

# General Terms and Conditions

## Status 03.06.2020



### 1. General provisions

All contracts and agreements shall only become binding for us upon our written confirmation. We shall only be bound by the terms and conditions of purchase of the purchaser or the purchaser of the work if we expressly acknowledge them. Lack of objection shall in no case imply our consent. Offers are always subject to change; prior sale of products in stock remains reserved.

### 2. Prices

Unless otherwise stated, prices are quoted in Euro, ex works (EXW Incoterms 2010), plus packaging and the respective statutory value-added tax. If additional or increased charges, in particular customs duties, currency compensation, taxes, arise between conclusion of the contract and delivery due to changed legal norms, we shall be entitled to increase the agreed price accordingly. In the absence of any other agreement, we shall be entitled to invoice the work performance to be performed by us according to the actual amount incurred and the expenses incurred by us as a result thereof.

### 3. Delivery time

The stated delivery and execution periods are subject to change without notice, i.e. without legal obligation. Therefore, claims for damages of any kind with reference to delivery and execution periods are excluded. The buyer is not entitled to reject partial deliveries.

### 4. Fulfilment and dispatch

Loading and dispatch shall be at the risk of the buyer in all cases - even in the case of carriage paid delivery. The shipping route, means of transport and means of protection, which are charged separately, are left to our discretion to the exclusion of any liability. We will, however, take into account the buyer's wishes as far as possible. Goods reported ready for dispatch must be called off immediately upon collection by the buyer; otherwise storage shall be at the expense and risk of the buyer.

### 5. Execution regulations

For the execution according to quality, dimension and mass, the relevant standards with the applicable deviations shall be decisive for the execution according to quality, dimension and mass, in the absence of existing standards. In the case of deliveries, irrespective of the means of transport, the total mass or dimensions shall be decisive for the calculation of the transport costs.

## **General Terms and Conditions Status 03.06.2020**



### 6. Permanent conclusion and exceeding of the contract

In the case of current contracts of a longer duration, we are to be given call-offs and corresponding specifications for approximately equal monthly quantities. If the goods are not called off or specified on time, we shall be entitled, after setting a grace period without result, to specify and deliver the goods ourselves or to withdraw from the outstanding part of the contract or to claim damages for non-performance. If the contractual quantity is exceeded by call-offs by the purchaser, we shall be entitled, but not obliged, to deliver the surplus at the daily prices valid at the time of the call-off. If our contractual partner is in default of acceptance, we shall be entitled either to store the goods with us for a storage fee and at the same time insist on fulfilment of the contract or to withdraw from the contract after setting a reasonable period of grace and use the goods elsewhere.

### 7. Acceptance

The buyer is obliged to accept goods at the supplier's works immediately after notification of readiness for acceptance. If the Buyer expressly or tacitly waives acceptance at the Seller's works by not specifying acceptance in the purchase order, the goods shall be deemed duly delivered and accepted upon leaving the Seller's works. In the case of material without quality regulations, the Buyer shall be entitled to carry out acceptance in the Seller's works to the extent that this extends to the determination of the external condition and dimensions in the stack, i.e. without the goods being allowed to be removed from the stack. Goods accepted or deemed accepted shall be deemed to have been properly delivered and accepted. Any later complaints cannot be considered. The notice of defects in accordance with § 377 UGB applies to all services under a contract for work and services; any waiver of this provision is expressly rejected.

### 8. Notice of defects and liability

In those cases, in which the buyer has a right to claim for defects, it must be raised in writing within 14 days of receipt of the goods or completion of the service at the place of destination. Hidden defects, which cannot be discovered within this period even with the most careful inspection, are to be reported immediately after discovery with immediate cessation of any treatment and processing, up to a maximum of 2 years. The purchaser must always prove that the defect was already present at the time of delivery. If a defect exists, we shall be entitled, at our discretion, to supplementary performance in the form of remedying the defect, return the goods free our works in exchange for a replacement, reduce the price or refund payment. In the event of return delivery, our order number shall be stated in the consignment note, the shipping documents and the forwarding invoice.

Any further claims for compensation, of whatever nature, from whatever title, in particular claims for compensation for direct or indirect damage, such as loss of profit, are expressly excluded. This does not apply to gross negligence and intent or personal injury. The burden of proof for Martin Schienentechnik KG's fault lies with the purchaser. § 1298 ABGB is expressly waived.

## **General Terms and Conditions Status 03.06.2020**



### 9. Terms of payment

Our invoices, including invoices for partial deliveries, shall be paid by the due date or, if a due date has not been agreed, within 30 days of receipt of the invoice in cash without discount. Bank charges shall be borne by the buyer. In the event of default in payment, we shall be charged interest at a rate of 8% above the base rate of the European Central Bank. Non-compliance with the terms of payment or circumstances which result in a deterioration of the creditworthiness of the purchaser will result in all our claims becoming due. Furthermore, in these cases, we are entitled to execute outstanding deliveries only against advance payment or to withdraw from the contract or to claim damages for non-performance, while maintaining our other rights. The withholding of payments due to alleged counterclaims of the purchaser not recognised by us is not permitted, nor is offsetting against such counterclaims.

### 10. Retention of title

We reserve the right of ownership of the delivered goods until all financial obligations of the buyer have been completely settled. The purchaser is entitled to resell the goods subject to retention of title in the ordinary course of business. In this case, however, he shall assign to us all claims arising from such resale.

### 11. Force majeure

Events of force majeure, which also include natural disasters, strikes, major operational disruptions, the occurrence of rejects in delivery items and the failure to supply primary materials as well as all circumstances which make delivery substantially more difficult or impossible for us, entitle us to suspend delivery for the duration of the hindrance and a reasonable start-up period or to withdraw from the contract with regard to the part not yet fulfilled. The purchaser can demand a declaration from us as to whether we wish to withdraw from the contract or deliver within a reasonable period of time. If we do not make such a declaration, the purchaser may withdraw from the contract.

### 12. Intellectual property, secrecy

Plans, sketches, construction drawings, cost estimates and other documents such as brochures, catalogues, samples, presentations and the like shall remain our intellectual property. Any use, in particular passing on, duplication, publication requires our express consent. All documents can be reclaimed by us at any time and must be returned immediately if the contract is not concluded. The contractual partner undertakes to maintain secrecy with respect to third parties with regard to the knowledge obtained from the business relationship.

**General Terms and Conditions**  
**Status 03.06.2020**



13. Place of performance, place of jurisdiction, applicable law

For all contracts concluded, the place of performance for both our performance and the consideration shall be the registered office of our company, even if carriage paid to the receiving station has been agreed. The exclusive place of jurisdiction for all disputes shall be the court having substantive jurisdiction at the registered office of our company; however, we may at our discretion also bring an action before a court otherwise competent for the purchaser. The contract is subject to Austrian law to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

14. Severability clause

Should individual provisions of these General Terms and Conditions of Sale be or become invalid, this shall not affect the validity of the remaining provisions.