free goods supplied by us shall not be permitted. If in exceptional cases we agree to the return of fault-free goods, a credit note shall only be provided to the extent that we determine that the goods can be reused without restriction. The actual costs, at least 20% of the invoice amount or at least €30, shall be deducted for the cost of inspection, processing, reworking and repackaging. Such credit notes shall not be paid out but shall instead serve only to be offset against future deliveries.

Standard terms of sale, delivery and payment

XI. Place of performance, legal venue, applicable law, commercial clauses

1. Place of performance and exclusive legal venue for all claims between us and the purchaser shall be our registered office. Unless in conflict with binding statutory provisions, we shall however also be entitled to file an action against the purchaser at its statutory legal venue.
2. The legal relationship between us and the purchaser shall be subject exclusively to the law of the Republic of Austria as applies between Austrian entrepreneurs and as can be validly agreed in the specific countries of supply (see I. of these terms of sale). The application of the provisions concerning the international sale of goods (CSIG – Vienna UN law on sales) and of Austrian international private law are expressly excluded.
3. Where commercial terms are agreed according to the International Commercial Terms (INCOTERMS), INCOTERMS shall apply in the latest version at the time (currently INCOTERMS 2000).

XII. Concluding provisions

1. If individual provisions of the above provisions shall be invalid, partially invalid or excluded by a special agreement, this shall not affect the validity of the remaining provisions.
2. We store the data of our purchasers within the framework of our reciprocal business relationships in accordance with the Data Protection Act 2000.