

# **General Terms of Delivery**

## **of the Austrian Association for the Machine-Building and Steel Construction Industry of 01 January 2002**

The present general terms of delivery have been primarily drafted for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in § 1, paragraph 1, item 2 of the Consumer Protection Act, Federal Law Gazette No. 49/1979, they shall only apply to the extent that they do not conflict with the provisions of the first main section of the aforementioned law.

It is mutually agreed that the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette No. 1988/96, is expressly excluded.

### **1. Introduction**

1.1. Unless the contracting parties have expressly agreed otherwise in writing, the present General Terms of Delivery shall apply.

1.2. The below provisions on the delivery of goods shall also apply mutatis mutandis to performances.

1.3. The Terms of Assembly of the Austrian Association for the Machine-Building and Steel Construction Industry shall additionally apply to assembly projects.

### **2. Making a Contract**

2.1. A contract shall be deemed to have been made if the seller has sent a written order confirmation upon receipt of an order and if there is no evidence that the buyer has opposed it within ten days.

2.2. Seller shall confirm in writing any modifications of and amendments to a contract in order to make these valid. Seller shall be bound by buyer's conditions of purchase only if the seller has accepted them separately.

2.3. In the event that import and/or export licenses or foreign currency permits or similar authorizations are required for the performance of a contract, the party responsible for obtaining such documents shall make every reasonable effort in order to obtain the necessary licenses or permits in due time.

### **3. Drawings and Documents**

3.1. The data on weight, measures, content, prices, performances or alike, as contained in catalogues, brochures, circular letters, advertisements, pictures and price lists, etc. shall only be definitive if the cost estimate and/or order confirmation expressly refers to them.

3.2. Drawing, design drafts, cost estimates, and other technical documents, which may also be part of the cost estimate, as well as samples, catalogues, brochures, pictures and alike shall always remain the intellectual property of the seller. Any use, copying, reproduction, dissemination and transfer to third parties and any publication or presentation thereof may only be affected with the express approval of the owner.

### **4. Packaging**

4.1. Unless other arrangements have been agreed upon:

- a) the listed prices are without packaging;
- b) the goods are packaged according to normal trade practice in order to avoid, under normal transport conditions, any damage to the goods on the way to their agreed destination. The goods are packaged at the buyer's expense and the packaging material will only be taken be if so agreed by the parties.

### **5. Passage of Risk**

5.1. Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).

5.2. Furthermore, the INCOTERMS shall apply in the version valid on the date when a contract is signed.

## **6. Period of Delivery**

6.1. In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates:

- a) the date of the order confirmation;
- b) the date on which the buyer has complied with all technical, commercial and financial preconditions for which the buyer is responsible under the contract;
- c) the date on which the seller has received a payment on account that is due prior to the delivery of the goods, and/or a payment guarantee has been issued or otherwise provided.

6.2. The seller shall have the right to make partial or advance deliveries.

6.3. If a delivery is delayed on account of a circumstance on the seller's part that constitutes a reason for relief according to article 14, a reasonable extension of the period of delivery shall be granted.

6.4. If the seller has caused a delay in delivery, the buyer may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite.

6.5. If the respite according to Article 6.4 is not used due to the seller's negligence, the buyer may withdraw from the contract by means of a written notice regarding all undelivered goods. The same shall apply to delivered goods, which, however, cannot be used appropriately without the outstanding goods. In this event, the buyer shall have the right to be refunded any payments made for the undelivered goods or for the goods that cannot be used. Moreover, in the event that the delay in delivery is due to a gross negligence on the seller's part, the buyer shall be entitled to a refund of any justified expenses that the buyer has had to incur up to the dissolution of the contract and which cannot be used for any further purpose. The buyer shall return any delivered goods to the seller and the goods that cannot be used.

6.6. If the buyer does not accept the goods supplied under the contract in the contractually agreed place or at the contractually agreed time and if the delay is not due to any action or omission on the seller's part, the seller may either demand the performance of the contract or withdraw from the contract, granting a respite. When the goods have been segregated, the seller may store the goods at buyer's cost and risk. The seller shall also be entitled to claim of any justified expenses that the seller had to incur in connection with performing the contract and that are not covered by the payments received.

6.7. Any other claims of the buyer against the seller for the seller's delay than those listed in Article 6 shall be precluded.

## **7. Acceptance test**

7.1. If the buyer wishes to have an acceptance test made, such a test shall be agreed expressly in writing with the seller when entering a contract. Unless otherwise agreed, the acceptance test shall be made at the place of manufacture, or at the place to be indicated by the seller respectively, during the normal working hours of the seller. In this connection, the general practice of the industry in question shall govern the acceptance test. The seller shall inform the buyer in due time of the acceptance test so that the buyer may be present during the test, or may be represented by an authorized representative respectively. If the delivery item proves to be contrary to the contract during the acceptance test, the seller shall remedy any defect immediately and produce the contractual condition of the delivery item. The buyer may demand for the test to be repeated only in cases of a major defect. An acceptance record shall be drawn up following the acceptance test. If the acceptance test has demonstrated that the delivery item has been manufactured according to the contract and operates properly, the two contracting parties shall confirm this at any rate. If the buyer or the buyer's authorized representative is not present during the acceptance test, in spite of having been informed thereof in due time by the seller, only the seller shall sign the acceptance record. In any event, the seller shall send the buyer a copy of the acceptance record, the correctness of which the buyer may not contest, not even in those cases where the buyer or the buyer's authorized representative was unable to sign it for lack of attending the test. Unless otherwise agreed, the seller shall bear the costs for performing the acceptance test. The buyer shall, however, bear any costs incurred by the buyer or the buyer's authorized representative in connection with the acceptance test, such as, for example, travel expenses, per diems or similar expenses.

## **8. Prices**

8.1. Unless otherwise agreed, all prices should be ex works of the seller, without loading.

8.2. The prices shall be based on the costs at the time of the quotation, unless otherwise agreed. In the event that costs change during the period until delivery, these changes shall be in favor, or at the expense of the buyer respectively.

## **9. Payment**

9.1. The payments shall be made in keeping with the agreed conditions of payment. Unless specific conditions of payment have been agreed upon, one third of the price shall be due upon receipt of the order confirmation, one third after half of the delivery period has lapsed, and the rest upon delivery. Irrespective of the foregoing, the value-added tax included in the invoice shall be paid within 30 days after the invoice date, at the latest, in all events.

9.2. The buyer shall not have the right to withhold payments due to warranty claims and any other counter-claims that the seller has not accepted.

9.3. If the buyer on one of the agreed payments or any other performance, the seller may either insist on the performance of the contract or and

- a) postpone compliance with the seller's own obligations until the buyer has paid the arrears in payment or has provided any other performance,
- b) use reasonable extension of the period of delivery,
- c) call for the payment of the full remaining purchase price,
- d) charge interest on arrears, as of the due date, in the amount of 7,5% above the respective base rate of the European Central Bank, unless the buyer can claim a reason for under Article 14 (see Directive 2000/35/EC of June 2000 on combating late payment in commercial transactions), or announce the withdrawal from the contract, granting a reasonable respite.

9.4. In all events, the buyer shall refund to the seller the dunning charges and collection costs which constitute a further damage caused by the delayed performance.

9.5. If the buyer has not made the payment due or provided any other performance within the respite according to 9.3, the seller may withdraw from the contract by means of a written notice. Buyer shall return to the seller, upon the seller's request, any delivered goods and compensate the seller for any reduction in the value of the goods that has occurred, as well as refund to the seller all justified expenses that the seller had to incur in connection with the performance of the contract. Regarding undelivered goods, the seller is entitled to make available to the buyer the compensated parts, or the parts with incipient processing respectively, and ask for a pro-rated part of the sales part.

9.6. The contracting parties agree mutually that the rights and obligations covered by the contract shall not be affected by the introduction of the euro. Payment obligations, especially the established values of the money shall be deemed to have been agreed as soon as the euro has become the only acceptable means of payment. In all events, any conversion will be made on the basis of the officially established exchange rates. It is mutually agreed that the conversion to the euro neither creates a right to terminate, to withdraw from or to contest the contract, nor a claim for damages or modification of the contract.

## **10. Reservation of Ownership**

10.1. The seller shall reserve the ownership in the object sold until the buyer has met all financial obligations. The seller is entitled to document the seller's ownership on the outside of the delivery item. The buyer shall comply with the required formal regulations to safeguard the reservation of ownership. In case of an attachment or any other recourse, the buyer shall be obliged to claim the seller's ownership and to inform the latter without delay.

## **11. Warranty**

11.1. Subject to the below provisions, the seller shall undertake to remedy any defect affecting the fitness for use which is due to a deficiency in design, material or workmanship. The seller shall also be responsible for any defects concerning expressly requested properties.

11.2. The above obligation shall only apply to such defects that appear within a period of one year, when working a one-shift operation, as of the passage of risk, or as of the completed assembly, in case of a delivery with assembly respectively.

11.3. The buyer may claim the present article only if he informs the seller in writing and without a delay of any defects that have appeared. The arrangements on presumption according to § 924 of the Austrian General Civil

Law code are excluded. Once the seller has been informed of the defects in this way, the seller shall - if the defects must be remedied according to the provisions of the present article - at the seller's choice:

- a) rework the defective goods on site;
- b) have the defective goods or the defective parts shipped back for reworking;
- c) replace the defective parts;
- d) replace the defective goods

11.4. If the seller arranges for the defective goods or parts to be returned to the seller for the purpose of reworking or replacement, the buyer shall bear the costs and the risk of the transport, unless otherwise agreed. The re-shipment of the re-worked or replaced goods or parts to the buyer shall be at the seller's costs and risk, unless otherwise agreed.

11.5. The defective goods or parts, which are replaced according to the present article, shall be at the seller's disposal.

11.6. The seller shall only refund any costs for remedying a defect, undertaken by the buyer himself, if the seller has agreed to this procedure in writing.

11.7. The seller's warranty obligation shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. His obligation shall, in particular, not apply to defects that are due to inadequate installation on the part of the buyer or the buyer's representative, inadequate maintenance, inadequate repairs or modifications undertaken by other persons than the seller or the seller's representative without the written agreement of the seller, normal wear.

11.8. The seller shall be liable for those parts of the goods that the seller obtained from subcontractors prescribed by the buyer only to the extent of the seller's own warranty claims vis-à-vis the sub-contractor. If the seller produces items on the basis of the buyer's design data, drawings or models. The seller's liability shall not extend to the accuracy of the design but as to whether the workmanship complies with the buyer's instructions. In such cases, the buyer shall keep the seller harmless and free from any court action, in the event of an infringement of proprietary rights. When accepting repair jobs or reworking or modifying old as well as third-party goods, or when delivering second-hand goods. The seller shall not accept any warranty.

11.9. As of the beginning of the warranty period, the seller shall not accept any liability that extends beyond the scope defined in the present article.

## **12. Liability**

12.1. It is expressly agreed that the seller shall not be liable to the buyer in the event of personal injuries, or for damage to goods that are not the subject of the specific contract, as well as for other damage and loss of profit, unless the circumstances of a specific case reveal that the seller acted with gross negligence. The reversal of the burden of proof according to § 1298 of the Austrian General Civil Law Code is excluded.

12.2. The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, the seller's rules on the handling of the purchased object - especially with regard to any possible inspections - and other instructions given.

12.3. For cases of the seller's minor negligence, the damages are limited to 5% of the order amount, or € 727,000 as a maximum, unless Article 12.1. applies.

12.4. All claims for damages due to defects in deliveries and/or performances must be filed in court within one year after the expiry of the contractually agreed warranty period if the seller does not expressly accept the defect; otherwise all claims become extinct.

## **13. Consequential damage**

13.1. Subject to any provisions of a different effect in the present Terms, the seller's liability vis-à-vis the buyer's shall be precluded for any standstill in production, loss of profit, loss of use, loss of contract or any other economic or indirect consequential damage.

## **14. Reasons of Relief**

14.1. The parties shall be released in part or in total from the timely performance of the contract if they are prevented by events of force majeure. Events of force majeure shall solely be such events that the parties are

unable to foresee and avoid and that are beyond their domain. However, strike and industrial dispute shall be considered as events of force majeure. A buyer affected by an event of force majeure may, however, claim only the existence of force majeure if the buyer informs the seller without delay, at the latest though, within 5 calendar days, about the onset and anticipated end of an obstruction, by sending by registered mail a statement, confirmed by the respective government authority or chamber of commerce of the delivery country respectively, on the reason, the anticipated effects and the duration of the delay. In the event of force majeure, the parties shall make every effort to remove or to mitigate respectively, the difficulties and the anticipated damage, as well as to keep the respectively other party continuously informed thereof; otherwise they shall be liable to pay damages to the respectively other party. Deadlines or dates that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or, if applicable, by a period to be determined by mutual consent. If a circumstance of force majeure prevails by more than four weeks, the buyer and the seller shall seek a solution for handling the technicalities of its effects by means of negotiations. If no solution can be reached by mutual consent, the seller may withdraw from the contract in part or in total.

#### **15. Data protection**

15.1. The seller shall have the right to store, to communicate, to process and to delete person-related data of the buyer in the framework of their business relations.

15.2. The parties shall undertake to keep absolutely confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.

#### **16. Place of Jurisdiction, Applicable Law, Place of Performance, Language**

16.1. The place of jurisdiction for all disputes arising directly or indirectly from a contract shall be the relevant Austrian court with competences for the seller's principal place of business. The seller may, however, also resort to the court with jurisdiction for the buyer.

16.2. The parties may agree that an arbitral tribunal has jurisdiction.

16.3. Contracts shall be subject to Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980, Federal Law Gazette No. 1988/96

16.4. The seller's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in a different place.

16.5. In the event of disputes arising from present certified translation of the contract, the German text shall prevail.