

# General Terms and Conditions of Sale and Delivery of Ferag Austria GmbH

## 1. General

These terms and conditions form the basis for all our deliveries, sales and services, are a fundamental part of our offers and the contracts concluded with us, and are deemed to be acknowledged through the issuing of the order or acceptance of the delivery of goods. These General Terms and Conditions of Sale and Delivery apply for the entire business relationship, thus for all our subsequent deliveries and services, even if they should not be separately agreed once again. Different agreements require our written confirmation to be valid. Non-response on our part to the different conditions of the client is not deemed to be consent or acknowledgement in any case. Commercial practices/customs that deviate from these General Terms and Conditions of Sale and Delivery do not have any legal validity.

## 2. Conclusion of contract

All our offers are non-binding and subject to change; printing errors, typos and mistakes in calculation in the same information in catalogues, plans, prospectuses and other information material do not constitute any obligation on our part. Illustrations, drawings, weight and measurement information, information about services etc. with regard to the goods and services marketed by us are only decisive if reference is explicitly made to them in the order confirmation. All orders are only binding for us when we have confirmed them. Verbal agreements and changes in contract require our written confirmation to be valid and binding. We are not obligated to check whether the goods ordered contravene the protective rights of third parties and reject any liability from this title.

## 3. Price

Unless otherwise agreed, our prices are non-binding, exclusive of sales tax, without packaging and insurance, ex works (EXW pursuant to Incoterms in the respectively last valid version). The packaging will be calculated at cost price, including the statutory disposal fees, and will not be taken back. All prices indicated by us are based on the price and cost level at the time when the price is issued. Direct or indirect changes to the cost structure that occur after the conclusion of the transaction entitle us to make corresponding price adjustments. In the event of a transaction concluded in foreign currency, we are entitled to correct the prices accordingly in the event of changes in the exchange rate. All ancillary costs (such as freight, insurance, taxes, fees, customs, permits, certifications, etc.) will be charged to the customer.

## 4. Delivery

Unless otherwise agreed, information about the delivery time is always approximate and non-binding. The delivery period commences with the day of the order confirmation after clarification of all technical and commercial details, and receipt of an agreed down payment. It is deemed to be fulfilled with the timely reporting of the readiness for dispatch, including if the dispatch is impossible, for whatever reasons and without us being at fault for this. Force majeure or other events that hinder and delay the progress of the production and delivery entitle us to postpone the delivery time by the duration of the hindrance to operations and exceptionally if the further circumstances so dictate to rescind our delivery obligation in its entirety or in part.

Delays in delivery for which we are not responsible do not entitle the customer to cancel the order.

If the customer is in arrears with acceptance, we are entitled to calculate the storage costs, but at least 0.1% of the gross calculation amount per calendar day commenced. Risk and accident are transferred to the customer when the delay in acceptance commences. A delay in acceptance does not result in a postponement of our invoices; instead, they are to be paid promptly.

The customer waives any filing of claims as the result of our delivery times or deadlines being exceeded, from whatever title.

Partial deliveries are permissible unless they are not excluded by written agreement. If warehousing is agreed with the customer, the latter is obligated to accept and pay for the goods in the agreed period, at the latest, however, after 90 days. Installation and commissioning is not included in the scope of supply and performance.

## 5. Transport

Transport is done at the risk of the customer even if delivery freight paid is agreed. Transport insurances will only be covered at the explicit order and for the account of the customer. In the event of there being no dispatch instructions from the customer, the choice of means of transport will be left to us. Any damage or losses are to be established by the recipient immediately on takeover of the goods, with filing of claims, and certified in each case by the railway official or by the freight forwarder. Transport damage is to be noted on the way bill or the delivery note and to be confirmed in writing by the signature of the freight forwarder / transport company or the driver delivering the goods. If such a confirmation is refused, the customer has to draw up a precise record of the damage established, indicating time, name of the driver, etc. The customer must send photocopies of these documents to us immediately. The acceptance of the goods cannot be refused based on the title of transport damage or wrong number. With the handover of the goods to the collecting party, the haulier or the freight forwarder, but at the latest on departure from our warehouse, all risks will be transferred to the customer.

## 6. Warranty and compensation

The customer has to examine the goods delivered immediately after they are delivered and to notify us of any defects detected immediately. The notification of obvious defects must be done immediately after delivery; the notification of all other defects within two weeks after delivery if, despite immediate examination, no earlier notice of defects should be possible, for instance due to complicated procedures for checking. The examination and notice of defects must be done at any rate before adaptation and processing and is to be communicated by registered letter or by telefax, specifying exactly the defects established. In addition to this notification, a sample of the rejected goods is to be provided immediately at our request.

If such procedures are not complied with, all warranty and compensation claims of the customer lapse.

In the event of delivery after sample or specimen, warranty claims are also excluded for concealed defects if the delivered goods correspond to the sample or specimen. If a defect has its cause in the material provided by the customer himself, any warranty

lapses. In the event of warranty, we are entitled at our choice to either produce the contractual state of the goods or to provide defect-free substitute free of cost and freight-paid at the contractual place of delivery in return for the defective goods that become or are still our property. After an unsuccessful third attempt at subsequent improvement or substitute delivery within an appropriate period of time, the customer can demand conversion or reduction in price. Other claims, in particular for compensation of consequential damage due to defects and other compensation are excluded if we are not culpable of wilful intent or gross negligence or if mandatory positions pursuant to the product liability law are given.

All warranty claims on the part of the customer lapse within six months from delivery. Compensation claims of any kind - unless stipulated otherwise by mandatory statutory provisions - become time-barred irrespective of when the customer becomes aware of the damage within 12 months from delivery.

## 7. Payment

Unless otherwise agreed, our invoice is to be paid immediately after receipt net cash without any deduction. The payment is not deemed to have been made until the corresponding amount has been received by us free of deductions. With payments, the invoice number and the invoice date is to be indicated at all times. We only accept bills of exchange as payment based on a special agreement. Credit notes via bills of exchange or cheques apply at all times subject to the receipt and irrespective of an earlier due date of the purchase price in the event of arrears on the part of the customer. Costs of discounting and redemption will be charged in each case to the customer. In the event of arrears in payment, arrears interest in the amount of 12% per annum is deemed to be agreed. In the event of arrears in payment, all dunning and collection fees and any costs before proceedings are to be reimbursed to us. If the terms and conditions of payment are not complied with, or if circumstances become known to us after conclusion that reduce the customer's credit rating, we are entitled to suspend the deliveries until the customer has met its obligations, or without setting a subsequent period to withdraw from the contract and demand compensation. In the event of our withdrawal from the contract, irrespective of the filing of other compensation claims, we are entitled to demand 15% of the gross invoice amount for fees already incurred, loss of earnings and appropriate agent commissions from the buyer, whereby this amount is not subject to judicial mitigation. In the event of still outstanding deliveries, however, we can also request security without withdrawing from the contract.

The customer is not entitled to retain or offset payments, not even when he files complaints.

## 8. Retention of title

We reserve title to the goods delivered until the complete payment of the purchase price including all ancillary fees. All technical documents such as drawings, illustrations, descriptions, etc. remain our property. They may not be made accessible to third parties and not copied, reproduced or used for own production. Pledging or transfer of security in favour of third parties are excluded without our approval. In the event of pledging or any other jeopardising of our ownership by third parties, the customer is obligated to give notice to us of this immediately. The customer is entitled to adapt or process the goods delivered. No obligations whatsoever arise for us from the adaptation or processing. In the case of adaptation or processing and combination of the supplied goods with other goods that do not belong to us, we are entitled to the resulting co-ownership share to the item created from adaptation or processing in the ratio of the value of the supplied goods to the other processed goods at the time of the processing and combination. If a new item is created through the adaptation or processing or combination with other goods, the customer already grants us, in the ratio of the processed or combined goods under retention of title to the value of the new item, co-ownership of the latter and will store this free of charge for us. In the event of resale through cash sale, the generated revenues up to the amount of the still outstanding purchase price, including all ancillary costs, will not be transferred to the ownership of the buyer of the goods under retention of title, but to our ownership. The revenues are to be stored separately by the buyer of the goods under retention of title in this amount and transferred to us immediately.

In the event of sale otherwise, the customer already undertakes now to assign to us the receivable which he is entitled to against his customers up to the amount of the still outstanding purchase price, including all ancillary fees, and to notify us immediately of the resale, naming the customer.

## 9. Place of performance, place of jurisdiction and arbitration court

The place of performance for all obligations arising from the delivery relationship is the registered office of our company, thus currently

AT 1230 Vienna, Kolpingstraße 11.

The sole place of jurisdiction for all disputes arising from contracts concluded with the customer, and regarding the question of the entry into force and the legal validity of concluded agreements, including these General Terms and Conditions of Sale and Delivery is the registered office of our company, thus currently Vienna. However, we also have the right to optionally initiate arbitration proceedings at the international court of arbitration of Vienna Chamber of Commerce according to the arbitration regulations valid there.

## 10. Applicable law, language of contract

All legal relationships with the customer are governed solely by Austrian law, to the exclusion of international agreements such as the UN Convention on Contracts for the International Sale of Goods (CISG or UNCITRAL) dated 11.4.1980.

The language of contract is German. If the contractual partners use another language as well, the German wording takes priority.

## 11. Validity

If individual terms and conditions of these General Terms and Conditions of Sale and Delivery or other contractual agreements should be or become invalid or legally ineffective, this will not affect the validity of the remaining terms and conditions or the legal transaction concluded. The invalid provision is to be replaced by a valid provision that comes closest to the meaning and purpose of the invalid provision.

Ferag Austria GmbH, AT-1230 Vienna, Kolpingstraße 11

Bank Austria Creditanstalt AG, BIC BKAUATWW, sort code 12000, account no. 0076-10777/00, IBAN AT78 1100 0007 6107 7700

Erste Bank der Österreichischen Sparkassen AG, BIC GIBAATWW, sort code 20111, account no. 310 037-00295, IBAN AT24 2011 1310 0370 0295

Data Processing Register No. 0314633, FN 31865k, Vienna Commercial Court, VAT ID no. ATU 15065701