**T&C**

**T&C: Terms and Conditions**

**1. T&C – Miscellaneous**

1.1 These Terms and Conditions apply, expect where the contracting parties have made other explicit and written agreements.

1.2 The following terms for the delivery of goods shall apply mutatis mutandis to the performance of services as well.

**2. T&C – Delivery period**

2.1 Delivery periods are merely indicative, except where they have been confirmed in writing.

2.2 Unless otherwise agreed, the delivery period shall begin at one of the following times, whichever is latest:

a) date of order confirmation;

b) date on which the buyer has satisfied all of its technical, commercial or financial obligations;

c) date on which the seller has received an advance payment required before delivery of the goods and/or on which an agreed letter of credit has been opened.

2.3 Where delivery is delayed due to a circumstance affecting the seller such as force majeure, fire, industrial action, delays in customs clearance, obstructions of transport routes etc., the contracting parties shall be obliged to agree a reasonable extension of the delivery period. It is of no consequence in this regard whether the circumstance affects us directly or one of our subcontractors.

**3. T&C – Delivery and acceptance**

3.1 Unless otherwise agreed in writing, deliveries are made at the expense and risk of the buyer. Usage and risk are transferred to the buyer from the departure of the consignment from our factory or warehouse, irrespective of the agreed pricing that applies to the delivery. We are entitled to determine the method of shipping and to select the forwarder or freight carrier at our own equitable discretion, except where the buyer has chosen a particular form of transport. We are not obliged to select the cheapest form of shipping.

3.2 The seller is entitled to organise partial and advance deliveries.

3.3 Where the buyer does not accept the contractually provided goods at the contractually agreed location or contractually agreed time and the delay is not due to an action or omission on the part of the seller, the seller shall be entitled to demand either fulfilment or may withdraw from the contract after extending to the buyer a grace period to take possession of the goods.

**4. T&C – Delayed delivery**

4.1 Insignificant overruns of the delivery periods must be accepted by the buyer on all accounts. The buyer shall not be entitled to any claims whatsoever in this regard.

4.2 Where the seller is at fault for a delayed delivery, the buyer shall be entitled to demand fulfilment or withdraw from the contract after extending to the seller a reasonable grace period in which to make delivery. In cases of custom-made products, the grace period shall take into account that the seller would be unable to find alternative uses for parts that have already been processed.

4.3 Where a grace period extended to the seller under the terms of Article 4 has not been adhered to at the fault of the seller, the buyer shall be entitled by written notification to cancel the contract for all parts that have not been delivered and for all parts that have been delivered, but that cannot be used in a meaningful way on their own or without the parts that have not been delivered. In this case, the buyer shall be entitled to demand reimbursement of payments made for undelivered goods and for delivered but unusable goods and, where the seller is at fault for the delayed delivery, to demand compensation for justified expenses incurred in connection with unusable items until cancellation and execution of the contract. The buyer must return to the seller all delivered goods that are no longer usable.

4.4 Apart from the claims that are set out in Article 2, the buyer shall have no claims against the seller based on delayed delivery.

4.5 Where we are not at fault, we shall not be liable for delayed deliveries on the part of our subcontractors, for delayed deliveries due to machine breakage, failure to obtain raw materials due to inclement weather, general scarcity of raw materials, force majeure, strike or similar. In these cases, the buyer shall waive its right to withdrawal from the contract and the enforcement of claims for indemnification, irrespective of the legal grounds. We shall be entitled to postpone fulfilment for the period of obstructed delivery or to withdraw from parts or all of the contract in these cases.

**5. T&C – Price**

5.1 All prices agreed with the buyer by written or verbal arrangement, including the prices in our print and online advertisements, are quoted in euros and are exclusive of value added tax.

5.2 The prices apply ex works of the seller, without packaging or shipping, unless otherwise agreed. Where delivery is agreed inclusive of shipping, the prices apply without unloading or carrying into the premises of the buyer.

5.3 The prices are based on the costs at the time of the quotation. Any changes in costs that occur before the time of delivery shall be to the benefit or expense of the buyer.

5.4 The sales prices on the date of delivery shall apply to contracts in which the prices are not specified.

5.5 There is no obligation to announce price changes; they shall be effective, irrespective of the date on which the price list was issued.

**6. T&C – Payment**

6.1 Payments must be made in accordance with the agreed terms of payment. Half of the purchase price shall be due upon receipt of the order confirmation and the rest upon notification that the goods are ready for shipping, except where an alternative payment schedule is agreed in the seller’s order confirmation.

6.2 We are entitled to submit part invoices where part deliveries are made.

6.3 The buyer is not entitled to withhold payments due to warranty claims or other counterclaims that are not recognised by the seller.

6.4 Where the buyer is in arrears with an agreed payment or other performance, the seller shall be entitled to demand fulfilment of the contract and, either

a) postpone fulfilment of its own obligations until the late payments or other performances have been received;

b) claim a reasonable extension in the delivery period;

c) declare the entire outstanding purchase price due for payment;

d) charge default interest of 12% per annum from the date of maturity and insist on the reimbursement of all judicial and/or court costs incurred for collection (payment) from the buyer (in particular all collection fees, charged for instance by Kreditschutzverband von 1870) or to withdraw from the contract after extension of a reasonable grace period.

6.5 The seller shall be entitled to cancel the contract by written notification insofar as the buyer has failed to make the outstanding payment or fulfil the outstanding performance by the end of the grace period extended pursuant to 6.4. When instructed to do so by the seller, the buyer shall be required to return to the seller all delivered goods, to provide compensation for any loss in value of the goods and furthermore to reimburse the seller for all expenses incurred due to performance of the contract. In regard to goods that have not yet been delivered, the seller shall be entitled to place the finished, i.e. processed goods at the disposal of the buyer and to charge the commensurate part of the sales price.

6.6 Payment difficulties and disruptions of this kind shall be assumed in all cases if

a) a customer does not make punctual payment to our company of the outstanding receivable, plus interest and penalties, after receipt of the second dunning notice;

b) execution is levied upon the customer’s assets by a third party;

c) a petition for bankruptcy or deficiency adjustment has been filed with a court, i.e. a petition for bankruptcy or deficiency adjustment is pending before court,

d) the customer has requested an out-of-court settlement for the deferral of payments.

6.7 In these cases, all special arrangements extended to the customer such as rebates, discounts, instalment payments, deferrals and considerations shall be null and void. We are therefore entitled to charge prices without discounts in the case of late payments. When in default of payment, the customer shall be charged for all processing and collection fees and for the intervention of our lawyers, in addition to the default interest. We are entitled to charge the customer for the necessary and purposeful dunning costs incurred for each dunning notice we send for outstanding payments.

6.8 The seller reserves title to the sold items until such time as the buyer has fulfilled all of its financial obligations. The buyer is required to comply with all of the formalities that are necessary to preserve this reservation of title. In the case of attachment or any other claim, the buyer is instructed to assert the seller’s ownership rights and to notify the seller without undue delay.

6.9 Reservation of title must extend to any sales of the goods. The buyer automatically assigns to the seller any receivables owed by its customers from the sale of the goods in an amount that is equivalent to the outstanding purchase price. The buyer is obliged to notify its customers of the assignment and furthermore to immediately inform the seller of the name and address of its customers and the amount of the receivables. The seller shall be entitled to exercise this assignment at any time.

7. **T&C – Electronic invoices**

7.1 We are entitled to submit all invoices in an electronic form by sending them to the email address designated by the customer. The customer waives the right to receipt of an invoice by post.

7.2 The customer must make arrangements to ensure that the electronic forwarding of emails to its designated email address is possible and that technical systems such as filter programs and firewalls are configured accordingly. Any electronic autoresponses to us (out-of-the-office notices) cannot be considered and will not prevent proper delivery. The customer must send to us (by letter or fax) written notice bearing a legal signature of any change in email address without undue delay. Transmission of our emails to the customer’s last known email address shall be considered received, even if the customer has neglected to inform us of a change in its email address.

7.3 We are not liable for damages resulting from the elevated risk of sending invoices by electronic means, compared to the risk of postal dispatch. The customer carries the elevated risk of unauthorised access by third parties that is associated with the storage of electronic invoices.

**8. T&C – Warranty and liability**

8.1 The seller warrants that deliveries of goods shall be made in the agreed quality and with the assured properties.

8.2 The buyer must send written notification of any defects with detailed information on their nature and extent immediately upon acceptance of the goods and no later than the first opportunity after the defects become apparent. The parties agree a complaints period of three days for packaged goods.

8.3 The buyer is also required to initially accept, properly unload and store the goods, even if it intends to submit a notice of defects or a complaint.

8.4 The seller’s warranty obligations are predicated on the receipt of a proper notice of defects from the buyer pursuant to Article 5.2; the buyer explicitly waives – and is not entitled to – the assertion of warranty claims for defects that were not the subject of a proper notice of defects.

8.5 Where the buyer rectifies defects by itself, the seller shall only be required to provide compensation if it has given its prior, written consent, especially to the costs of any cover purchases.

8.6 The seller shall only be liable for parts of the goods that it obtained from its subcontractors insofar as it has commensurate warranty claims against these subcontractors as well.

8.7 It is considered explicitly agreed between the parties that the seller shall not be required to indemnify the buyer for injuries to persons, for damage to assets that are not the subject of the contract, for other damages and for loss of profits, except where the circumstances of the individual case reveal that the seller is grossly at fault. The seller shall not be liable for damages incurred due to the improper processing or unsuitable use of the delivered goods.

8.8 The obligation to accept claims for indemnification of material damages based on the Product Liability Act (ProdHaftG) and claims of product liability that are inferred from other regulations is explicitly excluded.

8.9 All warranty claims shall be fulfilled at the registered address of the seller. Compensation will only be provided for the costs of dismantling or assembling preassembled, defective goods, their transport and any conceivable consequential damages in cases of wilful intent or gross negligence.

**9. T&C – Legal venue, applicable law, place of fulfilment**

9.1 The legal venue for all disputes arising directly or indirectly from this contract is the competent Austrian court for the registered address of the seller.

9.2 Austrian law shall apply exclusively. UN sales law (CISG) is excluded explicitly. The contractual language is German. Contracts containing individual invalid provisions shall remain effective as a whole. The invalid or ineffective provision shall be replaced with a valid provision that most closely resembles the original commercial intentions.

9.3 The place of fulfilment for deliveries and payments shall be the registered address of the seller, even if alternative places of delivery are agreed.

10. **T&C – Data protection, changes in address and copyright**

10.1 The customer consents to our storage and processing of personal data contained in the purchase contract for the performance of the contract.

10.2 The customer is required to send notification of any changes in residential or business address for as long as the transaction underlying the contract has not been completely fulfilled on both sides. Where the customer neglects to make this notification, declarations shall be considered received when they are sent to the last known address.

10.3 Technical documents, samples, catalogues, leaflets, illustrations and suchlike shall remain our intellectual property at all times; the customer does not acquire any rights of use or exploitation whatsoever.

**11. T&C – Final provisions**

Should any of the provisions of these terms and conditions of sale be null or void (pursuant to the Consumer Protection Act (KSchG) in particular), this shall not affect the validity of the remaining provisions.

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All prices are quoted in euro and exclusive of VAT.