

# **General terms and conditions**

Status: June 2021

## **1 General - Scope**

(1) The following terms and conditions shall apply to all deliveries, services and offers provided by the contractor to its client and shall be based exclusively on these General Terms and Conditions (hereinafter referred to as "GTC"). They shall also apply to future transactions, even if no express reference is made to them. General Terms and Conditions of the client are hereby excluded for the present legal transaction and the entire business relationship, unless the Contractor has expressly agreed to their validity in writing.

## **2. conclusion of contract; contract documents**

(1) Offers shall be deemed to be subject to change and non-binding unless their binding nature is explicitly agreed. By placing an order, the client makes a binding offer to conclude a contract. The contract is concluded by acceptance of the order by the contractor, either by sending an order confirmation by post, fax, e-mail or directly by dispatching the ordered goods.

(2) The client shall notify the Contractor immediately of any deviations from the order. If the client accepts the delivery without reservation in the event of deviations from its order, the deviations shall be deemed to have been approved by the client.

(3) Unless otherwise agreed, descriptions of performance, performance characteristics, illustrations, drawings and the like in catalogues and brochures are not binding and in particular do not constitute guarantees and warranties.

(4) The client is liable for documents and information provided by the client and their correctness, accuracy and completeness. This also applies in particular to samples, technical data, drawings and plans provided.

## **3. prices; terms of payment**

(1) The prices stated are EURO prices and are net ex works. All ancillary costs such as packaging, insurance, freight, permits, certifications, taxes, levies, customs duties, commissioning and assembly costs and the like shall be borne by the client.

(2) The Contractor reserves the right to change its prices appropriately if, in the case of contracts for which there are more than three months between the conclusion of the contract and delivery or the last partial delivery, cost increases or cost reductions occur for which it is not responsible, in particular

due to material costs, the increase of raw material prices, auxiliary material prices, wages and salaries or public charges. In this case, cost reductions and cost increases shall be offset against each other. The change in these costs shall be proven to the client at the latter's request.

(3) If the client places additional orders beyond the order, the Contractor shall invoice these separately.

(4) Payments shall be made free of deductions and charges. Unless otherwise stated in the order confirmation, the invoice amount is due for payment within 14 days of the invoice date and receipt of the invoice. Payment shall be deemed to have been made when the contractor can dispose of the invoice amount.

(5) If payment in advance has been agreed, the Contractor's delivery period shall only commence after receipt of the full invoice amount, free of deductions.

(6) The contractor reserves the right, despite the client's dedication to the contrary, to offset payments first against the client's older debts. Payments shall first be credited against the costs, then against the interest and finally against the main performance.

(7) In the event of default of payment by the client, default interest in the amount of 9.2 percentage points above the base interest rate shall be deemed agreed. In addition, the client shall be liable to the Contractor for the damage caused by the delay in payment.

(8) The Client is not entitled to set off due payments against counterclaims or to withhold such payments due to counterclaims unless such claim has been acknowledged by the Contractor, is undisputed or has been finally determined by a court of law.

#### **4. delivery deadlines**

(1) All information on delivery times is non-binding, unless their binding nature has been expressly agreed. The delivery period shall not commence until the contractor has all the information required for performance and the details and particulars of the execution of the order have been clarified between the contracting parties. A delivery period shall not commence until all details of the execution have been clarified and both parties agree on the terms of the order. Agreed delivery dates may be postponed accordingly. Changes in performance after acceptance of the order shall lead to a reasonable extension of the delivery period.

(2) The Contractor shall be entitled to withhold its performance if the client has not fulfilled its obligations under the contract in a timely and proper manner. The contractor expressly reserves the defence of non-performance of the contract. The contractor is furthermore entitled to withhold his performance if the client unjustifiably fails to fulfil payment obligations from previous orders.

(3) If the contractor is prevented by force majeure (such as transport bottlenecks or obstacles, other disruptions in the operational process at the contractor's or its subcontractors' and suppliers' premises for which the contractor is not responsible and which are demonstrably of considerable influence, operational hindrances e.g. due to fire, water, machine damage and the like), the contractor

undertakes to inform the client immediately in this respect. The existence of force majeure which prevents the contractor from executing his order in due time shall entitle him to extend the delivery period by a reasonable period of time. If the delivery is completely impossible due to the event of force majeure, the contractor shall be released from its performance. The assertion of claims for damages by the Client against the Contractor in this respect is expressly excluded. If the principal proves that the subsequent performance is of no interest to him as a result of the delay, he may withdraw from the contract to the exclusion of any further claims. If the event of force majeure or the disruption lasts longer than three months, the contractor is entitled to withdraw from the contract with regard to the part not yet fulfilled. All claims for damages of the client in connection with the exercise of this withdrawal from the contract are expressly excluded.

(4) The applicability and the legal consequences of clause 5 (3) shall also be deemed to be agreed in the event that the timely performance of the Contractor's services is not possible because the Contractor's suppliers have not delivered properly or on time, insofar as the Contractor is not at fault in this respect.

(5) In the event of culpable default on the part of the Contractor, the client shall be entitled to withdraw from the contract by setting a reasonable period of grace of at least 6 weeks.

(6) If the client is in default of acceptance or if the delivery is delayed for reasons within the client's sphere of influence, the client shall compensate the contractor for the resulting damage. Any costs of necessary storage shall be borne by the client and shall be invoiced to the client.

## **5 Delivery and transfer of risk**

(1) Unless otherwise agreed, delivery shall be ex works.

(2) If shipment has been agreed, the risk of accidental loss and accidental deterioration of the item shall pass to the Principal upon handover of the item to the forwarding agent, carrier or other third party designated to carry out the shipment. This shall also apply if the delivery is made by the contractor's own means of transport or if the contractor has arranged the transport costs for the client.

(3) If the client is in default of acceptance, the risk shall pass to the client as of that day.

## **6. retention of title**

(1) The goods shall remain the property of the contractor until payment has been made in full.

(2) A resale is only permissible if the contractor has been informed of this in good time beforehand, stating the name or the company and the exact (business) address of the buyer, and the contractor consents to the sale. In the event of consent, the purchase price claim shall be deemed assigned to the contractor already now and the contractor shall be authorised to notify the buyer of this assignment at any time.

(3) In the event of even partial default in payment, the Contractor shall be entitled to collect the goods in a reasonable manner, even without the client's consent, at the client's expense.

(4) The client undertakes to keep the Contractor informed of the location of the reserved goods until payment has been made in full.

## **7 Warranty and liability**

(1) The warranty is provided in accordance with the statutory provisions of the General Civil Code (ABGB).

(2) The contractor shall not assume any warranty for drawings, specifications, plans, samples and the like provided by the client and the client shall bear the risk of the suitability of the same for the intended purpose.

(3) The client shall notify the Contractor within a reasonable period of time of any defects which the Contractor has discovered or should have discovered by inspection in the ordinary course of business after delivery.

If the buyer fails to give notice, he can no longer assert claims for warranty (§§ 922 ABGB), for damages on account of the defect itself (§ 933a para. 2 ABGB) or on account of a mistake as to the defect-free nature of the item (§§ 871 f. ABGB). If such a defect becomes apparent later, it must also be reported within a reasonable period of time; otherwise the buyer can no longer assert the claims referred to in para. 2 in respect of this defect either.

(4) The Contractor shall be given the opportunity to inspect the notified defect on site. In the event of a justified complaint about a defect, the contractor shall be entitled to choose between remedying the defect or making a replacement delivery. If the rectification of the defect fails or if the contractor is not in a position to make a replacement delivery, the client is entitled to demand a price reduction or, if the defect is not minor, rescission.

## **8. exclusions and limitations of liability**

(1) The Contractor shall only be liable to the client for damage caused intentionally or by gross negligence, with the exception of liability for personal injury. Any further liability of the contractor is expressly excluded.

## **9. secrecy**

(1) The contractor remains the owner and author of the illustrations, drawings, calculations and other documents produced by them. Any disclosure of the same to third parties requires the express consent of the contractor. At the request of the contractor, the client shall surrender to the contractor all documents owned by the contractor and located at the client's premises, including any copies, if they are no longer required by the client in the ordinary course of business or if negotiations do not lead to the conclusion of a contract.

## **10. data protection**

- (1) The Contractor shall process personal data that it collects in the context of deliveries, services and offers exclusively in compliance with the applicable data protection requirements.
- (2) In the event of a transfer of personal data to the Contractor, the client shall be obliged to inform the data subjects in good time of the data processing by the Contractor in accordance with Article 14 of the General Data Protection Regulation (EU) No. 2016/679.

## **11. final provisions**

- (1) This contract shall be governed exclusively by Austrian substantive law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (2) The court with subject-matter jurisdiction at the Contractor's registered office shall have exclusive jurisdiction for disputes.
- (3) The place of jurisdiction and performance of the contract shall be the Contractor's registered office, Theodor-Körner-Straße 120A, 8010 Graz, Austria.
- (4) In the event of a provision of this contract being in breach of the law, it is agreed that the nullity shall render the contract ineffective only with regard to this point, but shall leave the other agreements in place. If one party to the contract cannot invoke a provision of the contract due to mandatory statutory provisions, this shall also apply to the other party.