

General Terms of Business GRONBACH

(Sales and Supply Terms) 01/07/2004 GA

I. General terms

- Our offers, supplies and services are exclusively provided on the basis of these Sales and Supply Terms (TOB). Our TOB form part of all contracts concluded between us and our customers on supplies and services we provide. They also apply to all future offers, supplies and services, even if no such explicit new agreement has been made.
- TOB of customers shall not apply, even if we do not object to them repeatedly in individual cases.
- After customers have placed their orders, the relevant contracts only become valid after we have provided our written confirmation of order. Our offers shall remain valid for a maximum of 30 days. Additional and ancillary terms must be made in writing to become legally effective. Any and all wishes for changes shall be deemed declined unless we have given our expressed consent.
- We reserve the right to technical and design-related deviations from descriptions and information in folders, offers and other written documents as well as service, construction and material changes in the course of technical progress, without any entitlements on the part of the customer being created by such changes. Documents such as pictures, drawings, measurements, weight and other technical information that forms the basis of any acceptance of an order shall only become binding if so confirmed by us in writing in the order.
- As regards products we do not make ourselves, especially commercial goods by other manufacturers, the terms of the relevant manufacturer annexed to these products shall apply in addition.

II. Supply, transfer of perils

- The perils regarding goods or services we provide shall be transferred to the customer as soon as the goods/services leave our warehouse or facilities, readily provided goods or services are not requested for delivery by the customer immediately, or as soon as any supply/service is returned on request by the customer.
- We do not accept any liability for the loss, peril or deterioration of any goods sent, unless such damage has been caused by us directly. Transport insurance is only provided on the expressed request and at the expense of the customer. We herewith assign any and all claims for damages against liable third parties and/or insurances to the customer accepting such assignment.
- We are entitled to partial deliveries and partial provision of services to the extent reasonably acceptable to the customer.
- Timeframes and deadlines for supplies and services shall only be valid approximately, unless a specific timeframe or deadline has been agreed. If the dispatch has been agreed, the relevant delivery periods and deadlines refer to the time of handover to the haulier, transport agency or other person in charge of the transport. Otherwise the timely advice of the readiness to deliver shall suffice to comply with delivery periods and deadlines. Any reasonably premature delivery shall be admissible. Reminders always have to be made in writing or sent by fax.
- Delivery or service provision timeframes shall not start before the provision of any and all documentation, construction plans, official and other approvals as well as the required releases – all to be provided by the customer – or before clarification of all details of performance, however, with the date of our confirmation of order at the earliest. In case of force majeure such as strikes, lockouts, subsequent shortages of material, import or export restriction or similar, unforeseeable events or situation beyond our area of responsibility that subsequently make the delivery substantially more difficult or even render it impossible for us or our subcontractors, the timeframe shall be extended by the time of such hindrance including a reasonable start-up period after this interruption. If any such hindrance goes beyond temporary limits, we shall notify our customer immediately of such hindrance and allow their withdrawal from the contract. In case of such withdrawal, any down-payments received will be refunded immediately. In case of any delay caused by an event beyond our area of responsibility yet reasonably unacceptable in consideration of the agreed supply and service deadlines and the interest of both sides, so the acceptance of the goods and services can not be reasonably expected, the customer may withdraw from the contract after receiving our notification on the presumed duration of the delay by submitting a written declaration. This, however, shall not apply in case of non-fulfillment of interim deadlines. Any legal rescission rights on the part of the customer due to any non-compliance with obligations on our part shall remain unaffected.
- If the customer is in arrears, the delivery periods shall be extended and delivery deadlines shall be postponed for the time of such delay, including a reasonable start-up period after such holdup.

III. Prices, payments

- Subject to any deviating written agreements, our general listed prices plus VAT shall apply at the relevant legal amounts ex works Niederndorf.
- If the delivery or service provision item changes after the contract has already been concluded (changes requested by the customer), an adjusted, new price is to be agreed. If such agreement cannot be made between the parties, we shall be entitled to determine the new price on the basis of our reasonable, legally verifiable discretion, taking into consideration our material and human resources expenditure as well as an appropriate profit margin. Otherwise we shall be entitled to adjust the agreed prices accordingly, if the currency exchange rates or the customs and import fees are raised compared to the prices offered at the time of our quotation. In addition we are entitled to change prices if there is a period of more than four months between conclusion of contract and date of delivery, and if no delivery had been agreed within four months after conclusion of the contract. In this case our listed price valid on the date of delivery shall apply, minus any rebates or discounts agreed with the customer.
- Subject to any other expressed agreement, conventional, suitable packaging will be provided for shipment. Special packaging, especially for air and sea freight shall only be provided on expressed request by the customer and against special compensation.
- If the agreed purchase quantity is not reached, rebates, discounts and other special terms shall become invalid.
- In case of delayed payment we shall be entitled to charge interest on arrears at the amount of eight percent above the relevant applicable basic interest rate of the ECB. Any other claims for damages due to delayed payment shall remain unaffected.
- If we should become aware of any facts that might indicate considerable and sustainable deteriorations to the asset situation of the customer, if the customer falls in arrears with regard to any due payments, if insolvency proceedings are applied for or instituted against his assets, or if the customer stops his payments, we shall become entitled to supply and/or provide services only against advance payment or payment in cash on delivery, even if other terms had been previously agreed. If we have already supplied goods or provided services, we shall be entitled to demand immediate payment in such cases for all pending receivables, even if they are not yet due for payment.
- Customers shall only be entitled to set-off or claiming retention rights on the basis of non-disputed, legally effective claims or counterclaims ready for decision.
- Deliveries abroad are only made against cash on delivery or an irrevocable, assignable, separable letter of credit at our bank and in our favour.

IV. Retention of title (RT)

- We retain the right to the titles of goods delivered by us until full payment therefore has been made. This also applies if our relevant claims have been included in a current account and if the balance has been accepted. If, as an exception, bill-of-exchange liabilities or cheque-liabilities are created by us in the course of the "cheque/bill-of-exchange procedure, the RT shall not cease to apply before redemption of the bill of exchange accepted by the customer.
- The customer may only resell the goods in the course of standard business transactions and only against cash on delivery or subject to RT. Our goods have to be expressly excluded from any transfer by way of security for entire warehouse stock. We have to be notified in writing immediately of any debt enforcement action against our RT-goods.
- If our goods are connected or inseparably pooled with other movable items, and if such other items are deemed the main subjects, then the customer shall assign to us his share in the title to the extent he retains or acquires ownership to these items. Treatment and processing of goods by the customer shall be subject to the exclusion of any acquisition of title of the customer and on our behalf. This shall not create any obligations on our part. We shall remain the owner of any such created items that is used as RT good to secure our claims according to fig. 1. In case of treatment or processing together with other third-party goods, we shall obtain co-ownership of the new item in relation of the value of our goods to the value of the third-party goods at the time of processing.
- To the extent our supply/service provision is resold for full payment, irrespective of whether it is resold together with third-party items or in a treated/processed state, the customer must pass on our RT. In addition, he shall herewith assign any and all claims resulting from the resale, including security and ancillary rights he is entitled to towards his own customers, to the extent of our claims. In case of connection or pooling of our goods/supplies with third-party goods/supplies, this claim shall only apply in relation of the invoice amount of our retained supply for the material supplied by us to the value of the third-party materials part of the resale/pooled usage. This shall apply to the extent our retained goods are used together with other goods/services and if they are e.g. supplied/installed/provided at an overall price.

- If the securities granted to us exceed 125% of our claims, we shall release as many securities on request by the customer and at our choice to fall below the above-mentioned limit with the remaining securities.
- The proceeds from reselling our RT goods shall be kept separately by the customer and have to be paid to us immediately as soon as our claims fall due.
- In case of any delayed payment or cessation of payment on the part of the customer, or in case of any application or institution of insolvency proceedings on the customer's assets, the entitlement for resale of our RT-goods shall be rendered invalid as well as the right to claim assigned account receivables.
- In order to enforce our rights based on the extended RT against the account debtor of the customer, the customer shall immediately cede to us on our request and excluding any objection or plea the necessary documentation and information and shall grant us the right to inspection in his business accounts for that purpose.
- If - after a relevant reminder - the customer does not deliver immediately in case of any behaviour violating the terms of the contract, he shall release the goods without any objections. In such case we are entitled to take away our RT-goods. For this purpose the customer shall irrevocably allow us to enter his warehouse and business premises during the usual office times. The redemption costs shall be borne by the customer. The goods we take back we shall be entitled to make use of the best possible way and at our own discretion. Claiming a retention of title will only represent a withdrawal, if this is expressly stated.

V. Warranty

- As regards the characteristics of our products (also referring to components), only our own product descriptions shall be deemed agreed. As for commercial goods, only the manufacturer's product description shall be applicable. Any public statements, promotions and advertising activities on the part of the component manufacturer shall not represent any contractual information on characteristics. Claims due to defects shall become time-barred six months after delivery or – if required – acceptance.
- Items supplied by us must be carefully inspected immediately after delivery at the customer or any third party he shall nominate. They shall be deemed approved if any notice of defects is not made immediately after delivery of the delivered item or if the defect was not recognisable during the immediate, careful inspection and is not reported in writing or by fax to us immediately after discovery of the defect. On our request, the complaint about the delivered item must be re-shipped to us free of charge. In case the complaint is justified we shall reimburse the best-price shipment rate; this shall not apply if the costs are raised, because the delivered item is in another location than the original place of delivery, unless transport to another location complies with the appropriate and agreed usage or resale of the delivered item, or if it has been agreed with us in writing in advance.
- In case of defects, aside from cases where the customer has the right of redhibitory action based on the law, we shall be entitled at our discretion to fulfil such warranty claim by way of improvement, exchange or price reduction. To the extent the terms of fig. VI of the present TOB are met, the customer may also claim damages. In case of minor violations of obligations (especially minor defects), redhibitory action is excluded. If a customer chooses redhibitory action, he shall not be entitled to claim damages due to this defect, except if the conditions of fig. VI of the present TOB are met. If, however, he chooses to claim damages, he shall retain the goods if this is reasonably acceptable to him. Damages shall be limited to the difference between purchase price and value of the defective item, unless we might have caused the violation of contract in bad faith, or if we have granted a guarantee of quality.
- In case of defects of products supplied to us by other manufacturers, and if we are unable to remedy those defects, and irrespective of our own liability for defects, we shall – at our own discretion – claim compensation for defects against the manufacturer or supplier of the standard software on behalf of the customer, or assign such claim to the customer.
- The liability for defects shall not apply if the customer changes the delivered item or has it changed by any third party without our prior consent, unless the customer produces proof that the relevant defect has not been caused by such changes, and that the remedy of defects has not been rendered impossible or unreasonably more difficult by such changes. In any case, the customer shall bear the additional expenses for the remedy of defects caused by such changes.
- If our recommendations of usage or other instructions are not complied with, or if changes to products are made without our consent, the claims for defects shall not apply. This also applies if the goods have not been stored correctly by the customer, or if they were exposed to unsuitable strain or inappropriate impacts. Minor deviations of the goods in terms of weight, material and colour due to technical reasons shall not represent quality defects.

VI. Damages, liability

- Our liability for damages based on a violation of obligations, irrespective of its type and the legal grounds it may be based on, especially impossibility, delay, defective or wrong supply, positive contract violation, violation of obligations during contract negotiations and unauthorised actions, shall be limited according to fig. 2 to 9. 2. if such points refer to actual fault.
- In case of simple negligence we shall not be liable, unless it is a violation of material contract obligations or a violation of obligations representing a defect of the purchased good or the plant. Our liability shall remain unaffected, if any obligation is violated in a way that the achievement of the purpose of the contract would be jeopardised in case the exclusion of liability becomes effective, or if personal injury has been caused by minor negligent action. In case of gross negligence, the damaging party shall carry the burden of proof.
- To the extent we are held liable for damages according to the above fig. 2, this liability shall be excluded for damage we have not foreseen as a possible consequence of any violation of the contract at the time the contract was concluded, neither with regard to the type nor scope of the services to be provided by us, and which was also unforeseeable in view of the circumstances we had been aware of or should have been aware of applying due diligence.
- In case we are held liable for any violation of custodial care or observation duties, our liability shall be excluded, if a comprehensive insurance policy is usually taken out for this good in this branch, or if the risk that causes the damage is usually insured by the customer.
- In case of any liability for negligence, our duty of replacement for material and asset damage shall be limited to the coverage amount of our product liability insurance or public liability insurance. We are prepared to send a coverage confirmation issued by our insurer on request.
- The above exclusions and limitations of liability shall apply to the same extent in favour of our organs, legal representatives, employees and other aids supporting us in delivering our services.
- To the extent we give technical advice or provide consulting in the course of our business transactions, and if such advice or consulting is not part of our agreed contractual services, we shall provide such advice or consulting free of charge and excluding any and all type of liability.
- Any customer claims regarding product liability due to culpable violations of live, body or health shall remain unaffected by the above liability exclusions or limitations.
- Claims for damages shall be time-barred one year from gaining knowledge of such damage and damaging party, but in any case 3 years after provision of service or delivery.

VII. Industrial protection rights

If our goods violate any industrial protection rights (patents, intellectual property rights, brands etc.) of third parties, the customer shall immediately advise us on any protection-right warnings. We commit ourselves to defend the customer against claims based on protection rights and to keep him indemnified as well as to put him in the position of being able to use our goods, or, if this is economically unreasonable, to either change or replace our goods to avoid any violation of protection rights, or to take back the goods and refund the purchase price minus a utilisation charge. Such choice shall be made at our own discretion. If protection-right claims are made against us, and if such claims are based on customer instructions we have followed, the customer shall keep us indemnified for all claims resulting from such violation. He shall reimburse all expenses may incur in this connection to the extent such expenses were required to duly maintain our interests and protect our rights.

VIII. Place of performance and place of jurisdiction

- Place of performance shall be Niederndorf
- Regarding any and all legal disputes due to or in connection with the agreements we have made with the customer and which are based on our TOB, the local competent courts at our company location shall have exclusive jurisdiction. However, at our discretion we shall also be entitled to sue the customer at the place of his own company headquarters.
- Austrian substantive law shall apply with the exception of the unified UN Contract for the International Sale of Goods (CISG).

IX. Partial voidness

If any of the stipulations should be or become void or contestable, the effectiveness of the contract shall remain unaffected. The affected clause shall then be construed or amended in a way to ensure its economic content in a legally permissible way and to the greatest extent possible. This shall also apply for regulatory loopholes contrary to the plan and therefore in need of an amendment.