

**ECON GmbH, Biergasse 9,  
A-4616 Weißkirchen****General Terms and Conditions  
of Sale and Delivery**

These General Terms and Conditions of Sale and Delivery are generally designed for legal transactions between businesses. If, in exceptional cases, they are also used for legal transactions with consumers within the meaning of § 1 Par. 1 (2) of the Austrian Consumer Protection Act (“Konsumentenschutzgesetz”), they shall apply only to the extent that they do not conflict with the provisions of the first main section of this Act.

**1. Preamble**

1.1 These General Terms and Conditions of Sale and Delivery apply to the sale and delivery of plant, machinery, spare parts and other services by ECON. If the Buyer’s general terms and conditions of business conflict with these General Terms and Conditions of Sale and Delivery, Buyer’s general terms and conditions of business shall not be part of the contract.

1.2 The terms and conditions of assembly of the Austrian trade association for the machinery and steel engineering industry which apply additionally regarding assembly works, are available on our homepage at [www.econ.eu](http://www.econ.eu).

**2. Drawings and Documents**

2.1 The information about dimensions, capacity, price, performance, etc. contained in catalogues, brochures, newsletters, ads, pictures and price lists, etc. are non-binding unless explicit reference is made to the same in the offer and/or in the order confirmation.

2.2 All offer, project and drawing documents, specimens, etc. are strictly confidential and must not be reproduced or made available to third parties without the consent of ECON. Their return may be demanded at any time, and they must be returned to ECON forthwith if the order is placed elsewhere.

**3. Conclusion of Contract**

3.1 The contract shall be deemed concluded when the Vendor has sent off a written order confirmation after receipt of the order.

3.2 Amendments and supplements or other

subsidiary agreements to the contract or these Terms and Conditions must be made in writing. This formal requirement may only be waived in writing.

3.3 If import and/or export licences or foreign exchange permits or similar permits are required for performance of the contract, the party responsible for obtaining the same must make every reasonable effort to obtain the required licences or permits within good time.

**4. Packaging**

4.1 Unless agreed otherwise,  
a) the quoted prices are without packaging;  
b) packaging will be provided at the Buyer’s expense in line with with commercial practice in order to avoid damage to the goods on the way to the specified destination under normal transport conditions. The packaging will be taken back only if specifically agreed.

**5. Transfer of Risk**

5.1 Unless agreed otherwise in writing, the goods are sold “ex works” (EXW) (ready for collection).

5.2 Besides, the INCOTERMS in the version valid on the day of conclusion of the contract, available at [www.incoterms.com](http://www.incoterms.com), shall apply.

**6. Term of Delivery**

6.1 Unless agreed otherwise, the term of delivery shall commence on the latest of the dates set out below:

a) Date of order confirmation;  
b) Date of fulfilment of all the technical, commercial and financial conditions for which the Buyer is responsible by agreement;  
c) Date on which the Vendor receives a down-payment payable prior to delivery of the goods and/or a payment guarantee to be issued or other surety is available.

6.2 The Vendor is entitled to make partial and advance deliveries.

6.3 If delivery is delayed by circumstances affecting the Vendor that represent a cause for relief within the meaning of Art. 16, an extension of the term of delivery shall be granted until the cause for relief no longer exists.

6.4 Unless the Vendor has caused a delay in delivery due to gross negligence or wilful intent, the Buyer shall not be entitled to claim any damages for such delay. He can merely demand fulfilment or declare rescission from

the contract, thereby setting a reasonable period of grace. The Buyer must return goods that have already been delivered and cannot be used to the Vendor.

6.5 If the period of grace as set out in Art. 6.4 was not used through the fault of the Vendor, the Buyer can rescind the contract by written notice with respect to all goods not delivered yet. The same shall apply to goods already delivered that cannot reasonably be used without the still outstanding goods. In this case the Buyer shall be entitled to a refund of payments made for the goods not delivered yet or for the goods that cannot be used. Moreover, the Buyer shall, if the delay in delivery was caused by gross negligence or willful intent on the part of the Vendor, be entitled to reimbursement of justified expenditures that he had to incur up to the rescission of contract and which can no longer be used. The Buyer must return goods that have already been delivered and cannot be used to the Vendor.

6.6 If the Buyer fails to accept the goods ready for delivery at the contractually agreed place or at the contractually agreed time, the Vendor shall be entitled – after setting a period of grace – to rescind the contract and to claim the damages incurred to him resulting from Buyer's failure. In the case of delayed acceptance by the Buyer, the Vendor can have the goods stored at the Buyer's expense and risk. Even if the goods are accepted with delay, the Vendor shall be entitled to reimbursement of the damages caused by the delay.

6.7 Claims by the Buyer against the Vendor on the grounds of delay other than those set out in Art. 6 shall be excluded.

## **7. Buyer's right of withdrawal for other reasons**

7.1 The Buyer is also entitled to withdraw from the contract for reasons other than those set out in Art. 6 and Art. 16.

7.2 In the case, the Buyer is obliged to compensate the Vendor for the expenses and costs incurred for the fulfillment of the order (material costs, costs for working time, etc.) up to and including the day of receipt of the notice of withdrawal by the Vendor including a profit mark-up based on the entire order in the amount usual in the industry. No further claims for remuneration or compensation shall exist.

## **8. Acceptance Inspection**

8.1 If the Buyer wishes an acceptance inspection, this must be agreed with the Vendor

explicitly and in writing on conclusion of the contract. Unless agreed otherwise, the acceptance inspection shall be conducted at the place of manufacture or at a place to be specified by the Vendor during the Vendor's business hours.

Thereby the general practice of the relevant industry shall be decisive for the acceptance inspection. The Vendor must notify the Buyer of the acceptance inspection within good time, so that he can be present during the inspection or be represented by an authorised representative. If in the acceptance inspection, the object of delivery turns out to be in breach of contract, the Vendor has to remove any defects and restore the contractual condition of the object of delivery. The Buyer may only demand a repeated inspection in the case of major defects. A record of acceptance must be drawn up at the end of the acceptance inspection.

8.2 If the Buyer or his authorised representative fails to attend the acceptance inspection despite being duly notified by the Vendor, the record of acceptance shall only be signed by the Vendor. The Vendor must in any case forward a copy of the acceptance record, the accuracy of which the Buyer cannot dispute even if it could not be signed by him or his authorised representative due to absence.

8.3 Unless agreed otherwise, the Buyer shall bear the costs of the acceptance inspection performed.

## **9. First operation**

9.1 In order to ensure the functionality of the plant and machinery in accordance with the contract, the commissioning of the plant and machinery shall be carried out by the Vendor, unless otherwise explicitly agreed. If the commissioning is not carried out by the Vendor, warranty and liability claims against the Vendor for any defects or damage caused as a result of this are excluded (see also Art. 13.7).

## **10. Price**

10.1 Unless agreed otherwise, the agreed prices shall apply ex Vendor's works without loading.

10.2 The prices are based on the Vendor's costs of acquisition and production at the time the offer is made. Should these costs rise by the time of delivery for reasons beyond the Vendor's control, the Vendor is entitled to a price adjustment to the extent of the cost increase affecting the Vendor.

## 11. Payment

11.1 Payments shall be made in accordance with the terms of payment agreed in the invoice. If no terms of payment were agreed, the following shall apply:

1/3 of the price is payable immediately on receipt of the order confirmation,  
1/3 after half the term of delivery, and  
1/3 on delivery.

Regardless thereof, in any case the sales tax according to the invoice must be paid not later than 30 days after invoicing.

11.2 The Buyer shall not be entitled to retain payments on the grounds of warranty claims or other counterclaims not accepted by the Vendor, unless they are claims that have already been accepted or legally ascertained.

11.3 If the Buyer is in default with an agreed payment or other performance, the Vendor may either insist upon fulfilment of the contract and

- postpone the fulfilment of his own obligations until the outstanding payment has been made or other performance has been fulfilled,
- claim a reasonable extension of the term of delivery,
- demand payment of the entire purchase price still outstanding,
- unless there is a cause for relief within the meaning of Art. 16 on the part of the Buyer, charge interest at a rate of 9,2% higher than the respectively current base rate pursuant to Paragraph 456 of the Austrian Commercial Code ("Unternehmensgesetzbuch") as of the due date, or/and declare rescission from the contract without stating reasons after granting a reasonable period of grace.

11.4 The Buyer must in every case indemnify the Vendor for all default damages.

11.5 If the Vendor rescinds the contract, the Buyer must return the goods already delivered to the Vendor at the Vendor's demand.

The Vendor must be paid a reasonable fee for use, as well as any loss in value of the goods that has occurred, as well as any justified expenditures that the Vendor had to make in connection with performance of the contract. With regard to goods not delivered yet, the Vendor shall be entitled to make the finished or partly processed parts available to the Buyer and to demand the respective portion of the purchase price for the same.

## 12. Vendor's Lien

12.1 The Vendor shall have a lien on the

purchase object until full payment by the Buyer. The Vendor shall be entitled to make his lien visible on the object of delivery. The Buyer must fulfil the necessary formal regulations to safeguard the Vendor's lien. In the case of attachment or other recourse, the Buyer shall be obliged to make the Vendor's lien known and to notify the Vendor forthwith. Resale of the goods is not permitted until full payment has been made.

## 13. Warranty

13.1 The statutory warranty regulations shall apply with the following modifications:

13.2 The The warranty obligation shall only apply if the defects are asserted in court within a period of 12 months after handover to the Buyer, but not longer than 16 months from ex works delivery.

13.3 Unless agreed otherwise, the time of handover is the time of transfer of risk according to Art. 5.1 (ready for collection).

13.4 The Buyer shall only be entitled to claim a defect if he notifies the Vendor of the defect in writing forthwith. The conjecture rule set out in Paragraph 924 Austrian General Civil Code ("Allgemeines bürgerliches Gesetzbuch - ABGB") is excluded. The Vendor thus informed must, if the defects have to be remedied by the Vendor in accordance with the provisions of this Article, at his own discretion:

- remedy the defective goods on the spot;
- have the defective goods or defective parts returned to him for remediation;
- replace the defective parts;
- replace the defective goods.

13.5 If the Vendor has the defective goods or parts returned to him for remediation or replacement, the Buyer shall – unless agreed otherwise – bear the costs and risk of transportation. The remedied or replaced goods or parts shall – unless agreed otherwise – be returned to the Buyer at the Vendor's costs and risk.

13.6 The defective goods or parts replaced in accordance with this Article shall be at the Vendor's disposal.

13.7 Any unauthorised modifications to the machinery by the Buyer shall result in the loss of all the Buyer's rights regarding representations by the Vendor with respect to condition of the delivered goods as well as warranty obligations, unless ECON has consented to a modification in writing prior to its implementation.

13.8 The Vendor's warranty obligation shall only apply in the event of defects which occur in accordance with the designated operating conditions and during normal usage. In particular, it will not apply to defects resulting from incorrect or improper installation, operation or maintenance, incorrect or improper repairs by the Buyer itself or persons attributable to the Buyer, or wear and tear resulting from normal use.

13.9 With regard to those parts of the goods that the Vendor acquired from the sub-suppliers specified by the Buyer, the Vendor shall only be liable within the scope of the warranty claims to which he himself is entitled vis- à-vis the sub-suppliers. If the delivered goods were manufactured by the Vendor on the basis of design specifications, drawings or models by the Buyer, the Vendor's liability shall not include the accuracy and completeness of the design, but merely the fact that the goods were manufactured in accordance with the Buyer's specifications. In these cases the Buyer must indemnify and hold the Vendor harmless for any infringement of property rights. The Vendor shall not accept any warranty when accepting repair orders or modifications or alterations to old or third-party goods and when delivering used goods.

13.10 As of the beginning of the warranty period, the Vendor shall not accept any further liability than defined in this Article.

13.11 The Vendor is not obliged to update software according to Paragraph 7 Austrian Consumer Warranty Act ("Verbraucher-gewährleistungsgesetz"). However, the Buyer shall have the right to conclude a separate service and maintenance agreement with the Vendor, which shall also include the supply of software updates, etc.

#### **14. Liability**

14.1 It is explicitly agreed that liability for defect damages is excluded unless the damages were caused by gross negligence or wilful intent on the part of the Vendor. The Vendor shall not pay any damages for personal injury, damage to property that is not the object of the contract, other damages and loss of profit, unless the facts of the individual case show that the Vendor has acted with gross negligence or wilful intent. Reversal of the burden of proof as set out in § 1298 ABGB is excluded.

14.2 The purchase object only affords the level of safety that can be expected on the

basis of authorisation regulations, operating instructions, Vendor's regulations for handling of the purchase object – in particular with regard to any stipulated inspections – and other information provided. The professional performance of service and maintenance works using the manufacturer's original spare parts is prerequisite for the required safety of the object.

14.3 Except in the case of gross negligence or wilful intent on the part of the Vendor, the maximum damages that can be claimed shall – unless Art. 14 applies – be limited to 5% of the order value, but to a maximum of 500,000 euros.

14.4 All claims for damages due to defective deliveries and/or services must – unless the defect is explicitly accepted by the Vendor – be asserted in court within the contractually specified warranty period; otherwise the claims shall be forfeited.

#### **15. Consequential Damage**

15.1 Except in the case of gross negligence or wilful intent, the Vendor's liability to the Buyer for production standstill, loss of profit, downtime, loss of contract or any other economic or indirect consequential damage shall be excluded.

#### **16. Force majeure**

16.1 If the parties are unable to fulfill the contract on time due to force majeure or other events that they are unable to avoid, the parties' obligation to fulfill the contract on time shall be suspended in whole or in part. Force majeure events are exclusively events that are unpredictable and unavoidable for the parties and do not come from their sphere of influence. These include in particular:

- a) forces of nature such as earthquakes, lightning, frost, storms, floods, etc.;
- b) pandemics, epidemics, etc.;
- c) legal or official orders and prohibitions;
- d) sanctions and embargoes in any form;
- e) armed conflicts; and
- f) energy and raw material shortages.

These above-mentioned events shall also be deemed to be force majeure events if they occur at the Vendor's subcontractors.

16.2 However, the Buyer who is affected by an event of force majeure can only invoke the existence of force majeure if he immediately informs the Vendor in writing about the beginning and - as far as foreseeable - the

expected end of the event of force majeure.

16.3 In the event of force majeure, the parties shall make every effort to eliminate or minimize the difficulties and foreseeable damage and shall keep the other party informed thereof on an ongoing basis.

16.4 Dates or deadlines that cannot be met due to the effect of force majeure shall be extended until the event has ended. The parties shall not be entitled to any claims against each other arising from such an extension of the dates and deadlines in particular any claims for damages due to delay.

16.5 However, if a force majeure event lasts longer than four weeks, the Buyer and the Vendor shall enter into negotiations in order to find a solution to the consequences of the event. If no mutual agreement can be reached, both parties shall be entitled to withdraw from the contract in whole or in part. In the event of a withdrawal under this provision, the Buyer shall be committed to compensate the Vendor's expenses and costs already incurred for the fulfillment of the order (material costs, costs for working time, etc.), but not for a profit margin related to the entire order.

## **17. Non-disclosure Obligation**

17.1 The parties undertake to maintain absolute secrecy vis-à-vis third parties with regard to any knowledge gained from the business relations.

## **18. Final provisions**

18.1 The sole place of jurisdiction for any disputes arising directly or indirectly from the contract shall be the Austrian court of jurisdiction at the Vendor's seat in Wels. However, the Vendor may also appeal to any other court of jurisdiction for the Buyer.

18.2 The parties may also agree upon jurisdiction by an arbitration tribunal.

18.3 The contract shall be governed by Austrian law with mutual exclusion of the rules related to the conflict of laws and the UN Convention on the International Sale of Goods. All legal terms in these provisions (for example, "ABGB") refer in each case to Austrian laws.

18.4 The venue for delivery and payment shall be the Vendor's seat, even if handover takes place at a different venue by agreement.

18.5 If any provision of the contract or these terms and conditions should be invalid, the

remaining provisions shall remain in full force and effect. The invalid provision shall be replaced by another provision which is as close as possible to the invalid provision in economic and legal terms.

18.6 The General Terms and Conditions shall be drawn up in German and English language versions. The German version shall be deemed the authentic version of the Terms and Conditions and shall also be used for the interpretation of the contract. In the event of any conflict between the English and German versions, the German version shall prevail.