

## General Terms and Conditions of Sales

The following General Terms and Conditions of Sale shall exclusively apply to all legal relationships with our Customers, including in particular to any inquiry, offer, or order unless expressly agreed otherwise in writing by an authorized representative of our company. These General Terms and Conditions of Sale are a translation of the German version, and even though every effort has been made to make an accurate translation, in case of a discrepancy the German version shall prevail.

Customer's terms and conditions shall not be valid with respect to our contractual relations with the Customer, irrespective of whether they contradict these General Terms and Conditions of Sale in part or in full, whether they contain regulations that go above and beyond them, or whether we have expressly rejected them.

With its order, the Customer expressly accepts the exclusive application of these General Terms and Conditions of Sale. Should the Customer wish to reject these General Terms and Conditions of Sale, the Customer shall immediately notify us in writing, in which case we can cancel the order without the Customer having any claims against us, and lacking such immediate notification any desired rejection shall be void.

These General Terms and Conditions of Sale shall also apply to all future contractual relations with the Customer unless otherwise agreed in writing.

### 1. Conclusion of Contract, Order

1.1. All offers made by the Seller shall be without engagement. All orders and agreements and any amendments and addenda shall be legally binding for the Seller only if confirmed by it in writing and signed or executed by an authorized representative. Silence shall not be deemed consent under any circumstances.

1.2. Any partial or complete transfer of an order to subcontractors shall be permissible at any time, and the Customer's consent thereto is hereby expressly given.

1.3. Unless otherwise agreed in writing, these General Terms and Conditions of Sale shall be deemed an integral part of possible framework agreements.

### 2. Price, Payment

2.1. All our prices are "ex works", exclusive of packaging and loading. Statutory VAT at the prevailing rate as well as any further taxes, fees, customs duties, and other charges at the time of delivery/service shall be borne by the Customer and will be charged additionally. The same applies to packaging and shipping costs, costs of any transport insurance to be contracted by the Seller as well as any other costs in connection with contract performance.

The Customer shall provide the Seller with all documents required for the determination of taxes, fees, duties, charges and costs and for invoicing, for example shipping documents or export certificates. The Customer shall dispose of the packaging material. The Customer shall reasonably support the

Seller in performing the contract, including by providing plans, drawings, calculations or other information. The Seller will perform on the basis of information on, among others, layout, machine and process specifications as well as legal requirements to be provided by the Customer to the Seller prior to the Seller's offer.

2.2. Any cost increase subsequent to contract conclusion shall be charged to the Customer unless it is agreed that such costs shall be included in the price.

2.3. If in a framework agreement certain prices and/or terms are agreed upon, these prices and/or terms shall be under the explicit condition that circumstances affecting the price that are not controlled by the Seller (such as e.g. producer/supplier prices, collective bargaining wages, shipping costs, etc.) will not change; if any change occurs, the Seller may adequately adjust prices by notification of the Customer. If the Customer does not agree therewith, the Seller may rescind the framework agreement with immediate effect.

2.4. The agreed price shall be due for payment within 30 days of making the goods available or, in case of services, completion of performance pursuant to clause 4., upon issue of an invoice by the Seller, without any deductions and charges, in the agreed currency and otherwise in Euros to one of the bank accounts indicated by the Seller. Payment will be deemed effected on the day on which full payment has been credited to, and is freely disposable on, the Seller's account. Checks and bills of exchange will be accepted by the Seller in lieu of payment only upon separate agreement. Any fees and expenses connected therewith will be

charged to the Customer. In case payment by Letter of Credit is agreed, the Customer shall open an irrevocable L/C to be confirmed by the Seller's bank in accordance with the instructions by the Seller and the Uniform Customs and Practice for Documentary Credits of the International Chamber of Commerce as applicable at the time the contract was concluded.

2.5. The Customer shall not be entitled to any set-off or right of retention.

2.6. In case of payment arrears, interest on late payment is due to the Seller in the amount of 8 percentage points over the 3-month EURIBOR as at the date payment is due.

2.7. All of the Seller's claims shall be due immediately if terms of payment are not adhered to or if circumstances arise that in the opinion of the Seller may reduce the Customer's creditworthiness. In such case, the Seller shall be entitled to carry out outstanding deliveries and services against prepayment only or, subsequent to granting a reasonable grace period for prepayment or provision of an adequate security, to rescind the contract and claim damages for default. Furthermore the Customer, after having been informed in writing by the Seller to that effect, shall be prohibited from using, processing or reselling the goods, and the Seller may demand re-transfer of the goods at the Customer's expense.

### 3. Acceptance Inspection

3.1. To the extent an acceptance inspection has been agreed upon, the costs of material for the acceptance inspection, to be carried out during

regular working hours at the production plant, shall be borne by the Seller.

The costs of staff in connection with acceptance inspection, such as expenses for travel and accommodation for the Customer's representative in charge of acceptance shall be borne by the Customer.

3.2. The Customer shall without delay declare acceptance or give notice of any defects. Upon acceptance or in the absence of such notice, delivery shall be deemed made in accordance with the contract. If acceptance is not on time or not complete, the Seller shall be entitled, without acceptance, at the Customer's expense and risk, to ship or store the goods, and the goods shall be deemed delivered and approved in accordance with the contract for all intents and purposes.

#### **4. Delivery, Performance**

4.1. Place of performance and transfer of risks and costs shall be at the respective production plant. Delivery is EXW Berndorf (or EXW other production plant if stated by the Seller in writing) (INCOTERMS 2010).

4.2. Irrespective of clause 4.1 the means and route of transportation including the forwarding agent and/or the carrier shall be determined by the Seller.

4.3. Irrespective of the agreed manner of shipping, delivery shall be deemed completed upon making the goods available, or performance, at the respective production plant, upon which risks and costs shall be transferred to the Customer. The Customer shall obtain insurance adequately covering

all risks in connection with transport, storage, and installation including start-up and test run.

4.4. Delivery times and dates are deemed to be approximate only. Delivery of up to four weeks earlier or later shall be deemed timely. Furthermore, observance of delivery times and dates shall be subject to Customer's observance of its contractual obligations such as payment and other terms. In case of advance performance agreed by the Customer, delivery times shall not begin before such performance has been effected. In case of unforeseen or extraordinary events, delivery times shall be extended accordingly.

4.5. In case of an acceptance delay or postponement of the delivery date requested or caused by the Customer, or in case the Customer defaults on its obligations (in particular on an obligation to provide security for payment, e.g. provide a bank guarantee or open an L/C), delivery and thus transfer of risks and costs shall be deemed completed upon making the goods available or upon performance, and the Seller may demand full payment. At such time, irrespective of the agreed terms of delivery, all risks, including damage, loss, or destruction of the goods, shall be transferred to the Customer. In accordance with the expected delay, the Seller shall store or temporarily store or dispatch the goods in reasonable manner at the Customer's cost and expense. The Seller may retain the goods until refund of such costs and expenses by the Customer.

4.6. The Seller may substitute specifications which are not suitable for the purpose of the contract by equivalent and suitable specifications. Upon amendments of and changes to specifi-

cations delivery times shall be extended accordingly. Any additional costs and expenses caused thereby shall be charged to the Customer. The Seller may retain performance until refund of such costs and expenses by the Customer. The Customer shall check, and reasonably assist with, compliance of performance with local laws in the country of installation and start-up, and shall indemnify the Seller against, and hold the Seller harmless from, any claims of third parties or authorities in case of non-compliance or other deviations. All belts, machines, components and materials will be engineered in accordance with EU directives in the metric system and with physical parameters that are technically feasible and suitable for the intended use.

4.7. In case of delay of delivery, the Customer shall grant the Seller a reasonable grace period, which shall be at least 10 business days.

4.8. The Customer shall not be entitled to reject partial deliveries.

## 5. Warranty

5.1. For determining whether the condition of the goods or performance is as agreed in the contract, the time of availability at the production plant or completion of performance shall be decisive.

5.2. The Seller undertakes to remedy defects affecting usability in accordance with the following provisions provided they are defects of material (except material was provided by the Customer) or manufacturing, a notice of defects pursuant to clause 5.3. has been filed timely and warranty ("Gewährleistung") is claimed within

six months from availability or performance. After expiry of the six month period, liability for defects, whatever the reason may be, shall be excluded. Services or deliveries due to warranty claims shall not extend the original warranty period. Only the Customer may file warranty claims.

5.3. Notice of defects must be received by the Seller in writing without delay following receipt of the goods or of performance, in case of earlier acceptance or earlier agreed time of delivery or performance without delay thereafter, and with regard to hidden defects without delay following discovery, and the Customer shall immediately suspend any use, processing or resale of the goods.

5.4. Burden of proof that delivery or performance was defective already upon availability, in particular in case of a claim of a defect of material, is always on the Customer.

5.5. Any of the Customer's warranty claims shall be subject to fulfillment of all its payment and other contractual obligations.

5.6. The warranty claim shall be limited at the Seller's option to repair or replacement of the delivered goods or performance within a reasonable period, or to a price reduction. Excluded from warranty shall be defects and damages due to the Customer's negligent or improper treatment or use of the goods or performance. The Seller does not accept any liability with respect to suitability for a specific use. The Seller shall only warrant such properties of the delivered goods or performance as the parties have explicitly agreed on in writing. All explanations by the Seller or his representa-

tives regarding usability of the goods or performance, in digital or other form, shall not be binding at any time and shall not constitute any covenant with respect to certain properties. The properties indicated in brochures and flyers shall be solely understood as reference values. Furthermore the Seller shall not warrant any feasibility, return or result. Any parts subject to wear and tear shall be excluded from any warranty. The Seller's warranty shall be excluded in case of use of materials, products or procedures by the Customer which is not envisaged by the Seller. Any warranty or similar claims shall be terminated immediately if attempts at eliminating defects of the delivery have been made by the Customer or a third party without prior written consent by the Seller. Any repair or assembly not performed by the Seller shall be performed at the Customer's own risk, and the Seller shall not have any liability in any respect.

5.7. If the Customer fails to let the Seller review a claimed defect (in particular by making the rejected goods or samples thereof immediately available), all warranty claims shall be terminated.

## 6. Repair orders

With respect to repair orders by the Customer, the Seller shall not have any liability with respect to warranty, damages, any result or otherwise. If, in case of a product to be repaired, the Customer does not advise the Seller on how to proceed within three months of the Seller's statement on possible repair, the Seller may return the product at the Customer's risk, cost and expense. If the product is not returned within a further month, or if the Seller

delivers a replacement, title to the product shall be transferred to the Seller.

## 7. Intellectual Property

Any intellectual property rights in connection with the contract goods, components, services and processes (including patents, brands, designs, copyrights, know-how and commercial, technical and process and other information, and any inventions and other developments in connection with the contract) shall be exclusively the Seller's, and the Customer shall not have any rights with respect thereto except the contractually permitted right of use, and in particular the Customer shall not have any wider license or other right. The Seller shall have the exclusive right to use or otherwise exploit such rights and to register, or apply for registration of, such rights or protect or preserve them otherwise, and to benefit from all rights available under intellectual property or other protection, including the right to prior use.

The Seller shall only warrant that the goods are free from any encumbrance of the goods with respect to intellectual property rights of third parties if and to the extent expressly confirmed in writing and subject to the entire construction being based on an unchanged specification of the Seller. In any event, the liability of the Seller shall be limited with the order value. Otherwise the Customer undertakes to hold the Seller harmless from, and indemnify the Seller against, any and all claims in the event of an infringement of third party rights. To the extent the use of intellectual property rights is required

for performance, the Customer shall procure such legal use.

## 8. Copyright

The Seller reserves all rights, in particular copyrights as well as any rights of use, with respect to all project and delivery documents and similar items including offers, designs, drawings, sketches, layouts, descriptions and manuals. Even if these documents do not originate from the Seller, these documents or similar items shall not be used by the Customer in a manner beyond the purpose of the contract. They shall be immediately returned to the Seller upon request.

## 9. Confidentiality

The Customer shall not at any time, directly or indirectly, use any information of the Seller or disclose it to any third party, except as required by the ordinary and usual use of the goods or services. The Customer shall take all necessary precautions to maintain information of the Seller in confidence under all circumstances, including but without limitation, procuring that where information is disclosed to employees or other persons, the disclosure shall be made only under a confidentiality obligation and only for the direct purpose of their activity in connection with the performance of the Seller. Upon termination of the agreement, termination of the cooperation or termination of the procurement, the Customer shall return all information to the Seller, permanently delete electronic information and destroy any copies; the Customer shall not have any right of retention.

## 10. Reservation of Title

10.1 Until complete payment, the delivery shall remain the property of the Seller. The Customer shall comply with the formal requirements for the Seller's reservation of title and perform any publication, registration, and other formal requirements; in case of failure to do so, the Customer shall indemnify the Seller against and hold the Seller harmless from all costs, damages or losses that might arise from such failure.

10.2. The Customer may sell a delivery where title was reserved only in the ordinary course of business and at regular terms and conditions and only if not in default. This is permitted only if the Customer validly agrees with its buyer on an extended reservation-of-title clause and that resale claims shall be assigned and transferred to the Seller for security purposes. In case of resale, the extended reservation of title shall only expire subject to complete payment by the Customer's buyer and receipt of payment due by the Customer to the Seller. The Customer shall have no right to dispose otherwise of a delivery where title was reserved.

10.3. All claims of the Customer against buyers that might arise from the resale of a delivery where title was reserved shall herewith be assigned and transferred to the Seller for security purposes. The Customer shall add an appropriate note to the claims in its books (list of receivables) and/or notify the third-party debtor. The Seller shall also be entitled to notify third-party debtors about the assignment. The Customer's assignment to the Seller shall terminate in each case only after all claims of the Seller against the Customer have been paid in full.

10.4. The Seller's assertion of title reservation shall not be deemed a rescission of the contract.

## 11. Force Majeure

The occurrence of unforeseeable events or events beyond the control of the parties, in particular all instances of force majeure, or in case an export permit or other permit or license cannot be obtained, shall entitle the Seller to an extension of delivery times according to the nature and duration of these circumstances and their consequences, and the Customer shall not have any claims therefrom, in particular to rescind the contract or damage claims. In such circumstances, the Seller shall also be entitled to complete or partial cancellation of an order, and the Customer shall not have any claims therefrom.

## 12. Liability and Compensation

12.1. The Seller's liability shall be excluded in case there is no fault of the Seller or in cases of ordinary negligence and simple gross negligence and shall be limited to direct damages of the delivery only. In particular, any liability for consequential losses (e.g. production losses), other losses, lost profits, or other damages or costs shall be excluded.

12.2. Furthermore, the Seller's liability shall be limited with third-party liability insurance coverage and with the order value.

12.3. Any liability for representatives shall be limited as set out above.

12.4. The above limitation of liability shall also apply to non-mandatory product liability claims ("Produkthaftungsgesetz" – PHG, or similar laws). If compensation is made by the Customer based on the PHG or similar product liability laws, refund by the Seller shall be excluded. The Customer shall indemnify the Seller against, and hold the Seller harmless from, any claims and legal actions in connection with the use or resale of the goods, in particular if based on product liability.

## 13. Rescission of Contract

13.1 In addition to the rights granted to the Seller by law or contract, the Seller shall have the right to rescind the contract without granting a grace period if assets of the Customer become subject to insolvency proceedings or if an insolvency filing has been rejected due to a lack of sufficient assets for the proceedings or if the Customer suspends payments or proposes a settlement or moratorium to all creditors or to a number of creditors or is, or is threatened to become, insolvent. The Seller may further suspend delivery or service if the Customer fails to fulfill its obligations timely.

13.2. The Seller shall have the right to rescind the contract at any time before delivery or service in case there was a substantial error in its cost estimate or price information. In such cases, the Customer shall have no claims against the Seller.

## 14. General

14.1. Any statement including any amendment of these terms and condi-

tions shall be made in writing and in the English or German language.

national Sale of Goods (UNCITRAL) shall be excluded.

14.2. Any challenge of a contract by the Customer due to error or gross disparity shall be excluded.

14.3. If individual provisions of these General Terms and Conditions of Sale are invalid or unenforceable, all other provisions of these General Terms and Conditions of Sale shall remain valid and enforceable. The Customer agrees that we shall replace such invalid or unenforceable provisions with valid and enforceable and economically and legally equivalent provisions.

14.4. The INCOTERMS 2010 as effective at the time of contract conclusion shall apply, unless otherwise stated in the contract or in these General Terms and Conditions of Sale.

14.5. Clauses 7, 8, 9, 12, 14 and 15 shall remain effective after termination of the contract, notwithstanding any other provisions which by nature shall remain effective.

## **15. Place of Jurisdiction, Applicable Law**

15.1. Any dispute from or in connection with the contractual relations with the Customer shall be finally settled by the courts of law competent for 1010 Vienna (Inner City), and the Seller may refer the case to other courts of law having jurisdiction over the Customer.

15.2. All legal relations with the Customer shall be governed by and shall be construed in accordance with Austrian substantive law without giving effect to the principles of conflict of laws thereof. Application of the UN Convention on Contracts for the Inter-