

I. Validity

The deliveries, performance and offers of our enterprise shall be based exclusively on these Terms and Conditions; terms and conditions of the customer opposing or deviating from these Terms and Conditions shall not be recognized by us unless we had explicitly agreed to their validity. Contractual performance on our part shall in this respect not be agreement to contractual conditions deviating from our Terms and Conditions. These Terms and Conditions shall **also be a basic agreement for all further legal transactions** between the contracting parties.

II. Conclusion of a Contract

An offer of a customer shall require a confirmation of order. The dispatch of the goods ordered by the customer shall also effect the conclusion of the contract. In the event offers are submitted to us, the offerer shall be bound thereto for a reasonable period, but in any case for not be less than 8 days from receipt of the offer.

III. Price

Insofar as nothing different is explicitly recorded, all **prices** stated by us **shall be exclusive of VAT**. In the event of changes in labour costs resulting from collective agreement regulations within the sector or internal works agreements, or should there be changes in other cost centres relevant for the calculation or in costs necessary for performance - for example those for materials, energy, transport, subcontracted works, financing, etc. -, we shall have the right to **increase or decrease** the prices accordingly. Point III shall not apply for consumer transactions.

IV. Terms of Payment, Penalty Interest

If nothing different has been agreed, our invoices shall be payable in cash on transfer of the goods. Deduction of discount shall require a separate agreement. In the event of arrears in payment, including arrears in payment by instalments, any discount agreements shall also become void. Payments made by the customer shall not be recognized as paid until they have been credited to our business account.

In the event the customer is in arrears with payment, we shall have the right, at our discretion, to demand compensation for the loss actually incurred or - insofar as the matter does not involve a credit transaction with consumers - **to charge penalty interest at a rate 4% higher than the basic interest rate of the Austrian National-bank.**

V. Withdrawal from the Contract

In the case of delayed acceptance (Point VII) or for other substantial reasons such as, in particular, bankruptcy of the customer or rejection of a petition in bankruptcy on grounds of insufficient assets, or arrears in payment by the customer, we shall have the right to withdraw from the contract insofar as it has not yet been fully performed by both parties. In the event of a withdrawal where the customer is at fault, we may at our discretion demand a **fixed rate of damages of 15% of the gross invoice amount or compensation for the loss actually incurred. If the customer is in arrears with payment we shall be released from all further obligations to perform and deliver** and shall have the right to hold back outstanding deliveries or performance and **to demand payments in advance** and/or **deposits**, or to withdraw from the contract after setting a reasonable extended time limit. If the customer withdraws from the contract without just cause, or demands its cancellation, we shall have the right to choose between insisting on performance of the contract and cancellation of the contract; in the latter case the customer shall be obligated at our discretion **to pay either a fixed rate of damages of 15% of the gross invoice amount or compensation for the loss actually incurred.**

In the case of contracts concluded in distance selling (s. 5a ff *Konsumenschutzgesetz* (consumer protection act)), the consumer may withdraw from the contract within 7 days, whereby Saturday does not count as a workday. The time limit begins on the day the goods are delivered to the consumer; in the case of services, on the day the contract is concluded. It is sufficient to send off the declaration of withdrawal within this time limit. If the consumer withdraws from the contract in accordance with this provision, the consumer must bear the costs of returning the goods; if credit was arranged for the contract, the consumer must also bear the costs for any au-

thentication of signatures and the taxes (fees) for the granting of credit. It is not possible to withdraw from a contract in accordance with which it has been agreed that the performance of services will begin within 7 workdays from conclusion of the contract.

VI. Costs of Reminders and Collection

The contractual partner (customer) undertakes in the case of arrears in payment to reimburse the costs incurred by the creditor for reminders and collection insofar as these are necessary for appropriate prosecution, whereby in particular the contractual partner undertakes to reimburse at a maximum the fee charged by the collection agency employed that derives from the *BMwA* regulations governing maximum rates of payment chargeable by collection institutes. Insofar as the creditor operates the reminder system itself, the debtor shall undertake to pay an amount of € 10,90 for each reminder issued, and an amount of € 3,63 half-yearly for keeping a record of the debt relationship within the reminder system.

VII. Delivery, Transport, Delayed Acceptance

Our selling prices do not include costs for delivery, assembly or installation. If required, however, these services can be performed or organized by us against separate payment. In this case transport and/or delivery shall be charged at cost plus a surcharge at an appropriate daywork rate, but not less than the normal freight and carriage charges for the selected form of transport, or those applying on the day of delivery. Assembly work shall be charged according to the time involved, whereby it is agreed that man-hour rates normal for the sector shall be charged.

In the event the customer has not accepted the goods as agreed (**delayed acceptance**) we shall, after failure to meet an extended time limit, have the right either to **store** the goods on our premises and charge a **storage fee** of 0.1% of the gross invoice amount per calendar day or part-day, or to have the goods stored by a business authorized to do so and at the cost and risk of the customer. At the same time we shall have the right either to insist on performance of the contract or, after setting a reasonable extension period of at least 2 weeks, to withdraw from the contract and use the goods elsewhere.

VIII. Term of Delivery

We shall not be obligated to perform the contract until after the customer has fulfilled all its obligations which are necessary for performance, in particular all technical and contractual details, work in advance and preparatory actions.

We shall have the right to **exceed** the agreed dates and terms of delivery **by up to one week**. Only after elapse of this period may the customer withdraw from the contract after first setting a reasonable extended time limit,

IX. Place of Performance

Place of performance shall be the registered office of our enterprise.

X. Minor Changes in Performance

If the matter is not a consumer transaction, **changes** in our obligation to perform and/or deliver that are minor, or that the customer may reasonably be expected to accept, shall count as agreed beforehand. This shall apply especially for deviations of a material nature (e.g. in dimensions, colours, appearance of wood and veneer, grain and structure, etc.).

XI. Warranty, Obligation to Inspect and Register Complaints

We shall meet all warranty claims by the customer **at our discretion** either through replacement, repair within a reasonable period, or price reduction. The customer may demand cancellation of sale (cancellation of the contract) only if the defect is major and cannot be remedied through replacement or repair, and the customer cannot reasonably be expected to accept a price reduction. **Claims for damages by the customer aimed at remedying the defect through improvement or replacement may not be asserted until we are in arrears with meeting the claims under warranty.** Claims under warranty that concern moveable objects must be legally asserted within **one year** of delivery of the object concerned.

If the customer claims that a defect exists, the assertion of claims resulting therefrom, in particular claims under warranty or claims for damages, shall be possible only **if the customer proves that the defect already existed at the time of delivery of the goods; this shall also apply within the first six months after delivery of the goods.**

Furthermore, in the sense of s. 377 f HGB (commercial code) the customer must inspect the goods immediately after delivery, and in any case within 6 workdays. Any defects found must be notified to us in writing without delay, and in any case within 3 workdays of their being discovered, stating the nature and extent of the defect. Complaints about hidden defects must be made in writing immediately, but at the latest within 3 days of their being discovered. If a complaint about a defect is not made, or is not made in time, the goods shall count as approved.

Our obligations under warranty shall expire in any case after elapse of the warranty period; **a special recourse of the customer extending beyond this pursuant to s. 933b ABGB (General Civil Code) because of obligations fulfilled by the customer under warranty shall be excluded.**

None of the terms of Point XI shall apply to consumer transactions.

XII. Compensation for Damages

All claims for compensation shall be excluded in the case of minor negligence. This shall not apply for personal injuries or in the case of consumer transactions for damages to objects accepted for processing. Insofar as the matter does not involve a consumer transaction the existence of **minor or gross negligence** must be proved by the injured party. **If the matter does not involve a consumer transaction, the time limit for bringing claims for compensation shall be three years from the point of passing of risk.** The conditions pertaining to compensation for damages as stated in these Terms and Conditions or otherwise agreed shall also apply if the claim for compensation is asserted in addition to or instead of a claim under warranty.

Before the connection or transport of IT products and before the installation of computer programs, the customer shall be obligated to adequately backup all data already existing on the computer facility, otherwise the customer shall be held responsible for lost data and all losses associated therewith.

XIII. Product Liability

Recourse claims in the sense of s. 12 *Produkthaftungsgesetz* (product liability law) shall be excluded, unless the party entitled to recourse proves that the defect originated in our sphere of responsibility and was the result of at least gross negligence.

XIV. Reservation of Ownership and Assertion thereof

All goods are delivered by us under reservation of ownership and shall remain our property until payment has been made in full. Assertion of the reservation of ownership shall involve a withdrawal from the contract only if this is explicitly declared. In the event of goods being recovered, we shall have the right to charge for any transport and manipulation expenses. In the event

of a lien by a third party on goods subject to our reservation of ownership - in particular through seizure - **the customer shall undertake to give notice that the seized objects are our property and to notify us immediately.** If the customer is a consumer or a firm whose normal business activities do not include trading with the goods acquired from us, the customer shall not dispose over the goods under reservation of ownership until open invoices for the purchase price have been settled in full and may, in particular, neither sell, pawn, give away or loan said goods. **The customer shall carry the full risk for the goods under reservation of ownership,** in particular for the risk of destruction, loss or deterioration.

XV. Assignment of Claims

In the event of delivery under reservation of ownership, the customer shall already now assign its claims against third parties to us for payment, insofar as these arise through the sale or processing of our goods, until final settlement of our open debt claims.

The customer must name its buyer to us on request and must notify its buyer of the assignment. The assignment shall be entered in the business accounts, in particular in the list of open items, and must be clearly visible to the buyer on delivery notes, invoices, etc. If the customer is in arrears with its payments to us, sales proceeds received by it shall be kept separate and the customer shall possess these solely in our name. Any claims against an insurer shall have already been assigned to us within the limits of s. 15 *Versicherungsvertragsgesetz* (insurance contract law).

Claims against us may not be assigned without our explicit agreement.

XVI. Retention

If the matter is not a consumer transaction and does not involve a cancellation, the customer **shall not have the right** in the case of a justified complaint **to retain the total amount of the gross invoice amount but only a reasonable amount thereof.**

XVII. Applicable Law, Jurisdiction

Austrian law shall apply. Application of the Convention on the International Sale of Goods shall be explicitly excluded. The contractual language shall be German. The contracting parties agree to Austrian, domestic jurisdiction. If the matter is not a consumer transaction, the technically responsible court at the registered office of our enterprise shall be exclusively locally responsible for ruling on all disputes arising from this contract.

XVIII. Data Protection, Change of Address and Copyright

The customer agrees that the **personal data** included in the sales contract may be **stored and processed** by us in the course of performing the contract.

The customer shall be obligated **to inform us about changes in its residential and/or business address** as long as the contractual legal transaction has not been fulfilled by both parties. In the event this **notification is not given, declarations** shall then also count as **delivered if they are sent to the last notified address.** Plans, drafts or other technical documentation, and samples, catalogues, brochures, diagrams and similar, shall remain our intellectual property; the customer shall not be granted usage or exploitation rights of any kind whatever.

Final clause on separate sheet:

I hereby confirm through my signature that I have been especially informed and made aware of the **bold-printed conditions** contained in the General Standard Terms and Conditions of Trade.

....., this day of,

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Signature of customer