

General Terms and Conditions of Delivery

of Plasser & Theurer, Export von Bahnbaumaschinen, Gesellschaft m.b.H. of October 2019, based on the General Terms and Conditions of Delivery of the Association of Metaltechnology Industries of Austria

These General Terms and Conditions of Delivery (GTCD) are, in principle, designed for legal transactions between businesses (B2B transactions). If they are, in an exceptional case, also applied to a legal transaction with consumers (B2C) as defined by Section 1 (1) No. 2 of the Austrian Consumer Protection Act [Konsumentenschutzgesetz], Federal Law Gazette [BGBl.] No. 49/1979, they shall only apply insofar as they are not in conflict with the first Main Part of the said Act. Applicability of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980, BGBl. 1988/196 is expressly excluded.

1. Preamble

- 1.1. These GTCD shall apply, unless the parties have expressly agreed otherwise in writing.
- 1.2. The following terms and conditions regarding deliveries of goods also apply to services *mutatis mutandis*.

2. Definitions

2.1. In these GTCD the following terms shall have the following meaning:

- **“Contract”**: means a written agreement concluded by and between the parties on the delivery of (a) delivery item(s), including any and all annexes and any and all written amendments or addenda to the aforementioned documents that may have been agreed.
- **“Gross Negligence”**: means the act or omission regarding which the relevant party can be accused of a behaviour which, in terms of its severity or frequency, can only be found in cases of special negligence and only with especially negligent or careless persons and where the circumstances suggest “malicious intent” and where the failure to exercise due care is of such severity that it does not happen to an orderly person.
- **“In Writing”**: means done in a written document signed by the parties or by letter, fax, email or other form agreed by the parties.
- **“Delivery Item”**: means goods which are to be delivered in accordance with the Contract, including software and documentation.
- **“Force Majeure”**: means all events which are unforeseeable and unavoidable by the parties and do not come from their sphere of control, including but not limited to strike, fire, war, general mobilisation, riot, requisition, confiscation, embargo, restrictions on energy consumption, exit of a Member State from the European Single Market, foreign exchange or export restrictions, epidemics, acts of God, extreme natural events, terrorist acts or defective or delayed delivery from subcontractors due to the circumstances listed above.

3. Conclusion of contracts

- 3.1. The Contract shall be deemed concluded if and when the seller has sent a written acknowledgement of order upon receipt of the purchase order and if the purchaser does not demonstrably object to the same within ten (10) days.
- 3.2. Modifications of and amendments to the Contract shall require a written acknowledgement by the seller in order to be valid. The terms and conditions of purchase of the purchaser shall be binding upon the seller only if they are accepted separately by the seller.
- 3.3. If import licences, export licences, foreign exchange approvals or similar permits are required for performance of the Contract, the party which is responsible for procurement shall use all reasonable efforts to obtain the required licences and permits in due time.

4. Plans and documents

- 4.1. Information on weight, size, volume, price, performance and the like included in catalogues, brochures, circulars, advertisements, illustrations, price lists, etc. shall only be relevant if they are expressly mentioned in the offer and/or the acknowledgement of order or the Contract.
- 4.2. Any and all plans, sketches, cost estimates and other technical documents which may be part of the offer shall always remain the intellectual property of the seller, as shall specimens, catalogues, brochures, illustrations, etc. Any exploitation, copying, reproduction, dissemination or distribution to third parties, publication or presentation may only be effected upon the owner's express consent.

5. Packaging

- 5.1. Unless agreed otherwise
 - a) the prices stated do not include packaging;
 - b) packaging will be done in a way that is customary in trade to prevent damage to the goods on the way to the agreed destination under normal transport conditions, at the purchaser's costs and will only be taken back if agreed.

6. Passing of risk

- 6.1. Unless otherwise agreed, goods shall be deemed sold “ex works” (EXW) (readiness for collection).
- 6.2. For the rest, the INCOTERMS as amended on the day of conclusion of the Contract shall apply.

7. Delivery period

- 7.1. Unless otherwise agreed, the delivery period shall commence on:
 - a) the date of acknowledgement of the order;
 - b) the date of fulfilment of all technological, commercial and financial prerequisites to which the Purchaser is subject according to the agreement;
 - c) the date at which the seller receives a down payment to be made prior to delivery of the goods and/or at which a security for payment has been provided, whichever is the latest.
- 7.2. The seller shall be entitled to effect partial and early deliveries.
- 7.3. If delivery is delayed due to a fact that has occurred with the seller and constitutes a ground for discharge as defined in Clause 15, a reasonable extension of the delivery period shall be granted.
- 7.4. If the seller has caused a delay in delivery, the purchaser may either demand performance of or rescind the Contract after having granted a reasonable grace period of at least twelve (12) weeks.
- 7.5. If the grace period provided for in Clause 7.4 was not used and if this is the seller's fault, the purchaser may rescind the Contract by written notice with regard to all goods not yet delivered. The same shall apply to goods that have been delivered which cannot be adequately used without the goods yet outstanding. In that case the purchaser shall be entitled to a refund of the payments made for the goods not delivered or not useable. In the event that the delay in delivery is due to Gross Negligence on the seller's part, the purchaser shall in addition be entitled to reimbursement of reasonable expenses which the purchaser had to incur up to the date of the dissolution of the Contract and which cannot be used for any further purpose. The purchaser shall return to the seller any goods that have been delivered and cannot be used.
- 7.6. If the purchaser fails to take delivery of the goods at the contractually agreed place or at the contractually agreed time although they are made available in accordance with the Contract and if such delay has not been caused by an act or omission of the seller, the seller may either claim performance of or rescind the Contract after having granted a grace period.

If the goods were segregated, the seller may store the goods at the cost and risk of the purchaser. Moreover, the seller shall be entitled to reimbursement of all reasonable expenses incurred for performance of the Contract and which are not included in the payments received.

- 7.7. Claims of the purchaser vis-à-vis the seller other than those listed in Clause 7 on grounds of the seller's default shall be excluded.

8. Acceptance test

- 8.1. If the purchaser requests an acceptance test, this shall be expressly agreed with the seller In Writing at the time of conclusion of the Contract. Unless otherwise agreed, the acceptance test shall be carried out at the place of manufacture and/or at a place to be determined by the seller during normal business hours of the seller. The general practice for acceptance tests of the relevant line of industry shall be decisive for the same.

The seller shall inform the purchaser in a timely manner before the acceptance test for the purchaser to be able to present during the test and/or to have itself be represented by an authorised representative.

If in the course of the acceptance test the Delivery Item proves to be not in conformity with the Contract, the seller shall immediately repair any defect and restore the condition of the Delivery Item agreed in the Contract. The purchaser may ask for another test only in the case of material defects.

Following an acceptance test an acceptance report shall be drawn up. If the acceptance test has shown that the Delivery Item is in conformity with the Contract and in perfect operating condition, this shall in any case be acknowledged by both parties. If the purchaser or its authorised representative is not present during the acceptance test despite timely notice by the seller, the acceptance report shall be signed only by the seller. In any case the seller shall send the purchaser a copy of the acceptance report, the correctness of which the purchaser may no longer challenge even if the purchaser or its authorised representative was not able to sign the report due to absence.

Unless otherwise agreed, the costs of the acceptance test shall be borne by the seller. In any case the purchaser shall bear the costs it or its authorised representative incurred in connection with the acceptance test, such as travel costs, cost of living or expense allowances.

9. Price

- 9.1. Unless otherwise agreed, prices shall apply ex works of the seller and shall not include loading.
- 9.2. Unless otherwise agreed, the prices shall be based on the costs at the time the price information was given. If the costs have changed by the time of delivery, those changes shall either be for the benefit of the purchaser or borne by the same.

10. Payment

- 10.1. Payments shall be made in accordance with the agreed terms of payment. If no other payment conditions have been agreed, one third of the price shall be due for payment upon receipt of the acknowledgement of the order, one third after half of the delivery period has passed and the residual amount upon delivery. Irrespective thereof the VAT included in the invoice shall in any case be payable within thirty (30) days of invoicing.
- 10.2. The purchaser shall not be entitled to withhold payments on account of warranty claims or other counterclaims not recognised by the seller.
- 10.3. If the purchaser is late in making an agreed payment or rendering other performance, the seller may either insist on performance of the Contract and
 - a) postpone fulfilment of its own obligations until payment of the arrears or rendering of the other performance,
 - b) make use of a reasonable extension of the delivery period,
 - c) call for immediate payment of the total purchase price outstanding,
 - d) charge late payment interest of 7.5% above the applicable base interest rate of the European Central Bank (see Directive 2011/7/EU on combating late payment in commercial transactions of 16 February 2011), unless there is a ground for discharge of the purchaser as laid down in Clause 15, or rescind the Contract after having granted a reasonable grace period.
- 10.4. In any case the purchaser shall reimburse the seller dunning and collection costs incurred as additional damages.
- 10.5. If at the time the grace period defined in Clause 10.3 expires the purchaser has not made the payment due or rendered the other performance due, the seller shall be entitled to rescind the Contract In Writing. At the seller's request the purchaser shall return to the seller goods that have been delivered and shall compensate it for the loss in the value of the goods that has occurred and reimburse it all justified expenses which the seller had to incur for performance of the Contract. With regard to goods not yet delivered the seller shall be entitled to make available to the purchaser the finished or semi-finished parts and to claim the pro-rata share of the selling price.

11. Retention of title

- 11.1. Until full payment the Delivery Item shall remain the property of the seller provided that retention of title is effective under the applicable law. The purchaser shall comply with the necessary formal requirements of the applicable law to safeguard retention of title.
- 11.2. Retention of title does not affect the provisions on passing of risk laid down in Clause 6.

12. Warranty

- 12.1. The seller is obliged to repair any defect which compromises usability and which is due to an error in design, material or workmanship, subject to the following provisions. Likewise the seller shall be responsible for any defects concerning expressly agreed properties.
- 12.2. This obligation only applies to defects which occur within a period of one (1) year in the case of one-shift operation from the time the risk has passed.
- 12.3. The purchaser shall only be entitled to rely on this clause if it immediately notifies the seller about the defects that have turned up In Writing. The presumption rule [Vermutungsregel] of Section 924 of the Austrian Civil Code [ABGB] shall be excluded. Provided that the seller has to repair those defects according to the provisions of this Clause, the seller who has been notified as above shall, at its option:
 - a) improve the defective goods on site,
 - b) have the defective goods or the defective parts sent back to it for improvement,
 - c) replace the defective parts,
 - d) replace the defective goods.
- 12.4. If the seller has the defective goods or parts sent back to it for improvement or replacement, the purchaser shall bear the cost and risk of transport, unless otherwise agreed. Unless otherwise agreed, the improved or replaced goods or parts shall be sent back to the purchaser at the cost and risk of the seller.
- 12.5. The defective goods or parts that were replaced as laid down in this Clause shall be available to the seller.
- 12.6. The costs of any repair of defects carried out by the purchaser itself shall only be borne by the seller if the latter has agreed to do so In Writing.

- 12.7. The seller's warranty obligation shall only apply to defects which occur while the designated operating conditions are observed and only in the case of normal use. The warranty obligation shall not apply to defects which are due to (without limitation): poor maintenance; repairs or changes made in a poor quality or without the seller's written consent by a person other than the seller or its agents; normal wear and tear.

- 12.8. The seller shall be liable for those parts of the goods which the seller purchased from upstream supplier prescribed by the purchaser only to the extent of the seller's warranty claims vis-à-vis the upstream supplier.

If goods are manufactured by the seller on the basis of design details, drawings or models of the purchaser, the seller's liability shall not extend to accuracy of the design but only to whether the goods were manufactured in accordance with the purchaser's specifications. In such cases the purchaser shall indemnify and hold harmless the seller from and against infringements of proprietary rights, if any.

The seller assumes no warranty if it accepts repair orders or modification work or alteration work for old goods or goods of third parties or in the case of delivery of used goods.

- 12.9. From the start of the warranty period the seller assumes no liability other than the one defined in this Clause.

13. Liability

- 13.1. It has been expressly agreed that the seller is under no obligation to pay damages to the purchaser for damage to goods which are no subject matter of the Contract, for other damage or lost profit unless the circumstances of a specific case suggest that the seller acted with Gross Negligence.

Reversal of the burden of proof as defined in Section 1298 ABGB shall be excluded.

- 13.2. The purchase item will only provide the degree of safety that can be expected based on licencing requirements, operating instructions, rules of the seller for handling the purchase item, in particular as regards checks that may be prescribed, and other information provided.
- 13.3. In the case of slight negligence on part of the seller damages shall be limited to 5% (five per cent) of the Contract value and a maximum amount of EUR 727,000, unless Clause 13.1 applies.
- 13.4. If defects are not expressly acknowledged by the seller, all claims for damages resulting from defects in deliveries and/or services must be claimed in court within one year of expiry of the warranty period stipulated in the Contract; otherwise the claims shall be forfeited.

14. Consequential damage

- 14.1. Unless otherwise agreed in these GTCD, the seller's liability vis-à-vis the purchaser for production downtime, lost profit, loss of use, lost contracts or any other financial or indirect consequential damage shall be excluded.

15. Grounds for discharge

- 15.1. The parties shall be released from their obligation to render timely performance of the Contract in whole or in part if they are hindered from such performance by events of Force Majeure.

A purchaser who is hindered by an event of Force Majeure may, however, only claim Force Majeure if it submits to the seller a statement on commencement and the expected end of the impediment and on the cause, the impact to be expected and the duration of the delay which has been confirmed by the relevant government agency and/or chamber of commerce of the country of delivery by registered letter without delay but not later than within five (5) calendar days.

In the case of Force Majeure the parties shall use all efforts to remove and/or minimise the difficulties and expected damage and inform the other party thereof on a regular basis. Otherwise they shall become liable for damages vis-à-vis the other party.

Deadlines or periods which cannot be observed due to the impact of Force Majeure shall at most be extended for no longer than by the duration of the effects of Force Majeure or, if necessary, by a period to be agreed by mutual consent.

If an event of Force Majeure continues for more than four weeks, the purchaser and the seller shall seek a regulation for the procedural effects by way of negotiation. If no solution can be found by mutual consent, the seller may rescind the Contract in whole or in part.

16. Data protection / Secrecy

- 16.1. The seller shall be entitled to store, transmit, edit and erase personal data of the purchaser in the course of business.
- 16.2. The purchaser agrees that the seller may electronically collect, process and store the following personal data, i.e. name/company name, business register number, email address, phone number, delivery and invoice address, measurement data, test results and inspection results for the purpose of performance of the Contract and processing the purchase order, for submitting documents to the competent

authorities and for the seller's own marketing purposes.

- 16.3. All procedures of collection and processing of personal data of the purchaser are subject to the purchaser's consent. This consent may be withdrawn at any time. The purchaser shall also have a right of access, rectification, erasure, restriction and data portability.
- 16.4. The parties undertake after termination of the Contract to keep strictly secret vis-à-vis third parties any knowledge they have received in connection with the business relationship and to keep strictly secret all business matters of which they learn, in particular business secrets and trade secrets and any other information they receive about the nature, volume of operations and practical work of the other party.

17. Compliance

- 17.1. The purchaser undertakes to comply with the Code of Conduct (see www.plassertheurer.com) and all export regulations which apply to the Contract.

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

- 18.1. The place of jurisdiction for all disputes indirectly or directly arising out of the Contract shall be the court in Austria having local jurisdiction over the seller's registered office.
Nevertheless, the seller may also bring the matter before the court which has jurisdiction over the purchaser.
- 18.2. The parties may also agree on arbitration.
- 18.3. The Contract shall be governed by Austrian law; the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, *BGBI.* 1988/96 shall be excluded.
- 18.4. The place of performance for deliveries and payments shall be the seller's registered office, even if delivery is effected at a different place and this has been agreed.
- 18.5. In the event of disputes arising from the translation, the German text shall prevail.