

General terms and conditions for heat treatment

1st of June 1993, in the version of 20th November 2002

1. Our deliveries, goods and services - also subsequent orders during active business relations - follow the general terms and conditions in their respectively applicable version. All mutual explanations require a written form. Business conditions of the customer or varying counter confirmations do not count.
2. Our offers count without obligation. All prices are net prices plus value added tax (VAT) at the respectively used rate, as long as there is no tax exemption according to the Value Added Tax Act. The prices are always understood ex works, costs for packaging and shipment, surcharges from changes in the prices of precursors and raw materials are added, as well as changes in exchange rate parities. If the prices are agreed on free point of reception, free receiving station or free construction site, they operate under taking the full loads as a basis and with exploitation of the full load weight. The customer is resided with the prompt and appropriate unloading. Latency times are on the expense of the customer.
3. If a work order is received without prior price request, our general price list for heat treatment work in its respectively valid version comes into operation.
4. In the exceptional case that the treated component is delivered without in time payment of the wage, the bill has to be paid within 14 days the latest, counting from billing date, without any subtraction, also in the case of arising claim. The acceptance of changes and checks takes place only after explicit agreement.
5. In the event of default, we charge default interests in the height of at least eight percentage points above the base interest rate, plus VAT at the respectively operating rate. Thereby the base rate, which operates on the last calendar day of a half year, is influential for the next half a year.
6. We are not obliged to fulfil the contract, as long as the customer carries out his/her duties according to the agreement, especially when the customer does not pay due invoices. Offsetting from the customer's side with other undisputed or legal recognized claims of the customer, as well as the right of retention and other rights to withhold performance are impossible.
7. If the customer is in partly or complete default of payment, an exchange or check is not redeemed or we obtain information that the granting of a loan appears critical, or if an order is placed on the opening of an insolvency proceeding or the customer is making a extrajudicial scheme of arrangement to his/her creditors, we have the right to claim the immediate payment of all open items, even if they are not due yet, or deferred payment, and charge prepayment for all pending deliveries, goods and services. Furthermore, we have the right to forbid the resale and processing of the delivered goods, as well as to claim their reassignment to us, free of charge.
8. For the content and extent of our obligations, only our written order acknowledgement is authoritative, as far as any such is made out.
9. Terms of delivery are calculated a tour site, for lack of other agreements on date of the proper receiving of goods, in the case of necessary clarification of questions according the treatment, please address yourself to us. The terms of delivery are fulfilled if the goods are handed over to shipping before expiration of time, or reported to the customer as ready to collect. We are entitled to perform part deliveries.
10. Force majeure events like traffic disruption, vehicular and energy scarcity, breakdown of any kind, strike and lockout at the own plant or any for the fulfillment coherent plants, or hindrances caused by orders of authorities or sanctions of international authorities release us from the fulfillment of the agreed terms of deliveries, but without the customer's right to drive claims of any kind.
11. If the conditions, under which the contract formation took place, have changed in a way that it can be assumed that the formation would not have taken place under the changed conditions or would have taken place under different terms, we are entitled to refuse the fulfillment of the contract or individual items of the contract, especially payment in a different currency, demand changes in terms of delivery under operation of a escalator clause, etc.
12. If the customer refuses the acceptance of goods, he has to pay all costs of transport and storing, regardless of his duty of payment. Work compensation is due immediately in the case of default in acceptance. According to our choice we are also entitled to claim compensation because of non-fulfillment instead. Defects, which do not essentially affect the ordinary use of the tool, do not entitle the customer to refuse the acceptance.

13. Except when otherwise stipulated, the component to be processed has to be delivered to our site free of expense and has to be collected at our site for cash only. If a delivery is desired by the customer, the delivery charges as well as the risk of loss or damaging at the customer's charge. We are entitled as well in this case to collect the delivery charges as well as our due works compensation by means of cash on delivery, when sending the goods with mail or train. If not otherwise agreed on, the loading and shipping happens at our discretion. The good receiving and outgoing goods is monitored according to weight and only by request to number of items as well.
14. To the work pieces delivered to us a delivery note has to be attached, which includes the following data:
 - a. Number of items, type of items, net weight
 - b. Information about the used steel (steel brand, material number, analysis) and the desired process after the standards of ÖNORMEN, DIN- or ISO.
 - c. Information about the expected consistency of artificial aging respectively the expected hardness of the steel
 - d. For hardness values the information from the test method and test body as well as the acceptable tolerance
 - e. For surface heat treatment processes, information about the desired depth of hardness in due consideration of a possible subsequent mechanical treatment (not referring to diameter)
 - f. Information about mechanical and thermic pre- and post-processing as well as scheduled operating conditions of the finished component, as long as it is of importance for the heat treatment.
 - g. At partial heat treatment clearly indicated information about the retainable surface or appropriate drawings
 - h. Safety components have to be defined as such in written form in advance to placing of order
15. If this information is missing, if it is incomplete or not feasible with our heat treatment facilities, we are entitled to refuse the fulfillment of the order or perform a heat treatment on the customers risk at the best of our judgment, for the result of which we are not adherent, so that in this case warranty claims and compensation claims are impossible. Not on the delivery note, but in separate correspondence or verbally made statements are not taken into account because of operational reasons.
16. The treated component is tested via samples before leaving our company. Any further investigation is done only because of specific written acknowledgement and at extra cost. This final clearance at our site does not release the customer from his duty of receiving inspection.
17. We do not undertake responsibility for loss or damage of the provided drawings, prototypes, exemplars, forging dies and similar devices and cover insurance for this only at the explicit order and at charge of the customer.
18. The customer has to indemnify us and hold us harmless, if through the accomplishment of the order a particular quality or miscellaneous features or through the use of the provided drawings, prototypes, exemplars, forging dies and similar devices, trademark rights, especially patent-, trademark-, and copyright rights are violated.
19. The implementation regulations of an order which was accepted by us can only be changed mutually and need our written approval to come into action.
20. As long as no special packing was explicitly agreed on, the original containers of the provided goods for the heat treatment are used as packaging. Additional packaging efforts, to avoid transport damages, are charged on the debit of the customer.
21. The risk is in any case – also at carriage free delivery or services delivered free – is shifted to the customer at the moment when the deliverable leaves our site or final deliveries. If the shipping or delivery is delayed on the customer's request or because of any other reasons, which we are not responsible for, the risk of readiness for dispatch is shifted to the customer. We determine the type and route of shipment and the packaging. Increasing of the freight rates between the contract formation and shipping can be brought to the customer's account separately.
22. After realization of an at best agreed acceptance of goods, the reproof if defects, which should have been endeavored, impossible. This applies as well, if the customer did receive our factory acceptance test testimonials under abandonment of the inspection. If the acceptance does not take place after announcement of the readiness for acceptance, not in time, or not completely, the customer gets into default of acceptance.
23. Claims have to be indicated clearly specified and immediately. If the claim does not ensue appropriately, all warranty claims, compensation claims and other claims impossible because of deficiency. The customer has to proof within the defects liability period that the deficiency did

already exist at the time of delivery. The customer has to ensure that the goods, if procurable, are still in the same shape as during the delivery.

24. Each claim has to be proven by the forwarding of work pieces respectively samples. We are entitled to perform material testing, which, in circumstances, require the destruction of the work piece. If the test conducted by us reveals that the defect lies in the sphere of the customer, he/she has to cover the costs of the material testing. At the use of post-treatments on the faulty work piece, which have not been approved by us, our seller's warranty expires.
25. For defects from our wage works, we safeguard within three months from delivery in the form that, according to our choice, we either improve or replace those work pieces free of charge, which defects laying on our charge are proved irreproachably, which eliminate the usability of the work piece. We safeguard only not exceeding the work compensation, which had to be respectively is paid (aliquot) for the justly queried and presented pieces.
26. If a post-treatment is not possible, we will conduct the works as provided in the contract at the alternative material provided by the customer, free of charge. If the improvement or compensation delivery fails, the customer has the choice to alter or reduce. Merchantable or minor or technically unavoidable variations in quality, form, dimensional stability, color, weight or equipment do not count as defects and can therefore not be queried. The same applies to prototypes and samples. Warranty claims from the customer are impossible as well upon expiry of a period of three months, if the customer himself safeguards his consumers.
27. Each warranty is excluded, if the customer did not provide proper material or if the treated work piece was not used by the customer according to its quality strings. The adequate entrance test of the provided materials is not made by us.
28. The work piece to be processed is treated by us with the highest possible caution and with the latest media; With this in view, because due to the metallurgical state of the provided work piece even at perfect and careful treatment warping, crack formation and fractures during cold and hot straightening, which proceed from so called predetermined breaking points like notches, grooves and sharp-edged transitions, cannot be excluded, any warranty or liability is waived on our part, since the consequences mentioned above are attributable to the state of the delivered work piece. The same holds true for the hardship, surface finish and depth of hardness of the metallurgic state of the work piece, which we cannot influence.
29. In the case of reworking at our site, an appropriate time limit for this extra work must be granted. Journey there and back are on the customer's charge. If reworking is necessary without any fault from our part, the agreed work compensation has to be paid by the customer separately. The agreed work compensation needs to be paid from the customer as well, if it becomes apparent not until the treatment, that the traits required in the order are not obtainable.
30. Seller's warranties do not come into operation, if the defect is based on ordinary attrition, inappropriate handling, faulty maintenance, abnormal environmental influences or transport damage. Furthermore, each warranty is foreclosed if our goods are mixed with other goods, which were not sourced by us or we did not recommend their use.
31. A liability pledge about the event of a heat treatment requires a chargeable, beforehand ordered destructive examination at the part itself, whereas it is assumed that the delivered work pieces math the reference sample.
32. Regulations made by the customer regarding a minimum quantity of the production output are only deemed as concerted, if we deliver an explicit written statement, in which the undertaken amount of semi-finished goods, the minimum quantity, and the surcharge, which needs to be stipulated in cases at all events, are included. Basically, with mass-production items and small parts, procedural losses have to be taken into account, so that compensation claims and price reduction claims for such losses are excluded up to 5%.
33. Furthermore excluded are compensation claims because of minor fault, moreover because of negligent or grossly negligent violation of sub contractual duties, especially duty of consulting and duty to inform. Moreover, the compensation of an at all events occurred collateral harm or consequential harm caused by a defect or compensation of lost profit is excluded. Indemnity is in each case limited with the height of the work compensation, which has been respectively is paid (aliquot) for the justly queried and presented parts. Information about possibilities in treatment and application of our goods, technical consulting and other statements about applicability and utilization, weight, dimensions, shapes, colors, performance and appearance are without any commitment.

34. In the case that the customer is being held liable within the framework of product liability, he/she expressly relinquishes any recourse. If the goods are sold to another entrepreneur, the customer is obliged to transfer the disclaimer mentioned above with the duty of transference as well. In the case of non-transference, the customer is obliged to indemnify and hold harmless and to refund all costs. We do not guarantee that the products (the goods we delivered), which we flawlessly forwarded to the customer, are flawless for the purpose of the product liability law also as parts in the products produced by the customer or his purchasers. The customer is obliged to respect the manual, warning notices and other performance of the product as well as forbear any inappropriate tampering at the product, if it is used or forwarded.
35. The customer allows us along with the acceptance of the primary material for the treatment a right of lien on the primary material as well as the work pieces made from it. The pawned objects in our property serve to secure all our claims against the customer, also from other business cases. For our right of lien, the terms of the code of commercial law on the legal rights of lien are in force. After maturity and ensued reminder we are entitled at any time to sell the pawned objects in pursuance of § 368 HGB and Art. 8 Nr. 14 4. EVHGB, after announcement to the purchaser.
36. In the case of ineffectiveness or inapplicability of individual terms of these "general terms and conditions", the remaining terms stay unaffected; the same applies in the case that only single terms are changed mutually in written form in a specific case, whereas it is put down explicitly that an unique rectification remains restricted to this case and ipso facto does not come into operation for future business.
37. Place of fulfillment for our supplies and goods and services is our warehouse respectively factory site. Place of fulfillment for the duty of payment of the customer, our company headquarters is stipulated. The court cognizant for our company headquarters is agreed upon as sole legal domicile. Nevertheless we are entitled, according to our choice, to suit the customer at his advocate legal domicile. The customer is obliged to substitute all costs resulting from the operation of our charges through reminders, collection attempts and similar sanctions, as well as pre-procedural costs promptly after announcement. The Incoterms 2000 and the Austrian law are in force. The application of the UN Convention on Contracts for the International Sale of Goods, (CISG), BGBl. 1988/96, is excluded.