

Terms and Conditions of Sale and Delivery of Austria Email AG

I. APPLICATION

1. These Terms and Conditions of Sale and Delivery are applicable for all contracts concluded by Austria Email AG (hereinafter AE); the buyer agrees to the application of these terms and conditions through submission of a quotation or acceptance of a quotation submitted by AE.
2. The Terms and Conditions of Sale and Delivery of AE shall apply exclusively. Terms and conditions of the buyer that conflict with or deviate from the terms and conditions of AE shall not be recognised by AE unless AE has consented to their application in writing. These Terms and Conditions of Sale and Delivery shall also apply even if AE provides its own services despite knowledge of terms and conditions of the buyer that conflict with or deviate from the terms and conditions of AE.

II. CONCLUSION OF CONTRACT

1. The buyer is bound by his quotation to AE for a period of 4 weeks from receipt by AE. AE can explicitly accept the quotation through written declaration of acceptance or through actual delivery.
2. Quotations submitted by AE are fundamentally without obligation in terms of price, quantity and delivery location or delivery time etc. Quotations are subject to prior sale.
3. If a written or verbal declaration of intent or other declaration issued by AE contains an error or mistake that is recognisable by a sincere and reasonable recipient, AE shall be entitled to correct the declaration of intent at any time informally. The declaration shall then become legally effective in the corrected form.
4. All information concerning measurements, weights as well as illustrations, descriptions, assembly sketches and drawings in sample books, price lists and other printed matter has been determined to the best of our knowledge but is nevertheless only approximate and therefore not legally binding. The same shall apply for suppliers of AE.
5. All samples are non-binding samples for inspection. Technical data constitutes statistical average values only. In the absence of explicit assurances, the goods to be delivered by AE following conclusion of a contract must not therefore have the features of the sample nor must they correspond to the technical data.

III. PRICES

1. All prices stated by AE are without obligation. Only prices explicitly confirmed are binding. They shall apply solely given offtake of the quantities confirmed to the buyer. The prices are in euros.
2. The prices are to be understood as ex-works. If delivery has been agreed with service, the prices are to be understood as excluding unloading and any further movement.
3. All ancillary costs of the contract are for the account of the buyer. These include in particular costs of establishing the contract, costs of legal advising, fees etc.
4. As a fundamental rule, special wishes of the buyer are not included in the quotation prices and must be paid for separately by the buyer.

4. Any pledging, transfer by way of security or other disposal of an object of sale, subject to retention of title by AE, in favour of a third party is inadmissible. The buyer is obliged to prevent access by third parties to the property of AE and shall be liable for all damages and costs that can result from any such access by third parties.
5. The buyer is obliged to inform AE immediately of any pledging of the goods delivered or of any other interference by third parties. He must compensate AE for all costs associated with the indemnification against pledging, whatever their nature.
6. If the buyer is a re-seller, he is entitled to sell on the goods, purchased from AE, at normal conditions in the ordinary course of business. In the event of onward sale, the buyer hereby transfers henceforth to AE all claims, including all ancillary rights and collateral, resulting to him against his own customers from the onward sale or processing of the goods purchased, in the amount of the claim of AE still outstanding plus 10%. AE is entitled to collect the claims assigned for the purpose of satisfying its own claims. The buyer undertakes, upon request by AE, to inform his own customers of the assignment. The buyer is authorised, subject to revocation at any time, to collect the claims against his customers, assigned to AE, for AE, for as long as he fulfils his payment obligations with respect to AE. Nevertheless, AE shall acquire ownership by way of security to the sales proceeds, received by the buyer, in the form of anticipatory constructive possession of chattels. The buyer must ensure the insolvency-law assertion of this constructive possession of chattels by keeping a separate account for this.
7. In the event of processing or treatment of the goods delivered by AE, joint ownership shall be created in the ratio of the value of the items processed; point IX. 6 shall apply accordingly in the event of onward sale of the goods processed.
8. If the customer defaults on payment, AE shall be entitled to take back the objects of sale subject to retention of title, even without court assistance. The contract shall remain in force despite taking back of the goods, unless AE explicitly declares withdrawal from the contract. AE is also entitled to sell the goods concerned by private sale; the proceeds from the sale will be credited to the buyer's liabilities. All costs of taking back and of the private sale shall be for the account of the buyer.

X. PLACE OF PERFORMANCE

In the absence of any explicit agreement to the contrary, the place of performance for both parties is the place from which the goods are dispatched; unless otherwise agreed, this is the registered office of AE in Knittelfeld.

XI. WARRANTY

The warranty obligation of AE is based on the statutory provisions of the ABGB and – if applicable – of the HGB (Commercial Code).

Nevertheless, the following modifications are hereby agreed:

- a) A defect shall only apply if, at the time of the passing of risk, the contractual item is missing a

IV. COST ESTIMATES

1. Cost estimates will only be prepared upon explicit request and, in the absence of any written agreement to the contrary, will be charged for.
2. Cost estimates whose correctness is not explicitly guaranteed by AE in writing are non-binding.
3. Both binding as well as non-binding cost estimates are based on the material and personnel costs applicable at the time of their preparation. In the event of these costs changing by the time of provision of the contractual performance, the remuneration shall change accordingly.
4. If the costs necessary for achieving the contractually-owed result exceed the cost estimate for reasons other than those stated in point IV. 3, the following is hereby agreed in deviation from Section 1170 a ABGB (Austrian Civil Code):
 - a) If the additional costs are not more than 15%, the remuneration owed by the buyer shall be increased accordingly.
 - b) If, however, the additional costs are more than 15%, AE shall advise the buyer of this within an appropriate period. The buyer shall then be entitled to withdraw from the contract within one week of receipt of the notification. In such cases, he must pay for the performances already provided by AE. The level of the remuneration will be determined by AE. The buyer shall be bound by this determination, unless it is grossly unreasonable. If the buyer does not withdraw from the contract, he shall owe the amount provided for in the cost estimate, plus the costs resulting from the exceeding.

V. DELIVERY, PACKING, PASSING OF RISK

1. Depending on the agreement made, handover of the goods sold shall be either through collection by the buyer, through dispatch or through service by AE. In the absence of any explicit agreement to the contrary, the risk concerning the goods delivered shall, in all cases, pass at the time at which the goods leave the respectively responsible branch of AE. This shall also apply if the goods are assembled or installed by AE or at the instigation of AE.
2. The risk concerning the goods shall also pass even if the goods are not called off or collected by the buyer within a period of 8 days from announcement of availability for delivery. In this case, AE shall be entitled to store the goods at the expense and risk of the buyer.
3. Unless otherwise agreed, the goods shall apply as sold "packed ex AE". AE is an ARA licensee; its ARA disposal license number is 2629.
4. If "delivery free construction site or warehouse" is agreed in deviation from point V. 3, the access road must be passable with heavy trucks. The suitability of the transport route and of the setting-up site for transport and setting up is within the risk area of the buyer; under no circumstances shall a lack of suitability release him from his payment obligation. Any costs incurred by AE must be reimbursed. The buyer shall ensure that the goods are unloaded correctly and without undue delay at his expense.
5. The goods will be transported packed in line with normal practice in the industry. The costs of transport packing shall be for the account of the buyer.
6. As a fundamental rule, the goods will be transported uninsured and at the sole risk of the buyer. All compensation for damages or liability of AE for the

feature which is necessary for its use as envisaged in the relevant regulations and provisions of AE as handed to the buyer. Defects not present at this time but not occurring until later shall not create an entitlement to assert warranty claims. Any lesser impairment of the intended use will not be considered.

- b) Features shall only apply as assured if this assurance is given in writing.
- c) No warranty is assumed for the matching colours of related items of furniture; non-matching colours do not constitute a defect.
- d) Not covered by the warranty obligation are defects caused by operating errors, physical influence or use of the contractual item that does/do not correspond to the present contract. The buyer is obliged to observe the instructions for use and warning references provided by AE with scrupulous precision and not to make any alterations whatsoever without consulting AE.
- e) The buyer can only assert claims from the warranty title if he has fulfilled his obligations under the contract of sale fully and completely, including all ancillary charges.
- f) The warranty period is 6 months from the time of the passing of risk.
- g) The buyer is obliged to examine the goods precisely and intensively immediately upon receipt in terms of whether they conform to the contractual specifications and, in the event of defects being apparent, to notify AE within 3 days of handover. In the absence of any notification by the buyer, the goods shall apply as approved, unless the defect is one which was not recognisable even given thorough examination. If any such defect becomes apparent at a later date, AE must be informed of this immediately in writing, otherwise the goods shall apply as approved despite this defect.
- h) AE shall fulfil its warranty obligations by rectifying defects, demonstrated as present at the time of handover, within an appropriate period; AE is however, also at liberty to replace the defective goods with defect-free goods within an appropriate period. If neither repair nor replacement is possible, AE shall grant an appropriate price reduction. Farther-reaching claims are excluded. If parts are repaired or new parts supplied, no new warranty period shall begin, even if the entire item delivered is replaced by a new item.
- i) AE assumes no warranty whatsoever for goods altered in any way by third parties or the buyer himself without the consent of AE.
- j) If goods are produced by AE on the basis of construction specifications, drawings or models of the buyer, AE's liability for damages and warranty liability shall not extend to the correctness of the construction but shall cover only performance in accordance with the buyer's specifications. The buyer explicitly notes that he therefore has no warranty, damage and product liability claims whatsoever against AE in so far as such claims are based on the construction or the system and not on the performance of the prescribed construction or system. The buyer also assumes responsibility for indemnifying AE against third parties in terms of any such claims as well as against any violations of protected privileges of third parties. The AE is under no obligation to check the construction specifications, drawings or models, provided to it, in

transport risk is/are excluded, even if AE has undertaken to effect service. The goods will only be insured at the explicit, written request of the buyer, at his expense and for his account. In this case, compensation will be provided solely up to a maximum of the compensation provided by the insurer.

VI. LATE DELIVERY BY AE; IMPOSSIBILITY OF DELIVERY

1. AE is entitled to exceed agreed provision/delivery periods and deadlines by up to a maximum of 8 weeks without the buyer being entitled to assert any default consequences. This shall not apply if the periods or deadlines have been explicitly agreed in writing as fixed.
2. AE is entitled to make and to invoice partial deliveries.
3. The following is hereby agreed in addition to point VI. 1: Unforeseeable events or events beyond the influence of AE, such as strikes, official measures, transport disruptions, transport and customs clearance delays as well as general cases of force majeure shall release AE from all delivery obligations for the duration of their effects. This shall also apply if these circumstances occur with an upstream supplier. Non-delivery by own suppliers shall also release AE from its delivery obligation. If any such event makes delivery fully or at least economically impossible or makes delivery more difficult to a not immaterial extent, AE can withdraw from the contract without the buyer being entitled to assert any claims whatsoever.
4. In the event of default on performance by AE or impossibility of performance for reasons for which AE is responsible, claims of the buyer for damages are excluded, unless they are based on intentional conduct or blatantly gross negligence on the part of AE, a statutory representative or vicarious agent of AE.
5. Under no circumstances shall AE be liable for late deliveries by carriers, railways or other parties entrusted with transport, transshipment etc., irrespective of the degree of culpability of these parties. Delays of this nature shall not entitle the buyer to withdrawal nor to the assertion of any claims for damages.

VII. DEFAULT OF THE BUYER ON ACCEPTANCE

1. Takeover of the goods purchased must ensue promptly. AE is also entitled to require takeover outside of normal business hours.
2. The buyer must take over the goods even if they have immaterial defects as defined in Section 932 ABGB.
3. In the event of – even merely objective – default by the buyer on takeover, AE shall be entitled to withdraw from the contract without the buyer being entitled to derive any form of claims whatsoever from this. Withdrawal from the contract does not presuppose the setting of any period of grace. AE's right to assert damages shall not be affected by any such withdrawal. Transport costs resulting from or caused by the withdrawal, including storage costs and demurrage as well as, in particular, the costs of return transport, shall be for the account of the buyer in all cases.

terms of whether they comply with the laws, ordinances or standards and safety precautions applicable to them, or whether these or their performance can violate protected privileges or whether this construction can withstand technical checking in the first place.

XII. RELEASE FROM LIABILITY

All liability of AE for damage, including liability for indirect damage, caused other than through blatantly gross or slight negligence, is hereby excluded by mutual consent, irrespective of whether this is the result of contract-violating or tortious conduct. AE shall only be liable if AE, or persons for whom AE must take responsibility, are guilty of at least blatantly gross negligence. This release from liability covers in particular consequential damage and damage suffered by the buyer as a result of claims asserted against him by third parties. The buyer shall take out adequate insurance cover to protect himself against such claims. AE shall assume no contractual liability whatsoever with respect to third-party persons.

XIII. PRODUCT LIABILITY, RELEASE, IMPOSITION AGREEMENT

1. The buyer, who is not a consumer as defined in Section 9 of the Product Liability Act, explicitly renounces all claims whatsoever for material damage which he, as entrepreneur, suffers as a result of a product defect.
2. The buyer is empowered and obliged to pass on this release from liability for material damage to his own commercial customers, both on his own behalf and on behalf of AE, in order to ensure that customers of the buyer – in so far as these are not consumers as defined in the Consumer Protection Act – likewise explicitly renounce all claims whatsoever against AE for material damage suffered by them as entrepreneurs.

XIV. EXCLUSION OF AVOIDANCE ON THE GROUNDS OF ERROR

The buyer hereby renounces avoidance of the present contract on the grounds of error.

XV. CONFIDENTIALITY

The buyer undertakes to treat all information, made available to him by AE or of which he becomes aware in any other way and which is not general knowledge, as confidential and to take all necessary measures to prevent third parties gaining knowledge of and using such information. The buyer undertakes furthermore to use all plans and/ or technical descriptions provided exclusively for the intended use and not to forward them or make them accessible to outside third parties.

XVI. PLANS AND DOCUMENTS, DOCUMENTATION, PRESENTATION ETC.

1. The information contained in the catalogues, prospectuses, circular letters, advertisements, illustrations and price lists concerning weights, dimensions, volumes, price, services and similar is only authoritative if explicit reference is made to it in the order confirmation. Plans, sketches and other technical documents as well as samples, catalogues, prospectuses, illustrations and similar shall, in all cases, remain the intellectual property of AE under protection of the relevant statutory provisions concerning reproduction, imitation,

VIII. PAYMENT TERMS, DEFAULT ON PAYMENT

1. In the absence of any agreements to the contrary, payment must be made immediately on receipt of invoice, in cash and without any deductions. Invoices can be issued as soon as availability for dispatch has been advised.
2. Cheques and bills of exchange will only be accepted following special, written agreement and only on account of payment, not in lieu of payment. All collection and discount charges shall be for the account of the buyer.
3. If the buyer's financial position deteriorates in any way whatsoever subsequent to conclusion of the contract, AE shall be entitled – even given agreement of credit purchase – either to require payment in cash step by step against delivery of the goods, to make delivery of the goods dependent on the provision of suitable collateral or to withdraw from the contract without setting a period of grace. This shall also apply even if AE must have reckoned with a deterioration in the financial position at the time of conclusion of the contract. If AE has already delivered the goods, AE shall also be entitled to demand immediate return of the goods. If AE withdraws from the contract, it shall have the option, at its own discretion, of demanding either damages or payment of a contractual penalty of 10% of the agreed selling price, irrespective of any fault. All costs associated with these procedures shall be for the account of the buyer.
4. All payments must be made free of charges and without deduction.
5. Payments will be credited to the respective oldest claim against the buyer.
6. In the event of exceeding of the period for payment, AE shall be entitled to charge default interest at 5% above the respective discount rate of the Austrian National Bank as well as compensation for any dunning and solicitor's costs.
7. In the event of default on payment by the buyer, AE shall be entitled to revoke any facilities of payment granted (payment by instalment etc.) and to demand the return of any services of which the buyer has already made use on the basis of this title. This right also covers claims from other transactions concluded between the buyer and AE.
8. The buyer is not entitled to offset own counterclaims against claims of AE, irrespective of the legal grounds on which these counterclaims are derived. Offsetting is only possible against claims explicitly recognised by AE or established by a court.
9. The buyer is not entitled to withhold payments on the basis of claimed warranty or other counterclaims.
10. If the buyer fails to fulfil his obligations from the business relationship with AE or if dunning procedures or court proceedings are initiated as a result of default on payment, or insolvency proceedings applied for against the buyer's assets, AE shall be entitled to revoke any discounts, cash discounts and credit notes or other rebates and remuneration already granted – of whatever description – and to invoice these to the buyer for immediate payment.

IX. RETENTION OF TITLE

1. AE shall retain title to the goods delivered until such time as full payment has been received for all claims of AE from the transactions concerned and all

competition etc. Their return can be required at any time if the order is placed elsewhere.

2. The buyer undertakes to prepare and keep documents on the use of the goods purchased for a period of at least 10 years as from acquisition, in particular concerning whether and, if applicable, what treatment, processing and/or joining has taken place. He hereby gives an assurance that he will make these documents available to AE at any time on request. Failure to comply with this provision shall render the buyer liable to damages with respect to AE.
3. AE shall provide the buyer with advertising material, such as prospectuses, technical descriptions and price lists, for AE products in a scope that it considers sufficient. The buyer undertakes not to make any alterations whatsoever to the advertising material provided to him and also to pass this obligation on to all acquiring parties. The buyer is also obliged to observe the instructions for use and warning references provided by AE with scrupulous precision and not to make any alterations whatsoever without consulting AE.

XVII. PLACE OF JURISDICTION

The court factually and geographically responsible for the registered office of AE is hereby agreed as place of jurisdiction for all disputes of any kind whatsoever arising directly or indirectly in connection with the order (purchase order), its coming about or its execution. AE can, however, also make recourse to another court, responsible for the buyer, in the event of a dispute.

XVIII. PRE-PROCEDURAL COSTS

If the buyer defaults on payment – even if only objectively – AE shall be entitled to take all, including extra-judicial, legal pursuit measures that it considers advisable. These include in particular payment reminders, the appointment of a solicitor or even of a debt-collection agency. The buyer undertakes explicitly and henceforth to reimburse AE for all costs.

XIX. CONSENT TO DATA PROCESSING

The buyer gives his explicit consent to AE storing all order and buyer-related data in so far as this is connected with the order, and, if necessary, processing and using this with automated means for own purposes; at the same time, he is hereby explicitly informed of this processing.

XX. APPLICABLE LAW

Austrian law shall apply as agreed both formally as well as substantively, nevertheless subject to the explicit exclusion of the UN Convention on Contracts for the International Sale of Goods.

XXI. WRITTEN FORM

Subsidiary agreements as well as retrospective amendments can only be made in writing; amendment of this reservation of the written form itself also requires the written form. Verbal assurances by employees or representatives of AE will therefore only be valid if confirmed by AE in writing.

XXII. INVALIDITY OF INDIVIDUAL CLAUSES, PARTIAL NULLITY OF INDIVIDUAL CLAUSES

Should individual provisions of these General Terms and Conditions of Business be or become invalid, the validity of the other agreements shall remain

related transactions, including costs, interest and default interest. If the claim of AE is included in a current account settlement, the retention of title shall serve as collateral for the balance claim of AE. The retention of title shall not be lifted through the provision of cheques or bills of exchange; the claims secured shall not apply as settled until following irrevocable redemption of the cheque or bill of exchange.

2. The buyer is obliged to keep, look after and maintain the goods delivered in a correct manner. In the event of damage or loss, he shall be obliged – irrespective of any fault – to rectify the resulting loss of value either through repair, replacement or through the provision of suitable bank collateral. The buyer shall inform AE immediately of any damage etc. to the conditional commodity.
3. The buyer shall insure the goods delivered adequately against fire, water, breakage and other damage. The claims from these insurance contracts must be assigned to AE automatically upon conclusion of the contract. AE must automatically be provided with evidence of this irrevocable assignment up until full payment of the goods delivered. If the insurer provides benefits in a damage event, the obligation to remove the damage, as envisaged in point IX. 2, shall apply only in so far as the damage is not covered by the insurance benefit.

unaffected. In such cases, AE is entitled to determine a replacement clause which corresponds as closely as possible to the meaning and purpose of the invalid clause. The buyer shall be bound by this replacement clause, unless it is grossly unreasonable. Should individual clauses partially violate mandatory law, they shall be maintained by the contracting parties in so far as they are legally admissible.