

General terms and conditions of sale

March 2011

1. General terms

Any transactions and agreements shall not be binding on us before written confirmation on our part. Any purchase conditions of the buyer or any agent or subcontractor ordering goods on its behalf shall only be binding on us if expressly recognised by ourselves. Failure to object under no circumstances constitutes consent on our part. Any offers made by us are non-binding; offers are subject to prior sale of stocked goods.

2. Prices

Unless otherwise stated, prices are ex works (Incoterms 2010), excluding packaging and cost of provision of railway wagons, plus VAT. Where additional or increased taxes become due between contract conclusion and delivery owing to changes in legislation – in particular, customs duties, import levies and currency equalisation levies – we shall be entitled to increase the agreed price accordingly.

In the absence of any agreement to the contrary we are entitled to charge for the services to be rendered by us in accordance with actual performance and the expenses incurred by us as a result.

3. Delivery times

The specified delivery and fulfilment times are non-binding, i.e. without any legal effect. Any claims for damages with reference to delivery and performance dates are hence excluded. The buyer/agent or subcontractor is not entitled to reject partial deliveries.

4. Fulfilment and shipping

Loading and dispatch are always at the risk of the buyer/agent or subcontractor, even if deliveries are made carriage paid. The method of dispatch and means of transportation and protection, which are charged separately in the same way as covered wagons, are at our discretion and all liability is excluded. However, wherever possible we shall take the wishes of the buyer/agent or subcontractor into consideration. Goods which are ready for dispatch must be called off immediately; otherwise they will be stored at the expense and risk of the buyer/agent or subcontractor.

5. Specifications

Unless otherwise agreed, the relevant standards and applicable deviations shall determine the order specifications in terms of quality, dimensions and weight; in the absence of existing standards, normal commercial practice shall apply. In the case of deliveries, the calculations shall be based on total weight or dimensions, irrespective of the means of transport.

6. Blanket contracts and contract overruns

In the case of continuous transactions of longer duration, call-off orders shall be placed and the relevant specifications furnished to us for approximately equal monthly quantities. If the goods are not ordered or the specifications made on time, after unsuccessful granting of a grace period we shall be entitled to make our own specifications and to deliver the goods, or to withdraw from the remainder of the transaction, or to claim damages for non-performance.

If the contractual quantity is exceeded through call-off orders placed by the buyer/agent or subcontractor, we shall be entitled, but not obliged, to deliver the excess amount at the prices applicable on the day the order is placed.

If our contractual partner defaults in accepting the goods, we shall be entitled to store the goods at our premises against payment of a storage fee while insisting on fulfilment of the contract or, after granting a reasonable grace period, to withdraw from the contract and dispose of the goods otherwise.

7. Acceptance inspections

The buyer is obliged to inspect the goods at our premises upon notification of readiness for acceptance. If the buyer expressly fails to inspect the goods, or does so tacitly by failing to include a provision regarding acceptance inspection in the order, the goods shall be deemed to be duly delivered and accepted upon leaving the works. In the case of materials without quality specifications, the buyer is entitled to confine acceptance inspection of the goods at our premises to determining their external condition and measuring the goods in the stack, i.e. without removing the goods from the stack. Goods that have been accepted or are deemed to be accepted shall be considered to be duly delivered and handed over. Any objections made subsequently cannot be taken into consideration. Section 377 *Unternehmensgesetzbuch* [Austrian Business Code] (*UGB*) shall apply to all services under a service contract; any waiver of this provision is expressly repudiated.

8. Notification of defects and liability

In cases where the buyer/agent or subcontractor has a right to make complaints, these must be made in writing within 14 days of receipt of the goods or completion of the service at the place of fulfilment. Defects which cannot be detected within this period, even after thorough examination of the goods, must be notified, and any handling or processing of the goods halted, immediately after their discovery, but no later than six weeks after receipt of the goods or completion of the service. The buyer/agent or subcontractor must in all cases prove that the defect was already present at the time of hand-over of the goods. In the event of a defect, at our discretion we shall be entitled to subsequent fulfilment by rectifying the defect, returning the goods and providing replacement goods free of charge ex works, reducing the price, or reimbursing the payment. In the case of return deliveries, the freight bill, shipping papers and forwarder's invoice must include our order number. Any further claims for damages arising on any ground whatsoever, in particular compensation claims for direct or indirect damages such as lost profits, are expressly excluded. This does not apply to extreme gross negligence, wilful intent or personal injury. The buyer/agent or subcontractor has the burden of proving fault on the part of Weichenwerk Wörth GmbH. Section 1298 *Allgemeines Bürgerliches Gesetzbuch* [Austrian Civil Code] (*ABGB*) is waived. Claims for damages shall expire six months after awareness of the damage and the injuring party, and not later than five years after rendering of the service or delivery.

9. Terms of payment

Invoices issued by us, including those relating to partial deliveries, must be paid in cash and without deductions no later than on the due date or, if a due date has not been agreed, within 30 days of receipt of the invoice. Any bank charges must be borne by the buyer/agent or subcontractor. In the event of payment default, interest at the rate of 8% above the base interest rate of the European Central Bank must be paid to us. Non-compliance with the payment terms, or circumstances which bring about a deterioration in the creditworthiness of the buyer/agent or subcontractor, shall result in all our claims' becoming due.

In addition, without prejudice to any other rights we may have, in such cases we shall be entitled to make outstanding deliveries only against pre-payment, or withdraw from the contract or claim damages on grounds of non-performance. The retention of payments on grounds of alleged counter-claims on the part of the buyer/agent or subcontractor which have not been recognised by us, or offsetting of such counter-claims against payments is prohibited.

10. Retention of title

We retain the ownership rights to all delivered goods until the buyer/agent or subcontractor has settled all its financial obligations. The buyer/agent or subcontractor is entitled to resell the goods subject to retention of title in the ordinary course of business. However, in such case the buyer/agent or subcontractor shall already now cede to us any claims arising from such resale.

11. Force majeure

Any force majeure events, including natural disasters, strikes, major disruptions of operations, spoilage, non-delivery of input materials, and any other circumstances which significantly impede or prevent delivery of the goods, entitle us to discontinue delivery for the duration of the impediment and a reasonable lead time, or to withdraw from the contract with regard to the part which has not yet been fulfilled. The buyer/agent or subcontractor may request a statement from us as to whether we decide to withdraw from the contract or deliver the goods within a reasonable period of time. If we do not provide such a statement, the buyer/agent or subcontractor is entitled to withdraw from the contract.

12. Intellectual property, confidentiality

Plans, sketches, design drawings, price quotations, and any other documents such as brochures, catalogues, samples and presentations shall remain our intellectual property. Any use, including transmission, reproduction and publication, requires our express consent. All documents may be reclaimed by us at any time and must be returned immediately if the contract is not formed.

The contractual partner is obliged to maintain confidentiality vis-à-vis third parties with regard to any knowledge obtained by it by reason of the business relationship.

13. Place of fulfilment, jurisdiction, applicable law

Our principal place of business of our company shall be deemed to be the place of fulfilment with regard to all conclusions of contracts for our services and for counter-performances, even carriage paid to destination has been agreed. The place of jurisdiction for all disputes shall exclusively be the court of substantive competence at the principal place of business of our company; however, at our discretion we shall be entitled to invoke the jurisdiction of another court having competence with regard to the buyer/agent or subcontractor.

Contracts made by us are subject to Austrian law, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

14. Severability clause

Should individual provisions of these general terms and conditions of sale be or become ineffective, this shall not affect the effectiveness of the remaining provisions.