general terms and conditions

§ 1 general – scope

1. Our General Terms and Conditions apply exclusively to the processing of this contract. Conflicting conditions of the buyer that deviate from our sales conditions are not recognised, unless we have agreed to them in writing. Remittance or acceptance of our invoices shall in any event be deemed to be an order confirmation, or an acceptance of the order confirmation.
2. Any agreements between us and the buyer that differ from these terms and conditions and that are entered into for the purpose of executing the contract must be in writing in order to be valid. Any statements made by any of our employees that deviate from these terms and conditions must be made in writing to be legally binding.
3. Our terms and conditions also apply to future business transactions with the buyer, including and in particular transactions effected after the fact by telephone, in writing or by fax on so-called „internal order forms" of the buyer. Our terms and conditions also apply if we execute a delivery without any reservations in the knowledge that the customer's terms contradict our terms and conditions or deviate from them.
4. Our offers and terms of delivery are subject to change and do not become legally binding until we receive a written order confirmation.

§ 2 prices – terms of payment

1. If after placement of an order the price of materials goes up for reasons beyond our control or if (collectively agreed) wages increase we have the right to raise prices without prior notification.
2. Value-added tax is not included in our prices. It must be added separately in the amount required by the law on the day the invoice is issued and paid to us by the buyer.
3. The supplier's quantity tolerances (typically ± 10%) apply to merchandise called off by us from the supplier for the customer.
4. Unless otherwise agreed, our invoices are payable within 10 days from the invoice date, net without a discount or deduction. Payments by bill of exchange require our express written permission, are not eligible for a discount, and do not extend the due date of the invoice.
5. The application of set-offs by the buyer is not permitted, unless the set-offs have been established by law or approved by us in writing. The buyer also does not have a right of retention for set-offs.
6. Payments made by the buyer are applied first to the costs, then to the interest and lastly to any capital still due. If there are several outstanding bills for the same buyer we have the right to decide to which debt a payment is applied first.

§ 3 type and time of delivery

1. Our adherence to the agreed delivery time presupposes clarification of all details of execution. We will, of course, make every effort to meet the agreed delivery deadline. If we fail to meet the agreed delivery date the buyer is obligated to grant us a grace period of at least 4 weeks in writing. If delivery is made within the stipulated grace period the order is deemed to have been fulfilled on time. The buyer's right to withdraw due to lack of timely performance does not start until after the deadline for fulfilling the contract has expired and providing that a written reminder has been sent and the required grace period of at least 4 weeks granted in this reminder has passed.
2. We are entitled to early delivery before the agreed delivery date. The buyer is obligated to accept goods delivered before the agreed delivery date. Unless other arrangements have been made in writing, the buyer is also obligated to accept fulfilment in the form of partial deliveries. Transactions at a fixed date can in no way be made legally binding for us, even if our representative has made a statement to the contrary.
3. If we are prevented from fulfilling our obligation by unforeseeable and exceptional events that we are unable to avert despite taking every reasonable care (e.g., business disruptions, intervention by the authorities, war, embargoes, riots, lockouts, delays in the delivery of essential raw materials or construction materials, Acts of God, etc.), regardless of whether they happen to us or to a supplier, the agreed delivery deadline is extended by the duration of the adverse event. If the above-mentioned circumstances prevent the delivery or service altogether we shall be released from our delivery commitment. We will, however, notify the buyer at once of an event that will prevent fulfilment.
4. If the events listed in the preceding paragraph lead to an extension of the delivery deadline or to a release of our delivery commitment the buyer is not entitled to file any claims for compensation against us. If the obstruction lasts longer than 3 months the buyer is entitled to withdraw from the contract with respect to the part that has not yet been fulfilled after granting a suitable grace period.
5. If we are responsible for defaulting on the fulfilment of a contract, we are not liable to the buyer or to third parties for punitive damages as long as the default is only caused by slight negligence on our part.
6. Unless stated otherwise in the order confirmation delivery shall be „ex works", and the risk of accidental damage or destruction of the goods is transferred to the buyer as soon as the goods ordered are handed over to the freight forwarder.
7. If requested by the buyer we will insure the goods for transport at the buyer's expense. The buyer bears the costs of packaging without the right to return it. C.O.D. shipments must be accepted immediately upon notification.
8. If special tools have to be made for a customer order the costs shall be borne by the customer in the amount stipulated. The customer does not acquire ownership of these tools.
9. If the buyer defaults in acceptance or violates other cooperation duties we have the right to claim the loss suffered by us, including any additional expenditures, from the buyer. In this case the risk of accidental damage or accidental destruction or degradation of the goods is transferred to the buyer at the time of the default.

§ 4 defects – warranty – damages

1. We must be notified of any obvious defects, regardless of their nature, either in writing or by telex immediately upon receipt of the goods, otherwise the defects shall be deemed to have been accepted. For goods purchased by us from a third party we are liable only within the scope of the warranty and compensation claims that we are entitled to bring against and recover from our supplier.
2. If we are responsible for any defects of a purchased item we have the right to either remedy the defect or replace the item. We must be granted a suitable time limit of at least 4 weeks to do so. If we are unwilling or unable to remedy the defect or replace the item, the buyer has the right to request a price reduction or, if applicable conditions are met, to rescind the contract.
3. Customary or minor, technically unavoidable deviations in quality, colour, width, length, features or design do not constitute a defect, therefore they do not justify a warranty or compensation claim.
4. If the buyer makes a claim against us as a result of a bad delivery the buyer is only entitled to withhold the portion of the claim that is required to remedy an actual defect or that equals the price reduction to which the buyer is actually entitled.
5. If the buyer files a claim under the product liability law the buyer is obligated to indemnify and hold us harmless if damage is caused by product defects that were known to, or should have been known to, the buyer. Claims against us as a result of positive violation of a contractual duty, culpa in contrahendo, tort and property damage under the product liability law are excluded. Within the scope of the above-mentioned limitations of liability we are furthermore only liable for damages caused intentionally or by gross negligence. If our liability is excluded or limited under the above-mentioned provisions, the exclusion or limit also applies to the personal liability of our employees, staff, representatives and vicarious agents.

§ 5 default

1. The buyer shall be in default without the need for a special reminder or notification if the buyer misses an agreed due date. In that case all stipulated due dates – including for any current acceptances – shall be invalidated. Subject to the assertion of further claims, if the buyer defaults on a payment we are entitled to charge default interest on the outstanding amount (plus any costs and accompanying charges) at the agreed rate of 1% per month, or request reimbursement for the potentially higher interest on credits plus interest paid on overdrafts in accordance with banking procedures and for the value-added tax on the interest. Notwithstanding the above we are also entitled to demand immediate payment of the entire outstanding balance (including additional claims) as well as prepayment of all orders placed, but not yet delivered by us, if the buyer defaults on any agreed partial payments. If this demand is not met we are entitled to rescind the contract after granting a grace period of 14 days and to claim damages for non-performance. In the event of a late payment we are entitled to charge a flat administration fee of EUR 11.00 per arrears letter written; the buyer also bears all expenses of collection and lawyer's fees in connection with an out-of-court enforcement of our claim.
2. We are not obligated to make any further deliveries to the buyer under any existing contract until all outstanding invoices have been paid in full, including interest and costs.
3. If the buyer is or was in default of an outstanding payment, or if the buyer's financial circumstances deteriorate such that the on-time payment of additional deliveries appears to be in jeopardy, we have the right to request cash payment for any outstanding deliveries from any existing contract before we deliver the goods. In those cases we also have the right to request cash on delivery for all shipments. The resulting costs are borne by the buyer. If deliveries in those cases are not made as COD deliveries the goods shall be made available and invoiced at our company, which renders the payment due.
4. The buyer acknowledges and agrees that all of our invoices, including invoices not yet due and deferred payments, become due immediately in the event of financial difficulties, especially late payments, presentation of bad checks, bill protests and the like.

§ 6 cancellation

1. If any of the circumstances listed in § 5 occur, and especially in the event of late payments or a deterioration of the buyer's financial circumstances that jeopardizes the on-time payment of additional deliveries, and so on, we have the right to either insist on acceptance and contract fulfilment or to rescind the contract. In the event of a rescission we have the right to charge the buyer a cancellation fee of 30% of the gross invoice amount as liquidated damages. This cancellation fee (contractual penalty) is not subject to the court's right to reduce or abate a fine. If the buyer in turn wrongfully rescinds the contract we have the right to charge a cancellation fee in the same amount.

§ 7 reservation of ownership

1. We expressly reserve ownership of the goods until they have been paid in full. If the buyer is in breach of contract, especially in the event of a late payment, we have the right to take back the goods, and the buyer is obligated at our unilateral request to surrender the items for which we have reserved ownership. Taking back the goods does not constitute a withdrawal from the contract on our part, unless we have specifically said so in writing. Seizure of the goods by us does not constitute a withdrawal on our part or a waiver of our agreed reservation of ownership. We are entitled to dispose of the goods we have taken back at any time; the earnings from the disposal – less reasonable disposal costs – shall be credited against the buyer's liability.

2. The buyer is obligated to treat the object of purchase with care; in particular, the buyer is obligated to take out adequate insurance at its replacement value against fire, water and theft. If damage occurs, the insurance benefit shall be assigned to us up to the invoice amount due and payable to us. In the event of damage the buyer is obligated to inform the insurer immediately of the assignment to us.
3. The buyer must notify us immediately and in writing of any attachment or other third-party intervention so that we can take legal action pursuant to § 37 of the EO (Austrian enforcement order). Insofar as we are not reimbursed by the third party for the out-of-court and legal costs incurred by asserting our claim to the attached goods the buyer is liable for the replacement of the out-of-court and legal costs incurred by us.
4. The buyer has the right to resell the object of purchase in the normal course of business; however, the buyer instantly assigns to us all claims in the amount of the invoice (including VAT) that result from the sale to the buyer's customers or third parties, regardless of whether the object of purchase is resold with or without processing. The buyer shall remain authorized to collect this claim even after assignment. Our power to collect the claim ourselves shall remain unaffected, however, we undertake not to collect the claim as long as the buyer meets its payment obligations with the collected revenues, is not in default, and, in particular, if no request to open insolvency proceedings has been made or no bankruptcy has been declared. Should that be the case we are entitled to ask the buyer to disclose to us the assigned claims and the debtors, supply all information needed for collection of the debt, hand over all corresponding documents and notify the debtors (third parties) of the assignment. An absolute covenant against assignment is agreed for all claims resulting from the resale or processing of our goods or of a processed product of our goods.
5. Any processing or alteration of the object of purchase by the buyer is always carried out on our behalf. If the purchased object is processed with other articles that do not belong to us we automatically acquire joint ownership of the new article in the proportion of the value of the purchased object to the other processed articles at the time of processing. If the goods or products made with our goods are disposed of, and especially if the goods or products are sold, the reservation of ownership extends to the resulting claims of the customer or a third party or to the proceeds gained. Apart from that, what applies to objects of purchase delivered under reservation of ownership also applies to the article created by processing.

§ 8 place of jurisdiction – place of fulfilment

1. The city of Salzburg is agreed to be the place of jurisdiction for all civil disputes arising from or connected with this contract as well as for all subsequent contracts. We remain free to use any other place of jurisdiction with different legal terms. Unless otherwise stipulated in our order confirmation it is agreed that the place of fulfilment is A-5164 Seeham and that Austrian law applies exclusively to all of our business cases.

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