

## 1. CONCLUSION OF CONTRACT

Our General Conditions of Sale and Delivery apply to all our sales unless otherwise agreed upon in writing.

Any terms and conditions of purchase and special instructions submitted by the Buyer, which are at variance with our Conditions of Sale and Delivery, shall only be deemed binding if they are expressly accepted by us in writing for each individual order and shall apply to that particular order only. The absence of contradiction on our part with regard to those terms and conditions and special instructions submitted by the Buyer does not imply acceptance. Our additional provisions shall apply to contracts for mechanical and thermal labour services.

No form of acceptance except our written order acknowledgement shall constitute valid acceptance of our obligations with regard to their contents and scope where such exists. Otherwise our delivery notes are binding.

Unless otherwise agreed our delivery periods shall run from the date of our order acknowledgement. Otherwise an appropriate delivery period according to custom and usage shall prevail. The delivery period shall be deemed as met when the goods have been taken to shipment before the deadline or when the goods have been reported to be ready for pick-up to the Buyer. We are entitled to make partial deliveries and to invoice those separately.

Unless otherwise agreed the delivery period of our call orders shall run from the last day of the following month after the readiness of dispatch has been reported. As soon as an order has been accepted by us, the specification may only be altered by the Buyer with our written consent.

## 2. PATENT RIGHTS, DRAWINGS, SAMPLES, MODELS

The Buyer shall be liable for and indemnify us against and from all liabilities, proceedings, claims, costs and expenses that may result from an infringement of industrial property rights of third parties both in Austria and abroad, particularly of any patent, registered design, trade mark and copyright, arising from any work done by us in the execution of the Buyer's order or from meeting the Buyer's specifications relating to certain quality characteristics and other properties or from our use of any drawings, models, samples, auxiliary aids or similar provisions placed at our disposal.

## 3. TOLERANCE IN QUANTITY AND WEIGHT

In absence of other agreements a tolerance of up to plus or minus 10% (ten percent) of the ordered quantity or weight shall be permissible.

The total weight determined by weighing at our own calibrated scales in our mill shall be deemed as binding. The partial weights determined by weighing the individual weights at the delivering factory or warehouse shall be deemed as the correct weights shipped.

In case import regulations of the country of destination do not permit tolerances in the ordered quantity or weight the Buyer must state this in his tender enquiry.

## 4. PRICES AND CONDITIONS OF PAYMENT

Our offers are only binding when confirmed expressly as such by us in writing. No order shall be deemed binding unless and until the order has been accepted on our written order acknowledgment.

All our prices are net exclusive of value added tax at the applicable rate unless a tax exemption applicable to the sales tax law shall apply to us. They are generally ex delivery works. Charges of packaging and shipment, any possible alloy surcharges and extra charges arising from price changes of preliminary products and raw materials as well as from changes due to exchange rate parities will be added to the Buyer's order.

Unless separately agreed in writing our invoices are due and payable on the 15<sup>th</sup> of the following month after delivery or after notification of readiness of dispatch to the Buyer. Payments must be made net on a cash payment basis or by credit transfer free of charge in Vienna. Bills of exchange and checks are only accepted when agreed upon in writing. Discount and collection charges shall be borne by the Buyer. Any discount on the freight costs included in the invoice and reductions shall not be allowed. Failure to overdue payment will result in default interest being charged at least 1.75 % above interests charged by Austrian major banks on working capital credits exclusive of value added tax at the applicable rate. In the event the Buyer fails to make payment in due time, the Buyer agrees to compensate for all costs arising from a demand of payment and from legal claims, and also to pay lawyer's fees if need be.

We have the right to suspend performance of our obligations as long as the Buyer does not attend to his obligations agreed upon under these Conditions, particularly when payments due have not been made. The Buyer shall not set off other than indisputable or legally binding and accepted outstanding amounts of the Buyer and shall not have any rights of retention or refusal of performance. Payments are at our option calculated on outstanding amounts.

All outstanding amounts to be paid by the Buyer become due at once even though those invoices shall not yet be due or are deferred and we shall have the right to demand payments in advance of all outstanding deliveries and performances in the event that Buyer fails to pay wholly or in part, a bill of exchange or check is dishonored or that information is brought to our knowledge which is giving cause for concern to grant a credit to the Buyer or that insolvency proceedings are opened against the Buyer or the Buyer compounds with his creditors out of court.

Furthermore we shall be entitled in such circumstances to prohibit resale and processing of goods shipped and to demand their return at the Buyer's expense.

## 5. ACCEPTANCE

If the Buyer rejects the goods shipped the Buyer shall bear all transport charges and costs for storage irrespective of Buyer's payment obligations. The purchase price is due immediately upon rejection of goods. We have liberty to claim for compensation due to non-fulfillment instead. The Buyer shall not be entitled to reject the goods shipped due to minor defects.

The risk will at all means pass to the Buyer on the date when the item to be delivered leaves our delivery factory or delivering warehouse. This also holds for deliveries and performances freight paid and free to the door. In the case the Buyer requests to delay shipment or delivery or of other reasons thereof which are not approved by us the risk shall pass to the Buyer upon our inspection of goods or upon notification of readiness of dispatch. The Buyer agrees without undue delay to make payments which become payable upon delivery and by the delivery.

We determine type and means of shipment and packaging. Increases of the price of freight charges between the date of order acknowledgment and the date of dispatch will be added to the Buyer's invoice.

After inspection of the goods as agreed in the Conditions no claim regarding a defect which would have been discernible in the course of inspection shall be accepted. This shall also apply when the Buyer has received our mill inspection certificates even though the Buyer has refused inspection. Should inspection after having notified of our readiness to inspection not be carried out at all, not be carried out in time or carried out incompletely the Buyer defaults acceptance.

## **6. RETENTION OF TITLE OF OWNERSHIP**

After delivery of the goods to the Buyer the ownership thereof shall remain in ourselves until the Buyer shall have paid in full to us the invoice price of those goods and any default interest, reminder and collection charges as well as any procedural costs accrued so far. The Buyer shall undertake to resell conditional goods only in the usual course of business. The Buyer has not the right to make other decisions, especially not to pledge these goods or to transfer them by way of security. In the event a third party impinges upon our rights as owner on account of a reservation of title the Buyer shall take necessary steps to safeguard our rights.

The Buyer already now assigns all his claims out of a resale of conditional goods to his Seller to secure our claims against the Seller. Upon our request, which we are entitled to make anytime, the Buyer shall notify the assignment to his Seller, and to make all information required available and to submit all documents required to assert our claims. The Buyer shall be entitled to debt collection out of the resale only if we do not reserve the right to collect debts on our own.

The Buyer shall have the right to manipulate and process the goods sold. We shall retain the title to the goods which were manipulated and processed to the extent of the ratio of our conditional goods to the final product. In the event the Buyer fails to pay the purchase price or to meet other provisions in these Conditions we reserve the right to enter our Buyer's premises and properties without prior notice, remove those conditional goods delivered on the Buyer's expense and reassume possession thereof without this being considered as withdrawal from contract. Instead the Buyer is at our option committed to return the goods at his expenses. In this case we shall only redeliver the goods to the Buyer until the Buyer shall have met his obligations under these Conditions, especially until the Buyer shall have paid the purchase price including all reminder and collection charges as well as any procedural costs accrued so far.

## **7. WARRANTY AND LIABILITY**

For defected deliveries and performances we warrant for the period of three months from the date of delivery at our option either to repair the goods free of charge or to replace the goods free of charge.

Should the improvement or the compensation delivery fail the Buyer shall have liberty to change or to reduction. Warranty does not apply to any minor or technically implied modifications or those according to custom and usage in quality, shape, color, weight or type as they are no defects. This also holds for deliveries according to models and samples.

Notifications of defects shall be accurately described and reported without undue delay, in case of hidden defects within 3 days after discovery of such defect. All warranty obligations, compensations and other claims are conditional upon the Buyer reporting defects in accordance with our instructions and shall not apply in such a case. The Buyer shall also prove within the warranty period that the alleged defect existed at the time of delivery. The Buyer shall see to it that the article is in the same condition as it was at the time of delivery. As regards labor services we are only liable for installation defects amounting to the labor costs entailed to us.

Warranty obligations shall in particular not extend to defects which are due to natural wear and tear, improper handling and storage, faulty maintenance, unusual environmental influences or transport damages. There shall be no warranty if our goods are mixed or combined with other goods which are not purchased by us or the use of which have not been recommended by us. The Buyer shall not be entitled to claim for warranty after the three-month-deadline has elapsed even though the Buyer has warranted his Seller.

Compensation claims shall not apply to damages due to acts of slight negligence, due to negligence or gross negligence when executing a letter of intent, especially under the obligation of consultation and information. The warranty covers neither the replacement of a defect which has occurred nor a consequential damage nor a loss of profits. Any claims for compensation due to a non-fulfillment or a delay in execution shall not apply. We shall not at all be liable for acts of negligence of pre-suppliers or of other companies which we used in executing our obligations. Our information given on processing and applying our goods, technical consulting and other particulars provided on aptitude and usage, weight, measures, colors, performance and appearance are not binding.

We shall not be liable for material damage due to any defective goods (products) claimed by companies with regard to Consumer Protection Laws. In the event the Buyer resells the goods to a third company the Buyer agrees to pass the prevailing disclaimer of warranty. If not, the Buyer shall indemnify us and hold us harmless against all liabilities, proceedings, claims, costs and expenses that may result and refund all costs. Should the Buyer himself be liable in the framework of product liability the Buyer expressly waives to claim for recourse.

## **8. FORCE MAJEURE AND OTHER EVENTS IMPENDING OR PREVENTING SHIPMENT**

Events of a force majeure such as congestion, any breakdown of service, lack of goods or energy shortage, strikes and lockouts in-house in those performance-related factories or restraints of any authorities or sanctions imposed upon by international authorities entitle us to extend delivery deadlines or to withdraw wholly or in part from our delivery obligations without any liability for compensation to Buyer.

In the event that the circumstances which led to a conclusion of the contract have been altered in such a way that it can be assumed that this contract would not have been concluded under the altered conditions at all or with different terms and conditions had those altered conditions existed we are entitled to refuse the fulfillment of these Conditions or to demand a variation of these Conditions or of individual clauses thereof to take into account the altered circumstances, such as payment in a different currency, applying an index clause, changes of the terms of delivery and others. The change of circumstances may also be caused by a change in the circumstances of Buyer.

#### **9. PLACE OF PERFORMANCE, INCOTERMS**

The place of delivery and of performance shall be our warehouse and our factory site only, as regards payment to be made by Buyer it is agreed that Vienna shall be the place of performance and the exclusive competent court. We however shall have liberty to take legal actions against Buyer at his general court. Buyer agrees to compensate for possible reminder and collection charges and for all other pre-procedural costs incurred by operating our claims. Incoterms 2000 shall apply and these Conditions shall be governed by, and be construed in accordance with, the laws of Austria. The principles of the United Nations Convention on Agreements for International Sale of Goods, Austrian Civil Code BGBL. 1988/96, shall not apply.

#### **10. PARTIAL INVALIDITY**

In the event of any clause or clauses of the present Conditions becoming invalid wholly or in part, these shall not affect the validity and enforceability of the other clauses.

Instead of an inapplicable clause the Parties agree to a valid and enforceable clause proposed which comes as close as possible to commercial intention and purpose of the replaced clause.