



Terms of Sales and Delivery

1) Preamble

These terms of sales and delivery apply as far as the contractual partners do not have agreed to any other written from these variations. Abnormal conditions are never subject of any contract, even if the seller does not emphatically disagree, or generates an unconditional performance to the contrary of the buyer's regulations. Consecutively conditions about the delivery of goods apply also for the performance of services. Insofar a written form is determined, Emails also comply this formality.

2) Conclusion of a contract

The contract is said to be closed, if the seller sends a written confirmation of order after the receipt of order, and the buyer does not disagree in written from within 3 days thereafter. Variations and amendments of the contract need a written agreement of the seller. Purchasing terms of the buyer are binding to the seller if and only if the seller accepts them in a separate written form. If import- or export licences, foreign exchange licences are necessary for the fulfillment of contract, the party which is responsible for the acquisition has the obligation to provide the licences on time.

3) Drawings and documents

Drawings, drafts, cost estimates and other technical documents remain in the ownership of the seller, even if they are parts of the offer – also examples, catalogues, brochures, images and suchlike. Every realisation, copy, reproduction, diffusion and handing over to third parties, publication and presentation needs an emphatically written acceptance of the owner (the seller). All documents are subject to secrecy. In case of acting in opposition to secrecy we are entitled to claim a penalty of € 10.000,00 per case.

4) Packaging

The quoted prices are without any packaging.

5) Transfer of perils

Except otherwise stipulated, the product deemed to be sold ex works (EXW). The version of Incoterms of that day on which the contract takes place is valid.

6) Date of delivery

In default of any other contradicting condition the date of delivery starts with the latest of the following points:

- Date of acceptance of order,
- Date of the completion of technical, commercial and financial obligations of the buyer,
- Date of receipt of a prepayment, or a payment guarantee which is received by the seller before the delivery of the product.

The seller has the right to do part- or pre deliveries.

Will there be a delay of delivery because of circumstances on the seller's side – which is to be understood as exception in terms of article 15 – a prolongation of the date of delivery will be allowed. Does the buyer not accept the contractual prepared goods on the contractual agreed location or contractual agreed time, and is the seller not guilty of any delay, the seller has the right of fulfillment or he can retire from the contract after setting an additional respite. If the goods have been separated, the seller has the right to stock the goods at the expense and danger of the buyer. The seller has also the right for replacement of all justified expenditures which were necessary for the realisation of the contract and which are not included in the received payments. Furthermore demands of the buyer because of delay of the seller are not accepted.

7) Acceptance inspection

If the buyer desires an acceptance inspection, it has to be arranged with the seller in written form. The inspection takes place at the place of manufacture or at a location pre defined by the seller and during normal work hours. The buyer has to be informed on time so that he can be present during the inspection or that he can be represented by a third party. Is the product of sale in contrary to the contract, the seller has to correct immediately all failings to reconstitute the conventional state of the product of sale. Only in cases of considerably failings the buyer can demand for repeated inspection. After the acceptance-inspection an acceptance-protocol has to be composed. The acceptance protocol has to be signed by the buyer and by the seller. Should the buyer or an authorised third party be absent, the certificate has to be signed by the seller and a copy of the certificate has to be forwarded to the buyer in order to be signed.

8) Price

Except otherwise stipulated the prices are ex works (EXW) of the seller without packaging and loading. The prices are based on the costs of the date when prices were offered if not otherwise stipulated. If there are any changes of costs until the date of delivery, then the changes are in favour of the buyer or at the expense of the buyer, no matter in which direction the prices fluctuate.

9) Payment

The payments have to be made accordingly to the agreed payment practice. If no payment practice was agreed upon, it has to be paid **one third** of the price with receipt of confirmation of order, **one third** after half of the lead time and **the rest** has to be paid at delivery. The value added tax included in the invoice has to be paid at any rate latest by the 30st day after receipt of final invoice.

The buyer is not authorised to detain payments because of warranty claim or other counterclaims disallowed by the seller.

Is the buyer behind schedule with the agreed payment or any other services, the seller can either demand the compliance of the contract and together with this

- the compliance of his own commitment can be delayed until the settlement of the due payment,
- can take an adequate prolongation of the delivery time,
- the whole still open purchase price can be duded,
- if there is no reason for exoneration on part of the buyer, there will be allocated interests of default at the amount of 7,5% over the particular base rate of the European Central Bank from maturity on by the seller.

Or the seller can resign from the contract under concession of an adequate respite.

The buyer has to substitute any arising dunning costs and operating costs to the seller because of the delay. If the buyer does not pay the due payment to the seller, the seller can resign from the contract by a written notice. If the seller requests, the buyer has to resituate the delivered goods and has to compensate the seller for the debasement of the produced goods, and also has to compensate for all justified expenditures which the seller has made for the execution of the contract. Concerning not finished goods, the seller has the right to deliver partly finished or installed parts to the buyer and for those parts he can demand adequate parts of the sales price.

10) Retention of title

The seller keeps the ownership of the articles of sale until the complete fulfillment of all financial commitments of the buyer. The seller has the right to mark his ownership at the article of sale. The buyer has to meet all necessary formalities for ensuring this ownership. A resale of our articles of sale is forbidden. The buyer must notify any party of the ownership of the seller if there is distrair or a claim. The buyer has to advise the seller of this action immediately. The ownership also aims for, if components will be attached into the construction. If the buyer delivers the goods to third parties, the seller has the right of a consideration. At this aim, the buyer cedes all this rights towards third parties to the seller including any ancillary rights, so that if this claim arises no special assignment act is needed any more. The claim at the amount of the payment balance request of the seller plus interests of default have to be ceded. The buyer is obliged to inform the seller about his customer and to inform the customer about the assignment. Also the seller is entitled to inform the customer about the assignment. The buyer is obliged to impose an ownership to the customer of the buyer in this case. The buyer has to inform the seller immediately about distraits or other accesses of third parties at goods which are under ownership. A default of payment authorises the seller to demand the return of the goods, to demand prepayments for goods which have not been yet delivered, and to resign from contracts which have not been handled and to dispose prepared securities. There will be no requirement for any set of respite on site of the seller.

11) Invoice of small amounts

Invoices of small amounts under € 150,00 have to be paid immediately and to be paid at the cash desk. Furthermore only small orders of a minimum settlement price of € 70,00, will be accepted.

12) Warranty

The period of warranty for our delivered goods and services is 12 months.

Technical data in catalogues, brochures, price lists and so on are non-binding and can be changed on demand. For us they are binding if they are emphatically abided in our confirmation. Our products and services have to be checked immediately after acceptance by the buyer; failings have to be noticed immediately in written form or by fax. Damages of transport have to be marked extra on the documents of transport of the carrier during the acceptance process. The assumption rule is debarred.

A default of this check is leading to a loss of any warranty and claim of damages. A further processing or modification of the delivered goods stands for the full acceptance and truth of the delivered goods. If there is a failing the buyer is not authorised to correct the failing himself or to correct the failing through a third party, the seller must first have the chance for these improvements within an adequate time frame. The seller has to correct failings which influence the serviceability of the product, or which are a mistake of construction or material. The seller has also to account liable for failings on emphatically characteristics of the product. The seller has to correct failings if they are according to clauses of these articles, at his choice:

- to repair the failing goods on the spot,
- to have sent back the failing goods or failing parts for amendment to his workshop,
- to replace the failing goods,
- to replace failing parts.

If the seller decides to have sent back the failing goods or parts for amendment or replacement, the buyer has to bear the risk and costs of transport. For the consignment of the corrected or substituted goods the seller has to bear the risks and costs of the transport.

According to this article the substituted failing goods or parts become again the property of the seller. The seller only bears costs for eliminating failing goods which have been done by the buyer if he had acknowledged in writing. The liability of warranty of the seller only applies for failings which arise under compliance of the service conditions and at regular use. The liability of warranty does not apply for failings which depend on:

- Wrong or inadequate installation by the buyer or his commissioner,
- Wrong or inadequate servicing,
- or without a written agreement of the seller done repair or modification which has been done by third parties and not by the seller,
- Regular abrasion.

The seller is only liable for parts of the goods which he has sub-sourced from sub-suppliers requested by the buyer, to the extent of his own warranty claims against the sub-supplier. Have products of the seller been produced based on construction specifications, drawings or examples of the buyer, the seller is not liable for the correctness of the construction but only for the fulfillments according to the specifications of the buyer. In such cases of possible infraction of trade mark rights the buyer has to compensate the seller. With acceptance of repair orders or alteration of re-buildings of elderly and used goods at delivery, the seller does not take any warranty. From the beginning of the warranty period on, the seller does not take any additional warranty or guarantee than the one in this article decided. The buyer has to bear all additional costs (costs of transport, travel costs, insurance costs and so on) of the elimination of failing products outside the domicile or workshop of the seller.

13) Liability

It is emphatically agreed, that the seller does not have to pay compensation for any damages against the buyer, for injuries of persons, for damaged goods which are not subject of agreement, as well as other damages and the missing of earnings, unless it results from a gross negligence. The compensation is limited with 5% of the total order, and at the max. with an amount of EUR 300.000,00. The shifting of the burden of proof according to § 1298 ABGB (Austrian private law) is emphatically excluded.

The object of purchase only provides reliability which can be abided due to permission instruction, instruction guidelines, commandments of the seller on the handling of the object of purchase – in particular about prescribed checks and maintenance services– and other advices. There will be no liability at all for planning services and also no liability for manufacturing documents which are prepared and provided by the buyer or third parties. All claims for damages or failings of delivery and/or of services – if the failings are not emphatically accepted by the seller - have to be claimed judicially within one year after expiration of the contractually defined warranty period. Otherwise the claims will have expired.

14) Consequential damages

The liability of the seller is debarred against any production stops, loss of profits, downtime, losing of contracts or any other commercial and indirect consequential damage of the buyer.

15) Exoneration reasons

Both parties are free of the on-schedule fulfillment of contractual liabilities completely or partially, if they are handicapped by happenings of force majeure. Happenings of force majeure are happenings which are unpredictable for the parties and which are inapplicable and are not from their sphere. Strikes and industrial conflicts are happenings of force majeure. The seller can only appeal to happenings of force majeure, if he accords directly and within 5 days a confirmed written statement to the buyer about the beginning and ending of the obstruction, about the cause and the expected consequences and the predicted time lag. This statement has to be confirmed from the particular government agency or chamber of commerce of the country of destination. In the case of force majeure the parties have to eliminate and/or reduce the complexity and foreseeable damages for each other. The parties also have to inform the counterpart about these points, otherwise they will be liable for damages adverse the counterpart. Dates and respites which can not be kept because of force majeure will be extended at the max. to the duration of the force majeure or to a defined period among both sides. If any force majeure takes longer than 4 weeks, the buyer and seller will have to set regulations about the technical consequences. If there is no amicable solution, to be reached, the seller has the choice to resign totally or partially from the contract.

16) Data protection

The seller has the right to save, transfer, revise and to delete any personal data of the buyer in line with the business relation. The parties commit to absolute secrecy of knowledge of their business connection towards third parties.

17) Jurisdiction, applicable law, place of delivery

Jurisdiction for all indirect and direct differences of any contract is the Austrian court which is responsible for the domicile of the seller. The seller can also call the court which is responsible for the buyer. The parties can also arrange an arbitral court. The contract is subject to Austrian law excluding the UN-convention on "purchase law". For deliveries and payments Villach classifies as the place of fulfillment, even though the delivery happens accordingly to an agreement on a different location.

18) Advanced value-added tax invoices

We reserve the right of an advanced value-added tax invoice. The due-date is max. 14 days without taking into account the control period.