General Terms and Conditions of Delivery

TTEngineering e.U. Company Register No.: 537672w

The following Terms and Conditions of Sale and Delivery apply to all our contracts, offers, deliveries and other services, including future ones. The customer's general terms and conditions shall not apply, even if they are transmitted to us in an order confirmation or in any other manner and we do not object to them. Except for the provisions below, the statutory provisions shall apply exclusively.

The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1988/96, is expressly excluded.

1. Preamble

1.1 These General Terms and Conditions of Delivery apply unless the contracting parties have expressly agreed otherwise in writing.

1.2 The following provisions concerning the delivery of goods shall apply mutatis mutandis to services.

1.3 For installation work, the installation conditions of the Austrian Professional Association of the Machinery and Steel Construction Industry, as amended from time to time, shall apply additionally.

2. Formation of the contract

2.1 The contract shall be deemed concluded when the Seller, after receipt of the order, has sent a written order confirmation and the Buyer does not demonstrably object to it within 10 days.

2.2 Amendments and supplements to the contract require the Seller's written confirmation to be valid. The Buyer's purchasing conditions shall be binding on the Seller only if separately accepted by the Seller.

2.3 If import and/or export licences, foreign-exchange approvals or similar authorisations are required for performance of the contract, the party responsible for obtaining them must make all reasonable efforts to obtain the necessary licences or approvals in good time.

3. Plans and documents

3.1 Information contained in catalogues, brochures, circulars, advertisements, illustrations, price lists etc. regarding weight, dimensions, capacity, price, performance and the like shall be binding only if expressly referred to in the offer and/or the order confirmation.

3.2 Plans, sketches, cost estimates and other technical documents, which may also form part of the offer, as well as samples, catalogues, brochures, illustrations and the like, shall at all times remain the intellectual property of the Seller. Any utilisation, duplication, reproduction, distribution, transfer to third parties, publication or presentation may take place only with the express consent of the owner.

4. Packaging

4.1 Unless otherwise agreed: a) the stated prices are exclusive of packaging; b) packaging shall be carried out in the customary commercial manner in order to prevent damage to the goods under normal transport conditions on the way to the agreed destination, at the Buyer's expense, and shall be taken back only by agreement.

5. Transfer of risk

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

5.2 Otherwise, the INCOTERMS in the version valid on the date the contract is concluded shall apply.

6. Delivery period

6.1 Unless otherwise agreed, the delivery period shall commence on the latest of the following dates: a) date of the order confirmation; b) date on which all technical, commercial and financial prerequisites to be fulfilled by the Buyer under the agreement have been satisfied; c) date on which the Seller receives an advance payment to be made before delivery of the goods and/or a payment security to be provided has been opened.

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

6.3 If delivery is delayed by a circumstance arising on the Seller's side that constitutes a ground for relief within the meaning of Article 14, a reasonable extension of the delivery period shall be granted.

6.4 If the Seller is responsible for a delay in delivery, the Buyer may either demand performance or, after setting a reasonable grace period, declare withdrawal from the contract.

6.5 If the grace period provided for in Article 6.4 expires unused due to the Seller's fault, the Buyer may withdraw from the contract by written notice with respect to all goods not yet delivered. The same applies to goods already delivered which cannot reasonably be used without the outstanding goods. In this case, the Buyer is entitled to reimbursement of payments made for the undelivered or unusable goods. In addition, if the delivery delay was caused by gross negligence on the part of the Seller, the Buyer is also entitled to reimbursement of justified expenses incurred up to termination of the contract which cannot be used elsewhere. Goods already delivered but unusable must be returned to the Seller.

6.6 If the Buyer does not accept goods duly made available under the contract at the contractually agreed place or time, and the delay is not caused by an act or omission of the Seller, the Seller may either demand performance or withdraw from the contract after setting a grace period. If the goods have been segregated, the Seller may store them at the Buyer's cost and risk. The Seller is also entitled to reimbursement of all justified expenses incurred in performing the contract that are not covered by payments received.

6.7 Claims by the Buyer against the Seller due to delay other than those stated in Article 6 are excluded.

7. Acceptance test

7.1 If the Buyer requests an acceptance test, this must be expressly agreed with the Seller in writing when the contract is concluded. Unless otherwise agreed, the acceptance test shall be carried out at the place of manufacture or at another place determined by the Seller during the Seller's normal working hours. The general practice of the relevant industry shall apply. The Seller must notify the Buyer of the acceptance test in good time so that the Buyer can attend or be represented by an authorised representative. If the subject of delivery proves non-conforming during the acceptance test, the Seller must immediately remedy every defect and restore the subject of delivery to the contractual condition. The Buyer may demand a repeat test only in the event of material defects. An acceptance report shall be prepared after the test. If the acceptance test confirms contractual execution and proper functionality, this shall in all cases be confirmed by both contracting parties. If the Buyer or its authorised representative is absent despite timely notice, the acceptance report need only be signed by the Seller. The Seller must provide the Buyer with a copy of the acceptance report; its correctness may no longer be disputed by the Buyer even if the Buyer or its representative could not sign it due to absence. Unless otherwise agreed, the Seller bears the costs of the acceptance test. The Buyer shall in all cases bear its own costs and those of its authorised representative connected with the acceptance test, such as travel and living expenses and expense allowances.

8. Price

8.1 Unless otherwise agreed, prices apply ex works of the Seller, excluding loading.

8.2 Unless otherwise agreed, prices are based on the costs at the time the price is quoted. If costs change by the time of delivery, such changes shall be for the benefit or account of the Buyer.

9. Payment

9.1 Payments shall be made in accordance with the agreed payment terms. If no payment terms have been agreed, one third of the price is due upon receipt of the order confirmation, one third halfway through the delivery period and the balance upon delivery. Irrespective thereof, the VAT shown in the invoice must in all cases be paid no later than 30 days after invoicing.

9.2 The Buyer is not entitled to withhold payments on account of warranty claims or other counterclaims not recognised by the Seller.

9.3 If the Buyer is in default with an agreed payment or other performance, the Seller may insist on performance of the contract and: a) suspend performance of its own obligations until the outstanding payments or other performances have been made; b) claim a reasonable extension of the delivery period; c) declare the entire outstanding purchase price immediately due;

9.3 d) unless there is a ground for relief on the Buyer's side within the meaning of Article 14, charge default interest from the due date at 7.5% above the respective base rate of the European Central Bank (see EC Directive on combating late payment in commercial transactions of 29 June 2000), or withdraw from the contract after granting a reasonable grace period.

9.4 In all cases, the Buyer must reimburse the Seller for the dunning and collection costs incurred as further damage caused by default.

9.5 If, upon expiry of the grace period under Article 9.3, the Buyer has not made the payment or other performance owed, the Seller may withdraw from the contract by written notice. Upon request by the Seller, the Buyer must return goods already delivered, compensate the Seller for any reduction in value and reimburse all justified expenses incurred by the Seller in performing the contract. With respect to goods not yet delivered, the Seller is entitled to make finished or partly finished components available to the Buyer and to demand the corresponding portion of the purchase price.

9.6 The contracting parties agree that the rights and obligations regulated in the contract are not affected by the introduction of the euro. Payment obligations, in particular fixed monetary amounts, shall be deemed agreed in euro as soon as the euro is the sole permissible means of payment. Conversion shall in all cases be based on the officially fixed conversion rate. It is agreed that conversion to the euro shall not give rise to any right of termination, withdrawal or rescission, nor to any claim for damages or amendment of the contract.

10. Retention of title

10.1 Until all financial obligations of the Buyer have been fully discharged, the Seller retains title to the purchased goods. The Seller is entitled to mark its ownership externally on the subject of delivery. The Buyer must comply with the formal requirements necessary to preserve the retention of title. In the event of seizure or other third-party action, the Buyer must assert the Seller's ownership and notify the Seller without delay.

11. Warranty / liability for defects

11.1 Subject to the following provisions, the Seller is obliged to remedy any defect impairing usability that is due to a defect in design, material or workmanship. The Seller is likewise responsible for defects in expressly agreed characteristics.

11.2 This obligation exists only for defects that occur within a period of one year in single-shift operation from the time risk passes or, in the case of delivery including installation, from completion of installation.

11.3 The Buyer may rely on this Article only if it notifies the Seller in writing of defects without delay. The presumption rule of § 924 ABGB is excluded. If the defects must be remedied by the Seller under this Article, the Seller, once notified in this manner, shall at its option: a) repair the defective goods on site; b) have the defective goods or defective parts returned for repair; c) replace the defective parts; or d) replace the defective goods.

11.4 If the Seller has defective goods or parts returned for repair or replacement, the Buyer shall bear the costs and risk of transport unless otherwise agreed. Return of the repaired or replaced goods or parts to the Buyer shall, unless otherwise agreed, be at the Seller's cost and risk.

11.5 Defective goods or parts replaced under this Article shall be at the Seller's disposal.

11.6 The Seller is liable for the costs of remedying defects carried out by the Buyer itself only if the Seller has given its written consent.

11.7 The Seller's warranty obligation applies only to defects arising under the intended operating conditions and normal use. In particular, it does not apply to defects resulting from: improper installation by the Buyer or its agents, poor maintenance, repairs or modifications carried out improperly or without the Seller's written consent by a person other than the Seller or its agent, or normal wear and tear.

11.8 For parts of the goods obtained by the Seller from a subcontractor specified by the Buyer, the Seller is liable only to the extent of the warranty claims available to the Seller against that subcontractor. If goods are manufactured by the Seller on the basis of design specifications, drawings or models provided by the Buyer, the Seller's liability does not extend to the correctness of the design, but only to execution in accordance with the Buyer's specifications. In such cases, the Buyer shall indemnify and hold the Seller harmless against any infringement of intellectual property rights. The Seller gives no warranty in connection with repair orders or modifications or conversions of old or third-party goods, or for the supply of used goods.

11.9 From the commencement of the warranty period, the Seller assumes no liability beyond that specified in this Article.

12. Liability

12.1 It is expressly agreed that the Seller shall not be liable to pay damages to the Buyer for personal injury, damage to goods that are not the subject matter of the contract, other damage or loss of profit, unless the circumstances of the individual case show that the Seller is guilty of gross negligence. The reversal of the burden of proof pursuant to § 1298 ABGB is excluded.

12.2 The purchased goods provide only that level of safety which may be expected on the basis of approval regulations, operating instructions, the Seller's instructions concerning treatment of the purchased goods - in particular with regard to any prescribed inspections - and other instructions provided.

12.3 In the event of slight negligence on the part of the Seller, unless Article 12.1 applies, damages are limited to 3% of the order value, but in any event to a maximum of EUR 500,000.

12.4 All claims for damages arising from defects in deliveries and/or services must - unless the defect has been expressly acknowledged by the Seller - be asserted in court within one year after expiry of the contractually stipulated warranty period; otherwise the claims shall lapse.

12.5 Our liability is covered by TTEngineering liability insurance with the Generali Group, policy 000-4232-0069 GEW. Sum insured: EUR 1,000,000; annual maximum benefit: three times the sum insured. We are liable only with the company's assets. Liability claims attributable to errors in the evaluation and measuring-technology software of the product owner for the Limos structural-stability system are covered by the civil-engineers' insurance of VCE Vienne Consulting Engineers ZT GmbH, Untere Viaduktgasse 2, 1030 Vienna, Austria.

13. Consequential damage

13.1 Subject to any provisions to the contrary in these Conditions, the Seller's liability to the Buyer for production stoppage, loss of profit, loss of use, loss of contracts or any other economic or indirect consequential damage is excluded.

14. Grounds for relief

14.1 The parties are wholly or partly released from timely performance of the contract if they are prevented from doing so by events of force majeure. Events of force majeure are exclusively events that are unforeseeable and unavoidable for the parties and do not originate within their sphere. Strikes and industrial disputes are, however, to be regarded as events of force majeure.

14.1 (continued) A Buyer hindered by an event of force majeure may rely on force majeure only if it delivers to the Seller without delay, but no later than within 5 calendar days, a registered statement confirmed by the competent government authority or chamber of commerce of the country of supply, setting out the cause, expected effects and duration of the delay. In the event of force majeure, the parties must make every effort to eliminate or mitigate the difficulties and foreseeable damage and keep the other party continuously informed. Otherwise, they shall be liable to the other party for damages. Dates or deadlines that cannot be met due to force majeure shall be extended by no more than the duration of the effects of force majeure or, where applicable, by a period to be agreed by mutual consent. If a force-majeure circumstance lasts for more than four weeks, the Buyer and Seller shall seek, by negotiation, a solution to the effects on contract performance. If no mutually acceptable solution is reached, the Seller may withdraw from the contract in whole or in part.

15. Data protection

15.1 The Seller is entitled to store, transmit, process and delete personal data of the Buyer in the course of business dealings.

15.2 The parties undertake to maintain absolute confidentiality vis-à-vis third parties concerning knowledge obtained through the business relationship.

16. Jurisdiction, applicable law, place of performance

16.1 The Austrian court having territorial jurisdiction for the Seller's registered office shall have jurisdiction over all disputes arising directly or indirectly from the contract. However, the Seller may also bring proceedings before the court having jurisdiction over the Buyer.

16.2 The parties may also agree on the jurisdiction of an arbitral tribunal.

16.3 The contract is governed by Austrian law, excluding the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1988/96.

16.4 The Seller's registered office shall be the place of performance for delivery and payment, even if handover is agreed to take place at another location.

Translation notice: This document is an English translation of the German original. It has not been adapted to English law or any other foreign legal system. All legal references, assessments and contractual provisions are based on Austrian law and Austrian case law. In the event of discrepancies or questions of interpretation, the German-language original shall prevail. The document is to be interpreted in accordance with Austrian law.