

Terms and Conditions of Sale (TCS)

Unless specifically agreed otherwise, sales are limited to the following terms and conditions:

1. Offer and confirmation of order

Our offers are not firm. Acceptance of an offer (order) creates a binding contract subject to our confirmation of the order in writing. Any modification and cancellation of an order requires our consent in writing.

2. Delivery and pricing

Unless agreed otherwise, delivery shall be effected „Ex Works“ the place of shipment named in the confirmation of order (seller's place of business for shipment, seller's plant or other place of shipment).

Except for packaging costs, prices do not cover any costs for shipment, in that all such costs including without limitation insurance, costs of loading, freight, customs duties and the like, shall be paid by the buyer. Shipment is arranged for buyers account and risk. Prices are calculated according to the price schedule applicable on the day of shipment and on basis of weight, number of pieces or metric number verified on seller's place. Price schedules are adapted annually as of 31.10 each year..

3. Time for performance

Any indication of time for performance is informative only and not binding. The buyer may not claim any penalty or other damages for late performance.

The buyer is required to take possession of goods without delay if we have notified the buyer that goods are ready for tender. Otherwise we may at our own discretion store the goods for buyer's account and risk and may deem the goods being delivered to the buyer "Ex Works" with the contract price becoming due immediately.

Tender before the time for performance and part deliveries must be accepted.

4. Non delivery in specific circumstances

Disruption of operations and traffic and other difficulties in the supply chain to our facilities or facilities of our supplier with regard to electricity, commodities, fuel and auxiliary materials as well as other restraints on the manufacturing and delivery process and any other circumstances that represent force majeure justify an extension of the time for performance until such restraint ends and, if required by the circumstances in single instances, to revoke our obligations to perform in part or entirely without buyer's right to performance, warranty and/or damages.

5. Warranty

As to specifications and an agreed fitness for a specific purpose the indications in the confirmation of the order are decisive. In doubtful cases, the applicable regulations of industry practice, the ÖNORMEN published by the Austrian Standards Institute respectively, are decisive to judge quality and workmanship.

We assume no responsibility for design. No warranty is given for racing parts or parts developed under new technology to a specific life circle, working capacity, durability, and the like.

Information about possibilities as to process and application of our goods, technical advice and other indications regarding capability, use, weights, measures, forms, colors, performance and optical appearance do not create a warranty.

6. Remedy for breach of warranty

We warrant that the products delivered are free of faults in the material and manufacturing defects to the extent that such faults and defects are proven without doubt and disable the product's fitness for the agreed purpose. Warranty is granted in that we can elect either to repair or to take back the goods against refund of the purchase price or to deliver new goods which conform to the order "Ex Works" the place of shipment in which case the nonconforming goods, originally delivered must be returned. For prove of faults and defects an audit of our facility is decisive.

Any other remedy, damages or lost profit claims of whatever kind, including but not limited to compensation of costs for manufacturing and freight, are excluded. Indemnification under § 933b ABGB is excluded.

The buyer may not reject a delivery for a lack of number of pieces, weight, length, quality or other defects, including such defects which are not evident, unless buyer has given us notice of the defect in writing immediately after receipt of the goods but not later than 14 days from receipt of the goods which notification must contain a detailed description of the defect.

7. Deviation in quantity

In instances where the manufacturing process does not permit a precise production in terms of weight or pieces, we may deliver goods which exceed or undergo the order up to 10 % of the volume ordered.

8. Acceptance and inspection

The buyer can have the goods inspected and accepted on his account at our facility. We are not obliged to notify the buyer when the goods are shipped unless we were advised in the order by buyer to have the goods inspected and accepted at our facility prior to shipment.

If inspection and acceptance is not effected timely before the time shipment is scheduled for, the goods are shipped without said procedure.

A specific inspection and acceptance procedure due to particular quality specifications requires an explicit additional agreement in writing when the contract is formed. Such procedure shall take place within 14 days from receipt of our notification that the goods are ready for shipment either in our facility or in a domestic state owned research institute. Upon expiration of this period the right to such specific inspection and acceptance procedure elapses.

9. Packaging

Packaging is billed on a cost basis without refund if goods are returned.

10. Payment

Unless agreed otherwise, our invoices are due within 30 days from the invoice date payable without discount in that the amount payable must be at our disposal on the last day of the payment term at the latest without right to set off a counterclaim.

We retain the right to ask the buyer for a security to cover the amount the buyer owes us prior to shipment and to cancel the order if buyer refuses to meet such request regardless of the agreed payment terms.

If after confirmation of the order the financial standing of the buyer deteriorates, our claim becomes immediately due even if a grace period was granted. The same applies if we took in a draft or check in lieu of payment..

We retain an ownership interest in the goods sold until the purchase price has been fully paid. If the buyer fails to discharge his agreed payment obligations we may cancel orders which have not been settled yet or an installment contract without notice and may claim damages until the buyer has met his obligations.

For late payments we charge interest on arrears of 1,5% per month.

11. Third party claims and product liability

To the extent that goods have been manufactured according to buyer's instructions and specifications, the buyer grants and warrants us that this will not constitute an infringement of legally protected rights of third parties. The buyer shall indemnify and save us from any loss or damage we will incur from a breach of this warranty.

The buyer shall indemnify and save us from any claim against us alleging that goods are defective or another cause of action (e.g. product liability) and from all costs and damages related to such claim if the cause of such claim is based on circumstances which have been laid by the buyer (e.g. risks attached to development work rendered according to instructions and specifications of the buyer, claim related promotion of the product by the buyer in commercials, descriptions, instructions, and the like).

12. Ownership of tools and matrixes

The buyer is granted a right to acquire ownership of those tools and matrixes specifically used for manufacturing the goods.

Two third of costs for producing such tools and matrixes are borne by the buyer which become due immediately subject to billing (Para. 10.). We retain ownership of the tools and matrixes until the balance of costs is paid by the buyer. Upon buyer's request, the ownership interest in the tools and matrixes is transferred to the buyer subject to the concurrent condition of payment of the residual costs by the buyer.

Costs for current repair and maintenance of tools and matrixes shall be borne by the buyer.

13. Place of performance and jurisdiction

The parties agree that the place of shipment shall be the place where the contract is performed (Para. 2.). The place for performing the payment, including claims from drafts, is our company's principal place of business in Kapfenberg. Austrian law is agreed to govern.

The parties agree to submit any dispute about the construction and performance of the transaction to the jurisdiction of the competent courts for the district of Bruck an der Mur. If the buyer is domiciled in a foreign country, this choice of forum shall be binding only if at the time of the controversy a treaty exists between Austria and the foreign country of the buyer according to which Austrian judgments resolving the dispute will be acknowledged and enforceable in the other country.

14. Divergent terms

All terms, indications and general conditions of the buyer which differ from and are not consistent with these general terms and conditions of sale are binding only if acknowledged explicitly in writing upon confirmation of an order at the latest and shall apply to the specific transaction only for which they have been agreed.

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