

# GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY

## EISENWERK SULZAU - WERFEN, R. & E. WEINBERGER AKTIENGESELLSCHAFT

1. **Scope of Application and Legal Effectiveness:**
  - 1.1 Any and all legal relations between us and the customer shall be governed by the terms and conditions set forth below ("General Terms and Conditions"). The version in force at the time of the signing of the contract shall be the relevant version.
  - 1.2 Any amendment to and modification of, or any agreement deviating from, these General Terms and Conditions shall only be valid if expressly agreed to by us by means of a written confirmation duly signed by us.
  - 1.3 Our General Terms and Conditions shall prevail also in case of any general business and/or purchase conditions of the customer, even if we do not specifically object to any contradicting provisions therein.
2. **Offer and Signing of Contract:**
  - 2.1 Our offers are subject to change without notice and are not binding on us. As a matter of principle, our offers are executed in written form and will be valid for the time specified therein, unless explicitly agreed otherwise in writing.
  - 2.2 Upon placing its order, the customer bindingly declares its acceptance of the contract. In the event that an obvious error in calculation upon submission of the offer becomes apparent, we will notify the customer thereof and correct such error by mutual agreement. We are entitled to reject the customer's order, for example, as a result of our credit assessment of the customer.
  - 2.3 The contract will be deemed concluded only once we have sent (also via fax or e-mail) a written declaration of acceptance in the form of an acknowledgement of order.
  - 2.4 Any and all information (including pictures, drawings, weights, and measurements) that may be contained in brochures, folders and the like shall constitute approximations usual in the line of business unless such information is explicitly declared to be binding.
3. **Provision of Supplies, Delivery Periods and Delivery Dates:**
  - 3.1 The provision of supplies/services, the delivery periods and the delivery or call dates will, as a rule, be agreed upon in the declaration of acceptance (acknowledgement of order). The delivery period will commence upon receipt by the customer of our acknowledgement of order, but not before we have received the information to be furnished by the customer. If the customer fails to fully comply with any of its contractual obligations, including without limitation, if the customer - contrary to the agreement, if any - fails to open a letter of credit or to furnish a payment guarantee, bond or letter of comfort, or if the customer fails to supply or meet in advance any other technical or commercial details or conditions that must be supplied or met, as the case may be, the running of the delivery period shall be suspended until the customer has met any and all of its contractual obligations. The preceding clause shall, however, not affect our right to claim compensation from the customer for any expenses incurred by us as a result of such delay.
  - 3.2 Part shipments by us are permissible. As a rule, each part shipment will be deemed a separate transaction.
  - 3.3 Upon our timely dispatch of a notice that the goods are ready for dispatch (notice requesting acceptance of delivery [*Anzeige zur Abnahme*]), the delivery period will be deemed complied with even if the actual shipment is prevented or cannot be made in full or within the stipulated period, without any fault on our part. If the customer does not promptly call any goods declared by us to be ready for dispatch, such goods will be stored at our discretion, but always for the account and at the risk of the customer, and will be charged as if delivered (see also Section 14).
  - 3.4 If the customer fails to accept the goods delivered as per contractual agreement at the agreed place and/or date and/or if the delay has not been caused by us, we may either request prompt payment or withdraw from the contract by setting a grace period for acceptance. Any default in acceptance on the customer's part will have the consequences set forth in Section 14.
  - 3.5 In case of late delivery, the customer does not have any claims whatsoever against us for damages or lost profit or for consequential damage.
  - 3.6 In the event of contracts for delivery on call, the customer is obligated to give us written notice of the contemplated call quantities at least 4 months prior to the agreed delivery date; any such quantities indicated shall be binding on the customer.
4. **Handing Over/Taking Over and Acceptance:**
  - 4.1 As a rule, it is agreed that the place of performance for delivery by us is "ex works" (INCOTERMS 2000). The risk shall pass at the time defined in the INCOTERMS 2000, irrespective of any work or services to be performed or rendered, respectively, by us, e.g. installation or assembly.
  - 4.2 If the customer wishes an acceptance test, such test shall be specifically agreed with us in writing upon signing of the contract. Unless otherwise agreed, such acceptance test will be performed at the place of manufacture and/or at any other place to be designated by us, during our regular working hours. The acceptance test will follow ordinary acceptance test procedures.
5. **Purchase Price:**
  - 5.1 The purchase price is quoted net without any deduction pursuant to our acknowledgement of order, ex works, plus packaging, freight, cost of placing goods in readiness for transport and insurance, unless agreed otherwise in the acknowledgement of order.
  - 5.2 If the customer has its registered office outside of Austria, the customer is obligated to comply with the import turnover tax regulations and provisions of the European Union. Such obligation includes the duty to advise us, without a separate request being required, of the VAT identification number and of the EORI number, to the extent available.
  - 5.3 If - following the signing of the contract - order-related cost units (such as wages and salaries, costs of materials and/or energy) should change considerably and if such changes have not been foreseeable, we will promptly notify the customer and negotiate an adjustment of the prices. We are entitled to demand reimbursement of any and all justified extra efforts and costs which we have necessarily incurred in performing the contract and which are not included in the payments received by then (purchase price). This shall not affect any rights and claims we have *vis-à-vis* the customer (see Section 3.4).
6. **Payment, Due Date, Consequences of Late Payment:**
  - 6.1 It is understood and agreed upon that the place of performance for payments to us is Tenneck, Austria.
  - 6.2 Our invoices are due and payable upon receipt, without any deduction, unless agreed otherwise. Provided that we have explicitly agreed thereto in advance, we will accept discountable bills of exchange, if all taxes and charges payable thereon have been properly paid, but credit to the customer's debt will be made only subject to actual receipt of the funds, less expenses and charges, with the value date being the date when we can actually access the funds. The same procedure shall apply to checks.
  - 6.3 Payments will be deemed to have been made at the date at which we can access the moneys in the agreed currency.
  - 6.4 In the event of late payment, it is understood and agreed upon that in case of payments in Euro or in US dollars, default interest shall amount to 8% p.a. above Euribor and Libor, respectively. In addition, we reserve the right to claim any other damage or loss suffered by us that has been caused by the customer. The customer is obligated to reimburse us for any and all costs and expenses incurred by us in collecting any amounts due to us; this shall include, without limitation, dunning and collection charges, costs incurred in research, investigations, inquiries and the costs of any legal counsel retained by us as well as any other costs incurred in appropriately enforcing our rights and claims.
  - 6.5 Unless specifically earmarked, payments will be applied to the oldest open debt. In every single debt, payments will be applied first to the costs, then to interest and finally to the principal.
  - 6.6 If the customer fails to comply with the agreed payment conditions and/or if circumstances arise which give rise to doubts as to the customer's creditworthiness, we are furthermore entitled to accelerate any and all amounts owing to us from the customer, to withdraw from all pending delivery contracts and to demand damages for non-performance.  
The provisions of the preceding clause shall not affect our right to request damages and/or reimbursement of any and all expenses already incurred by us in connection with the contracts, irrespective of any fault on the customer's part.
  - 6.7 The exercising of any such rights does not give rise to any liabilities on our part *vis-à-vis* the customer, in particular the customer shall not have any damage claims against us on account thereof. Nor does the customer have the right to set off any counterclaims against the agreed purchase price or to retain any payments.
7. **Third-party Products and/or Products Supplied by the Customer:**
  - 7.1 If it has been contractually agreed that the customer shall supply third-party products, the customer shall be liable for the timely delivery of such products to us in the stipulated quality and quantity. As regards damage claims and claims for factual faults, if any, by the customer, all third-party products shall be subject to the same rules and regulations as the contractual products proper (see in this connection Sections 11, 12, and 13). If third-party products are not delivered to us in due time prior to the contractually stipulated delivery date, such delivery date shall be postponed and we cannot be held liable for any consequences that may have arisen or may arise on account of the delay (see in this connection Section 3.1). The customer will be advised thereof in due time.
  - 7.2 We cannot be held liable for the loss, destruction or deterioration of third-party products and/or products supplied by the customer as a result of Force Majeure (see in this connection Section 10).
8. **Retention of Title:**
  - 8.1 The products sold (goods subject to retention of title) shall remain our property until full payment of the purchase price as well as any and all of our ancillary claims, including, without limitation, interest and costs.
  - 8.2 As long as title to the goods subject to retention of title remains with us, the customer is obligated to properly store such products and have them insured at its own cost, with the benefits assigned to us, against loss, destruction and deterioration, fire and theft, damage from storage and damage due to water. The customer may not re-sell, pledge, or transfer by way of security, all or part of the delivered products, except with our written approval.
  - 8.3 If the customer acts in violation of the contract, in particular if the customer defaults in payment, we have the right to withdraw from the contract and/or demand the return of the goods that are subject to retention of title. The invoking of our right of retention of title by taking back or levying

execution on the goods that are subject to retention of title can be deemed a withdrawal from the contract only if such legal consequence was specifically declared by us. If we invoke our right of retention of title, the customer herewith authorizes and empowers us to enter its premises and to dismantle and remove and/or collect the goods that are subject to retention of title.

**9. Industrial and Intellectual Property Rights:**

- 9.1 The customer herewith agrees to unconditionally acknowledge and accept all our patent rights, trademarks, copyrights, and design rights relating to our products.
- 9.2 Any documents made available by us may neither be copied nor made available to third parties, except with our approval. We may at any time request the return of such documents without having to specify any reasons.
- 9.3 In the event that the customer becomes aware of any infringement of such rights (Section 9.1) by third parties, it shall promptly notify us thereof in detail and provide any and all reasonable assistance in asserting and enforcing our rights.
- 9.4 If we make a product on the basis of design information, drawings, models, patterns or other specifications furnished by the customer and/or, we are held liable by any third party on account of any infringement of third party patent rights, trademarks, copyrights and rights to designs that may have occurred, the customer shall fully indemnify and hold us harmless from and against any loss or damage suffered or claims arising in such respect and shall, in addition, assist us in any way in the defense of our rights.

**10. Force Majeure:**

- 10.1 Events of force majeure entitle us to postpone the delivery for the duration of the event of force majeure and for a subsequent reasonable start-up period or to withdraw from the contract, be it in full or in part. This shall not give rise to any liability on our part *vis-à-vis* the customer, in particular, the customer shall not have any damage claims against us.
- 10.2 Events of force majeure shall include strikes, lock-out, mobilization, war, blockades, import and export bans, lack of raw materials and fuels, fire, traffic blockages, operational disruptions or disruptions of transport as well as any other circumstances that considerably impair or inhibit the execution of the transaction, no matter whether such an event arises with us or with our suppliers or any of their sub-suppliers, or with the customer or otherwise in the customer's sphere of influence. Events of force majeure shall also include non-delivery or failure to make timely delivery on the part of our suppliers, provided that we are not responsible for the reasons therefor.

**11. Warranty:**

- 11.1 The warranty period shall commence upon the transfer of risk (Section 4.1) and shall last for 12 months, unless specifically agreed otherwise.
- 11.2 Warranty is only given for the specifically stipulated characteristics of our products or for such characteristics as are usually deemed to exist in a product. The relevant date for determining whether or not a product is in the contractually stipulated condition is the date of the transfer of risk.
- 11.3 Warranty claims shall become forfeited in any case upon the customer repairing or otherwise working on the product.
- 11.4 If we make a product on the basis of design information, drawings, models or patterns furnished by the customer, we cannot be held liable for the correct design, but we solely warrant that the execution and workmanship is in accordance with the customer's specifications. If we have to provide warranty services in such a case, the customer shall fully indemnify and hold us harmless from and against any loss or damage suffered or claims arising in such respect.
- 11.5 Our warranty shall exclusively be governed by the provisions of Sections 11 and 12 hereof. In particular, sec. 924 of the Austrian "ABGB" (General Civil Code) shall not be applicable to the legal transactions covered by these General Terms and Conditions. The customer shall bear the full burden of proof for establishing the basis of any claims, including the defect proper, the time of determination of the defect, and the timely communication of the notice of defect. Our warranty does not cover consequential damage.

**12. Defects:**

- 12.1 The products supplied by us shall be checked by the customer for defects immediately upon delivery (handing over, see Section 4.1), and any defects found shall be communicated to us in detail and without delay. Notice of any defect shall be given in writing (including fax or e-mail) not later than 14 (fourteen) days following handing over (see Section 4.1). If a defect becomes apparent only at a later date, notice shall be given in the same manner immediately after their discovery, but not later than 1 (one) week thereof.
- 12.2 In particular in view of the intended use, the customer shall bear the responsibility for the proper installation, taking into consideration any security and safety regulations, as well as for the correctness and completeness of the technical delivery regulations.
- 12.3 In case of remediable defects, we are entitled, at our discretion, to improve or exchange the defective products or parts thereof, or to supply any missing parts, or to grant a price reduction. Any further claims against us, including, without limitation, the right to rescind the contract, any damage claims and/or claims for substitute delivery or the right to claim lost profit or any consequential damage, shall be excluded.
- 12.4 In case of irremediable defects, we are entitled, at our discretion, to offer the exchange of the defective products or a price reduction. Any further claims against us, including, without limitation, the right to rescind the contract, any damage claims and/or claims for substitute delivery or the right to claim any consequential damage, shall be excluded.

**13. Liability:**

- 13.1 If any of the objects provided by the customer is damaged, we can be held liable only for damage which has resulted directly from the execution of the work and which has been caused by gross negligence or intent on our part. Any and all further claims of the customer, including, without limitation, any claims for compensation in excess thereof, including any consequential damage as well as lost profit, are excluded.
- 13.2 In the event of damage claims raised for whatever reason we can be held liable only subject to the following agreements:
- a) Our liability in case of intent, in case of claims under the Austrian "Produkthaftungsgesetz" (Product Liability Act), and in case of death, personal injury or impairment of health shall be governed by the relevant statutory provisions.
- b) We cannot be held liable for slight negligence, compensation of consequential damage or pecuniary loss, lost savings or lost interest gains, nor for damage or loss resulting from any claims raised against the customer by third parties.
- c) Our liability for gross negligence is limited to the invoiced amount.
- 13.3 The reversal of the burden of proof pursuant to sec. 1298 of the Austrian General Civil Code is specifically excluded. The statute of limitations governing damage claims against us is herewith shortened to 6 (six) months. In case of any negligence on the part of any persons employed by us in performance of our obligations ("Erfüllungsgehilfen" [pursuant to sec. 1313 a of the Austrian General Civil Code]), we will be liable to the same extent as for negligence on our part and we do not have any liability in excess thereof.
- 13.4 The customer waives the right to challenge the contract on the grounds of error, to the extent that such error has not been caused by gross negligence or intent.
- 13.5 If the customer violates any of the obligations imposed on it by these General Terms and Conditions, the customer is obligated – whether or not it is at fault – to fully indemnify and hold us harmless from and against any loss or damage suffered or claims arising in such respect; this shall also refer to any attorney's fees or legal expenses.
- 13.6 If the customer has provided compensation to a third party under the provisions of the Austrian Product Liability Act in connection with a product supplied by us, any rights of recourse against us are in any case excluded.
- 13.7 Further claims against us are excluded, except where stipulated otherwise by mandatory law.

**14. Postponement of the Delivery Date:**

- 14.1 If the customer – following the placement of the order – issues a written request for delivery at a date after the contractually stipulated delivery date, we are entitled to charge the customer for any and all costs arising as a consequence of such change (including any price increases due to an increase in the price of raw materials or in payroll costs). Any postponement of the delivery date shall be subject to our written confirmation.
- 14.2 Concurrently with such a written request for postponement of the delivery date, the customer shall pay 25% of the invoiced amount, unless agreed otherwise. If the customer requests the postponement of the scheduled delivery date by more than 3 (three) months, the customer is obligated at the same time to pay us an extra 10% of the invoiced amount for every month of the requested postponement, such payments to be made in advance.
- 14.3 Postponement of the delivery date can be accepted only if the written request arrives with us, together with the requested down-payment, not later than 9 (nine) months prior to the scheduled delivery date in case of products of less than 20 tons as well as at agreed HSS quality or not later than 12 (twelve) months in case of products of more than 20 tons.  
A shorter lead time for the postponement of the delivery date may be agreed upon in writing. Such a shorter lead time can be accepted in particular in the event of a postponement of the delivery date by less than 6 (six) months if the customer pays us 30% of the invoice amount in advance. In the event of a postponement of the delivery date by more than 6 (six) months, the advance payment can be agreed from time to time.
- 14.4 In the event of any postponement of the delivery date, we have the right to store any materials that have already been furnished to us and/or any products made, in each case at the risk and cost of the customer. We may also use a shipping agent or a warehouse for storage purposes. Any and all costs incurred in connection with the storage of the goods due to the postponement shall be charged to the customer on a monthly basis in advance.

**15. Product Liability:**

- 15.1 Within the scope of application of the Austrian Product Liability Act, we are liable for personal injury and property damage, including without limitation any such injury or damage sustained by consumers.
- 15.2 Every customer that has acquired a product from us is obligated to comprehensively inform itself on its own initiative about the handling, operation and maintenance of our products. On account of the available specifications and the documentation, the customer will be deemed to have been specifically informed about the product-specific characteristics and will therefore be deemed an expert for product liability purposes.
- 15.3 Furthermore, the customer is expressly obligated to keep an accurate documentation about the products supplied by us so that it is possible in the event of any damage occurring at a later date to determine unambiguously whether the product that has caused damage has actually been supplied by us and/or which parts of the product have caused the damage.
- 15.4 Such documentation shall be kept by the customer for the time our products are in operation, but at least for a period of 10 years as from commissioning.

- 15.5 In the event that we are held liable under the Austrian Product Liability Act, the customer is obligated to make all documentation and other evidence available to us free of charge, without delay and without any claim to reimbursement of costs. The customer is also obligated to assist us in any way, without having any claim to reimbursement of costs.
- 16. Withdrawal from Contract and Cancellation of Orders:**
- 16.1 We may withdraw from the contract, if
- a) the delivery is delayed, in spite of the granting of a grace period, for reasons falling in the customer's sphere of influence;
  - b) concerns as to the customer's solvency arise, and the customer does not heed our request to make advance payment or to provide suitable security prior to delivery (see Section 6.6);
  - c) on account of the circumstances specified in paragraph a) above, the delivery period is extended by more than half of the originally agreed delivery period.
- 16.2 For the above reasons, we may withdraw from the contract also with regard to any outstanding part of the ordered delivery and services,
- 16.3 If we withdraw from the contract as a result of a default in acceptance on the customer's part, we are entitled to demand liquidated damages in the amount of 25% of the agreed net invoice amount. We specifically reserve the right to claim any damage or loss in excess thereof that we may have suffered.
- 16.4 If insolvency proceedings are opened against a contracting party or if a petition for the opening of insolvency proceedings is denied for lack of assets, the respective other contracting party is entitled to withdraw from the contract, without having to grant a grace period.
- 16.5 Our damage claims notwithstanding, any work or services that may already have been performed in full or in part upon the withdrawal, if any, from the contract will be charged and shall be due and payable. This shall also apply to the extent that the work and services have not been taken over by the customer and/or in the instances where we have already incurred material- or work related costs. Alternatively, we have the right to demand the return of any objects already delivered.
- 16.6 Any cancellation by the customer can be accepted only on the terms and conditions specified below:
- a) in case of rolls >/ or 20 tons: the cancellation must arrive with us in writing not later than 12 months prior to the stipulated delivery date and 15% of the agreed purchase price must be paid;
  - b) in case of rolls </ or 20 tons: the cancellation must arrive with us in writing not later than 9 months prior to the stipulated delivery date and 15% of the agreed purchase price must be paid.
- The preceding clause shall not affect any other costs (costs of delays, postponement, etc.) relating to the order and already incurred by us.
- 16.7 Cancellation by the customer shall in any case be excluded if upon receipt of the written notice of cancellation from the customer production has already started. We will notify the customer thereof.
- 17. Data Protection and Confidentiality:**
- 17.1 The contracting parties undertake to absolutely keep secret, and not disclose to any third parties, any information and knowledge gained by them under their business relationship.
- 17.2 In addition, the customer shall use any and all documents (including designs, samples, models, patterns, data, as well as written documentation) and knowledge gained from the business relationship exclusively for the jointly pursued purposes, and shall keep such documents and knowledge secret *vis-à-vis* third parties with the same care and diligence that it applies to the secrecy of its own documents and knowledge, if we designate such information as confidential or have an obvious interest in their non-disclosure.
- 18. Choice of Law and Jurisdiction Clause:**
- 18.1 The contract as well as these General Terms and Conditions shall exclusively be subject to Austrian substantive law, to the exclusion of the conflict-of-laws rules and the United Nations Convention on Contracts for the International Sale of Goods.
- 18.2 Any and all disputes arising under or in connection with the contract or these General Terms and Conditions shall exclusively be settled by the competent court in Vienna having subject-matter jurisdiction.
- 19. Miscellaneous:**
- 19.1 If any provision of the contract or of these General Terms and Conditions is or becomes invalid, ineffective or unenforceable, be it in full or in part, the validity, effectiveness and enforceability of all other provisions shall not be affected thereby. To the extent permitted by law, the invalid, ineffective or unenforceable provision shall be replaced by such a valid, effective and enforceable provision which comes as close as possible (in terms of subject matter, dimensions, time, date and scope of application) to the originally intended economic purpose of the invalid, ineffective or unenforceable provision. The same shall apply *mutatis mutandis* to any gaps in the contract or herein.
- 19.2 In the event that any contract or these General Terms and Conditions or any project-specific conditions are drafted by us in a language other than German, it is understood and agreed that the German-language version of such stipulations shall prevail over any other version.
- 19.3 The preceding clause shall not apply to English-language contracts. Such contracts shall be governed by the English-language version of our General Terms and Conditions

Rev. Aug. 2010

Eisenwerk Sulzau - Werfen  
R & E. Weinberger Aktiengesellschaft