

GENERAL BUSINESS TERMS AND CONDITIONS
GENERAL TERMS FOR SALES AND DELIVERIES (Version 2011)

1. General:

1.1 Unless something else is regulated in special business terms and conditions, the delivery of goods to our customers only takes place at the following conditions. Conflicting agreements require the written form (this does not apply to consumer business). Our employees are not authorised to make any deviating verbal promises or reach agreements to the detriment of consumers.

1.2 The possible ineffectiveness of individual provisions contained in these General Terms for Sales and Deliveries does not affect the other provisions. Instead of a possibly ineffective provision, it is agreed that this should be replaced with another provision which comes closest in a legally permissible manner.

1.3 These provisions also apply analogously for services and other deliveries to be carried out by us as far as nothing else is regulated in special business terms and conditions.

2. Order acceptance:

2.1 Unless the order is rejected by us within three days after receiving a verbal order, the order is considered to have been accepted. If we reject a written order, we are obliged to provide an explanation within 14 (fourteen) days after its receipt otherwise the order is considered as accepted as at order date.

2.2 For postal deliveries, the rejection is considered to be punctual if it is handed over to the post office within the deadlines.

3. Consumers' right of withdrawal

3.1 If the consumer has not given his contract declaration either at the premises we permanently use for business purposes or at an exhibition stand we use at a [trade] fair or a market, he can withdraw from his contract application or from the contract within one week; the deadline commences with the delivery to the consumer of a document, which shall at least include our name and our address as well as information regarding the right of withdrawal; however, at the earliest, the deadline commences upon the formation of the contract.

3.2 The consumer does not have a right of withdrawal if he himself has initiated the business relationship with us or where no discussions were held between the involved parties prior to the formation of the contract.

3.3 For its effectiveness, the withdrawal requires the written form, whereby the provision of a written document that includes a contract declaration is sent to us or our agent, who has participated in the contract negotiations, with a notation from which it is obvious that the consumer refuses to realise or maintain the contract shall be sufficient.

3.4 The consumer also can withdraw from his contract application or from the contract if, without his instigation, circumstances crucial to his approval, such as the approval of a third party, the expectation of tax advantages or public subsidies or a loan which we have presented as likely during the contractual negotiations, do not occur at all or only to a considerably lesser extent.

The withdrawal can be declared within one week as soon as the consumer realises that the stated circumstances do not occur or only occur to a considerably lesser extent and he has received a written instruction regarding this right of withdrawal. However, the right of withdrawal expires at the latest one month after the complete fulfilment of the contract by both contractual partners. Clause 3.3 shall apply for the rest. The consumer has no entitlement to a right of withdrawal if, at the time of the contractual negotiations, he already knew or should have known that the decisive circumstances will not occur or only occur to a considerably lesser extent, the exclusion of the right of withdrawal was negotiated in detail or we agree to a reasonable adaptation of the contract.

4. Fulfilment, transfer of risk, reclamation:

4.1 The place of fulfilment for deliveries and payments is our company's seat; this applies even if, following an agreement, the delivery takes place elsewhere. Irrespective thereof, the use and risk are transferred to the customer at the latest when the goods leave our warehouse, for goods despatched ex factory at the time they leave the factory; this applies irrespective of the pricing agreed on for the delivery (such as, for example "freight [postage] paid, or the like), unless we caused the damage either with intent or through gross negligence.

4.2 Maintaining the agreed delivery deadline is subject to unforeseeable or independent circumstances outside the parties' control such as, for example, all instances of force majeure, warlike events, official encroachments and prohibitions, transport and customs delays, transport damage or an energy shortage. Such circumstances shall then also permit an extension of the delivery deadline if they occur at a manufacturer or a supplier.

For consumer business, the consumer can withdraw from the contract by granting a reasonable period of grace of at least 4 (four) weeks in writing.

4.3 Should the goods be delayed in leaving our works or our warehouse due to circumstances attributable to the customer, the risk is transferred to the customer on the day the goods are ready for despatch. If on call delivery has been agreed upon, the goods shall be deemed retrieved six months from the date of order at the latest. We shall notify the customer in good time of the expiry of the deadline and the consequences of his behaviour. Should we not be able to fulfil our commitment due to the absence of the customer's corresponding disposition, the effects of the acceptance delays shall occur after the end of this six-month period. Further claims for damages from our side are not excluded hereby.

4.4 We have the right to make and invoice partial or advance deliveries.

4.5 Reclamations with regard to deliveries allegedly not made or not made in full must be notified in writing at the latest one day after the receipt of the delivery note. If the customer has not received a delivery note, this deadline commences as from receipt of the invoice. A violation of this obligation does not reduce the customer's right to warranty; however, it does make him liable for compensation and releases us from compensating incurred damage caused by the belated fulfilment. This regulation does not apply to consumers within the meaning of the KSchG [Kundenschutzgesetz = KSchG Austrian law for the protection of the consumer].

5. Offers:

5.1 Our offers are subject to confirmation and do not constitute any obligation to accept the order.

6. Prices:

6.1 If there are any price increases between concluding the contract and the delivery as a result of circumstances which are outside our control, such as recommendations by the Parity Commission, an increase in the cost price, an increase in the manufacturers' price or the wholesale price, due to legal wage increases, ordinance or a collective bargaining agreement or an increase or new introduction of fees or based on escalation clauses, the relevant prices shall be adjusted accordingly (this does not apply to consumer business).

6.2 Prices are stated ex warehouse. Packaging, pallets, transport and the like are additionally charged for.

6.3 If we collect the goods on condition that we levy a charge on the take-back of additionally charged packaging, pallets etc., the customer shall be responsible for properly storing these items until the actual hand-over.

7. Reservation of ownership:

7.1 We retain the title of the object of purchase until the purchase price has been paid in full. In the event of pledging or other utilisation of the object of purchase by a third party, the customer is obliged to point out our right of ownership and to notify us without delay.

7.2 In the event the customer resells the goods subject to a reservation of title, the reservation of title extends to the future revenue or the purchase price demand arising from this transaction. In the event of such re-sale, the customer is obliged to notify this without delay and to keep the revenue separate.

7.3 In the event the goods delivered by us are reworked, processed or combined with other goods, we are entitled to the consequently ensuing co-ownership in the item created through such reworking or processing proportionate to the value of the goods delivered by us to the processed goods at the time of their processing or combining.

8. Payment:

8.1 In the absence of other agreements, payments are due within 14 (fourteen) days net from receipt of invoice.

8.2 In the event of payment arrears, and notwithstanding our other rights, we are entitled to take back the goods, devices and the like which are subject to our reservation of title - without this being deemed equivalent to a withdrawal from the contract.

8.3 In the event that a consumer is in arrears with his payment and we have agreed on contractual interest, we are entitled to charge 5 (five) percent interest on arrears per annum plus the contractual interest. Where no contractual interest has been agreed to, the interest on arrears shall be charged at 13 percent per annum on a quarterly basis.

If an entrepreneur is in arrears with a payment, we are entitled to charge interest and accumulated interest of 13 (thirteen) percent per annum on a quarterly basis. Should there be changes in the money or capital markets which have the effect of a general change in credit interest rates, we are entitled to adjust the agreed interest rate accordingly.

8.4 The defaulting customer is obliged to compensate all judicial and culpably caused extrajudicial costs of the appropriate legal proceedings such as, in particular, dunning fees, fees for the use of a collection agency as well as costs of any attorney we call in.

8.5 Setting off alleged counter-claims by the customer against the purchase price is excluded unless the customer is a consumer and the other contracting party becomes insolvent or the counter-claim is in a legal relationship with the customer's liabilities, legally determined or recognised by us. Unless the customer is a consumer, retention of the purchase price or works compensation in the event of entitled improvement claims is only permissible within the scope of the expenditure required for the improvement.

8.6 Any payments we receive initially settle accumulated interest, interest and ancillary expenses, then the outstanding capital starting with the oldest debt.

8.7 Deliveries and services provided to customers with whom we regularly do business is conducted on the basis of a current account and the reciprocal claims are therefore settled within the current account. Balances are provided with a separate notification.

8.8 Unless anything else has been agreed to in an actual individual case, an interest rate of 13 percent per annum (thirteen percent) shall be applied and charged on a quarterly basis. Should there be changes in the money or capital markets which have the effect of a general change in credit interest rates, we are entitled to adjust the agreed interest rate accordingly (sentence 2 does not apply to consumer business).

8.9 It is expressly noted that a balance can be acknowledged either in writing or verbally as well as tacitly if the customer does not raise any objection to the balance notified by us within a reasonable deadline, however, at the latest within 4 (four) weeks.

8.10 We expressly reserve the right to take the decision not to include individual claims in the existing current account relationship.

9. Warranty

Consumer business is subject to the legal provisions; in all other cases, the following applies:

9.1 We are in any case entitled to exchange defect goods against identical perfect goods within a reasonable deadline or to remove the defect within a reasonable deadline. Thereby, the entitlement to rescind the contract or a price reduction expires.

9.2 As soon as the customer has taken over the goods - however, within 12 hours - he shall examine the goods and notify us in writing of any possible defects a day after he has taken over the goods (date of Email or post stamp). If the customer does not submit the notice of defects in time, he is not entitled to assert any warranty claims. If the customer does not examine the goods and notify the defect within the aforementioned deadline, we are only responsible for consequential damage, such as the consequence of reworking defect goods, if we intentionally caused the defect.

9.3 The onus is on the customer to prove that the goods were defective at the time they were handed over.

9.4 Not included in the warranty are defects which are caused by the customer's incorrect handling of the goods; this also applies for defects which are attributable to material provided by the customer. In particular, we are also not liable for damage attributable to the actions of third parties or chemical influences. The warranty does not include natural wear and tear.

10. Withdrawal from the contract:

10.1 If we are in delivery delay after the acceptance of the contract due to intent or grossly negligent behaviour, the customer is entitled to withdraw from the contract after the fruitless expiry of a reasonable period of grace set in writing. The customer does not have a right of withdrawal in the event the delivery delay was caused by force majeure and a delay due to slight negligence with regards to goods which were to be manufactured or procured based on the customer's specific information; if the customer is a consumer, he is also entitled to withdraw from the contract, however, only after the fruitless expiry of a written period of grace of at least 4 (four) weeks set in writing. If we are unable to provide the delivery or service due to force majeure, or if such provision cannot reasonably be expected of us or is prohibitive, we are entitled to withdraw from the contract. The customer is only entitled to assert claims for damages due to non-fulfilment or delay in the event of a delay based on our intentional or grossly negligent behaviour.

10.2 On the other hand, we are entitled - notwithstanding our other rights - and after granting a reasonable period of grace, to withdraw from the contract in whole or in part; in the event of our withdrawal, we are entitled to attrition costs of 10 percent (ten) of the price of those goods which are attributable to the withdrawal. Asserting further damages remains reserved.

10.3 In the event that the customer stops his payments, institutes insolvency proceedings on his assets or an insolvency application is rejected due to insufficient cost-covering assets or his economic circumstances deteriorate, we are entitled to withdraw from the contract without granting a period of grace. Within the scope of application of the Austrian Insolvency Statute (IO = Insolvenzordnung), the right of withdrawal as a consequence of initiating insolvency proceedings is not considered as agreed.

10.4 We are generally not obliged to take back goods already delivered. If we take back goods as a gesture of goodwill, the customer is in any case charged a handling fee of 10 percent (ten) of the invoice amount, plus the compensation for any possible damage to the goods taken back; such compensation is calculated on the basis of the new value - without consideration given to any possible reduction in the fair value. Should, as a result of taking back the goods, the customer fall below the relevant scale of discount for goods purchased, this will additionally result in a charge-back of originally granted quantity discounts.

11. Liability:

11.1 Our liability for damage caused by slight negligence, with the exclusion of damage to persons, is excluded for consumer business. Irrespective of the liability exclusions in Points 4.5 and 9.2, in all other cases our liability is restricted to damage which arises to the delivery item itself as far as we cannot be blamed for intent or grossly negligent behaviour.

11.2 The customer shall inform us without delay of any damage he becomes aware of which was caused by an item delivered by us; in particular, if he is required by a third party under the title of product liability to compensate for a damage or to disclose his supplier, or otherwise gains knowledge of a production fault in our goods or is himself harmed.

11.3 Asserting liability, information or petitions must be sent to the company's management in writing and include accurate information on the damage, the facts substantiating a liability including the proof that the deliveries and services were performed by us.

12. Address:

The customer shall immediately and expressly inform us of any change of address. Otherwise, written notifications during the normal postal delivery are considered to have been received if they are sent to the last address made known to us.

13. Data processing:

The customer herewith grants us his express approval to process his personal data such as, in particular, his name, address and date of birth which become known or will become known during the course of this business relationship for the purpose of company-related advertising as well as the transfer leaving of such information to directory publishers and direct advertising companies (only as a service provider for own advertising campaigns) and further for the purpose of creditor protection to the Kreditversicherungs-AG Prims.

The customer may revoke his approval given for the transfer of data at any time. This revocation does not affect the underlying transaction.

14. Place of jurisdiction:

The exclusive place of jurisdiction for disputes arising from the business relationship for the customer's actions against us is the in rem competent court of the current seat of our company at the time of the action. For our actions against the customer we are free to choose the in rem competent court at the current seat of the customer as the applicable place of jurisdiction.

15. Choice of law:

Austrian substantive law with the exception of the rules of conflicts of laws shall apply to disputes arising out of the business relationship between the customer and ourselves. The use of the regulations on UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.