

## 1. Orders

The following conditions apply to our orders, except where the order expressly states otherwise in writing. No other conditions shall be valid unless they were expressly agreed upon by us in writing. If you send us a document, such as an acceptance of an order, an invoice or other correspondence, and we do not respond to it, this shall neither imply our tacit consent to deviating general conditions of purchase nor to a change of our conditions of purchase. Faxes and emails shall also be regarded as written documents. By supplying the goods or services, you will be deemed to have fully and unconditionally accepted our conditions of purchase.

## 2. Goods and/or services to be supplied

You shall supply the goods and/or services in full, such as, that at the time of ordering, they shall represent the state of the art, are new or as good as new/unused, and of the highest quality. In addition, they shall also comply with all legal requirements, regulations, technical standards, and trade associations as well as other requirements applying in Austria and at the place of fulfilment. Under or over deliveries shall not be accepted without our prior written consent.

The scope of supplies and services shall include all additional services and parts required to ensure that they comply with the promised specifications, particularly with regard to performance, even when these additional parts and services are not expressly specified.

## 3. Prices

All prices shall be lump-sum fixed prices according to INCOTERMS 2000, DDP place of fulfilment and shall include all additional services and costs such as transport, unloading and packaging. The cost for retrieving of packaging material (provided you are not an ARA member) and of items used for transporting the goods shall be borne by you.

## 4. Shipment, dangerous goods, places of fulfilment, transfer of risk

### Shipment:

Each consignment shall be accompanied by a delivery note in duplicate. The dispatching documents shall at least quote the order number and give clear details on the goods allowing for their incontestable identification at their destination. You shall be exclusively liable for any costs resulting from failure to provide a proper certificate of origin or to comply with the shipment requirements, such as customs duties, demurrage, the cost of transporting the goods to their proper destination and similar costs. Consignments sent by "Bahn Express Extra" within Austria, or by express train abroad, shall be delivered to the corresponding place of fulfilment.

### Delivery address:

As agreed upon/mentioned in the order.

In accordance with customs regulations the following shall apply:

- a) For suppliers from EU member states: a legally binding global supplier's declaration in accordance with Regulation (EG) No. 1207/2001 dated July 11<sup>th</sup>, 2001 shall be supplied upon demand.
- b) For suppliers from third countries: If, for the goods supplied, a preferential agreement with the EU exists, we assume that this agreement shall be applicable. In particular all required original documents (EUR 1/ EUR 2, preferential declaration of origin, declaration of origin) shall be enclosed in the shipment to allow for duty-free import or reduced customs duties. If these documents are missing or sent with delay all resulting costs there from (customs duties, administration fees) shall be charged to you.
- c) For all suppliers:  
If, due to customer contracts and their handling, the ordering company is or will be under the obligation to present proofs of certain facts, in particular with regard to manufacturers, addresses, country of origin as well as to conformity with the DUAL USAGE regulation and the applicable embargo regulations of each case, this shall be carried out by the supplier independently of his own responsibility and on his own account and at his own risk without being entitled to reimbursement.

### Dangerous goods:

If this order includes goods which are subject to international dangerous goods regulations, by accepting the order, you shall also accept responsibility for full compliance with these regulations and for the legal consequences in case of failure to comply with said regulations.

Irrespective of the delivery conditions agreed upon, it shall be understood that for any dangerous goods supplied under this order a properly completed official dangerous goods certificate shall be duly sent to us signed under the name of the company and prior to the dispatching of the goods. A second official copy of the certificate must be sent with the goods.

### Place of fulfilment:

Place of fulfilment shall be the place for delivery of the goods, documents and/or services specified by us in the order. You shall bear the risk until the goods are handed over.

The place of fulfilment for the final post-assembly inspection, start-up and guarantee/warranty shall be the place where the goods are installed.

## 5. Invoicing and payment

A separate invoice stating the purchase order number for each order shall be sent in triplicate to our accounts department (not to be added to the delivery) under correct disclosure of statutory VAT, and after having entirely supplied all the goods or services (see item 4). You will ensure that the invoices formally comply with the applicable legal regulations. The date of payment as laid out in the provisions agreed upon shall be counted from the date on which the invoice in conformity with the contract is received, but not before the order has completely been fulfilled. It shall be understood that payment will be delayed if the delivery documents or certificates or documentation are incorrectly filled out or incomplete. Bank transfer fees shall be at your responsibility. If goods are delivered before the agreed dates (which requires our consent), the invoice payment date will be counted from the agreed delivery date of our order.

Payment shall be made after receipt of the goods in conformity with the contract and after receipt of the due and verifiable invoice within 30 days with deduction of a discount of 3%, within 60 days with deduction of a discount of 2% and net within 90 days. Unless otherwise agreed invoices are settled on the day our accounts have been debited by the amount.

## 6. Delivery date

All dates stated in the order are fixed, unless expressly agreed upon otherwise; in other words, it is expressly agreed upon that, if delivery does not take place on the agreed

date, we shall be entitled to withdraw from the present contract without granting you any extension.

In the event that we refrain from exercising our right to withdraw from the present contract, you shall by no means be exonerated of your obligation to supply the goods or services, nor shall claims for damages be limited or excluded.

In the event that it becomes evident before the delivery date that you will not be able to fulfil the order properly and/or by the due date, we shall be entitled to provide the goods or services ourselves or to obtain them from third parties, in which cases you shall be liable for the additional cost incurred by us. You shall notify us without delay of all circumstances which might prevent you from carrying out the order on time or at all. Failing which, you shall be made liable for damages.

If the delivery date is changed by us due to our customers order or intention, the goods shall be stored at your premises without any costs to us.

## 7. Contractual penalties

If the agreed delivery dates are not met, we shall be entitled to deduct from your invoice a contractual penalty of 1% per started week of delay up to a maximum of 10% of the total contract value and this without proof of loss.

The deduction of a contractual penalty will not exonerate you from your obligation in regard to the supplies and/or services, nor does it exclude damage claims exceeding the claim of contractual penalties.

## 8. Acceptance of goods

Acceptance of the goods shall not take place prior to their application for their intended use, however no later than 24 months after their delivery. You shall therefore waive any claim for immediate checking of the goods or for immediate notification of any defects. Our payment shall not imply unconditional acceptance of the goods.

## 9. Guarantee

You shall hereby guarantee the suitability of the goods for their intended purpose, their good quality and compliance with the stated specifications. This guarantee shall apply for a period of three years after they have been put to use for their intended purpose. You shall immediately and at your own expense remedy any defects that arise during this period and you shall also compensate us for any loss or damages incurred resulting from the defect, including the costs of identifying the defect.

The place of fulfilment under this guarantee may be chosen by us. Further legal stipulations shall remain unaffected. If the supplier does not immediately meet his obligations upon request and in case of minor defects and also in especially urgent cases, we shall be entitled to repair the defect ourselves or to have it repaired by third parties or, if this is not possible, to procure replacement elsewhere without further notification and at your expense.

We shall be entitled to claim either correction, price reduction or rescission. Any damages incurred by us due to defective supplies shall be compensated by you.

If we, as the manufacturer of the final product, have to assume responsibility for defects that are caused by base material or partial products supplied, you, as the supplier, shall be liable to indemnify us for such liability and to pay in full for recourse independently of any possible default.

## 10. Assignment

You shall not be entitled to assign any of your rights and obligations under the present contract to supply to third parties without our expressly written permission; any such assignment shall be deemed invalid with respect to third parties. Furthermore you shall not be entitled to subcontract any work without our permission.

## 11. Documents

All documents, drawings, calculations, etc. which we shall provide to you for the purposes of giving a quotation or fulfilling orders will remain our sole property. These documents must be treated as confidential and may only be used for the specific purpose for which they were given to you.

## 12. Reservation of title

By accepting our order, you agree not to make any reservation of title for the items to be supplied.

## 13. Set-Off

We may at any time offset payments due to you against amounts due to us or our subsidiaries.

## 14. Withholding

Under no circumstances shall you be entitled to delay the provision of services and/or to withhold the goods or to withhold items provided by us.

## 15. Industrial property rights

The supplier declares that the supplies and services made on the basis of the present order do not violate any industrial property rights of third parties. In the event that we are held liable for the violation of industrial property rights with regard to the present order, the supplier shall indemnify us and save us harmless.

## 16. Concluding provisions

If any one or more of the provisions of this Agreement should be or become invalid, then all other provisions shall remain effective. The invalid provision or provisions shall be replaced by an analogous amendment to the Agreement which comes closest to the intentions of the Parties of the agreement at the time of conclusion of the Agreement.

## 17. Place of jurisdiction

In the event of disputes arising from this Agreement or in connection with its execution, the Parties undertake to endeavour to settle these amicably. Your contractual obligations shall fully remain in force for the period of the settlement proceedings. If such an amicable solution is not to be agreed upon, this Agreement shall be finally settled by the ordinary and substantive competent Austrian court in Vienna.