

Terms and conditions

1. Order acceptance: No order or contract will be fulfilled until it has been confirmed by us in writing; and we will accept responsibility only for supplying what is specified in the confirmed order. Prices and the period of delivery stated in the original offer should be regarded as subject to confirmation, until we have formally accepted the final order. It is the responsibility of the purchaser to ensure that by using documentation provided by him the rights of third parties will not be infringed. The purchaser must also guarantee that we will have no liability in relation to third parties' claims. Nor will we accept any responsibility for the loss of, or any damage done to documents, and the like, sent to us. The purchaser's purchasing conditions only apply, if we have explicitly confirmed them in writing. In any case where the purchaser cancels a purchase after the order has been made legal and binding (for no matter what reason), we are entitled to claim an indemnity (a cancellation fee). For standard products this fee will amount to 10 % of the selling price. For non-standard products, extra production costs incurred will also have to be paid. In such cases, any components that have already been produced, or partially produced will be placed at the disposition of the purchaser.

2. Delivery period: The agreed delivery time ex factory, or ex stock, applies only once all commercial and technical details have been received by us, and it is not a firm commitment from us. For us to keep to the agreed delivery time, the purchaser must meet all conditions of payment that are specified as having to be fulfilled prior to delivery. In all cases, acts of God and other unforeseeable problems in our factories, or in our suppliers' factories, release us from the obligation of keeping to the delivery period specified. They do not give the purchaser the right to cancel the order. However, we are entitled to cancel the order, if the problem appears likely to persist in the long term. No claims for compensation or for penalties resulting from failure to meet the agreed delivery times will be considered by us. If the purchaser fails to meet his obligation to collect the goods, we are entitled to put them in storage at our own discretion, and at the purchaser's expense and at his own risks. We are also entitled to invoice him for the goods immediately. We are entitled to make partial deliveries; the purchaser is obliged to accept partially delivered goods.

3. Completion and Dispatch: Delivery will be deemed to have been fulfilled as soon as the goods for delivery have been handed over to the carrier or the forwarding agent. Delivery will also be deemed to have been fulfilled as soon as the goods are ready for collection, even if the purchaser's collection of the goods is delayed. In all cases, loading and dispatch of the goods takes place at the purchaser's risk. In cases where there are losses or damage during transport, the recipient must make his complaint to the Railways, to the carrier, or to the forwarding agent. Charges for any packaging will be calculated at cost price and the packaging will not be returnable, unless this has been specifically agreed in individual cases. As soon as the purchaser has taken the goods into his charge, he is responsible for them. This applies even when we are the installers, and the goods get damaged. In the case that the goods get delivered to a boat for transport, it is the purchaser's responsibility to provide a dispatch order in due time, and he must ensure in due time that the required space will be provided on the boat. The purchaser must pay all costs resulting from a delay in transport by sea, such as expenses for carriage arising from the delay, any costs of haulage, storage costs etc. This is because delivery will be deemed to have been fulfilled already. When accepting repair work, the extent of the repairs will be at our discretion, unless specified otherwise in writing.

4. Prices: Quoted prices are subject to confirmation until the items have reached our dispatch office, unless specified otherwise. They are calculated on the basis of the costs of materials and labour, in so far as they are known to us when we make the offer. If there is an increase in these costs in the period between the offer and the delivery, the prices specified will also be increased proportionally. We are not obliged explicitly to notify the purchaser. Such an increase in price does not entitle the purchaser to cancel the contract. For the purposes of calculating prices, the weight stated by our site will be decisive. In cases where the price remains open when the contract is signed, the price will be calculated according to the selling price on the day of delivery.

5. Dimensions, weight, and documentation: In cases where – after the production process - there are no exact figures regarding weight or numbers of items produced, excess delivery or short delivery regarding numbers or weight ordered, will be permissible. Our images, illustrations, and blueprints, and any dimensions and weight specified in publicity materials, advertising brochures, offers, or the like, should be taken as approximate only. They are subject to change. The content of these documents will always remain our intellectual property protected by the legal regulations regarding duplication and competition.

6. Conditions of payment: Unless agreed otherwise, payment is due upon receipt of invoice, free of charge, net without cash discount, in Wartberg or Vienna. The court of jurisdiction is either Kindberg, Leoben, or Vienna, as we choose. In case of default of payment, bank interest rates will be charged. The minimum rate will be 12% per annum. Furthermore, in case of default of payment, the purchaser is committed to pay all the expenses regarding the collection of the debt. In case of default of payment, we are entitled to make use of our right to withdraw from the contract, according to § 918 Austrian Civil Code, without allowing the purchaser extra time to pay. The cancellation of the contract can also lead to a cancellation of transactions not yet settled, and to a cancellation of partial delivery. The purchaser is not entitled to deduct his own claims against us from the invoice in respect of the purchase price. We are entitled to demand securities regarding settlement of the payment obligation, prior to delivery. If the purchaser refuses to provide us securities, we are entitled to withdraw from the contract. These entitlements do not need to be stated in the terms of the contract. In cases where the customer's financial situation deteriorates, we are also entitled immediately to call in payments for which we had originally granted additional time. This also applies to bills of exchange or cheques that have already been accepted. Unless agreed otherwise, we are not obliged to accept a bill of exchange. In all such cases, payment will be deemed to have been made only when the funds are credited to our bank account. Any costs connected with the transfer of funds (such as discounting expenses, bank charges, and possible bill stamps are chargeable to the purchaser.

7. Retention of proprietary rights: We always supply with the explicit reservation that the delivery of all kinds of goods remain our property, until our invoice in respect of the purchase price, including all charges, has been paid off in its entirety. Unless we agree otherwise, the purchaser is prohibited from mortgaging the goods specified. Compulsory possession orders that affect our legal position must be reported to us immediately. In case of default of payment we are in all instances entitled to the prompt return of our property and to the annulment of the order. We are entitled to claim a compensation of 40% of the purchasing price for wear and tear, unless we are able to prove a higher loss or lost profit. If the goods delivered by us are intended to undergo further processing, this does not mean that we lose our property rights in them. We shall be credited at least with proportionate co-ownership of the total quantity of goods. This will make us co-owners of the new products, and will entitle us to a potential sales revenue. In cases where the purchaser sells on the products delivered by us after further processing, he is permitted to do so only, if he respects our proprietary rights in the goods or in the resulting revenue. In this respect, he is our fiduciary. The legal claim towards a third party results from this agreement by itself and is also effective in case that the purchaser has not reported our proprietary rights to the third party, when selling the goods. We are entitled to reclaim our proprietary rights from the buyer, if he is at all our debtor of the business relationship in question. By the terms of this contract, the purchaser has transferred to us all of his claims against a third party resulting from the resale of the goods subject to reservation of title, or resulting from any other legal reason, no matter if the goods subject to reservation of title have been sold before or after further processing. The purchaser's claims have been transferred to us also in case that there are more than one buyer. Our claims towards the third party amount to the purchase price of the resold goods subject to reservation of title. In a case where the purchaser has sold the goods subject to reservation of title together with goods that do not belong to us, the claims transferred to us are equal to the total amount of the invoice for the purchase of the goods subject to reservation of title. The purchaser is authorised to collect the money from the resale, despite transferring his claims to us. Our entitlement to collection remains unaffected by the purchaser being authorised to collect the claim. We shall not collect the claim, as long as the purchaser duly meets his obligations to pay. The purchaser commits himself, on our first request, to disclosing to us the purchasers of the goods specified under this condition, and to report to them that he has transferred his claims to us.

8. Complaints: complaints must be lodged within 14 days after the goods have been handed over, otherwise any legal action is excluded. Complaints that are justifiably raised and made within the time limits will be settled by means of a letter of credit or by a replacement free of charge, after the faulty item has been sent to us by pre-paid freight. However, we accept no liability for further claims, particularly claims for compensation or reimbursement of costs arising from further processing. Approval for the return of any item must be granted by us in advance and the item must be dispatched as pre-paid freight. We accept liability only towards the purchaser. Claims that items are faulty will be subject to verification by us. Our verdicts will be final. Liability expires after 3 months, even in the case of hidden faults. We assume no liability for delivered components which are subject to wear and tear damage, attributable to the material they are made of, or to the way in which they are used. Liability also expires as soon as parts not provided by us, are installed by persons other than us. In a case where we have agreed to deliver an item that has to meet specific requirements, then this item must be tested at the delivery site. Even if the purchaser is not satisfied with the test certificate provided by us, he is obliged to take the item in question there and then.

We assume liability for faulty materials only within the terms of reference of our suppliers' warranty conditions. Our obligations to repair defects rest during the time of default of payment by the purchaser. If an item is made according to the specifications, illustrations or models provided by the purchaser, he is fully responsible to us as well as to third parties for consequences in respect to damage, or to legal consequences regarding patent, pattern, or market rights. In this case we assume liability only for the design made according to the purchaser's specifications, and not for the construction itself.

9. Other reasons for exemptions from obligations to fulfill the contract: a. War and general mobilization exempt us from our obligation to fulfill existing contracts. During these events, we shall certainly try to inform the purchaser well in advance that we do not intend to fulfill the contract. b. The following events fall into the category of Acts of God: breakdowns, strikes or lockout of workers at our sites, or at factories supplying us with raw materials, fuels, or auxiliary materials. c. We are entitled to decline to fulfill the contract in its entirety, or to demand the contract to be changed according to the new circumstances, in the case that the circumstances in which the contract was signed have changed so much that it can rightly be assumed that the contract would not have been signed under those circumstances, or that the contract would have been set up differently (according to those circumstances), and that the change of circumstances could not have been foreseen, not even with the diligence of a prudent businessman. d. We are entitled to defer delivery for the time of hindrances mentioned below, and for the time we need in order to get the production going again, or even to cancel the contract in respect of the part that has not yet been fulfilled by us, because it has become very difficult or even impossible for us to fulfil delivery, due to lack of coal, of natural gas, or of primary materials of any kind.

10. Place of performance and court of jurisdiction: The place of dispatch is the place of performance and the court of jurisdiction, either for the delivery and for sold items delivered postpaid to the place of destination. Regarding payment, including claims from bills of exchange, the place of performance is Wartberg / Muerztal. Our company's head quarters at Wartberg / Muerztal are also the court of jurisdiction regarding any disputes resulting from or in connection with the business connection. However, we are also entitled to institute proceedings against the purchaser at our own discretion at the purchaser's place of general jurisdiction. Austrian law shall apply for the legal relationship resulting from the delivery contract.

11. Deviating conditions: Deviations from or additions to the conditions of delivery, as stated in this document, must always and explicitly be confirmed by us in writing in order to be legal. They are always valid only for the interaction in question.