

CONCLUSION OF CONTRACT :

1. Unless expressly agreed otherwise, by issuing an order the purchaser acknowledges our general terms and conditions of sales and supply.
The purchaser agrees that in the event that his general terms and conditions of business or purchase have been used in the case of doubt our terms are to be assumed, even if the purchaser's terms have not been refuted.
2. Our general terms and conditions of business are agreed for the entire duration of the business association, including in particular also for repeat orders. This also applies for future orders even if they are not expressly referred to or the purchaser orders under different terms without our expressly refuting these.
3. To this extent activities on our part for the fulfilment of contracts do not count as agreement to contractual terms which differ from our terms. If however when contracts are being interpreted any ambiguities remain, then these are to be removed in such a way that those contents which are usually agreed in comparable cases shall count as having been agreed.
4. All offers are non-binding and do not oblige us to supply. Illustrations, drawings and information about brands in any form whatsoever are not binding.
5. Transactions and other contracts, especially insofar as they deviate from our terms, only become binding through our written confirmation.
6. All transactions and contracts, even when these have been executed or made by our external sales force, are only binding on us through our written confirmation.
7. Acceptance of the order takes place through our order confirmation or through supply, but we reserve the right to partial acceptance and partial supply.
8. In the case of supply based on orders made by phone, the consequences of any supplies brought about by errors of hearing or misunderstandings shall not be at our cost. In such cases the purchaser may not invoke the fact that all deals, contracts etc. only become binding upon us through our written confirmation.

SUPPLY AND DISPATCH:

1. Unless agreed otherwise in writing, all supplies take place FCA (Incoterms 2000) Feistritz/Drau.
2. We make every effort to comply with the agreed delivery periods and delivery dates as far as possible. The delivery periods and dates give are non-binding, in other words they are without legal obligation. Therefore claims for compensation of all kinds and invoking delivery periods are excluded.
3. Delivery periods begin with the date of our order, however not before full clarification of all the order details and the furnishing of any certificates required by the authorities at home or abroad. Delivery periods and dates refer to the moment of dispatch ex works. They count as having been met when readiness for dispatch is announced if the goods can not be shipped on time for reasons which are not fault. When there is delay on the purchaser's side, delivery periods are extended without prejudice to our rights by the period for which the purchaser is in arrears towards us with his obligations from this or other transactions. The same applies analogously to delivery dates.
4. The above point also applies if the delivery periods or dates have expressly been agreed as fixed.

DELAY IN DELIVERY:

If the delivery date which has expressly been made into a condition by the orderer is exceeded, then the orderer or the purchaser may withdraw from the contract after the fruitless expiry or after 30 days. Further claims are ruled out.

WITHDRAWAL:

1. Cancellations and suspensions of orders are only possible by mutual agreement.
2. Any withdrawal from the contract is in any event only possible provided that on our part no fulfilment activities have yet been instigated; in particular the start of production for a supply or the ordering of goods from sub-suppliers are to be considered as fulfilment activities.
3. In the event of a cancellation, it is agreed that a cancellation fee of 15 % applies. The cancellation fee does not exclude any claims for compensation due to withdrawal from the contract.
4. For all special production for the purchaser any prepayment which exists lapses without replacement on withdrawal from the contract.

GENERAL TERMS AND CONDITIONS OF SALES AND SUPPLY

MAI International GmbH

Valid from October 1st 2008



PRICES:

1. Our price lists as valid on the day of order acceptance or our offers are decisive.
2. Prices apply FCA Feistritz/Drau in accordance with INCOTERMS 2000
3. All prices are net prices excluding value added tax.
4. In addition, for sales in Austria and the European Union we charge value added tax separately at the respective applicable rate.
5. Customers based in the EU who provide us with their valid vat identification number at the time of ordering are exempted from this.
6. Cost estimates for works of whatever kind as a rule reflect only approximate prices, and not the binding final price.

PAYMENT TERMS:

1. Payment must strictly be made after 30 days from delivery in cash and excluding offsetting or retention. Payment terms differing from this are only valid if these have been confirmed by us in writing.
2. For part supplies the corresponding part payments must be made unless agreed otherwise in writing.
3. The deduction of a discount, if this has been expressly agreed in writing, is only permissible when no older due claims exist.
4. All payments must be made to the account specified by us free from charges. We are not obliged to accept cheques and bills of exchange; they will be credited on account of payment only provided they are actually redeemed with the actual value being available.
5. All costs incurred through the acceptance of bills of exchange or cheques, especially discount charges and interest, are at the expense of the purchaser.

PAYMENT ARREARS, INTEREST ON LATE PAYMENTS, REMINDER FEES AND COLLECTION EXPENSES

1. In the event of delay in payment or if we become aware of circumstances which in our opinion are liable to reduce the creditworthiness of the purchaser, all remaining claims still outstanding, including from bills of exchange, are immediately due for payment irrespective of their due date and type.
2. In such cases we are entitled to withdraw from all current contracts, to cease supplies without written notification, make them dependent on the issuing of securities or only undertake them against prepayment or payment on delivery, or after an appropriate period of grace to withdraw from the contract and request compensation due to non-fulfilment.
3. New orders can be accepted by us, but no further processing or delivery will take place.
4. Even in the event of a delay in payment through no fault of the purchaser, we are entitled to charge interest on late payments at a rate of 5 % above the 12-month EURIBOR p.a., but at least 9% p. a..
5. In the event of delay, and even in the event of payment arrears through no fault of his own, the purchaser undertakes to reimburse us for the reminder fees and collection charges arising (in particular also in the event that a collection agency is involved) insofar as they are necessary for adequately asserting our legal rights and appropriate in relation to the claim.

RETENTION OF OWNERSHIP:

1. The safeguarding of the claim to the purchase price represents a major point of the contract.
2. Delivered goods, samples or articles from our company remain our property until full payment has been made for any open claims of whatever kind from the entire business relationship (goods subject to retention of title), whereby a limitation period is expressly excluded.
3. The purchaser is however entitled to resell the goods during the normal course of business as is usual commercially. If goods which have not yet been paid for are resold, then the purchaser must assign any claims arising against third parties to us at this time to the amount of the respective balance owed to us.
4. We are entitled, but not obliged, to disclose the assignment. The purchaser must immediately provide us in writing with all the information and documents we need to pursue our rights.
5. The purchaser is not entitled to pledge our unpaid goods or transfer them as security. He is also obliged to assert our right of ownership towards third parties and to inform us immediately in writing if claims are raised to the goods by third parties or if compulsory enforcement is introduced.
6. In the event of delay in payment or if we become aware of circumstances which in our opinion are liable to reduce the creditworthiness of the purchaser (see above) we can prohibit the resale and processing of the goods supplied and also request that they be returned to us at the expense of the purchaser. Furthermore we are entitled to identify and take back the remaining stocks of the supplies at the purchaser's premises without this resulting in withdrawal from the contract, although this can be undertaken. The purchaser already agrees to the removal of the goods supplied in the cases mentioned.

WARRANTY:

Defects in goods, including the lack of the guaranteed characteristics, are handled in accordance with the following provisions:

1. The time the goods left the works is decisive for the contractual condition of the goods.
2. It is the duty of the purchaser to examine the goods immediately after delivery and if necessary to check by means of a trial run whether the goods supplied are free from defects and suitable for the intended purpose.
3. Defects must be notified to us immediately, and at the latest within 14 days of delivery of the goods, by the purchaser in writing by means of a registered letter stating the type and extent of the defect.
4. Damages or losses during transport must be notified to us immediately while at the same time submitting a record of the damage signed by the transport company and the purchaser.
5. Hidden defects must be notified in writing immediately they are discovered, but at the latest 12 months after the dispatch of the goods. After the expiry of this twelve month period any liability for defects for whatever reason is excluded.
6. The purchaser always bears the burden of proof for the fact that any defects were already present at the time of handover.
7. Insofar as the seller takes measures to reduce the damage or enters into negotiations on account of a defect which has been notified in writing, this shall count neither as an acknowledgement of the defect nor as a renunciation of objections to claims which were not raised in good time in writing.
8. Damages caused through the effects of bad weather are excluded from the warranty.
9. We do not bear any damages due to errors in using or operating machines or items supplied by us or through incorrect or faulty installation.
10. The warranty expires if the damages can be ascribed to alterations which the orderer or third parties have undertaken, even if the orderer or purchaser tries to remedy the damage himself or by means of third parties.
11. If the purchaser does not give us any opportunity of convincing ourselves of the defects, in particular if he does not make the goods or samples thereof available immediately upon request, or if he gives us no opportunity of improvement, then all warranty claims expire.
12. Warranty claims expire at the latest one month after written rejection of the written notice of defects by us.
13. No warranty of any kind is accepted for parts which are subject to normal wear and tear.
14. Any usage of the right of recourse once the warranty to consumers has taken place in accordance with § 933b of the Austrian Civil Code [ABGB] by the purchaser is expressly excluded.
15. The above conditions also apply to the supply of goods other than those specified in the contract.

LIABILITY

1. The reimbursement of consequential damages due to defects or of other consequential damages (in particular from loss of production, interruptions to operations, standstill periods), of lost profits, savings not achieved, loss of interest, the reimbursement of pure financial losses for no matter what legal grounds, are excluded. However this exclusion does not include urgent claims in accordance with the Product Liability Act [*Produkthaftungsgesetz*].
2. We are only liable if the injured party has shown us to be guilty of gross negligence.
3. Overall the liability is limited to benefits from our business liability insurance, and over and above this where there is a breach of our contractual duties in any event to the material value of the supply which was the cause of the damages.
4. The above restrictions on liability do not apply to personal injury as a result of an infringement of the life, the physical integrity or health of a person.
5. Preliminary negotiations can in no way lead to claims for compensation against us.

PRODUCT LIABILITY:

Any claims for recourse which contractual partners or third parties direct against us by reason of “product liability” in the sense of the Product Liability Act [PHG] are excluded unless the party entitled to recourse demonstrates that the error has been caused in our sphere and we are at least guilty of gross negligence.

OFFSETTING, RETENTION:

1. Offsetting any counterclaims of whatsoever kind against our claims is excluded.
2. Justified complaints do not convey entitlement to retention of the entire amount of the invoice, but only of an appropriate part.

DATA PROTECTION, DATA STORAGE:

We store and process the personal details we obtain through our business relationship with the purchaser in accordance with the statutory requirements.

PLANS AND DOCUMENTS:

1. The details of weights, measures, price, performance etc contained in catalogues, brochures, advertisements, illustrations and price lists are non-binding. They are only intended to give the purchaser a general overview of the goods offered.
2. These details only become significant when they are expressly referred to in the order confirmation.
3. The plans produced by us are drawn up to the best of our knowledge without rights being enforceable against us from these.

COPYRIGHT

Drawings, designs, diagrams, plans, sketches and other technical documents as well as samples, catalogues, brochures, illustrations etc. permanently remain our intellectual property (copyright) under the protection of the relevant provisions in respect of duplication, imitation, competition etc.

FORCE MAJEURE:

Events of force majeure, which also include strikes, major interruptions to operations, the incidence of rejects in items supplied and all circumstances which significantly make delivery harder or impossible for us, and irrespective of whether they occur at our premises or those of one of our sub-suppliers, entitle us to suspend the supply for the duration of the obstacle and an appropriate start-up time, or to withdraw from the contract in respect of the as yet unfulfilled portion. The purchaser can ask us to state whether we want to withdraw or supply within an appropriate period. If we do not state this the purchaser can withdraw.

WRITTEN FORM:

Purchaser and seller waive the plea of any oral additional agreements. Amendments and additions to the contract must be in written form in order to be effective and in any event to the contrary are to be regarded as ineffective and as not having come into effect.

PARTIAL INEFFECTIVENESS:

If individual provisions of these terms and conditions of sale should be fully or partly ineffective, then all the remaining provisions of these terms and conditions of sale will remain effective. Purchaser and seller undertake to immediately agree a new effective provision which comes as close as possible to a financial purpose of the ineffective provisions.

PLACE OF FULFILMENT AND PLACE OF JURISDICTION:

The place of fulfilment for our performance and also for services in return is our company head office at Werkstrasse 17, 9710 Feistritz / Drau, Austria.

In the clarification of any ambiguities in the interpretation of these terms and conditions of sale, and also in the event of any legal action, as well as in respect of the circumstances which are not regulated in these conditions and for all disputes from the entire business relationship of whatsoever kind, solely Austrian substantive law shall apply and Klagenfurt is agreed as the sole place of jurisdiction. The application of the UN Convention on Contracts for the International Sale of Goods is excluded.