

Terms and Conditions of Purchase and Delivery

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1. GENERAL

- 1.1. Orders for services and goods shall always be subject to the following terms and conditions. By supplying the goods ordered or by rendering the services ordered, CO accepts that CU's purchasing terms and conditions shall apply exclusively as terms of the agreement. Differing agreements require the express confirming written form. These terms and conditions shall apply accordingly to services to be provided to CU.
- 1.2. CO's terms and conditions of sale and delivery shall not oblige CU, even if they are not expressly objected to.
- 1.3. In case of permanent business relations, later orders, even if placed orally and even without separate reference, shall be deemed as having been placed subject to CU's purchasing terms and conditions.

2. PRICE

- 2.1. Prices are quoted packed, insured, delivered free respective receiving centre, unloaded and are fixed prices that cannot be increased for whatever reason.
- 2.2. CO shall assume a best price warranty for all deliveries of goods and provisions of services and CU will be entitled to reduce the price in case of a breach of this warranty. However, if CO reduces their prices for other customers by the date of delivery or provision of services, CU will benefit from these reductions as well.
- 2.3. The quantities stated are approximate quantities. Increased / reduced quantities shall not entitle CO to change the unit prices.
- 2.4. Offers, visits, consultation, plans and sampling shall be free of charge to CU. All costs for patents, licences and fees for the protection of utility models shall be at CO's expense.

3. ACCEPTANCE OF ORDER

- 3.1. Orders for goods or services placed shall be deemed accepted if they are not refused by CO within a reasonable period after receipt.

4. TERMS OF DELIVERY

- 4.1. Unless second quality or second-hand goods were ordered expressly, the delivered new goods have to be free from defects and correspond to any submitted samples in all detail.
- 4.2. Not approved deviations from the order shall entitle CU to not take delivery of the goods or to perform a corresponding reduction of prices.
- 4.3. By delivering the goods, CO warrants that they comply with all relevant provisions in Austria.
- 4.4. CO guarantees that no patent, trademark or design rights are infringed and otherwise undertakes to indemnify and hold CU completely harmless.
- 4.5. CO shall indemnify CU from all claims under *Produkthaftungsgesetz* [Austrian Product Liability Act] to which the builder / main contractor or third parties are entitled against CU for defects of the goods under Austrian law. CO shall support CU at the best in the defence against such claims in a suitable manner from the beginning.
- 4.6. CO has to continually inspect the goods of the type delivered and to be delivered to CU and to inform CU immediately and in detail of any defects, in particular design defects and defects due to workmanship. The same applies to changes of the state of the science and of the art. If such changes prove delivered goods to be defective, CO will have to inform CU immediately and to take back such defective products at their own expense.
- 4.7. Only building materials, products and materials must be used that are included in the ÖA list of building materials according to the regulation of *Österreichisches Institut für Bautechnik* (OIB, Austrian Institute of Construction Engineering) and are marked with the ÜA sign or for which a valid European technical approval is available and that comply with the requirements of performance or terms of use of the federal states (e.g. building regulations) and bear the CE sign.

5. DELIVERY DATE

- 5.1. Deliveries have to take place on the agreed date. Delivery terms shall start on the order date. CU is not obliged to grant an additional period of time.
- 5.2. If compliance with the delivery dates / periods and / or dates / periods of provision of services becomes impossible, CO will have to inform CU in writing at the earliest possible point in time.
- 5.3. Agreed delivery times have to be complied with as well, otherwise costs incurred by CU will be charged and / or CU will be entitled to reject the goods. Costs of deliveries that are fruitless on account of missed delivery times have to be borne by CO.
- 5.4. Irrespective of the reason of the delay and notwithstanding further legal claims, CU shall be entitled to rescind the agreement without granting an additional period or to procure replacement from third parties.

- 5.5. If compliance with the dates obviously becomes impossible for reasons for which CO is responsible, CU shall be entitled to terminate the agreement without granting an additional period. Corresponding accelerating measures have to be arranged for at CO's expense.

6. TRANSPORT AND TAKING OVER

- 6.1. Deliveries have to take place exclusively to the place of delivery stated by CU and at CO's risk and expense. Unless otherwise agreed, all deliveries shall be unloaded free construction site or warehouse.
- 6.2. If the goods cannot be delivered to the agreed place of delivery for reasons for which CU is responsible, CU will have to be contacted immediately. If this is not possible, delivery will have to be made to CU's nearest place of business.
- 6.3. CU reserves the right to reject partial deliveries not agreed and / or to cancel residual quantities.
- 6.4. The delivery note always has to include detailed information on quantities and goods as well as the place of delivery.
- 6.5. Deliveries for several orders or agreed partial deliveries must not be grouped to a single delivery note.
- 6.6. The obligation to notify defects and to inspect as defined by sections 377 et seq. HGB [Austrian Commercial Code] is excluded.
- 6.7. The issued acknowledgement of receipt shall apply to the correctness of the number of packages only, the actual taking over by the piece will take place later, which is why CU reserves the right of later notification of defects. A notification within two months after detection of the defect or fault of the goods shall be deemed timely.
- 6.8. If CU does not accept the goods, CO shall be obliged to collect them within 8 days after announcement. If CO does not meet the request for collection, CU shall be entitled to return the goods at CO's expense.
- 6.9. All returns for whatever reasons shall always be at CO's risk and expense.
- 6.10. Return of package material, pallets, empty packing etc. shall be at CO's risk and expense and the full invoice amount has to be credited.
- 6.11. Taking over of the delivery item by CU shall take place with reservations without exceptions and shall take place by CU taking over this item on the construction site or at another place of destination through our authorised representative. Of CO has to work or to install the delivery item on the place of destination, taking over by CU will take place after completion of this work only. If a test run of the delivery item is required, taking over will take place after realisation of the test run only. If the delivery item comes into CU's custody before installation or before its arrival at the point of destination – for example, because CU has organised the transport – this shall not constitute the taking over of the delivery item.
- 6.12. The risk of damage, loss and destruction of the delivery item or of parts thereof shall pass to CU upon their taking over only. The same shall apply if shipping was organised by CU or takes place on CU's account.

7. INVOICING AND TERMS OF PAYMENT

- 7.1. The confirmed proof of delivery / performance has to be enclosed with the invoices and has to correspond to the provisions of *UStG* [Austrian Value-added Tax Act] as amended from time to time.
- 7.2. The period for terms of payment shall start on the date of receipt of the invoices according to 7.1.
- 7.3. Unless otherwise agreed, the following terms of payment shall apply: 60 days net or 30 days less cash discount of 3%.
- 7.4. The agreed terms of payment are net periods. Payments are made once per week by bank transfer. Therefore, the above-mentioned periods shall be considered to be respected if payment is made on the next transfer date after expiry of the above-mentioned period of payment. If this cycle of payment is complied with, no consequences of default shall result from the excess of the payment period.
- 7.5. Payment shall be made by transfer to one of CO's accounts. Timeliness of the payment is determined by the date at which CU has given their bank instructions to carry out the transfer.
- 7.6. If any payment is not made within the agreed discount period, the lost discount shall apply to the payments made too late only. Therefore, every invoice has to be checked individually to find out whether a discount applies. Discount shall be granted also in case of offsetting. If only a partial amount of the issued invoice is paid within the agreed discount period, the entitlement to deduction for the partial amount paid shall remain valid. Missed discount periods have to be asserted to CU within 1 month after receipt of the corresponding partial or final invoices, otherwise the right will forfeit.
- 7.7. If the invoice received is incorrect so that it has to be returned to CO, the discount period shall start upon presentation of the corrected invoice only. If the invoice documents turn out to be incomplete and

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- not verifiable, the payment period shall be interrupted until the complete documents are available.
- 7.8. If CU makes a deduction after presentation of the required documents for invoice examination, this deduction shall be considered to be justified and accepted unless CU receives an objection perfectly justified by the facts within 4 weeks after receipt of the correction of the invoice.
- 7.9. Any counterclaims existing against CO, company's of CO's group or consortiums in which CO or their group companies are involved shall be deducted in advance. This shall take place also in case of assignment or in case of pledging of CO's claims. The same shall apply to claims of companies of CU's group and for consortiums in which CU or CU's group companies are involved; CO expressly agrees to this provision. If the due dates of offset claims are different, interest at the legal rate shall be paid to CO. CO shall not be entitled to make any set-offs.
- 7.10. Payment shall neither constitute an acceptance of correctness of delivery nor a waiver of applicable rights.
- 7.11. If delays in payment can be proven and are due to negligence, interest at the rate of 1.25 times the basic rate of interest as amended from time to time - published by the Austrian National Bank - shall become due for the unpaid amount from the end of the payment period on. The claim shall expire if it is not asserted in writing within 4 weeks after receipt of the invoice amount. Any damages shall be excluded.
- 7.12. CO is obliged to state their employer number on all invoices. If the employer number is missing, the agreed payment period shall be interrupted until presentation of the employer number. CU shall make use of exoneration from liability by transfer of 20% of the compensation to the service centre (section 67c ASVG [Austrian Social Security Act]) if CO is not included in the *HFU* list [list of companies exonerating from liability] at the time of payment of compensation.
- 8. LIABILITY**
- 8.1. CO shall be liable for and guarantee the quality of the delivered goods / provided services as regards their use and / or construction as well as the usually assumed or contractually agreed properties and that the delivered goods / provided services do not have any defects that cancel or reduce the value or the suitability for the usual or assumed use.
- 8.2. CO shall be liable to CU for every damage resulting from improper delivery and work and / or defective or faulty goods. To the extent claims are made against CU by third parties in this context, CO shall indemnify and hold CU completely harmless. Accordingly, CO shall be liable to CU at least to the extent and for the duration to and for which CU is obliged to make payments to third parties – in particular as regards damages, warranty and product liability. CO has to reimburse CU in particular for costs incurred for the determination of the justification of claims made for product defects, incl. costs of the proceedings.
- 8.3. Moreover, CO shall be liable without restrictions for all personal injury and property damage caused by CO or the vicarious agents used by CO during the delivery of goods / provision of services and the associated consequential damage (standstill costs, default penalties, loss of production) caused for CU, the builder or third parties and shall indemnify and hold CU harmless in this context.
- 8.4. CO shall also be liable for all damage caused to third party property (e.g. pieces of land, buildings, fences, cables, pipes, channels etc.) during the execution of the delivery / service ordered as defined by *ABGB* [Austrian Civil Code].
- 8.5. CO shall be liable for all damage, consequential and /or additional and / or storage costs resulting from non-compliance with dates / periods of delivery of goods or provision of services, the non-compliance and / or improper and / or incomplete compliance with the obligations to deliver goods and to provide services.
- 8.6. If CO neglects their duties, accordingly also the provisions of the general terms and conditions of purchase and taking over, CU shall be entitled to demand a contractual penalty amounting to 0.5% / day up to 10% of the invoice amount of the goods concerned. Assertion of further damage exceeding this amount is not excluded and the amount is not subject to the court's right to reduce the amount of penalty. If CU sustains any concretely demonstrable damage due to default in delivery or service, this damage will have to be made good by CO.
- 8.7. Restrictions of any kind of the obligations resulting for CO from *Produkthaftungsgesetz* as well as restrictions of any kind of claims for damages to which CU is entitled according to this act or other provisions are considered to be expressly excluded.
- 9. WARRANTY**
- 9.1. As for the rest, the legal warranty claims shall apply. Payments made shall not constitute a waiver of warranty claims. Notwithstanding any other legal claims, CO is obliged to repair defects immediately and within the legal periods at CO's own expense upon corresponding notification of defect and request made by CU and, if this is not possible, to deliver new goods.
- 9.2. CU shall have no obligation of immediate inspection and notification of defects. A notification of defect shall be considered to be made in time if it is sent within 3 months after receipt of the goods or services in case of an apparent defect and within 3 months after detection of the defect in case of a hidden defect. Any notification of defect shall interrupt the warranty period.
- 9.3. Damage to a consignment shall be notified to CO immediately after receipt and after exact determination of the damage.
- 9.4. If CO does not comply with the request for repair of the defect within the period, CU shall be entitled to repair the defect themselves or to have it repaired at CO's expense. CU shall be entitled to do this as well without a request being necessary if this is required for reasons of time (urgent case or imminent danger).
- 10. RETENTION OF TITLE, TRANSFER OF AGREEMENT, CESSION**
- 10.1. With further obligation to compensation for damage, CO declares that there is no retention of title by CO or by third parties regarding the delivered goods and that the goods shall become CU's unrestricted property.
- 10.2. Transfer of the order placed by CU – completely or in part – to one or several other suppliers or to third parties requires CU's express consent.
- 10.3. CO is authorised to assign claims against CU. CO is obliged to announce the intended assignment of a claim to CU in writing at least 4 weeks before the assignment. In case of assignment, a handling fee for increased administrative effort and other associated disadvantages for CU amounting to 2% of the amount, however at least € 500.00 plus VAT, shall be withheld and / or set off.
- 11. RESCISSION OF ORDERS**
- 11.1. CU shall be entitled to rescind orders for goods and services placed without fixing an additional period if CO's economic situation deteriorates or insolvency proceedings against CO's assets are instituted or the institution of insolvency proceedings is dismissed for lack of assets so that difficulties in complying with dates or supply difficulties or a lack of cover of our liability or warranty claims have to be expected. CU may terminate the agreement immediately if CO's behaviour constitutes an important reason that essentially shakes the confidence required for this order of goods or services.
- 11.2. In cases of force majeure, in particular strikes, default or cancellation of services provided by other companies involved in the overall product, CU shall be entitled to rescind the order or demand delivery at a later point in time. CO does not have any claims against CU in this context.
- 11.3. A (complete or partial) cancellation of the order placed with CU for the execution of the underlying transaction by the builder / main contractor associated with the present order, shall entitle CU to rescind the agreement without CO having a claim to reimbursement of costs.
- 12. PLACE OF JURISDICTION**
- 12.1. The court locally competent for CU's head office is agreed as place of jurisdiction for all litigations resulting directly or indirectly from the present agreement.
- 12.2. Austrian law shall be applicable.