

Contractual and Delivery Conditions – Lugstein Ges.m.b.H.

Last update January / 2005

1. Conclusion of a contract:

- 1.1. The contract is concluded after the sending of an order confirmation for an order received.
- 1.2. The contract fundamentals are our written offer, your written order and our written confirmation. Oral acceptances and agreements become valid only after a written confirmation from our side. Likewise, subsequent changes and amendments to the contract become valid only upon written confirmation from our side.
- 1.3. All agreements and offers are governed by our contractual and delivery conditions. Order placement or order acceptance will be considered as an acceptance of these conditions. Deviating conditions of the buyer, which we have not recognised in writing, do not apply, even if we have not explicitly objected.

2. Price, payment, delay of payment:

- 2.1. The prices and payment conditions given in the offer and the order confirmation apply exclusively.
- 2.2. All prices are valid ex works, unless otherwise agreed upon. Shipping is at the cost and risk of the buyer.
- 2.3. Payment must be made without allowances or discounts.
- 2.4. Unless otherwise agreed upon, payment of our invoices is due as follows:
 - Within 10 days of the invoice date with a 2% discount.
 - Within 30 days of the invoice date with no discount.
- 2.5. In the case of a delayed payment, the following conditions apply:
 - 2.5.1. We may charge interest at a rate of 12% p.a.
 - 2.5.2. We may require reimbursement for payment reminders, collection expenses, collection agency, and legal costs, arising from the delinquent part of the contract.
 - 2.5.3. We may withhold deliveries and services covered in the delinquent part of the contract until our payment requirements have been completely fulfilled. Agreed upon delivery and service deadlines are suspended for the durations of the delinquency.
- 2.6. Our claims may be offset solely against demands which are undisputed or legally determined. In all other cases, the offsetting of our claims is prohibited.

3. Delivery, acceptance:

- 3.1. The agreed upon delivery and service deadlines begin with the date of our order confirmation; under the conditions that the order is technically clear and that all official permits have been obtained. If either the technical clarifications or the official permits have not been received at the time of the order confirmation, then our service and delivery deadlines begin when these requirements have been fulfilled.
- 3.2. Hindrances (delays of the beginning of the performance of the service or the occurrence of delays and interruptions during the performance of the service) give us the right to extend the deadline, if:
 - a) we have informed the customer of the hindrance.
 - b) it is either beyond our power or unreasonable to remove the hindrance.
 - c) the hindrance is caused from the side of the customer (i.e. delayed provision of design documents, defective or delayed services from subcontractors).

The length of the deadline extension will be determined based on the extent and duration of the hindrance.

- 3.3. The agreed upon deadline will be adhered to under the condition that the contractual obligations of the purchaser have been fulfilled, in particular the timely provision of required documents and the fulfillment of the agreed upon payment conditions.
- 3.4. If an agreed upon deadline is not met by our own fault, then the customer may either demand the fulfillment of the contract or withdraw from his contractual obligations. Cancellation of the contract is allowed only under the condition that the delivery is more than two weeks overdue and that the customer has issued a grace period of one month beyond this deadline in written form. The right of the customer to withdraw from the contract is not valid in the event that we could not meet the delivery and service deadlines for reasons beyond our control.
- 3.5. Compensation to the seller for a delayed delivery will only be made if the delay results from a major violation on our part (premeditation or gross negligence).
- 3.6. Upon completion of our services, we will inform the customer and require from such an acceptance of the services. If the formal acceptance has not been made within one week of the date of our communication to the customer of the completion of the service, the customer is guilty of default of acceptance, and the legal consequences come into force (i.e. transfer of perils, begin of the warranty period and period of compensation, due-date of fees).
- 3.7. The usage of our equipment by the customer is also considered as an acceptance of our services.

4. Warranty, compensation for damages:

- 4.1. We guarantee our products and services in accordance with the warranty-amendatory law from May 8, 2001, BGBl I 48/2001 pursuant to the following changes and amendments.
- 4.2. The defect(s) must be reported to us in writing within one week after discovery. The defect(s) must be specified.
- 4.3. The guarantee period for mobile and immobile equipment extends for two years and begins with the date of actual or implied acceptance of our services.
- 4.4. In the event of a defect, which is reported to us in a proper and timely manner, and the purchaser has required correction of the defect, the purchaser may withhold the purchase price in an amount no greater than the approximate costs of the elimination/repair of the defect.
- 4.5. Negligible deviations in the surface structure, color, or dimensions do not fall under the guarantee provisions.
- 4.6. The warranty becomes null and void if repairs, improvements, or other changes are performed from a third party on the delivered equipment without our consent.
- 4.7. We provide compensation for damages in accordance with legal regulations for damages (including indirect damages and secondary damages) which we unlawfully and demonstrably have caused by gross negligence.
- 4.8. We are exempt from liability for property damage in accordance with the product liability laws (as far as the contractual partner is not the end user).
- 4.9. We are exempt from all possible compensation claims, which the contractual partner or a third party makes towards us in the name of product liability in accordance with the product liability laws, except in the case of compensation claims resulting from a gross negligence on our part.
- 4.10. We have the right from our side to demand compensation from the customer when the contractual relationship is cancelled due to fault of the customer or to reasons originating from the side of the customer. In this case, we have the right to require either lump-sum compensation in the form of a cancellation fee of 20% of the net price of the order or the actual compensation of demonstrated losses.

5. Reservation of Title:

- 5.1. Our delivered merchandise, machines, and goods of all kinds remain as our legal property until the complete fulfillment of all payment obligations in the delivery contract.
- 5.2. The buyer has the right of resale of the conditional merchandise in the realm of normal business transactions. Resold merchandise will be payable to us until the merchandise has been paid for. The reseller transfers all receivables from the resale

to us until the final payment of the delivered merchandise has been made. The transfer serves as a security for our receivables, but does not free the buyer from his payment obligation to us.

5.3. In the case of resale of the merchandise, the reservation of title extends to the selling price.

5.4. We will be informed without delay of any third party claims to the conditional merchandise.

6. Plans and documents:

6.1. Data from brochures and other documents are not binding unless they are included as part of the order confirmation.

6.2. We design our schematics and plans in accordance with the latest technology. They must be checked, however, for the correctness of the local conditions used as a basis, and the correct consideration of the product requirements. We will assume that our plans and schematics are acceptable in terms of local conditions and product requirements unless the purchaser raises objections in written form within one week after receipt of the documents.

6.3. The purchaser must verify in a timely manner the correspondence of our plans and products with the applicable required official legal regulations and restraints of the installation site. The installation may not be put into service until such required official authorizations have been obtained.

6.4. Neither contractual partner may use documents received from the other partner for any purpose other than the fulfillment of the contract obligations. Any other usage requires the written consent of the contractual partner.

6.5. Sample collections remain our property and can be reclaimed at any time in exchange for return shipment at no cost to the purchaser. Cash on delivery (C.O.D) is not allowed.

6.6. Technical details are subject to change.

7. Place of execution, Place of jurisdiction:

7.1. The place of execution of all contractual obligations is our company headquarters.

7.2. It is agreed that jurisdiction for any and all disputes arising from this contractual relationship shall rest with the competent court for such matters in the city in which our registered office is located. We shall also be entitled to take any and all of our claims arising from this contract to any court that in accordance with statutory provisions has competence in said matter and territory.

7.3. This contractual relationship is governed by Austrian law.