

**ECON GmbH, Biergasse 9,
A-4616 Weißkirchen**

**GENERAL TERMS AND
CONDITIONS OF SALE AND
DELIVERY**

These General Terms and Conditions of Sale and Delivery are generally designed for legal transactions between businesses. If, in exceptional cases, legal transactions with consumers within the meaning of § 1 Par. 1 (2) of the Consumer Protection Act, Fed. Law Gazette 49/1979 are based hereupon, they shall apply only inasmuch as they do not conflict with the provisions of the first main section of this Act.

1. Preamble

1.1 These General Terms and Conditions of Sale and Delivery apply to the sale and delivery of plant, machinery, spare parts and other services by ECON. If the Buyer's general terms and conditions of business conflict with these terms and conditions of contract, they shall not be part of the contract.

1.2 The terms and conditions of assembly of the Austrian trade association for the machinery and steel engineering industry are available on our homepage at www.econ.eu.

2. Drawings and Documents

2.1 The information about dimensions, capacity, price, performance, etc. contained in catalogues, brochures, newsletters, ads, pictures and price lists, etc. are non-binding unless explicit reference is made to the same in the offer and/or in the order confirmation.

2.2. All offer, project and drawing documents, specimens, etc. are strictly confidential and must not be reproduced or made available to third parties without the consent of ECON. Their return may be demanded at any time, and they must be returned to ECON forthwith if the order is placed elsewhere.

3. Conclusion of Contract

3.1 The contract shall be deemed concluded when the Vendor has sent off a written order confirmation after receipt of the order.

3.2 All amendments and additions to the contract must be confirmed by the Vendor in writing in order to be valid.

3.3 If import and/or export licences or foreign exchange permits or similar permits are required for performance of the contract, the

party responsible for obtaining the same must make every reasonable effort to obtain the required licences or permits within good time.

4. Packaging

4.1 Unless agreed otherwise,
a) the quoted prices are without packaging;
b) packaging will be provided in keeping with commercial practice in order to avoid damage to the goods on the way to the specified destination under normal transport conditions at the Buyer's expense. The packaging will only be taken back if specifically agreed.

5. Transfer of Risk

5.1 Unless agreed otherwise in writing, the goods are sold "ex works" (EXW) (ready for collection).

5.2 Otherwise, the INCOTERMS as amended on the day of conclusion of the contract, available at www.incoterms.com, shall apply.

6. Term of Delivery

6.1 Unless agreed otherwise, the term of delivery shall commence on the latest of the dates set out below:

a) Date of order confirmation;
b) Date of fulfilment of all the technical, commercial and financial conditions for which the Buyer is responsible by agreement;
c) Date on which the Vendor receives a down-payment payable prior to delivery of the goods and/or a payment guarantee to be issued or other surety is available.

6.2 The Vendor is entitled to make partial and advance deliveries.

6.3 If delivery is delayed by circumstances affecting the Vendor that represent a cause for relief within the meaning of Art. 14, an extension of the term of delivery shall be granted until the cause for relief no longer exists.

6.4 If the Vendor has not caused a delay in delivery due to gross negligence or wilful intent, the Buyer shall not be entitled to claim any damages for such delay. He can merely demand fulfilment or declare rescission from the contract, thereby setting a reasonable period of grace. The Buyer must return goods that have already been delivered and cannot be used to the Vendor.

6.5 If the period of grace as set out in Art. 6.4 was not utilised through the fault of the Vendor, the Buyer can rescind the contract with respect to all goods not delivered yet by written notice. The same shall apply to goods already delivered that cannot reasonably be used without the still outstanding goods. In this case

the Buyer shall be entitled to a refund of payments made for the goods not delivered yet or for the goods that cannot be used. Moreover the Buyer shall, if the delay in delivery was caused by gross negligence or wilful intent on the part of the Vendor, be entitled to reimbursement of justified expenditures that he had to incur up to the rescission of contract and which can no longer be used. The Buyer must return goods that have already been delivered and cannot be used to the Vendor.

6.6 If the Buyer fails to accept the goods ready for delivery at the contractually agreed place or at the contractually agreed time, the Vendor shall be entitled – after setting a period of grace – to rescind the contract and to claim the damages incurred to him as a result.

In the case of delayed acceptance by the Buyer, the Vendor can have the goods stored at the Buyer's expense and risk. Even if the goods are accepted with delay, the Vendor shall be entitled to reimbursement of the damages caused by the delay.

6.7 Claims by the Buyer against the Vendor on the grounds of delay other than those set out in Art. 6 shall be excluded.

7. Acceptance Inspection

7.1 If the Buyer wishes an acceptance inspection, this must be agreed with the Vendor explicitly and in writing on conclusion of the contract. Unless agreed otherwise, the acceptance inspection shall be conducted at the place of manufacture or at a place to be specified by the Vendor during the Vendor's business hours.

Thereby the general practice of the relevant industry shall be decisive for the acceptance inspection. The Vendor must notify the Buyer of the acceptance inspection within good time, so that he can be present during the inspection or be represented by an authorised representative. If the object of delivery turns out to be in breach of contract in the acceptance inspection, the seller must have any defects remedied forthwith and produce the contractual condition of the object of delivery. The Buyer may only demand a repeated inspection in the case of major defects. A record of acceptance must be drawn up at the end of the acceptance inspection.

If the Buyer or his authorised representative fails to attend the acceptance inspection despite being duly notified by the Vendor, the acceptance inspection shall only be signed by the Vendor. The Vendor must in any case forward a copy of the acceptance record, the accuracy of which the Buyer cannot dispute

even if it could not be signed by him or his authorised representative due to absence.

Unless agreed otherwise, the Buyer shall bear the costs of the acceptance inspection performed.

8. Price

8.1 Unless agreed otherwise, the agreed prices shall apply ex Vendor's works without loading.

8.2 The prices are based on the Vendor's costs of acquisition and production at the time of the prices being quoted. Should these costs rise by the time of delivery for reasons beyond the Vendor's control, it is agreed that the Vendor shall have a price adjustment right to make a price adjustment as he reasonably sees fit.

9. Payment

9.1 Payments shall be made in accordance with the terms of payment agreed in the invoice. If no terms of payment were agreed, the following shall apply:

1/3 of the price is payable immediately on receipt of the order confirmation,
1/3 after half the term of delivery, and
1/3 on delivery.

Regardless thereof, the sales tax according to the invoice must in any case be paid not later than 30 days after invoicing.

9.2 The Buyer shall not be entitled to retain payments on the grounds of warranty claims or other counterclaims not accepted by the Vendor, unless they are claims that have already been accepted or legally ascertained.

9.3 If the Buyer is in default with an agreed payment or other performance, the Buyer may either insist upon fulfilment of the contract and

a) postpone the fulfilment of his own obligations until the outstanding payment has been made or other performance has been fulfilled,
b) claim a reasonable extension of the term of delivery,
c) demand payment of the entire purchase price still outstanding,

d) unless there is a cause for relief within the meaning of Art. 14 on the part of the Buyer, charge interest at a rate of 8% higher than the relevant base interest rate of the Austrian National Bank as of the due date, or/and declare rescission from the contract without stating reasons after granting a reasonable period of grace.

9.4 The Buyer must in every case indemnify the Vendor for all default damages.

9.5 If the Vendor rescinds the contract, the Buyer must return the goods already delivered to the Vendor at the Vendor's demand. The Vendor must be paid a reasonable fee for use, as well as any loss in value of the goods that has occurred, as well as any justified expenditures that the Vendor had to make in connection with performance of the contract. With regard to goods not delivered yet, the Vendor shall be entitled to make the finished or partly processed parts available to the Buyer and to demand the respective portion of the purchase price for the same.

10. Vendor's Lien

10.1 The Vendor shall have a lien on the purchase object until full payment by the Buyer. The Vendor shall be entitled to make his lien visible on the object of delivery. The Buyer must fulfil the necessary formal regulations to safeguard the Vendor's lien. In the case of attachment or other recourse, the Buyer shall be obliged to make the Vendor's lien known and to notify the Vendor forthwith. Resale of the goods is not permitted until full payment has been made.

11. Warranty

11.1 The statutory warranty regulations shall apply with the following modifications:

11.2 The warranty obligation shall only apply if the defects are asserted in court within a period of one year as of handover to the Buyer.

11.3 The Buyer shall only be entitled to claim a defect if he notifies the Vendor of the defect in writing forthwith. The conjecture rule set out in § 924 ABGB [Austrian Civil Code] is excluded. The Vendor thus informed must, if the defects have to be remedied by the Vendor in accordance with the provisions of this Article, at his own discretion:

- a) remedy the defective goods on the spot;
- b) have the defective goods or defective parts returned to him for remediation;
- c) replace the defective parts;
- d) replace the defective goods.

11.4 If the Vendor has the defective goods or parts returned to him for remediation or replacement, the Buyer shall – unless agreed otherwise – bear the costs and risk of transportation. The remedied or replaced goods or parts shall – unless agreed otherwise – be returned to the Buyer at the Vendor's costs and risk.

11.5 The defective goods or parts replaced in accordance with this Article shall be at the Vendor's disposal.

11.6 Any unauthorised modifications to the machinery by the Buyer shall result in all the Buyer's rights regarding promises by the Vendor with respect to condition as well as warranty obligations being forfeited, unless ECON has consented to a modification in writing prior to its implementation.

11.7 The Vendor's warranty obligation shall only apply to defects that occur if the specified operating conditions are observed and during normal use. In particular, it shall not apply to defects due to:

improper assembly by the Buyer or his agents, poor maintenance, improper repairs, and normal wear.

11.8 With regard to those parts of the goods that the Vendor acquired from the sub-suppliers specified by the Buyer, the Vendor shall only be liable within the scope of the warranty claims to which he himself is entitled vis-à-vis the sub-suppliers. If the delivered goods were manufactured by the Vendor on the basis of design specifications, drawings or models by the Buyer, the Vendor's liability shall not include the accuracy and completeness of the design, but merely the fact that the goods were manufactured in accordance with the Buyer's specifications. In these cases the Buyer must indemnify and hold the Vendor harmless for any infringement of property rights. The Vendor shall not accept any warranty when accepting repair orders or modifications or alterations to old or third-party goods and when delivering used goods.

11.9 As of the beginning of the warranty period, the Vendor shall not accept any further liability than defined in this Article.

12. Liability

12.1 It is explicitly agreed that liability for defect damages is excluded unless the damages were caused by gross negligence or wilful intent on the part of the Vendor. The Vendor shall not pay any damages for personal injury, damage to property that is not the object of the contract, other damages and loss of profit, unless the facts of the individual case show that the Vendor has acted with gross negligence or wilful intent. Reversal of the burden of proof as set out in § 1298 ABGB is excluded.

12.2 The purchase object only affords the level of safety that can be expected on the basis of authorisation regulations, operating instructions, Vendor's regulations for handling of the purchase object – in particular with regard to any stipulated inspections – and other information provided. The professional

performance of service and maintenance works using the manufacturer's original spare parts is prerequisite for the required safety of the object.

12.3 Except in the case of gross negligence or wilful intent on the part of the Vendor, the maximum damages that can be claimed shall – unless Article 12.1 applies – be limited to 5% of the order value, but to a maximum of 727,000 euros.

12.4 All claims for damages due to defective deliveries and/or services must – unless the defect is explicitly accepted by the Vendor – be asserted in court within the contractually specified warranty period; otherwise the claims shall be forfeited.

13. Consequential Damage

13.1 Except in the case of gross negligence or wilful intent, the Vendor's liability to the Buyer for production standstill, loss of profit, downtime, loss of contract or any other economic or indirect consequential damage shall be excluded.

14. Causes for Relief

14.1 The parties shall be fully or partly relieved from punctual fulfilment of contract, if they are prevented by events of force majeure.

Events of force majeure shall be exclusively those events that are unforeseeable and unavoidable for the parties and that are beyond their control. However, strikes and labour disputes shall be deemed events of force majeure.

The Buyer frustrated by an event of force majeure shall only be entitled to claim force majeure, however, if he presents a registered statement on the beginning and anticipated end of the obstruction, the cause, the anticipated effect and the duration of the delay confirmed by the responsible government authority or chamber of commerce of the

destination country to the Vendor forthwith, but not later than within 5 calendar days. In the case of force majeure the parties shall make every effort to remove or reduce the difficulties and foreseeable damage, and shall keep the respective other party informed about such efforts. Otherwise they shall be liable for damages to the other party.

Dates or deadlines that cannot be complied with due to the force majeure shall be extended until the end of the event of force majeure.

If an event of force majeure lasts longer than four weeks, however, the Buyer and the Vendor shall seek to negotiate a regulation for the technical impacts on performance. If they are unable to reach agreement, the Vendor may rescind the contract in whole or in part.

15. Non-disclosure Obligation

15.1 The parties undertake to maintain absolute secrecy vis-à-vis third parties with regard to any knowledge gained from the business relations.

16. Jurisdiction, Governing Law, Venue

16.1 The sole place of jurisdiction for any disputes arising directly or indirectly from the contract shall be the Austrian court of jurisdiction at the Vendor's seat in Wels. However, the Vendor may also appeal to any other court of jurisdiction for the Buyer.

16.2 The parties may also agree upon jurisdiction by an arbitration tribunal.

16.3 The contract shall be governed by Austrian law with mutual exclusion of the rules related to the conflict of laws and the UN Convention on the International Sale of Goods.

16.4 The venue for delivery and payment shall be the Vendor's seat, even if handover takes place at a different venue by agreement.