

GENERAL CONDITIONS OF SALE AND DELIVERY

1. GENERAL

These general conditions of Sale and Delivery shall be an integral part of all – present and future – sales orders and shall be valid during the continuance of the business relation. Conflicting or deviating conditions of purchase or other reservations made by the Buyer shall not be effective unless the Seller has expressly accepted them in written form. In this case they are exclusively effective for the respective order.

2. OFFERS AND ORDERS

The Seller's offers shall be non-binding with respect to price, quality, delivery time and availability and are in principle based on the INCOTERMS 2000 clause "EXW" in relation to the inquired delivery quantities. The Buyer's orders shall become binding on the Seller – even placed with our agents and representatives – upon receipt by the Buyer of the Seller's written order acknowledgement. Oral agreements and subsequent alterations of contract shall become binding on the Seller upon receipt by the Buyer of the Seller's written confirmation; even abrogating the principle of written form needs to be done in written form to be valid. The property and the exclusive right of use of all drawings, quotations, information, know-how and other technical documentation made available by the Seller to the Buyer remains with the Seller. The Buyer acknowledges the Seller's exclusive copyright. The Buyer shall not disclose to third parties or to the public nor use for advertising or any other purposes related to the contract or any other information obtained directly or indirectly from the Seller, including all information developed by the Buyer on the basis thereof without the Seller's written consent. Buyer's terms and conditions of purchasing are therefore only binding for the Seller, if they are separately and in written form accepted by the Seller. Orders do not become binding unless the Seller sends a written confirmation of order. Even if the Seller delivers without written confirmation, the Buyer cannot rely on this.

3. PLACE OF PERFORMANCE, JURISDICTION AND APPLICABLE LAW

Place of performance and jurisdiction for all disputes arising out or in connection with the present contract shall be WELS. The contractual relation is subject to Austrian Law, and in particular to the provisions of the Austrian Product Liability Law with exclusion of the UNCITRAL Purchasing Law (United Nations Commission on International Trade Law and the related agreements on Contracts dealing with the International Sale of Goods).

4. PRICES

The minimum order value is EURO 200,-. The Seller shall invoice those prices against the Buyer, which are actually enforced at the date of delivery. Prices do not include VAT, packaging and transportation costs. Those and other related charges or fees are invoiced separately by the Seller. The quotation prices are solely based on – referring to the date of quotation – actual raw material prices and surcharges (scrap and alloy surcharge etc.) Is there a price variance in raw material purchase price between the order date and the delivery date, the Seller is entitled to additionally invoice appropriate material surcharges against the Buyer. The Seller is entitled, to raise prices, if there are any unexpected changes in calculation, which are not influenced by the Seller.

5. DELIVERY

In general, delivery periods mentioned by the Seller in price lists, order confirmations or any other document shall be non-binding for the Seller, unless they are separately agreed upon by the Seller in writing. The delivery starts at the earliest with the date of order confirmation, but not earlier than the date, when complete conformity regarding all technical and commercial details of the contract is reached. Committed delivery periods or fixed delivery dates shall be regarded as achieved as soon as the goods leave the WELS site or the readiness for dispatch had been communicated by the Seller to the Buyer. Force Majeure or other unpredictable incidents affecting the Seller or his suppliers, which prevent an on-time delivery, entitle the Seller under exclusion of any claim of the Buyer (especially compensation claims), to extend the delivery period as long as and to the extent the hindrance prevails, or to cancel the contract in total or in part. Strike, lock-out or any other circumstances, which make the delivery considerably difficult or even impossible – concerning either the Seller or one of the suppliers – shall be seen as Force Majeure. Within a period of 14 days, the Buyer is entitled to demand the Seller's statement, whether he will withdraw from the contract or he will supply within a reasonable period of time. In case that there is no statement issued by the Seller within this period, the Buyer is entitled to withdraw from the contract. Further claims, especially compensation for damages with respect to delays in deliveries are excluded. Upon deliveries in due time by the seller, the buyer is bound to fulfil any contractual obligations.

6. PAYMENT

Payments are, unless otherwise agreed in written form, due net within 14 days at 2% cash discount or within 30 days net of date of invoice. The only accepted receipt of payment, is the credit entry on the Seller's account. Terms apply without exception on date of invoice. Initial orders are only accepted by payment in advance. 50% of the proportionate tool costs are charged as down payment when placing the order, 50% are charged on delivery of the initial sample, regarding the agreed terms of payment. In case of default or delayed payment, the Seller shall be entitled to invoice against the Buyer all dunning and collection charges, as well as default interests and charges based on the current interests and any other fees. The Seller reserves the right to accept bills of exchange and cheques, but only subject to their full discharge. The Seller does not assume any liability on accurate sighting, protest and on return in the case of non-reward. All expenses related to the payment and honouring of cheques and bills of exchange, including account interests and note taxes, shall be borne by the Buyer. Payments are always applied to the oldest debt due and to any related claims.

7. RETENTION OF TITLE

Title to the goods remains with the Seller. Manufacturing or alteration is always done for the Seller as a producer, but without obligation for him. When expired, the (co-) ownership of the Seller, the (co-)ownership of the Buyer passes on to the Seller averaged on the invoice value of the good. The Buyer keeps the Seller's (co-)ownership free of charge. Goods, on which the Seller has (co-) ownership are indicated as reservation goods. The Buyer is entitled, to manufacture the reservation goods in proper business process and also to sell them, unless he is in delay. Pledging as collateral or chattel mortgage is not admitted. The debts, which arise because of the resale or any other legal basis on the goods, which are delivered with retention of title, are assigned to the full extent from the Buyer on to the Seller. The Buyer legitimates the Seller irrevocably to collect the debts, which were assigned on to the Seller. Should the Seller request to have an insight in the documents, the Buyer is obligated to provide any information requested by the Seller. At any access of third parties to the goods, on which a reservation of title rests the Buyer will explicitly point out the Seller's reservation of ownership and will inform him immediately. Any costs and damages on the goods, which had been delivered with retention of title, are carried by the Buyer. In case of non-contractual behaviour by the Buyer – especially at delayed payment – the Seller reserves the right to take back the goods, on which a title of reservation rests at the expense of the Buyer respectively to assume Buyer's third party rights of assignment. Redemption or execution on the goods, on which a reservation of title rests, do not entitle the Buyer to withdraw from the contract, unless the legal terms state something different. The Seller is allowed to enter the Buyer's premises or construction sites to mark the goods, whenever he likes to do so.

8. TRANSFER OF RISK

Insofar as the acknowledgement of order does not state anything else, the contract is fulfilled at the Seller's site via readiness for shipment ("EXW"). The applicable INCOTERMS version is the one, which was valid at the date of the contract conclusion. At the latest, on the date, when the goods are to be ready and collected, via dispatch, shipment, communication of readiness for shipment or handover to a freight forwarder, all risks concerning performance and price are transferred to the Buyer, even if there is just a partial shipment or even if the transportation costs are borne by the Seller.

9. GUARANTEE

The period of warranty ends 12 months after the acceptance of the goods by the Buyer. The Buyer always has to prove, that the goods were already faulty at the date of delivery. The Buyer is obligated to inspect the goods immediately on delivery. In case of complaints, the Buyer has to notify those to the Seller immediately, but latest within 7 days after the date of delivery. The complaint has to be done in written form and has to include all details on the extent and kind of the defect. The Buyer is obligated to provide the Seller the opportunity of surveying the corresponding goods, whenever he likes to do so. If the complained goods are processed by the Buyer without previous agreement by the Seller, no guarantee shall be granted by the Seller. In the case that the letter of complaint is not sent in time, or not at all, the goods are seen as accepted. The assertion of guarantee and claim for damages – especially for consequential harms caused by a defect – and also the right to appeal against an error is excluded in those cases. In the case of warrantable complaints, the Seller takes the faulty goods back and delivers goods free of defect. It is up to the Seller to decide, whether he will redeem the goods or grant a discount instead.

10. COMPENSATION

Apart from personal injury, the Seller is only liable for gross negligence. Claims for compensation are subject to a limitation period of 12 months after acknowledgement of damage and injuring party. The Seller is not liable for any damages on goods, which were not part of the contract, production stop, lost profit, loss of use, or any other economic or indirect consequential damage. In the case of claims for compensation, the Seller is only liable for the sum of the order; for any other claims, the maximum liability is limited to the extent of the coverage of the Seller's liability insurance.

11. PRODUCT LIABILITY

Only as far as regulations of the product liability law are binding, they are part of the existing contract. Any claims for compensation, according to the product liability law, which are aimed against the Seller, are excluded. An exception would be, if the fault is grossly negligent and caused by the Seller. This has to be proven by the Buyer.