

Terms of sale, delivery and payment – valid as of 01.04.2004

The present terms of sale, delivery and payment have primarily been drafted for legal transactions between companies. It is mutually agreed that the UN Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 is expressly excluded.

1. General conditions:

- 1.1. The present terms of sale, delivery and payment shall apply unless otherwise expressly agreed by the contracting parties in writing.
- 1.2. The below provisions on the delivery of goods shall also apply mutatis mutandis to performances.
- 1.3. Our terms of assembly shall additionally apply to assembly projects.

2. Offer:

- 2.1. Our offers are subject to confirmation, cost estimates are not binding, right to prior sale reserved.
- 2.2. Right to changes in construction and weight reserved to the extent to which those changes are due to technical development.
- 2.3. Data on measures, volumes and weights, or alike, as contained in documents are estimates only unless otherwise particularly described as binding.
- 2.4. Drawings, design drafts and other technical documents which may be part of the offer shall always remain the intellectual property of the Seller. Any use, copying, reproduction, dissemination and transfer to third parties, and any publication and presentation thereof may only be effected with the express approval of the owner.

3. Scope of delivery:

- 3.1. The scope of delivery shall be laid down in our written order confirmation.
- 3.2. Any further agreements or changes need to be laid down in writing.

4. Prices:

- 4.1. Unless otherwise agreed, all prices shall be ex works of Seller, without loading. Prices shall be based on the costs at the time of quotation. In the event that costs change during the period until delivery, these changes shall be in favour, or at the expense of Buyer respectively.

5. Payment:

- 5.1. The payments shall be made in keeping with the agreed conditions of payment. Unless specific conditions of payment have been agreed upon, one third of the price shall be due upon receipt of the order confirmation, one third after half of the delivery period has lapsed and the rest upon delivery. Irrespective of the foregoing, the valued added tax included in the invoice shall be paid within 30 days after the invoice date, at the latest, in all events.
- 5.2. Buyer shall not have the right to withhold payments due to warranty claims or any other counter-claims that Seller has not accepted.
- 5.3. If Buyer defaults on one of the agreed payments or any other performance, Seller may either insist on the performance of the contract and
 - a) postpone compliance with Seller's own obligations until Buyer has paid the arrears in payment or provided any other performance,
 - b) use a reasonable extension of the period of delivery,
 - c) call for the payment of the full remaining purchase price,
 - d) charge interest on arrears, as of the due date, in the amount of 7.5 % above the respective base rate of the European Central Bank, unless Buyer can claim a reason for relief under Article 13, or announce the withdrawal from the contract, granting a reasonable respite.
- 5.4. In all events, Buyer shall be responsible for any damage caused by the delay and shall refund to Seller the dunning charges and collection costs which constitute a further damage caused by the delayed performance.
- 5.5. If Buyer has not made the payment due or has not provided any other performance within the respite according to Article 5.3., Seller may withdraw from the contract by means of a written notice. Buyer shall return to Seller, upon Seller's request, any delivered goods. Buyer shall compensate Seller for any reduction in the value of the goods that has occurred and refund to Seller all justified expenses that Seller had to incur in connection with performance of the contract. With regard to undelivered goods, the Seller is entitled to make available to Buyer the completed parts, or the parts with incipient processing respectively, and to ask for a pro-rated part of the sales price.
- 5.6. It is mutually agreed by both parties to the contract that the rights and obligations covered by the contract shall not be affected by the introduction of the Euro. Payment obligations – especially the established values of the money – shall be deemed to have been agreed in Euro as soon as the Euro has become the only accepted means of payment. In all events, any conversion will be made on the basis of the officially established rate of exchange. It is mutually agreed that the conversion to the Euro neither creates a right to terminate the contract, to withdraw from or contest the contract, nor a claim for damages or modification of the contract.
- 5.7. Bank charges for remittance are to be paid by the Buyer.

6. Reservation of ownership:

- 6.1. Seller shall retain the ownership in the object sold until Buyer has met all his financial obligations. Seller is entitled to document Seller's ownership on the outside of the delivery item. Buyer shall comply with the required formal regulations to safeguard the reservation of ownership. In case of an attachment or any other recourse, Buyer shall be obliged to claim Seller's ownership and to inform the latter without delay.
- 6.2. Buyer is not allowed to resell the acquired good before the whole purchase price has been paid to the Seller. In all events, Buyer is not granted the full right of disposal of the acquired good by the Seller. In the event of violation of this provision, the reservation of ownership to the Seller of the good resold also applies to the second buyer (extended retention of title).

7. Period of delivery:

- 7.1. The period of delivery shall begin at the latest of the following dates:
 - a) the date of the order confirmation;
 - b) the date on which Buyer has complied with all technical, commercial and financial preconditions for which Buyer is responsible under the contract;
 - c) the date on which Seller has received a payment on account that is due prior to the delivery of the goods and/or a payment guarantee has been issued or otherwise provided.

- 7.2. Seller shall have the right to make partial or advance deliveries.
- 7.3. If a delivery is delayed on account of a circumstance on Seller's part that constitutes a reason for relief according to Article 13, a reasonable extension of the period of delivery shall be granted.
- 7.4. If Seller has caused a delay in delivery, Buyer may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite.
- 7.5. If the respite according to Article 7.4. is not used, due to Seller's negligence, Buyer may withdraw from the contract by means of a written notice, regarding all undelivered goods. The same shall apply to delivered goods which, however, cannot be used appropriately without the outstanding goods. In this event, Buyer shall have the right to be refunded any payments made for the undelivered goods or for the goods that cannot be used. Moreover, in the event that the delay in delivery is due to a gross negligence on Seller's part, Buyer shall be entitled to a refund of any justified expenses that Buyer has had to incur up to the dissolution of the contract and which cannot be used for any further purpose. Buyer shall return to Seller any delivered goods and the goods that cannot be used.
- 7.6. If Buyer does not accept the goods supplied under the contract in the contractually agreed place or at the contractually agreed time, and if the delay is not due to any action or omission on Seller's part, Seller may either demand the performance of the contract or withdraw from the contract, granting a respite. When the goods have been segregated, Seller may store the goods at the Buyer's cost and risk. Seller shall also be entitled to claim a refund of any justified expenses that Seller had to incur in connection with performing the contract and that are not covered by the payments received.
- 7.7. Any other claims of Buyer against Seller for Seller's delay than those listed in Article 7 shall be precluded.

8. Passage of risk:

- 8.1. Unless otherwise agreed, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection).
- 8.2. Furthermore, the INCOTERMS shall apply in the version valid on the date when a contract is signed.

9. Complaint and notice of defects:

- 9.1. Complaints because of incomplete or wrong delivery or notice of defects after delivery of the goods have to be given in writing immediately or, at the latest, within 8 days after delivery of the goods.
- 9.2. If complains are not made in time or notices of defects are not given in time according to article 9.1., Buyer shall have no warranty claims vis-a-vis the Seller. If notice is given in due time, the Anton Panhans Werkzeug- und Maschinenfabrik Ges.m.b.H shall be obliged to deliver again or to undertake warranty obligations according to article 10.
- 9.3. Seller shall eliminate defects either by repairing the defective goods or by making a new delivery according to Seller's assessment of the defect.
- 9.4. Notices of defects shall only be valid as far as they concern reproducible defects and are given in writing.
- 9.5. In case of transportation defects the receiver of the goods shall be obliged to inform the carrier about the defects and to name the defects in the consignment note.

10. Warranty:

- 10.1. Subject to the below provisions, Seller shall undertake to remedy any defect existing already at delivery affecting the fitness for use which is due to a deficiency in design, material or workmanship. Seller shall also be responsible for any defects concerning expressly requested properties. The buyer always has to prove whether the defect already existed at the date of delivery.
- 10.2. The above obligation shall only apply to such defects that appear within a period of six months, when working a one-shift operation, as of the passage of risk, or as of the completed assembly, in case of a delivery with assembly respectively.
- 10.3. Buyer may claim the present Article only if he informs Seller in writing and without delay of any defects that have appeared. Once Seller has been informed of defects in this way, Seller shall – if the defects must be remedied according to the provisions of the present article - at Seller' choice:
- a) rework the defective goods on site;
- b) have the defective goods or defective parts shipped back for reworking;
- c) replace the defective goods;
- d) replace the defective parts.
- 10.4. If Seller arranges for the defective goods or parts to be returned to Seller for the purpose of reworking or replacement, Buyer shall bear the costs and the risk of transport, unless otherwise agreed. Unless otherwise agreed, the reworked or replaced goods or parts shall be returned to the Buyer at the Seller's risk and expense.
- 10.5. The defective goods or parts, which are replaced according to the present article, shall be at Seller's disposal.
- 10.6. Seller shall only refund any costs for remedying a defect, undertaken by Buyer himself, if Seller has agreed to this procedure in writing.
- 10.7. Seller's warranty obligations shall only apply to defects that appear when observing the applicable operating conditions and putting the item to normal use. His obligation shall, in particular, not apply to defects that are due to inadequate installation by the Buyer or Buyer's representative, inadequate maintenance, inadequate repairs or modifications made by another person than Seller or Seller's representative without the written agreement of Seller, normal wear.
- 10.8. With regard to those parts of the good that Seller has acquired from a sub-contractor prescribed by Buyer, Seller shall be liable only to the extent of Seller's own warranty claims vis-a-vis the sub-contractor.
If Seller produces items on the basis of design data, drawings or models provided by Buyer, Seller's liability shall not extend to the accuracy of the design but as to whether the workmanship complies with Buyer's instructions. In such cases, Buyer shall keep Seller harmless and free from any court action in the event of an infringement of proprietary rights.
When accepting repair jobs or reworking or modifying old as well as third-party goods, or when delivering second-hand goods, Seller shall not accept any warranty.
- 10.9. As of the beginning of the warranty period, Seller shall not accept any liability that extends beyond the scope defined in the present article.

11. Liability:

- 11.1. It is expressly agreed that Seller shall not be liable to Buyer for damages in the event of personal injuries, or for damage to goods that are not the subject to a specific contract, as well as for other damage and loss of profit, unless the circumstances of a specific case reveal that Seller acted with gross negligence.
- 11.2. The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, Seller's rules on the handling of the purchased object – especially with regard to any possible inspections – and other instructions given.

- 11.3. All claims for damages due to defects in delivery and/or performances must be filed in court within one year after the expiry of the contractually agreed warranty period if Seller does not expressly accept the defect, otherwise all claims become extinct.
- 12. Consequential Damage:**
- 12.1. Subject to any provisions of a different effect in the present Terms, Seller's liability vis-a-vis Buyer shall be precluded for any standstill in production, loss of profit, loss of use, loss of contract or any other economic or indirect consequential damage.
- 13. Reasons for Relief:**
- 13.1. The Parties shall be released in part or in toto from the timely performance of the contract if they are prevented by events of force majeure. Events of force majeure shall solely be such events that are unforeseeable and inevitable and that are beyond the domain of the parties. However, strike and industrial action shall be considered to be events of force majeure. A Buyer affected by an event of force majeure may, however, only claim the existence of force majeure if Buyer informs Seller without delay, at the latest though, within 5 calendar days, about the onset and anticipated end of an obstruction by sending by registered mail a statement, confirmed by the respective government authority or chamber of commerce of the delivery country respectively, on the reason, the anticipated effects, and the duration of the delay. In the event of force majeure the parties shall make every effort to remove, or to mitigate respectively, the difficulties and the anticipated damage, as well as to keep the respectively other party continuously informed thereof; otherwise they shall be liable to pay damages to the respectively other party. Deadlines or dates that cannot be observed on account of events of force majeure shall be extended by the duration of such events of force majeure, as a maximum, or, if applicable, by a period to be determined by mutual consent. If a circumstance of force majeure prevails by more than four weeks, Buyer and Seller shall seek a solution for handling the technicalities of its effects by means of negotiations. If no solution can be reached by mutual consent, Seller may withdraw from the contract in part or in toto.
- 14. Data protection:**
- 14.1. Seller shall have the right to store, to communicate, to process and delete person-related data about Buyer in the framework of their business relations.
- 14.2. The parties shall undertake to keep absolutely confidential vis-a-vis third parties knowledge obtained in the course of their business relationship.
- 15. Soft- and Hardware:**
- 15.1. All programs delivered shall always remain the intellectual property of the Seller. The programs are licensed as single products and may only be used on **one** computer. Programs sold by the Seller must not be copied or put at the disposal of other users apart from the licensee without the express approval of the Seller. Should the Buyer not comply with the licensing conditions specified herein, then he shall incur any responsibility in respect of the damage caused thereby.
- 15.2. Any control and hardware components must not be put at the disposal of third parties without prior consent of the Seller. By paying the purchase price the Buyer solely acquires the right to use the tools, but not the right of ownership of the technical know-how regarding control components.
- 15.3. Only persons authorised by the Seller shall make adaptations to the program and repair the control components, otherwise any right to warranty with respect to the entire good delivered shall expire.
- 16. Court of jurisdiction, law applicable, place of performance:**
- 16.1. All disputes arising directly or indirectly from a contract shall be subject to the jurisdiction of the Austrian Court with competencies for Seller's principal place of business. However, the Seller may – at his option – also resort to the court with jurisdiction for Buyer.
- 16.2. The parties may also agree upon the jurisdiction of a court of arbitration.
- 16.3. Contracts shall be subject to the Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
- 16.4. Seller's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in a different place
- 16.5. In the event of disputes arising from the present translation of the contract, the German text shall prevail.