



AUSTRIAWOOD&CO
EDELDIELN MANUFAKTUR

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Standard Purchasing Terms and Conditions

1. Scope of Validity of the Ordering Terms

1.1 These general ordering terms apply to all orders placed with the supplier by the orderer and to all deliveries to the orderer and they are an integral component of any contracts between the supplier and the orderer arising from such orders or deliveries. The supplier's general business terms or other terms only apply if the orderer has expressly acknowledged them in writing. This also applies if the orderer places an order subsequently to receiving the supplier's business terms or does not object upon receipt of the supplier's business terms after placement of an order.

1.2 Changes and supplements to these terms and the contract concluded with the supplier require the written form for their validity; any deviation from this provision also requires the written form.

2. Orders and Conclusion of the Contract:

2.1 Orders require the written form in order to be valid. Order placement by fax, e-mail, or in any other electronic form also fulfills this requirement with the orderer's signature not being required in the case of electronic order placement.

2.2 The supplier shall confirm the respective order in writing in one of the forms specified in Item [2.1]; the orderer must receive this confirmation within 3 working days from the order date. Only then is the contract concluded.

If the orderer does not receive such confirmation by the aforementioned deadline, the orderer is no longer bound to its order and has the right to refuse the late arriving confirmation or the delivery made without confirmation.

3. Delivery, Delivery Date, Late Delivery:

3.1 The delivery must be made to the delivery address given on the order.

3.2 The supplier shall obtain adequate transport insurance at its own expense.

3.3 A separate bill of delivery is required for each delivery of an order and must give at minimum the order number, the sequential item number, and the order date.

3.4 The filling of the order in partial deliveries is only permitted upon express written agreement. For partial deliveries, the note "Delivery of remaining goods by" must be added to the bill of delivery and the delivery deadline specified in the order must not be exceeded. If partial deliveries are invoiced with an overall bill, the due date or the period allowed for payment begins with the invoice date, but no earlier than after receipt of the final partial delivery.

The orderer has the right to return partial deliveries that have not been agreed upon; this also applies if one or several partial deliveries of an order have already been accepted. The orderer is likewise not obligated to accept early deliveries.

3.5 The receipt of the goods at the place of the delivery address is of the essence for compliance with agreed upon delivery periods or deadlines.

3.6 If the supplier is unable to comply with the agreed-upon delivery date, it must inform the orderer thereof without delay, stating the reasons and the foreseeable length of the delay. If the supplier has failed to impart this information even though it has been aware of the possibility of a late delivery, it shall be liable to the orderer for all disadvantages and harms caused thereby.

As soon as such notification is received, the orderer is entitled to the rights (as for delivery delays that have already occurred) specified in the following Items [3.7] through [3.10].

3.7 In the event of a delivery delay, the orderer has the right to cancel the contract after setting an appropriate period of grace and in the event of cancellation, it is entitled to assert any claims resulting therefrom or insist upon fulfillment. The orderer is also entitled to these rights even if it does not exercise its right of cancellation right away.

3.8 The orderer has the right to procure the goods from a different supplier in the event of a justified cancellation. The supplier is liable for any additional costs associated therewith, if and to the extent to which it was not hindered in the fulfillment of its obligations by an act of God. The supplier is also liable for delays caused by delays on the part of its subcontractors, if and to the extent to which the latter cannot claim an act of God. Acts of God in the scope of these terms are unforeseeable and unavoidable events of such a nature that a provision for their consequences is not required or such a provision is not possible, even if exercising the due care of a diligent businessman. The burden of proof of causation by acts of God lies with the supplier.

3.9 In the event of a delay on the supplier's part, the orderer has the right, regardless of the supplier's responsibility (unless the supplier proves it was due to an act of God as previously described), to claim a contractual fine of the amount of 5% of the delivery value affected by the delay for each begun day exceeding the deadline with the assertion of a claim for additional damage (e.g. penalty claims by the orderer's customers, etc. [also see point [6.4.] of the general purchasing terms]) being not excluded. In the event of a delivery delay in excess of 10 days or cancellation by the orderer, the contractual fine shall total 50% of the aforementioned value.

The agreed-upon price including value added tax shall be used in calculating the delivery value as the basis for figuring the contractual fine.

3.10 The preceding provisions do not affect the rights of the orderer according to §§ 918 ff General Civil Code. The supplier shall bear the burden of proof that it has not been at fault for the delay or non-performance. The orderer also reserves the right to assert a claim for damages in excess of the contractual fine, including lost profit or other losses suffered by the orderer, e.g. disadvantages due to third party claims as a result of non-fulfillment of obligations to said third parties. Frustrated expenses, such as e.g. for advertising costs for goods that cannot be offered (on time) due to the delay on the part of the supplier and costs to the orderer from any competitive claims on such grounds, are also compensable losses.



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4. Performance Place and Passing of the Risk:

4.1 The performance place for the supplier's duties is the place of the delivery address.

4.2 Passing of the risk does not take place until delivery to the performance place. The supplier is solely liable for the transport risk.

5. Prices, Invoicing, and Payment:

5.1 The prices listed in the order - unless otherwise agreed in writing - do not include value added tax but do include packaging, shipping, transport insurance, and customs duties (according DDP Incoterms 2000).

5.2 The invoice must be sent to the billing address on the order stating the delivery address. The delivery of each order must be invoiced separately.

5.3 At minimum, the invoice must contain the delivery address, order number, sequential item number, as well as the date of the order. If this information is lacking or incomplete, the due date and beginning of the payment period will not be triggered.

5.4 The payment deadlines and discount provisions stated in the order apply; however, the discount deadline does not apply prior to receipt of the original invoice by the orderer (date of receipt stamp).

6. Guarantees and Warranties, Trademark Protection Rights and Product Liability

The supplier shall guarantee that the goods correspond to the contract in terms of §§ 922 and 923 General Civil Code. The compulsory presumption period of § 924 General Civil Code is extended to 12 months. The compulsory warranty period ends upon resale of the goods by the orderer no earlier than 36 months after receipt by the orderer of a corresponding complaint by the purchaser of the resold goods.

6.1 The orderer shall inspect the goods within 14 days maximum after receipt, merely to confirm their identity with the goods and quantity ordered. Otherwise the orderer is under no other obligations to perform further inspections or to give notice of defects as in § 377 Corporate Law Code.

6.2 In the event of defects, the orderer has the right to demand at its discretion either a cost-free replacement delivery (to the extent that this is possible for the supplier) or a discount or cancellation of the contract; these rights are not restricted by the provisions of § 932 Subsections 2 through 4 General Civil Code.

6.3 The supplier shall compensate the orderer for all costs and disadvantages resulting from the deficiency of delivered goods unless it can prove that neither it nor any of its subcontractors has been at fault for the deficiency. This includes indemnification of the orderer from all third party claims for deficiencies of the goods, the costs of a required reinspection of other stock, returns, inspections, appraisals, additional costs for provision with substitute goods, etc.

6.5 Furthermore, in the event of a replacement delivery the supplier shall take back the defective goods at its own expense (e.g. customs duties, shipping, and handling costs, etc.); the supplier shall fully indemnify the orderer in this regard.

6.6 The supplier is also obligated to indemnify the orderer if it is held liable for defectiveness in a product delivered and marketed by it (e.g., on the grounds of product liability or breach of other provisions).

6.7 The supplier shall guarantee that the delivered goods, particularly also with regard to its labelling, comply with all Austrian and European laws and the laws of the final destination country as per order.

6.8 Furthermore, the supplier shall guarantee that the delivered goods are fully marketable in Austria, the European Economic Area, and in the final destination country as per order and that it is not protected by third party industrial property rights (such as patent, trademark, registered design rights, or copyrights). If the goods are labeled with a trademark name, the supplier shall guarantee that the delivered goods are genuine and that they have been marketed either by the owner of the trademark with which it is labeled and/or under which it is marketed or with the approval of said trademark owner and this notwithstanding, the supplier shall guarantee the full legal legitimacy of marketing and distributing the goods under the trademark name in Austria and in the final destination country as per order.

6.9 With regard to the entire scope of business with the orderer, the supplier shall confirm that it is a participant in a collection and recycling system as defined in § 11 of the Austrian Packaging Regulation and that as such regarding the packaging of all goods delivered to the orderer, it thus guarantees compliance with the obligations imposed by the Packaging Regulation on the orderer in its capacity as distributor or final distributor. On its invoices, the supplier shall state the transaction number and the date of the notice of approval of the collection and recycling system as defined in § 11 Subsection 1 of the Packaging Regulation and in each case confirm that it will duly meet its contractual obligations regarding this collection and recycling system.

6.10 The supplier obligates himself - irrespective of other or further rights - to indemnify the orderer for all damages and disadvantages from the non-compliance with the above-mentioned guarantees and to compensate it for all costs and consequential damages whatsoever resulting from a non-compliance, even in part, of the above-mentioned guarantee promises. This also includes damage claims by the trademark owner or other third parties. Furthermore, this obligation of the supplier also extends to compensation for fines imposed on organs or employees of the orderer or of its customers or by its customers on the grounds of flawed quality or labelling of the goods; this compensation shall be provided to the orderer if the latter provides such compensation to the affected party/parties, or else directly to the affected parties themselves.

6.11 Other or additional rights of the orderer's with regard to the supplier to which the orderer is entitled by law or through other arrangements with the supplier shall remain unaffected by the provisions of Item [6.].



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7. Assignment of Claims and Setoff:

7.1 The assignment of claims of the supplier against the orderer is inadmissible and invalid without the latter's express written consent.

7.2 The supplier can only set off the orderer's claims with its claims from deliveries of goods if the latter has expressly acknowledged these claims in writing. The supplier does not have a right of retention on the grounds of claims against the orderer.

8. Applicable Law and Venue:

8.1 Austrian law applies exclusively to the contract relationship between supplier and orderer, including the assessment of the accomplishment of such a relationship as well to these ordering terms. The UN Convention on Contracts for the International Sale of Goods (CISG) is not applicable.

8.2 The sole legal venue for all disputes from or in connection with contracts concluded between orderer and supplier, including those regarding their accomplishment, is in each case the materially competent court in the provincial capital of Salzburg. However, the orderer also has the right to sue at its discretion the supplier at the latter's general legal venue.

9. Miscellaneous:

9.1 Should any of the above provisions be or become ineffective, the remaining content shall not be affected thereby. The ineffective provision shall be replaced with a provision that is legally effective and comes closest economically to the intent and purpose of the ineffective provision.

9.2 The legal provisions agreed in Item [8.1.] apply to the extent that these terms provide no alternative arrangements. Furthermore, the rights of the orderer stated in these ordering terms do not exclude the enforceability of other or additional legal or contractual rights of the orderer.