

**Terms and Conditions of Sale, Delivery, and Payment**  
**Version January 2017**

**1. Scope of applicability**

1.1 We make all of our deliveries and provide all of our services (hereinafter, the "Deliveries") exclusively subject to these Terms and Conditions of Sale, Delivery, and Payment. By entering into a contract, the supplier approves the validity of these Terms and Conditions, including for future transactions.

1.2 These Terms and Conditions are also applicable in cases where we make Deliveries and/or accept payments without reservation despite our awareness of contradictory terms and conditions of the customer. Deviations from our Terms and Conditions or from the customer's terms and conditions are thus ineffective and do not form part of the contract, unless they have been acknowledged by us in writing, either in whole or in part.

1.3 Our Terms and Conditions of Sale, Delivery, and Payment apply only to companies within the meaning of the Austrian Commercial Code (Unternehmensgesetzbuch, UGB).

**2. Order, scope of Delivery, documentation**

2.1 Our offers are non-binding and subject to change, unless they have been expressly characterised as binding.

2.2 Essential for the order is our written order confirmation. Plans, dimensioned drawings, and the like attached to our offers are non-binding and are approximate only. We reserve the right to make the changes that appear necessary.

2.3 A contract comes into effect when our written order confirmation is sent to the customer. If the customer is not in agreement with the content of the order confirmation, it must promptly object to it in writing. Otherwise, a contract comes into effect in accordance with the order confirmation.

2.4 The customer is responsible for obtaining any official approvals that are needed in order to carry out the Delivery or the service. If statutory or official provisions have to be complied with in order to render the service or carry out the Delivery, or if compliance or non-compliance with same may lead to delays in Deliveries, or if effects on assembly conditions, operations, prevention of accidents and illnesses, etc. may be relevant, the customer must make us aware of such provisions in advance in writing.

2.5 We retain title and all rights of use without limitation in and to all drawings, cost estimates, brochures, models, forms, maintenance and operating instruction, and other documentation, including in electronic form. Such documentation must be returned to us upon request. In this regard, there is no right of retention. It may not be made accessible to third parties without our prior written consent.

**3. Delivery, assembly**

3.1 Delivery and assembly deadlines (hereinafter, "Delivery Deadlines") and dates are considered to be approximate and non-binding, unless they are agreed to be binding. Even dates that are agreed to be binding are not fixed dates, unless they have expressly been designated as such.

3.2 Compliance with deadlines agreed to for Deliveries presupposes timely receipt from the customer of all documentation, information about technical details, and required permits and releases that is to provide, in particular, plans, as well as compliance by the customer with agreed payment terms and other obligations, completion of all formalities, such as import and payment approval, and provision of any guaranties. If such preconditions are not fulfilled in timely fashion, the deadlines are extended accordingly.

3.3 Compliance with agreed Delivery Deadlines is subject to proper and timely delivery by upstream suppliers and sub-suppliers. In the event of delays or obstacles with respect to them, we are obligated to give the customer prompt notice, in which case the deadlines are then reasonably extended.

3.4 The Delivery Deadline is extended:

3.4.1 when we fail to receive in timely fashion the information that we need to process the order or when such information is subsequently amended by the customer.

3.4.2 when obstacles arise that are outside of our sphere of influence, irrespective of whether they occur with us, the customer, or a third party. Such obstacles include, by way of example, epidemics, war or war-like conditions, riots, substantial operational disturbances, accidents, labour conflicts, delayed or defective supply of necessary raw materials, semi-finished or finished goods, lack of availability of important materials and components, official measures, and natural events.

3.4.3 when the customer is behind in the work it is to carry out or is in default in the meeting of its contractual duties, particularly when it fails to comply with payment terms.

3.5 Where any of the conditions set forth in section 3.4 exists, the Delivery Deadline is extended by that period of time for which the obstacle lasts. When an obstacle within the meaning of section 3.4.2 continues for a period of more than 12 months, either party may rescind the contract in writing, and when an obstacle exists within the meaning of sections 3.4.1 and 3.4.2, each party may rescind the contract separately in writing.

3.5.1 If a condition within the meaning of section 3.4 occurs from the sphere of the customer, the provisions on default are applicable mutatis mutandis. In no event is the customer charged interest on payments already received.

3.6 The Delivery Deadline is considered met when the Delivery has been made ready at the plant by the end thereof. If the object of the Delivery is inspected and accepted by the customer at the Delivery plant, timeliness is decided by the date on which the notification is sent that the Delivery is ready for inspection and acceptance.

3.7 Partial Deliveries are permissible, provided that it is reasonable to expect the customer to accept them.

3.8 When Delivery Deadlines are exceeded, the customer may rescind the contract only if it has given us a reasonable grace period under threat of rescission and the Delivery was not made by the end of such grace period. The foregoing does not apply where the setting of a deadline is superfluous because we have seriously and definitively refused to perform, because we failed to perform on time and therefore the interest in performance definitively ceases to exist pursuant to prior contractual stipulation, or because special circumstances exist that justify immediate rescission after a balancing of the interests of both sides.

3.9 Our liability in the event of default in Delivery is limited to damages caused by gross negligence. Compensation of consequential damages, mere pecuniary losses, lost profit, and third-party damages is in any event precluded. Claims for compensation for damages due to delay must be asserted in court not later than one year after actual performance, failing which they are deemed prescribed.

3.10 If the customer fails to immediately call off goods that have been notified as ready for shipment or pick-up, it will be charged 1.0% of the invoice amount for each week, starting four weeks after notification of readiness for shipment, with such charge however not to exceed 15%. If higher inventory costs are demonstrable, the customer must also bear same.

3.11 The delivery terms and conditions of all of our contracts are subject to Incoterms 2010.

**4. Prices**

4.1 The prices set forth in our order confirmation are controlling. Unless agreed otherwise, prices are considered ex respective manufacturing plant, or, for used machinery and equipment, ex previous place of installation, and in all other cases, ex our registered office (FCA Incoterms 2010). Not included therein are assembly, packaging, freight, insurance, and other expenses, as well as customs duties and applicable value-added tax. The customer is responsible for paying taxes, contract fees, stamps, import, export, and transit fees, customs duties and expenses, and administrative commission fees.

4.2 If, between conclusion of contract and processing of the order, we experience unforeseeable cost increases, e.g. for wages and materials, or decisive, constructive changes, etc. occur, we are entitled to modify prices in connection with the changed circumstances and without calculating an additional profit. In the event of a change in the exchange rate between the currency indicated in the invoice and the euro, the purchase price is calculated based on the relationship between the values of the two currencies on the date of contract conclusion.

4.3 If we have assumed installation and/or assembly or provision of services at the customer's location and there is no agreement otherwise, the customer is responsible for the agreed compensation or, where same has not been agreed upon, our respectively applicable hourly rates for technician work, as well as for all incurred ancillary costs, including actual travel time incurred by technicians and any travel-related delays (traffic jam) in the amount of our respectively applicable hourly rates for travel time, as well as travel expenses, costs for the transport of tools and personal luggage, and per-diems for technicians.

## 5. Packaging

5.1 Packaging is done in the manner customary in the trade in order to avoid damage due to common weather effects under normal transport conditions.

5.2 We must be given timely notice of special wishes relating to packaging. Notice is considered timely where the desired packaging can be done without causing delays and without difficulties. If notice of the special type of packaging is not given in a timely manner, or considerable time and effort is needed for the special type of packaging, we are entitled to refuse the special type of packaging by written notice. The foregoing does not affect the customer's duty to pay.

5.3 Packaging is invoiced separately to the customer and will not be taken back.

## 6. Payment

6.1 Unless agreed otherwise, the customer must make the following payment on the contract price, on account and without deduction, for the Delivery of new or used machinery and equipment:

- following receipt of the order confirmation, 45% as deposit
- following notification of readiness for shipment of the main parts, 45% and
- the balance within two weeks of transfer of risk.

6.2 Our other invoices are payable within 14 days of the date of invoice, with 2% discount for early payment, or within 30 days, net, free of expenses, in the agreed currency into our account set forth in the order confirmation.

6.3 Bills of exchange and cheques are accepted as a means of payment only pursuant to express agreement and always subject to receipt. Discounting fees and other costs associated with bills of exchange are for the account of the customer.

6.4 All of our receivables become immediately due and payable when the customer fails to comply with the payment terms and is in default in the payment of an instalment (immediate maturity). We may then prohibit the resale or processing of goods delivered subject to retention of title and demand their surrender or the assignment of indirect ownership at the customer's expense.

## 7. Set-off and retention

7.1 The customer may set off a counterclaim only if it is uncontested or has been reduced to a legally enforceable judgment.

7.2 The customer may assert a right of retention only if such right is based on one and the same contractual relationship and if the counterclaims underlying it are uncontested or have been reduced to a legally enforceable judgment.

## 8. Transfer of risk / shipment

8.1 Goods are shipped at the customer's risk ex respective manufacturing plant, or, for used machinery and equipment, ex previous place of installation, and in all other cases, ex our registered office. For Deliveries without installation or assembly, the risk passes to the customer when the Delivery has been consigned for shipment or has been picked up. The same also applies where pre-paid freight has been agreed to in a given case. For Deliveries with installation or assembly, the risk passes on the date of inclusion in the customer's own operation or, where agreed, following flawless trial operation.

8.2 Risk also passes to the customer where shipment, delivery, start or performance of installation or assembly, inclusion in its own operation, or trial

operation is delayed for reasons attributable to the customer or where the customer is for other reasons in default in acceptance.

8.3 If we select the type of shipment, the route, or the shipper, we are liable only for gross culpability in making the selection.

8.4 For Deliveries with pre-paid freight, risk also passes to the customer ex works not later than with notification of the readiness of shipment, when partial Deliveries are made or we have assumed additional services, e.g. engagement of the freight forwarder, delivery and installation, or shipping costs.

## 9. Transport and insurance

9.1 The shipment occurs through the customer at its risk and expense. If the freight forwarder is engaged by us – because same was agreed to with the customer – the customer is nevertheless obligated to ensure proper insurance of the Delivery during transport from location to location against slipping and shifting, overturning, possible exterior mechanical influences, and the like. Unless the customer's special shipping requirements have been agreed to, we are entitled to choose the type of shipment.

9.2 The customer must direct complaints about transport to the last freight forwarder promptly following receipt of the Delivery or the freight documents and document same. The customer is obligated to promptly assert any transport damages with the freight forwarder. We must simultaneously be notified of any such complaint.

9.3 The customer is obligated to obtain at its own expense transport insurance from location to location that corresponds to the value of the delivered goods. If we are required to obtain such insurance pursuant to agreement, same is however accomplished at the customer's risk and expense. In no event are we liable for transport damages.

## 10. Installation, assembly, and provision of services

Unless agreed otherwise in writing, installation, assembly, and the provision of services (hereinafter, collectively, "Assembly") are governed by the following provisions:

10.1 The customer must at its own expense assume and provide in timely fashion:

- a) all excavation work, construction work, and other ancillary work extraneous to the trade, including the professionals, workers, building materials, and tools necessary for same,
- b) the equipment and materials needed for Assembly and initial operation, such as scaffolding, lifting gear, and other equipment, as well as glass, production or consumable material, etc.,
- c) energy and water at the place of use (including connections), heating, and ventilation
- d) at the place of Assembly, sufficiently large, suitable, dry, and lockable rooms for storing machinery parts, equipment, tools, etc., and suitable work and break rooms for Assembly personnel, including sanitary facilities appropriate to the circumstances; in addition, the customer must take the same steps at the construction site to protect the supplier's property and Assembly personnel as it would to protect its own property,
- e) protective clothing and protective devices that are necessary as a result of special conditions at the Assembly site.

10.2 Prior to starting Assembly work, the customer must on its own initiative provide all necessary information about the location of hidden electrical, gas, and water lines or similar installations, as well as the necessary structural information.

10.3 Prior to starting installation or Assembly, the equipment and objects necessary for beginning work must be located at the place of installation or Assembly, and prior to starting setup, all preliminary work must have reached a stage where installation or Assembly can be initiated in accordance with the contract and completed without interruption. Access roads and the place of installation or Assembly must be level and cleared.

10.4 If installation, Assembly, or initial operation is delayed by circumstances not attributable to us, the customer must bear the reasonable costs for waiting time and additionally necessary travel by Assembly personnel.

10.5 The customer must provide us with a weekly certification as to the duration of working time by Assembly personnel, as well as the ending of installation, Assembly, or initial operation.

10.6 If, following completion, we request that the Delivery be inspected and accepted, the customer must do so without unnecessary delay, at the latest, within one week. If same does not occur, acceptance is considered as having taken place. Acceptance is also considered as having taken place when the Delivery - where necessary, following completion of an agreed testing phase - starts to be used. The customer may not refuse acceptance of the Delivery for minor defects.

## 11. Warranty

11.1 Upon acceptance or receipt of every Delivery, the customer must inspect same for completeness and damage to packaging. Complaints are to be promptly sent to us in writing. The freight forwarder is to be instructed to document the facts and circumstances.

11.2 The customer is obligated to promptly inspect the goods and to give us prompt written notice of obvious defects, failing which the right of warranty is lost. Latent defects must be objected to in writing promptly following their discovery.

11.3 Once the duty to object arises, defective goods delivered by us may no longer be processed, installed, or otherwise used, failing which every warranty duty lapses.

11.4 The customer may not refuse acceptance of the Delivery due to its defectiveness. If it nevertheless refuses acceptance, the provisions of section 373 UGB are applicable.

11.5 If new items delivered by us or services provided by us have a defect attributable to us whose cause existed at the time of transfer of risk, we are entitled to cure, at our discretion, by eliminating the defect or delivering a defect-free item. The customer bears the burden of showing that the defect existed at the time of handover. Upon request, the customer is obligated to send the goods or parts to be cured at its own risk and expense either to us or to a third party designated by us for the purposes of cure. Transfer of risk for the cure takes place when the improvement is available ex works. If we refuse the cure, if it fails, or if it is unreasonable for the customer to accept it, the customer may, in the event of a serious defect, at its discretion rescind the contract or demand a reduction of the price or, in the event of a non-serious defect, demand a reduction of the price. In the event that a Delivery is taken back, the customer bears the compensation for diminished value through its use.

11.6 Unless agreed otherwise, we give no warranty that used machinery and equipment is free of defect, nor are we liable for alterations using the products of others. Rather, these are sold as-is under exclusion of any liability on the part of the supplier for material defects.

11.7 The warranty period is 12 months and begins to run upon transfer of risk, irrespective of the obviousness of the defect. The warranty period is not extended in the event of elimination of defects or acknowledgement, including in the case of insertion of new parts in the main Delivery, either for the main Delivery or for the replacement or new parts. Warranty claims and damage claims based on defects must be asserted in court within one year of handover, failing which they are deemed prescribed.

11.8 In addition, there are no claims for defects in the event of merely insubstantial deviation from the agreed quality, optical defects, merely insubstantial interference with usability, natural wear and tear, or damages that occur following transfer of risk for the following reasons:  
failure to comply with Assembly, maintenance, and operating instructions, unsuitable or improper storage or use, excessive strain, defective Assembly or initial operation by the customer or third parties, defective or negligent treatment, frost, unsuitable operating supplies, chemical or electrochemical influences, non-reproducible software errors, unless same are attributable to a fault by us in connection with section 10.1, use of unsuitable and wear-causing raw materials or operating supplies, as well as due to other circumstances not caused by us.

11.9 In the event that the customer or a third party improperly makes changes or performs maintenance work without the prior consent of the supplier, liability for the resulting consequences is excluded.

## 12. Damages

We are liable for wilful misconduct and gross negligence. We are liable for simple negligence only in cases of breach of material contractual duties that result from the nature of the contract or breach of which threatens achievement of the contract purpose. Even in these cases, damages are limited to those that are foreseeable and typical for this type of contract. In all other respect, the customer's claims for damages in the event of simple negligence are precluded, regardless of legal grounds. In any event, the basis for and amount of damages are limited to the coverage obligation and amount of our insurance. Consequential damages are not compensated. The customer's claims for damages are prescribed unless asserted in court within six months of recognition of the damage, but in any event after one year following transfer of risk.

## 13. Retention of title

13.1 Until satisfaction of all of the customer's payment obligations under the entire business relationship, we retain title to the objects of Deliveries ("Secured Goods").

13.2 The customer must promptly notify us in the event of liens or other encumbrances of third parties. The customer bears all costs that have to be expended in order to remove the encumbrance or reacquire the object of the Delivery, provided they cannot be collected from the third party without court action.

13.3 Subject to permissible revocation for an important reason, the customer is entitled to dispose of the object of the Delivery in connection with proper business operations. In the event of resale, retention of title is to be assigned by the customer to the end customer, until the contractor has received payment in full.

13.4 In addition, the customer hereby assigns to us all claims from resale, including payment claims, but also other claims in connection with resale, in the final amount of our invoice (including VAT), irrespective of whether the object of the Delivery has been resold with or without processing. In the event that the Secured Goods are processed, retention of title extends to the product, provided same is permissible by statute. Until revocation by us, the customer is entitled to collect the assigned receivables on our behalf. In the event that the authority to collect is revoked, we may demand that the customer disclose to us the assigned receivables and the parties owing them, provide all information necessary to collect them, turn over related documents, and notify the parties owing the receivables about the assignment. The resale of receivables requires our prior written consent. We are entitled to disclose to third-party debtors that the receivables have been assigned, including on behalf of the customer. Once the third-party debtor has been notified about the assignment, the customer's authority to collect expires.

13.5 With regard to Deliveries abroad, the customer is obligated to take all measures in order to comply with the statutory provisions applicable for the safeguarding of retention of title abroad and thus to make retention of title effective (designation as property subject to retention of title, recording in registries, etc.). If instead of retention of title, a different, similar right to secure the object of the Delivery exists in the foreign legal system, we are entitled to exercise all provided rights of this nature. In such case, the customer is obligated to facilitate exercise of a comparable security right, failing which we are entitled to retain undelivered parts until proof that the prerequisites have been met to create such security right and/or to rescind the contract.

13.6 In the event that the customer breaches its duties, including payment default and/or breach of its duties under section 13, we are entitled, notwithstanding our rights under section 15, to take back the Secured Goods, and the customer is obligated to surrender same. Taking back the Secured Goods or asserting retention of title does not constitute rescission of the contract, unless we expressly declare same.

## 14. Default in delivery

14.1 In the event of default in delivery, the customer may insist upon performance or, in the case where we are demonstrably culpable for the default in delivery, rescind the contract after having set a reasonable grace period.

14.2 If a partial Delivery has been used by the customer, rescission with respect to such partial Delivery is precluded, provided the partial delivery in and of itself is useable, albeit limitedly. Otherwise, the provided performance is to be returned, taking into account any diminished value as a result of use.

#### **15. Default by the customer**

15.1 In the event that the customer is in default with respect to an agreed payment or other performance, the contractor may, at its discretion, insist upon performance of the contract or postpone its own performance accordingly. In addition, the contractor may demand immediate payment of the remaining purchase price outstanding and charge the statutory default interest for entrepreneurs. In the alternative, the contractor may rescind the contract after granting a reasonable grace period and demand compensation for the damage incurred as a result of non-performance of the transaction.

15.2 In the event of rescission, all provided performance is to be returned and non-performance damages are to be paid.

#### **16. Taking back of goods without legal obligation; cancellation costs**

16.1 If we take back the object of the Delivery, this does not constitute rescission of contract, unless we would have expressly accepted this.

16.2 In the event that they are in flawless conditions, goods taken back by us without the existence of a legal obligation may only be credited at up to 70% of the invoice amount or, for special types or special productions, only at the scrap value.

16.3 If the customer unjustifiably rescinds the contract, either in whole or in part, we may, notwithstanding the possibility of asserting greater actual damage, demand as damages for the expenses we incurred and for lost profit 10% of the agreed price, including value-added tax, for Deliveries not made as a result of the unjustified rescission.

#### **17. Place of performance, place of jurisdiction, applicable law**

17.1 For both parties, our registered office is the place of performance for Deliveries and payments.

17.2 The court with substantive competence over our registered office is the place of jurisdiction for all legal disputes arising out of the contractual relationship, as well as about its coming into being and its effectiveness. However, we are also entitled to bring suit at the customer's registered office.

17.3 Austrian law is applicable, under exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

#### **18. Miscellaneous**

Should one or more of the above clauses violate mandatory law, all other content in these General Terms and Conditions remains in full effect. An ineffective provision in these General Terms and Conditions, as well as a gap herein, is to be replaced by a provision that most closely approximates the sense of these General Terms and Conditions.