

General Terms and Conditions

1. Conclusion of Contract

All legal transactions with us, in particular sales transactions and deliveries are only executed subject to our General Terms and Conditions.

Modifications or additional agreements are only valid if confirmed in writing and are valid for the respective transaction only.

We herewith contradict any contradicting Terms and Conditions of the Buyer; they are not binding also in case if we do not contradict again at the conclusion of the contract. Also a submission of an order confirmation by the Buyer is not valid as acceptance of his conditions.

2. Conditions

All our offers, be it in writing or verbal are not binding; a contract of sale is finalised only, if we confirm to the Buyer the conclusion of the contract by submitting of our order confirmation.

Each and every contract of sale is on condition that all necessary official authorizations have been granted, especially of all competent national authorities in the countries of our suppliers and all competent national authorities in Austria or abroad. In case of not granting a necessary permission the conclusion of the contract shall not be valid.

All possible claims of the Buyer arising from this reason shall be excluded.

3. Prices, Payment Conditions

Prices are – if not agreed otherwise – net without allowance, ex works Abtenau (EXW).

Payments have to be effected in cash under exclusion of any set-off or retention. Representatives, commercial agents, sales persons, etc. are not entitled to accept any payments without special permit entitling him to do so.

Bills of exchange or cheques are accepted under reservation and are not considered as cash payment before complete encashment.

In case of default payment we shall be entitled to charge interest on arrears of 1 percent per month. Furthermore we are entitled to assert compensation for late performance or to withdraw from the contract completely or partly in terms of particular part-deliveries and assert compensation for non-performance. In the later case we are entitled to keep or to assert the stipulated down payment, but at least 5 percent of the purchase price of the cancelled delivery as contract penalty. This amount shall also be considered as minimum damage in case of non performance.

4. Payment for Imported Goods

If the country of origin is mentioned in our order confirmation, the price shall alter according to a change of the exchange rate valid in the country of origin for exports to the country of destination, payable in the contractual currency between the date of conclusion of contract and date of payment by more than 5 percent.

5. Delivery

Quantities are quoted with a tolerance of plus/minus 10 percent, meaning that we are entitled to deliver 10 percent more or less of each grade or dimension.

6. Time of Delivery, Date of Acceptance

Indications of delivery time are not binding. We are not liable for late delivery of our suppliers. Claims of the Buyer for damages for late performance are excluded. The Buyer shall take over the goods after announcement of delivery promptly.

We shall be entitled to perform part deliveries if it is physically possible to do so.

Each part delivery is considered as independent business and can be invoiced separately.

As long as the Buyer is in arrears with payments or does not perform any other action necessary for fulfilment of the contract, obligations to deliver and delivery dates shall be suspended. Furthermore we are entitled to assert compensation for late performance or to withdraw from the contract completely or partly in terms of particular part-deliveries and assert compensation for non-performance. In the latter case we are entitled to keep or to assert the stipulated down payment, but at least 5 percent of the purchase price of the cancelled delivery as contract penalty. This amount shall also be considered as minimum damage in case of non performance.

Every modification of an order is followed by a modification in the not binding delivery date.

7. Transport

If not otherwise stipulated in the contract, we shall choose the mode of transport according to our best discretion but without responsibility for the most economic freight rate.

Risks and obligations shall be subject to the INCO-Term (in the actual version) stipulated the contract. It is the buyers' responsibility to ensure that the goods can be delivered properly by articulated truck and takes care of the costs and risks of immediate unloading.

Otherwise the buyer takes the costs and risks of goods if stored at others or resold alternatively.

8. Freight costs

In case of a increase of freight costs between conclusion of contract and delivery the Buyer shall be charged with the balance.

9. Retention of Ownership

Delivered goods shall be our property until complete settlement of our receivables and of a potential balance in our favour.

In case of arrears with payments we are entitled to retake the goods into possession and to refuse handing over to the Buyer until full settlement of our receivables.

We also reserve the right to withdraw from the contract and to reclaim the goods if we have not regained possession so far.

Taking legal action on fulfilment of payment – be it complete or partly – does not abolish the retention of ownership. As long as the retention of ownership is valid, the Buyer must not dispose of the goods; in particular he shall not process, sell, pledge, etc. If a third party has taken any legal action on the goods the Buyer shall notify us at once.

The Buyer takes note that any contravening against the provisions of this clause, that means any violation of the retention of title, will be prosecuted by means of the Austrian Criminal Law (Strafgesetzbuch § 133).

10. Assignments of Rights

Any assignment of rights arising out of the contract to third parties may only be done after our written permission.

11. Notice of Defects

The Buyer is entitled to notify defects only in case of deliveries that have not been checked by him or an authorized merchandise control firm before loading or should have been checked according to the contract.

Otherwise notice of defects that have to be represented by the Seller can only be accepted within three (3) days (in case of hidden defects within six (6) weeks) after taking over of merchandise through the Buyer or arrival at destination respectively. Notifications of claims can be made in written form by fax or mail. Fault can be found only with the original un-processed raw material. For services free of charge warranty is excluded. Principally we grant the buyer, excluding the explicitly confirmed, no specific characteristics of the delivered goods and are not liable for inappropriate and improper usage or handling of the material. In case of notice of defects the Buyer shall nevertheless take over the merchandise to avoid demurrage fees.

The Buyer must keep claimed goods at our disposal. In case of justified claims we will we will alternatively either

a) perform compensation delivery or
b) reduce the price or
c) cancel the contract in respect of the defective goods without obligation to perform compensation delivery.

The right of the Buyer to withdraw from the contract shall be excluded, also any compensations for damages of what kind ever, for direct or indirect damages, in particular for handling and freight costs, for covering purchase and for consequential damages, also in case of proven defects in substance.

12. Exemptions from Obligation to Perform

Any cases of force majeure, strikes, lockouts, operational disturbances and suchlike, delays in delivery of our suppliers, delays of official permissions, blockade or disturbance of transport, mobilisation, war, civil commotion or suchlike incidence, rule out default from our side. Such incidence entitles us to withdraw from the contract partly or entirely, so far as it has not been executed yet or to postpone deliveries according to the disturbing incident without being subject to any claims to compensation of the Buyer.

Any alteration of the Buyer's creditworthiness entitle us to demand prepayment or suretyships and – in case of non-performance to do so of the Buyer – entitle us to withdraw from the contract partly or entirely in respect of part-deliveries, and to claim compensation for non execution .

In this case we are entitled, to withhold the stipulated down-payment or to claim or to withhold at least 5 % of the purchase price of the cancelled delivery as contractual penalty. This amount shall also be considered as minimum damage for non-execution of the contract. Claims to compensation of the Buyer for any reason stipulated in this section shall be excluded.

13. Separability Clause

If one or more provisions of this General Terms and Conditions shall be declared void the balance of the General Terms and Conditions shall remain in force. These are to be substituted with new regulations corresponding to the initial intentions of the contract.

14. Place of Execution, Place of Venue

Place of execution for deliveries and payments shall be A-5411 Abtenau; applicable law for all disputes arising from the contractual relation shall be the Austrian law, place of jurisdiction shall be A-5020 Salzburg. This stipulation however shall not affect our right to lodge a claim at the competent court at the place of registered office of the Buyer. Venue for all deliveries to Italy shall be I-39100 Bozen. In case of doubt the German language shall be legal basis.