

# Terms and Conditions of Sale – Otto Mandl Ges.m.b.H.

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## (1) SCOPE

- a) All offers, deliveries and services to entrepreneurs are subject to the Terms and Conditions of Sale ("T&C") stated herein. The valid version at the time of the conclusion of the contract is decisive.
- b) This T&C shall also be considered as a framework agreement for any future transaction between the buyer and us regardless of any indication to this T&C in future transactions.
- c) This T&C do not apply to legal transactions with customers.
- d) Terms and Conditions of Sale or Purchase, other clauses or contract-modifying terms of the buyer are only accepted, if we explicitly approved their validity in writing prior to the conclusion of the contract. Any act of performance on our part shall thus not be considered as an approval of conditions deviating from our T&C.
- e) All legal transactions as well as offers, deliveries and services are made subject to the Incoterms valid on the day of order acceptance.

## (2) CONTRACT CONCLUSION

- a) Our offers shall be without engagement. Declarations of acceptance as well as orders of the Buyer shall not become legally effective until confirmed by us in writing. Silence on declarations of acceptance as well as orders of the Buyer shall not be qualified as acceptance.
- b) Drawings, figures, measurements, weights and other performance data shall only be binding if expressly agreed in writing.

## (3) PRICES

- a) All our prices are valid ex our works resp. ex warehouse ("ex works") and, unless otherwise agreed upon in writing, do not include VAT. Decisive are the prices stated in our order confirmation at the conclusion of contract.
- b) Our prices are retail prices and, therefore, do not include additional costs like Custom duties, consulate costs, freight costs, shipping insurance premiums, sales tax and other taxes as well as public charges. Such costs shall be met by the Buyer, even if „carriage paid to“ is agreed.
- c) If necessary, the Buyer is obliged to seek building and other permissions by the competent authorities on his own cost.
- d) The Buyer shall carry the currency risk for sales in foreign currency after contract conclusion.
- e) In case unforeseen events beyond our control occur after conclusion of the contract, which have influence on the price calculation, including but not limited to increase of freight charges, shipping insurance premiums, prices of raw material, auxiliary supplies and operational material, introduction of new respectively increase of existing governmental charges, we have the right to adjust our retail price according to the ratio of the previous costs to the increased costs.

## (4) TERMS OF PAYMENT

- a) Unless otherwise agreed in writing, payment is due within thirty days of delivery ex works.
- b) In the event of call-off orders or similar, which obligate the Buyer to take delivery of the goods within a certain period after receiving our notice that the goods are ready for collection, we are entitled to invoice the goods as of the date of readiness for shipment. In such case, payment is due within thirty days of the invoice date. The rights according to (3) d) remain valid until the goods are called.
- c) Payment shall be effected without any deductions by the due date and shall be considered as effected upon receipt of payment on your bank account.
- d) The Buyer is not entitled to offsetting against counterclaims, retention or reduction of the invoice amount, even if defects are asserted.
- e) In the event of difficulties in transferring the invoice amount to the Republic of Austria for whatever reason, including without limitation interferences in the execution of intergovernmental trade or payment agreements, the costs for such disadvantages shall be to the Buyer's account.
- f) Discountable bills of exchange and cheques shall be accepted by us only after preceding agreement. Acceptance of bills of exchange and cheques is only effected on account of performance. Otto Mandl Ges.m.b.H. does not undertake any commitment to submit or to protest against a bill of exchange in time. Any discount charges etc. – minimum the charges levied by private banks – shall be born by the Buyer.
- g) All payments requested by us shall be due immediately, independent of the duration of received and credited bills or of any respites allowed, in the event that the agreed payment conditions are not fulfilled or we, after their conclusion, become aware of circumstances that are likely to reduce the creditworthiness

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of the Buyer. In such cases, we are also entitled to retain outstanding deliveries and services or to demand advance payments or seizures.

- h) In the event of payment by instalments and delayed payment, we are entitled to charge interest in the amount of 8 % above the refinancing interest rate of the European Central Bank applicable at the due date of the payment.

## (5) PACKING, DELIVERY AND RISK

- a) Necessary packing material shall be charged at cost price. The Buyer shall be responsible for the duly disposal of packing material according to the local regulations. Packing material shall only be taken back by us if explicitly agreed upon in writing.
- b) Unless otherwise agreed upon in writing, the means of transport are at our best discretion, however without liability for the cheapest, shortest or quickest means of transport or its maximum utilisation. In case pickup by trucks is agreed upon in writing, the pick-up time is subject to arrangement in due time. We are not liable for any waiting times caused by the pickup by trucks.
- c) Unless otherwise agreed upon in writing, all goods shall be sold „ex works“. All risks shall transfer to the Buyer with the delivery of the goods to the freight carrier or the haulier, but at the latest upon leaving our factory, even if freight-free delivery or an additional service have been agreed upon.
- d) Transport insurance shall only be covered at the Buyer's request and expense.

## (6) DELIVERY TIMES AND DELIVERY DATES

- a) Delivery times and delivery dates as confirmed by us shall apply.
- b) The delivery time commences with the date of the order confirmation, but only in case that we received all documents and information to be supplied by the Buyer.
- c) Delivery times and delivery dates shall be extended in all cases of force majeure, including but not limited to shortage of raw materials and strikes, as well as other unforeseeable events for which neither we nor our supplier are responsible, including but not limited to delays in production, automatically by the duration of the obstacle plus a reasonable start-up period.
- d) If the confirmed delivery dates are exceeded, no delay in delivery occurs if the Buyer is in delay with its contractual obligations.
- e) In case of delayed delivery the Buyer shall be obliged to grant a reasonable grace period by means of a registered letter. This grace period has to be at least 20 working days from the working day following the day of receipt.

## (7) CALL-OFF ORDERS

- a) In the event of call-off orders or similar, which obligate the Buyer to take delivery of the goods within a certain period after receiving our notice that the goods are ready for collection, the release has to take place within one year from the day of the order, unless otherwise agreed in writing. The specifications issued cannot be changed.
- b) Should the Buyer exceed the period agreed, the Buyer is in default of acceptance. Should the grace period expire in vain, we are entitled to choose to deliver the good or to withdraw from the contract in full or, if only part of the goods were not called in time, with regard to this part of the delivery. The Buyer is obliged to compensate us for all damages resulting from the default of acceptance.

## (8) CANCELLATION OF THE CONTRACT

- a) We are entitled to cancel the contract with immediate effect in case of exceptional reasons.
- b) An exceptional reason is in particular if the Buyer is in default of payment for a period of 30 days despite a payment reminder and a grace period.
- c) We are also entitled to cancellation of the contract if, due to unforeseen circumstances at the time of conclusion of the contract for which neither we nor our suppliers are responsible, the fulfilment of the contract would entail considerable burdens and these cannot be calculated on an imputed basis. In such a case, the Buyer is not entitled to claim damages.
- d) In the cases mentioned in point (6) c) we are entitled to terminate the contract in case that these circumstances last longer than 3 months. The Buyer is not entitled to claim damages.

## (9) TITLE RETENTION

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- a) All goods are supplied under title retention and remain our property until payment is made in full.
- b) Enforcement of the title retention shall be considered a cancellation of the contract only if the cancellation is expressly declared. In case of retraction of goods, we are entitled to charge any incurred costs of transportation and handling.
- c) If third parties take hold of the goods under title retention, in particular in case of distraint, the Buyer shall be obliged to inform the third party of our property rights and inform us about it immediately.
- d) The Buyer shall have the right to dispose of or resell the goods under title redemption in ordinary business transactions in accordance with its usual business conditions only if the Buyer is not in default and if the purchase price claim from the resale is assigned to us.
- e) In the event the reservation of title or the assignment according to the applicable law is not effective, the security that corresponds to the reservation of the respective title or the respective assignment shall apply. If involvement of the Buyer is necessary to obtain these rights, the Buyer is obliged to take all measures required for the substantiation and maintenance of such rights at our first request.
- f) The Buyer shall bear all risks for the goods under title retention, in particular for the danger of decay, loss or deterioration.

## (10) WARRANTY

- a) Any warranty claims for our products shall be lodged within six months. The warranty period is automatically extended for another six months if the Buyer duly files out and signs the Takeover Protocol certifying also receipt of our Operation Manual within one month after delivery of the goods.
- b) The Buyer is obliged to notify us of defects of the goods, which it has ascertained or should have ascertained in the ordinary course of business by examination, in writing with a detailed description of the defect within 3 (three) working days after delivery, otherwise all claims are excluded.
- c) The presumption of defectiveness of delivered goods or parts thereof at the time of delivery according to Article 924 of the Austrian Civil Code as well as the Buyer's right of recourse pursuant to § 933b of the Austrian Civil Code shall be explicitly excluded.
- d) In the event that the Buyer verifies defect in delivery by returning the faulty component to us at its expense, we are obliged to repair the defect or provide a replacement delivery ex works within a reasonable period. If the repair or replacement delivery ex works cannot be carried out within a reasonable time period, we reserve the right to choose whether to reduce the sales price or to withdraw from the contract.
- e) A warranty for any technological dough problems of the Buyer is excluded. Furthermore, any warranty is excluded if the goods supplied by us are modified, supplemented or rebuilt or in case that the Buyer fails to comply with the instructions for use or to obtain our advice in case of doubt.
- f) Also there shall not be any warranty for used goods.

## (11) LIABILITY

- a) We are, except in the case of personal injury, only liable in cases of gross negligence or intent. The Buyer or injured third party has to prove the existence of gross negligence or intent.
- b) Furthermore, we are not liable for consequential damages, loss of profit, loss of savings, interruption of business or other occurrences at the Buyer or third parties, which lie outside of our sphere of influence.
- c) Our liability is also excluded in the cases mentioned above under item (10) e).
- d) In any case our liability is limited to the amount covered by our insurance, therefore, EUR 250,000,00.

## (12) PRODUCT LIABILITY

Recourse claims according to Article 12 of the Austrian Product Liability Act shall be excluded, unless the recourse beneficiary proves that the defect occurred within our sphere of influence and that it is the result of at least gross negligence.

## (13) APPLICABLE LAW AND PLACE OF JURISDICTION

- a) Unless otherwise agreed in writing, Austrian Law with the exclusion of the provision of International Private Law as well as the UN Conventions on Contracts for the International Sale of Goods applies to all contractual relationships with us.
- b) Place of fulfilment for all our deliveries and services is Klagenfurt, Austria.
- c) If no contrary written agreement has been reached, Klagenfurt, Austria, is the place of exclusive jurisdiction for all disputes arising from the contract, including those on the existence of non-existence of a contract.

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## (14) DATA PROTECTION

Our privacy policy can be found on our website [mandl-gmbh.at](http://mandl-gmbh.at) under "Privacy Policy".

## (15) OTHER STIPULATIONS

- a) The Buyer undertakes not to divest, surrender or otherwise pass on goods that have been manufactured solely for the purpose of business use to consumers.
- b) Should any clause of the contract, including this clause, be entirely or partially invalid or unenforceable, the validity of the remaining provisions or parts thereof shall remain unaffected. An ineffective or unenforceable provision shall be replaced by a valid and enforceable one, which comes as close as possible to the economic purpose of the original one.
- c) Additions as well as Changes of the Contract or ancillary agreements to the Contract, including this T&C have to be made in writing to be effective; this also applies to the renouncement of the written form requirement. Any change or addition to the contract needs to be confirmed by us in writing to be legally valid. This also applies to oral commitments by our representatives or other auxiliary persons.