

1. Application

1.1. These General Terms & Conditions (hereinafter "AGB") are basically conceived for legal transactions between companies. Should they, as an exception, be used as the basis for legal transactions with consumers, in the sense of the Consumer Protection Act, then they only apply insofar as they do not contradict compelling provisions.

1.2. These AGB also apply to all legal transactions and legal relationships between Customer and Supplier, not only for the first legal transaction, but the application of the AGB is also expressly agreed to for all additional and subsequent commissions and further business.

1.3. The Customer's purchase or other business conditions do not apply, and these are, hereby, expressly contradicted. The Supplier expressly declares that he only wishes to enter into contracts based on his AGB. Should, as an exception, the application of the Customer's AGB be agreed to in writing, then those only apply insofar as they do not collide with these AGB. Provisions which do not collide remain in force alongside each other.

1.4. The Customer declares that, before the concluding of this agreement, he had the possibility to acquaint himself with the contents of these AGB and that he accepts their content.

1.5. Amendments and addenda to these AGB must be in writing to be valid. This written form imperative can only be varied in writing. It is noted that no subsidiary agreements exist.

2. Offers, Concluding an Agreement

2.1. Offers by the Supplier are, and remain, non-binding.

2.2. Offers or orders by the Customer are accepted by the Supplier by written confirmation of the order, or by delivery of the object of the purchase or by provision of the service.

2.3. The information contained in catalogues, price lists, brochures, company information material, prospectuses, advertisements on exhibition stands, in circulars, advertising communications or other media about the Supplier's services and products are non-binding, insofar as they are not expressly declared to be a part of the contents of the agreement.

Supplier's estimates are basically free of liability as regards their completeness and correctness.

The order creates an offer for the product or service that will be bought, according to the commercial terms and conditions. The offer for the order of a product or service will cause a contract between the customer and Tyromotion. After Tyromotion has checked the availability of the product or service and also your credit card, or a other payment you have chosen we will accept your order. Here for, Tyromotion set his general time to accomplish those Actions, to 14 days, from the time of ordering. Without a confirmation, Tyromotion is not bound to share products or services. The seller shall be at liberty to accept or deny an order.

3. Delivery/Performance Deadlines

3.1. Delivery/performance deadlines are non-binding, insofar as they were not expressly otherwise described in the written confirmation of the order or agreed to in writing in the individual agreement.

3.2. If, following the placing of the order, regardless on which grounds, there is an alteration or an addition to the order, the delivery/performance deadlines are automatically extended by a reasonable period.

3.3. In the absence of a divergent agreement, the delivery time limit begins with the latest of the following points in time:-

- a) date of the written confirmation of the order; or
- b) date of the fulfilment of all the Customer's obligatory technical, commercial and other requirements; or
- c) date on which the Supplier receives an agreed advance payment or security.

3.4. Should the Supplier be prevented from complying with his obligations, due to unforeseeable occurrence(s) or by circumstances for which he is not answerable, such as, for example, malfunctions, acts and interventions by the state, power supply problems, the loss of a Supplier whom it is difficult to replace, strike, blocked roads, customs clearance delays, or force majeure, then the delivery/performance deadlines are extended for a reasonable period. It is irrelevant whether these circumstances arise to the Supplier himself or to his sub-contractor.

3.5. Should the fulfilment of the agreement be impossible for reasons for which the Supplier is not answerable, then the Supplier is released from his contractual obligations.

3.6. The Supplier has the right of early or partial delivery and invoicing. If a call-up basis is agreed for delivery, then the service/purchase object is deemed to be called up six months after order at the latest.

4. Payment/Prices

4.1 All prices are charged in Euros.

4.2. Should a previous order be placed or services rendered which were not expressly included in the agreement, then the Supplier may charge any amount which corresponds to his price list or to his usual charges.

4.3. The Supplier has the right to demand a price in excess of the agreed charge or purchase price if, the calculation bases existing at the point in time of the written confirmation of the order, such as raw material prices, exchange rates or personnel costs, change following conclusion of the agreement.

4.4. All prices and payments are understood to be plus the legal turnover tax (VAT) ruling at the time and to be ex warehouse. Packing, transport, loading and shipping costs, as well as customs duty and insurance, are carried by the Customer. Packing (materials) will only be taken back if expressly agreed.

4.5. Insofar as not otherwise agreed, the payment/purchase price is due as to half on receipt of the written confirmation of the order, and the rest on delivery or holding (the goods) ready for collection, as well as upon receipt of the invoice, free of expenses and deduction free.

4.6. A payment is made in time if the Supplier can dispose thereof. Customer's payment dedications, such as transfer vouchers are non-binding.

4.7. In the case of payment default, the Supplier has the right, at his choice, to be reimbursed for his actual damage, such as the expenses for reminders, collection attempts, storage costs and any court or out-of-court legal fees, or to demand default interest at the legal level. In the case of payment default, the Supplier has the right, from the day on which the goods are handed over, to charge interest on interest.

4.8. The benefits agreed upon concluding the agreement, such as discounts and rebates, are granted upon condition of timely and complete payment. In the case of default, also even by partial performance, the Supplier has the right to set these off afterward.

4.9. The exercise of a right of retention using the excuse by the Customer of an unfulfilled agreement due to alleged fault(s) is debarred. Set-off the Customer with counterclaims or with alleged claims for price reductions is only permitted if the debt is established as legally enforceable or is not disputed by the Supplier.

4.10. If the Customer is in default under a contractual relationship or another payment responsibility towards the Supplier, the Supplier has the right, regardless of other rights, to suspend his delivery duty towards the Customer until payment, and/or claim reasonable extension of the delivery deadline; to declare due all open claims arising out of this or other legal business and, if necessary, to take back items delivered, without this releasing the Customer from his performance obligations. Withdrawal by the Customer from the agreement because of these actions is only permitted if this was expressly declared.

4.11. Should the customer's asset situation worsen, the Supplier has the right to declare due the agreed payment or purchase price immediately, as well as implementing the agreement only against payment up-front.

4.12. Should a periodically chargeable payment, such as for services or maintenance be agreed, this falls due annually, at the start of a calendar year. If the agreement begins or ends during a year, then this payment is due pro-rata. This payment is linked to the 1996 Consumer Price Index (CPI), whereby the month in which the servicing or maintenance agreement was concluded serves as the starting point. If the 1996 CPI is no longer published, then it will be replaced by its successor or by that which comes nearest to it. Furthermore, the Supplier has the right to adjust a periodically chargeable payment on the grounds set out in § 4.2.

4.13. Outgoings for travelling expenses, per-diems and overnight allowances relating to periodically chargeable payments are to be invoiced separately. Travelling time counts as working hours.

5. Risk Bearing and Shipping

5.1. The risk is transferred to the Customer as soon as the Supplier holds the purchase object/ work ready for collection at the factory or warehouse, and that regardless of whether the items are to be handed over by the supplier to a shipper or haulage contractor. Shipping, loading and unloading are always at the Customer's risk.

5.2. The Customer approves every appropriate manner of shipping. Transport insurance will always be entered into by the Supplier and charged on.

5.3. The Supplier has the right, when shipping, to cash the packing and shipping costs, as well as the payment or purchase price, per COD, insofar as the asset situation of the Customer worsens, or a credit limit agreed with the Supplier is exceeded.

5.4. Place of performance is the Supplier's factory.

6. Liens and Retention Rights

6.1. All goods and products remain the property of the Supplier until the Customer has paid in full, and that, even if the items to be delivered or manufactured should be sold on, modified, adapted or processed or blended.

6.2. Until payment of all amounts due to the Supplier is complete, the service/purchase items may neither be attached, pledged as security, nor otherwise encumbered with third-party rights. In the case of an attachment order or other utilisation, the Customer is obligated to point out the Supplier's ownership rights and to inform the latter immediately.

6.3. The Customer reassigns herewith all his claims and rights to receive payment accruing from the further disposal, processing, blending or other utilisation of the goods and products. The Customer has, until the payment or purchase price has been paid in full, to note this reassignment in his books and on his invoices, and to inform his creditors thereof. Upon demand, he must make available to the Supplier all documents and information which are necessary for the enforcement of the assigned debts and claims.

6.4. In order to secure his debts and the debts from other legal transactions, the Supplier has the right to retain the goods and products until settlement of all debts arising from the business relationship.

7. Customer's Obligations

7.1. In the case of assembly by the Supplier, the Customer is obliged to ensure that the assembly can be commenced immediately following the arrival of the Supplier's assembly personnel.

7.2. The Customer is liable for ensuring that the necessary technical requirements for the work to be created or the purchase object exist, and that the technical facilities, such as supply lines, wiring, networks and similar, are in technically sound and operational condition, as well as those products to be produced by the Supplier or purchase objects are compatible. The Supplier has the right, but is not obligated, to check these facilities, against payment.

7.3. There is no checking, warning or clarification obligation in respect of documents, details or instructions which may have been made available by the Customer, and such a liability on the part of the Supplier is debarred.

7.4. The order will be placed independently of any required official consents and approvals which the Customer has to acquire.

7.5. The Customer does not have the right to assign debts and rights arising from the contractual relationship, without the written consent of the Supplier.

8. Guarantee

8.1. The guarantee period is limited to six months, and begins upon the transfer of risk in the sense of these AGB. This also applies to delivery and service items which are tied to a building or land.

8.2. A guarantee is debarred if the technical facilities, such as wiring, cables, networks and similar are not in a technically sound and operational condition or are not compatible with the works or purchase objects to be provided by the Supplier.

8.3. No warranty claims exist for fault(s) which occur as the result of inappropriate treatment or overuse, or if legal regulations or the service or installation instructions issued by the Supplier are not followed; if the item delivered was created based on Customer's specifications and the fault arises from these specifications or drawings; in the case of faulty assembly or commissioning by the Customer or by a third party; of normal wear and tear; in the case of damage during transportation; inappropriate storage; malfunctioning operational conditions (e.g. inadequate power supply); chemical, electrochemical or electrical influences; failure to carry out necessary maintenance, or in the case of poor maintenance.

8.4. Claims and complaints of any nature are – in the case of other losses of the warranty claims – are to be notified immediately, in writing, mentioning the possible causes. Verbal, telephonic or claims and complaints not immediately reported, will not be taken into account. After implementing an agreed acceptance (procedure), the complaints about fault(s) which could have been detected in the course of the acceptance are debarred.

8.5. Claims and complaints are to be made at the Supplier's Head Office, with the most detailed possible fault description, and the goods and services complained of are to be handed over, insofar as the latter is feasible.

8.6. The Supplier has the right to investigate or to arrange any investigation he may consider necessary, even if this causes these goods or components to be rendered unusable. In the event that this investigation reveals that the Supplier is not answerable for any fault, then the customer has to bear reasonable costs for this investigation.

8.7. If the products/services are created based on data, drawings, plans, models or other specifications provided by the Customer, then the Supplier's warranty only covers the specified version.

8.8. If the Customer undertakes alterations to the purchase object or work, after handover, without prior written consent of the Supplier, then the Supplier's warranty obligation is void.

8.9. The Customer's warranty claims will be fulfilled by us in the manner of our choice, either by replacement, repair within a reasonable period or price reduction; the Customer may only demand cancellation (cancellation of an agreement) if the fault is not materially remediable by replacement or repair, and a price reduction is not reasonable for the Customer. The Customer's damage claims which are aimed at remedying the fault by improvement or replacement can only be effective in case of default in the fulfilment of the warranty claims.

8.10. The Customer must also, during the first six months following the handover of the item/work, prove the existence of a fault at the point in time of the handover.

8.11. All costs related to the remedying of a fault, such as, e.g. transport, in and out costs, as well as travelling costs, are borne by the Customer. Upon the Supplier's demand, the Customer is to supply the required labour, free of charge.

9. Liability and Product Liability

9.1. The Supplier is only liable for deliberate or grossly negligent damage caused. A liability for slight negligence is debarred. The Customer must prove the Supplier's guilt.

9.2. Liability for indirect damage, consequential damage, loss of profits, damage to assets, damage by virtue of interruption of business, loss of data, as well as for damage to third parties against the Customer, is debarred in any case.

9.3. A possible liability of the Supplier is, in any event, limited in amount to the agreed payment or purchase price for each order. Agreements taken over from the Supplier will only be taken over with this limited liability. A Supplier's liability in excess thereof is expressly debarred. If the total damage exceeds the upper limit, then the compensation claims of individual victims are reduced pro-rata.

9.4. The Customer must inform the Supplier, in writing of each fault discovered in the goods or works, without delay or forfeit the right to all claims. Claims for compensation are, in any event to be enforced through the courts within six months or they lose their validity.

9.5. The Customer can only, firstly, by way of compensation, demand improvement or replacement of the item/work; only if both are impossible, or if the cost thereof to the Supplier is tied to an unreasonable expense, may the Customer demand monetary compensation.

9.6. In the event of failure to comply with any conditions for assembly, starting operations and use, or the official approval conditions, any liability is generally debarred. The Customer is obligated to take care that the operational instructions for the delivered goods or works are complied with by all users. In particular, the Customer must appropriately train and instruct his personnel and all persons who come into contact with the delivered goods or work.

9.7. Compensation liability for physical damage, as well as product liability claims arising out of the Product Liability law, which could be deduced from other provisions, is debarred, insofar as is legally possible. The orderer is obligated to impose the exclusion of liability for product liability claims on any of his contractual partners. Recourse of the Customers against the Supplier based on a claim in accordance with the Product Liability law is debarred. The Customer must obtain sufficient insurance against product liability claims in order to hold himself free and harmless.

10. Premature Termination of Agreements and Errors

10.1. If a delivery/service is, for reasons for which the Customer is answerable, not possible or if the Customer does not comply with a legal or contractual obligation as against the Supplier, to which he is obligated, then the Supplier has the right to withdraw from the agreement. In such a case, the Customer must compensate the Supplier for all consequent disadvantages and loss of profits.

10.2. The Customer waives the right to challenge/adapt this agreement due to error.

11. Industrial Property Rights

11.1. The Customer is liable to ensure that no third-party Industrial Property Rights for any construction details, drawings, models or other specifications handed over during the production are encroached upon. The Customer indemnifies and holds the Supplier harmless for any breach of protective rights.

11.2. Software, project documents, such as plans, sketches and other technical documents remain, like samples, catalogues, prospectuses and the like, the Supplier's intellectual property, and the Supplier enjoys copyright protection. Every not expressly permitted reproduction, distribution, imitation, revision or exploitation is forbidden.

12. Software

12.1. If software components or computer programmes are part of the service/purchase object, the Supplier grants the Customer non-transferable and non-exclusive user rights at the agreed performance location, subject to compliance with the contractual conditions and documents (e.g. operating instructions).

12.2. Without prior written consent from the Supplier, the Customer – with the exclusion of other claims of any kind – does not have the right to reproduce or to alter the software, or to make it accessible to third parties or to use it other than for expressly agreed purposes. This applies to the Source Code in particular.

12.3. A warranty in respect of the software exists only for the conformity of the software with the specifications agreed upon concluding the agreement, insofar as the Software is used in accordance with the installation needs and conforms to the applicable operational conditions. The Supplier does not warrant that the software has been manufactured free of flaws, or that it functions uninterruptedly or error free. The occurrence of errors cannot be excluded.

12.4. The choice and specification of the software offered by the Supplier is a matter for the Customer, who must take care that these are compatible with the local technical conditions. The Customer is responsible for the use of the software and the results thereby achieved.

12.5. For individually produced software, there are capability characteristics, special functions, hard and software requirements, installation needs, operating conditions and usage, arising exclusively out of those parts of the agreement for agreeing a responsibility handbook. The Customer must make the information necessary for the production of the individual software available prior to concluding the agreement.

13. General

13.1. Should a provision of this AGB be or become ineffective, this does not affect the validity of the remaining provisions. Ineffective provisions are to be replaced by the nearest provisions which are normal in the trade.

13.2. Jurisdiction is Graz.

13.3. The contracting partners agree to the application of Austrian law. The application of the UN purchase law is mutually excluded.

13.4. Changes in the firm name, its address, its legal form or other relevant information must be notified by the Customer to the Supplier in writing, without delay.