

General Terms of Delivery

of the Association of Austrian Machinery and Steel Construction Industries
Of 1st March, 1963, as amended up to 1st May, 1994

(Drafted with reference to the General Conditions of Contract, Document No. 188 A and 730 published and recommended by the United Nations Economic Commission for Europe)

These General Terms of Delivery are basically drafted for legal transactions between commercial enterprises. Should these Terms of Delivery exceptionally serve as a basis, for legal transactions with consumers under the provisions of Section 1, Paragraph 1, lit. 2, Consumer Protection Act, Federal Law Gazette 49/1979, they only shall prevail insofar as they are not contradictory to the provisions of the first part of the said Act.

1 Preamble

- 1.1 These general terms shall apply, save as varied by express agreement accepted in writing by both parties.
- 1.2 The following provisions concerning the delivery of goods shall also apply correspondingly to the performance of services.
- 1.3 For erection and assembly work the pertinent special terms of the Association of Austrian Machinery and Steel Construction Industries shall be applicable in supplement of these general conditions.

2 Conclusion of Contract

- 2.1 The contract shall be deemed to have been entered into when, upon receipt of the order, the vendor has mailed his acknowledgment of such order.
- 2.2 To be valid any changes in the contract and supplements there to require the acknowledgment of the vendor in writing. Any purchasing conditions stipulated by the purchaser shall only be binding on the vendor if they have been specifically acknowledged by the latter.
- 2.3 Offers made by the vendor are subject to confirmation. The offers are made subject to prior sale.
- 2.4 In the event of import licences, export licences, foreign exchange authorizations or the like being required for the implementation of the contract, the party responsible for the procurement of the supplies shall undertake all reasonable steps in order to obtain the requisite licences and authorizations in due time.

3 Drawing and Descriptive Literature

- 3.1 Data concerning weights, measures, capacities, prices, performance ratings and the like found in catalogues, leaflets, circulars, advertisements, illustrated, price lists etc. Shall be binding only when they are expressly referred to in the acknowledgment of the order.
- 3.2 Drawings, sketches and other technical documents, as well as samples, catalogues, leaflets, illustrations and the like always remain the intellectual property of the vendor, i.e. they must not be reproduced, distributed, published or used for the purpose of demonstrations without the express consent of their owner.

4 Packing

- 4.1 Unless otherwise specified
 - a) prices quoted shall be deemed to apply to unpacked goods;
 - b) goods will be packed in the customary manner in such a way as to prevent their being damaged under normal transport conditions until they reach the destination stated in the contract, such packing to be charged to the purchaser, with packing materials taken back only by prior mutual agreement.

5 Passing of Risk

- 5.1 In the cases listed below, the moment at which the risk passes shall be determined as follows.
 - a) On a sale „ex works“ the risk shall pass from the vendor to the purchaser when the goods have been placed at the disposal of the latter. The vendor shall advise the purchaser of the date from which the goods will be at the latter's disposal. Notice to this effect must be given in due time so as to enable the purchaser to take the necessary steps customarily required for the purpose of taking delivery.
 - b) On a sale „ex wagon, lorry, barge“ (agreed point of departure), „frontier“ or „place of destination“, or on a sale „carriage paid up to ...“ („free ...“), the risk shall pass from the vendor to the purchaser at the moment at which the means of transport loaded with the goods in question is taken over by the first carrier.
 - c) On a sale „F.O.B.“ or „C.I.F.“ or „C. & F.“, the risk shall pass from the vendor to the purchaser when the goods have effectively passed the ship's rail at the agreed port of shipment.
- 5.2 Unless otherwise stipulated, the goods shall be considered as sold „ex works“.
- 5.3 The vendor shall be obligated to arrange for insurance coverage of the goods only if and in so far as this has been agreed upon in writing.
- 5.4 As for the rest, the INCOTERMS as amended up to the day of the conclusion of the contract shall apply.

6 Delivery

- 6.1 Unless otherwise agreed, the delivery period shall run from the latest of the following dates:
- a) date of the acknowledgment of the order;
 - b) date on which all technical, commercial and financial obligations incumbent on the purchaser have been met;
 - c) date of receipt by the vendor of such payment in advance of delivery as is stipulated in the contract and/or at which a stipulated letter of credits is opened.
- 6.2 The vendor is entitled to make partial- and advance deliveries.
- 6.3 Should a delay in delivery be caused by the vendor as a result of any of the circumstances mentioned in Clause 11 as constituting a ground for relief, a reasonable extension of the delivery period shall be granted.
- 6.4 Should the vendor be responsible for any delay in delivery, the purchaser shall be entitled to demand either specific performance or, after having granted the vendor a reasonable period of time to meet his obligations, to withdraw from the contract. In fixing a period of grace allowance has to be made for the fact that in the case of special fabrications the vendor may not be able to find any alternative use for components which have already been partly completed.
- 6.5 Should the vendor culpably fail to deliver the goods within the period of grace provided for in Clause 6.4, the purchaser shall be entitled to terminate the contract by the simple act of sending a written notice to that effect to the vendor, both in respect of all goods undelivered and in respect of goods which, though delivered, cannot be properly used without the undelivered goods. In such cases the purchaser is entitled to recovery of any payments he has made both in respect of all goods undelivered and in respect of goods which by themselves cannot be used appropriately and, in so far as the delay in delivering the goods may be due to the gross negligence of the vendor, to the recovery of the expenses incurred by him up to the termination of the contract and in the performance of the later inasmuch as there is no further use for them. Goods already delivered and goods that cannot be used must be returned by the purchaser to the vendor.
- 6.6 Any claims of the purchaser against the vendor with respect to the latter's default, other than those mentioned in Clause 6, are precluded.
- 6.7 Where the purchaser does not take delivery of the goods at the place and time provided for by the contract for any reason other than an act of commission or omission of the vendor, the latter shall be entitled to either claim specific performance or, after granting a reasonable period of time for taking delivery, to withdraw from the contract.

On appropriation of the goods to the contract, the vendor shall arrange for their furthermore – to the

exclusion of any other claims against the purchaser for the latter's failure to take delivery of the goods – to recover any expenses properly incurred in the performance of the contract and which are not covered by payment received.

7 Prices

- 7.1 Unless otherwise agreed upon, prices are to be understood as „ex works“ of the vendor, not including packing and loading charges. If delivery to the consignee has been agreed upon, the prices shall not include unloading and handling charges.
- 7.2 Prices are based on the costs at the time the quotation is made. Should there be any changes as regards costs prior to the time of delivery, the differences are not be charged to the debit or credit of the purchaser, as the case may be.
- 7.3 Where the prices are not fixed in the contract, current selling prices as prevailing on the day of delivery shall be charged.

8 Payment

- 8.1 Payment shall be made in the manner and at the time or times agreed by the parties. Unless different times of payment have been expressly agreed upon by the written acknowledgment of the vendor in his acceptance of the order, one half of the purchaser price shall be payable on receipt of the acknowledgment of the order, with the balance due on receiving notice that the goods are ready for shipment.
- 8.2 The purchaser is not entitled to withhold payment because of claims of warranty or other counter-claims not recognized by the vendor as valid.
- 8.3 If the purchaser falls in arrears in making the agreed payments or delays in meeting any other contract and
- a) postpone meeting his own obligations until such payment is made and other commitments fulfilled,
 - b) demand a reasonable extension of the delivery period,
 - c) fix a due date for payment of the entire balance of the selling price still outstanding,
 - d) in so far as the purchaser is not able to claim any grounds of release as provided for in Clause 11, recover interest on arrears at the rate of 7,5% over and above the bank rate charged from the time fixed for payment.

Or, after granting a reasonable period of grace, terminate the contract.

- 8.4 Should the purchaser – after the period of grace specified in Clause 8.3 – fail to make payment or to meet any other obligation, the vendor shall be entitled to terminate the contract by given notice in writing. On being asked to do so by the vendor, the purchaser must return to the vendor any goods that have already been delivered and reimburse the latter

for the depreciation of the goods in addition to defraying all expenses properly incurred by the vendor in the performance of the contract. As regards goods which have not yet been delivered, the vendor shall be entitled to place the finished or unfinished parts, as the case may be, at the disposal of the purchaser and debit the purchaser's account with the corresponding share of the selling price.

- 8.5 The vendor retains legal title to the goods until such time as the purchaser shall have completely discharged all his financial obligations. The purchaser is obligated to comply with all required formalities conducive to ensuring the retention of title by the vendor. In case of attachment, seizure or other distraint, the purchaser is under obligation to file the vendor's retention of title to ownership of the good and to notify him of same without delay.
- 8.6 Claims of the vendor against the purchaser, other than those mentioned in Clause 8, arising from the latter's default are not admissible.

9 Guarantee

- 9.1 Subject as herein after set out, the vendor undertakes to remedy any defect resulting from design, materials or workmanship.
- 9.2 This liability is limited to defects which appear during a period of six months in single-shift operation or three months in multiple-shift operation („Guarantee Period“), commencing from the passing of risk or, in the case of delivery that includes installation, from the time of completion of erection and assembly work.
- 9.3 The purchaser can only avail himself of his rights under this Clause if he notifies the vendor in writing and without delay of any defects that have become apparent. On receipt of such notification, the vendor – if the defect is one which, under the provisions of this Clause, is to be remedied by him – shall at his own option:
- repair the defective goods in situ or
 - have the defective goods or parts returned to him for repair; or
 - replace the defective goods; or
 - replace the defective parts.

The repair of any defects does not result in an extension of the guarantee period.

- 9.4 Where the vendor has defective goods or parts returned to him for replacement or repair, the purchaser shall, unless otherwise agreed, bear the cost and risk of carriage. Unless otherwise agreed, the return to the purchaser of goods or parts sent by way of replacement or of repaired goods or parts shall take place at the cost and risk of the vendor.
- 9.5 Defective goods or parts replaced in accordance with the provisions of this Clause shall be placed at the disposal of the vendor.

- 9.6 The vendor shall not be under any obligation to defray the cost of repairs carried out by the purchaser himself or undertaken by him unless the vendor has consented to do so in writing.
- 9.7 The guarantee obligation of the vendor shall apply only to defects that become manifest under operating conditions as stipulated in the contract and in the course of normal use. In particular his guarantee obligation does not extend to defects arising from faulty installation carried out by the purchaser or the latter's agent, poor maintenance, faulty repairs of alterations, or those made without the written consent of the vendor by persons other than the vendor or his agent, nor is he liable for normal deterioration.
- 9.8 For those parts of the goods which he himself has obtained from sub-suppliers, the vendor shall only be liable to the extent of the guarantees granted him by the sub-suppliers.

Where goods are made to order by the vendor in accordance with design- and construction specifications, drawings or models supplied by the purchaser, the liability of the vendor does not extend to the correctness of the design but to its execution in accordance with the instructions of the purchaser. In such cases the purchaser is fully responsible to the vendor for all damages or claims that may result from any infringement of patent rights.

The vendor assumes no warranty liability in accepting repair orders or orders for alterations and modifications of goods that are not new or have not been manufactured by the vendor.

- 9.9 From the commencement of the guarantee period the vendor assumes no further liability, save as provided for in this Clause, nor shall he be liable even in respect of defects due to causes existing prior to the passing of the risk.

10 Liability

- 10.1 It is expressly agreed that the purchaser shall have no claims on the vendor in respect of personal injury or of damage to goods that are not subject of the contract, for any other damage and for loss of profit, unless it is evident from the circumstances of the case that the vendor has been guilty of gross misconduct.
- 10.2 The article bought shall provide only that degree of safety that can be derived from licensing requirements, operating instructions, vendor's recommendations for proper treatment of the article, especially with regard to obligatory checks, and from other information or restrictions.
- 10.3 In the case of the agent's ordinary negligence damages shall be limited to a maximum amount of €7.267,3 for an amount of order of €145.346,- and up to 5 % of the amount of order in the case of an amount of order exceeding €145.346,-, but shall be limited to a total amount of €363.365,-

10.4 Any claim for damages resulting from defects in delivery and/or services have to be judically asserted within one year after expiry of the guarantee period according to the contract, otherwise claims shall be precluded, if the defect has not expressly been acknowledged by the agent.

11 Reliefs

11.1 The following shall be deemed grounds of relief if they intervene after the formation of the contract and impede its performance:

Industrial disputes and all other circumstances that are beyond the control of the parties, e.g. fire, mobilization, requisition, embargo, currency restrictions, insurrection, general shortage of materials and restrictions in the use of power.

11.2 The effects of the said circumstances with respect to the obligations of the contracting parties are defined in Clause 6 and 8.

12 Jurisdiction, Law Applicable, Place of Performance

12.1 Disputes arising out or in connection with the contract shall be under the jurisdiction of the Austrian court of law having original jurisdiction over the headquarters of the vendor.

The vendor may also appeal, however, to another court of law having jurisdiction over the purchaser.

12.2 The parties can also agree as to the competency of a court of arbitration.

12.3 The contract shall be governed by the law of the vendor`s country.

12.4 Tzhe place of the vendor`s headquarters shall be deemed to be the place of performance for purposes of delivery and payment even when delivery is – by mutual agreement – made at some other place.