

# ISH - Industrielle Soft- und Hardware

Hainbach 102

A-4861 Schörfling a. Attersee

Industrielle

ISH

Soft- und Hardware

## GENERAL TERMS AND CONDITIONS OF DELIVERY

### 1. SCOPE

- 1.1 These general conditions are an essential and inseparable part of the contract and apply unless the contracting parties have explicitly agreed something to the contrary in writing.
- 1.2 The following terms concerning the delivery of goods also apply by analogy to other services.
- 1.3 These terms also apply particularly to deliveries of spare parts or to deliveries under warranty claims etc.
- 1.4 Assembly work is additionally subject to the seller's terms and conditions of assembly.

### 2. CONCLUSION OF CONTRACT

- 2.1 The contract is concluded when written confirmation of the order is sent to the buyer. The confirmation of the order alone is decisive for the scope and performance of the order. Secondary agreements are only valid if confirmed by the seller in writing.
- 2.2 The seller's quotations are subject to change without notice. The seller reserves the right to immediate sale.
- 2.3 The plans, dimensional drawings and the like attached to the seller's quotation are non-binding and only serve as rough approximations. The seller reserves the right to make any necessary changes at any time.
- 2.4 Prior to conclusion of contract, the buyer must draw the seller's attention to the statutory, official and other regulations which apply in particular to the performance of the delivery and to assembly, operation, health protection and accident prevention, currency controls, and export and import restrictions and any official regulations whatsoever capable of delaying or preventing the delivery or affecting it in any way to the seller's detriment. The buyer must obtain all the necessary official permits or else bear the legal consequences of points 12.2 and 12.3 of these terms and conditions.

### 3. PLANS AND DOCUMENTS

3.1 Quotations, plans and the relevant drawings, descriptions, illustrations and the like are the intellectual property of the seller and must be neither copied, reproduced nor brought to the knowledge of third parties in any way nor used without authorization for the construction of a production line or parts thereof. They are to be returned to the seller immediately on request if the order is not carried out.

### 4. PRICES

- 4.1 The prices of the seller apply, failing any agreement to the contrary, ex works, exclusive of packing, goods-in-transit insurance, carriage and assembly.
- 4.2 Taxes, contract fees, stamp duties, export, import and transit fees, discount interest, customs duties and customs charges, official commission fees and the like are borne by the buyer.
- 4.3 The prices of the seller are established in accordance with the wage rates and costs of materials in force at the time of confirmation of the order. If these increase between the confirmation and execution of the order, the seller is entitled to pass on these increases to the buyer. The same applies in the event of other increases beyond the seller's control as a result of new taxes, customs duties or transport tariffs.
- 4.4 At conclusion of contract and with disclosure of the prices, the seller is entitled to charge the sales prices valid on the date of delivery.
- 4.5 If the rate of the invoice currency changes in relation to the euro, particularly as a result of the devaluation or revaluation of one of the currencies, the purchase price charged is based on the exchange rate between the two currencies on the date of conclusion of contract.

### 5. TERMS OF PAYMENT

- 5.1 All payments must be made as agreed, in the currency specified in the quotation and confirmation of the order, to the account of the seller at the bank stated in the confirmation of the order or on the invoice. The buyer may only pay one of the seller's agents in discharge of the sum owed if the seller has given his explicit consent in writing.
- 5.2 In the absence of any written confirmation of the order to the contrary, half the purchase price is payable upon receipt of the order confirmation and the remainder upon communication of readiness for dispatch.
- 5.3 The date of payment is deemed the date of receipt at the payment office named by the seller.
- 5.4 The buyer is not entitled to withhold or set off payments owing to warranty claims or other counterclaims or those arising from other transactions.
- 5.5 If the buyer defaults on an agreed payment or other service, the seller can either insist on performance and
  - a) suspend the fulfillment of his own obligations until the payment in arrears or other service is effected,
  - b) claim an appropriate extension of the delivery deadline,
  - c) set a due date for the entire still outstanding purchase price,
  - d) failing any reason to exonerate the buyer, claim interest on arrears from the due date of 7.5% above the current bank rate of the Österreichische Nationalbank or, after allowing an appropriate deadline extension, announce his withdrawal from the contract.
- 5.6 If the buyer fails to effect the owed payment or other service before the extended deadline pursuant to 5.5, the seller can withdraw from the contract by written notification. At the seller's request, the buyer must return to the seller goods already delivered and reimburse him for the incurred loss in value of the goods and any justified expenditure incurred by the seller in performance. With regard to goods not yet delivered, the seller is entitled to make the finished or partly finished parts available to the buyer and demand the corresponding portion of the purchase price for these.

### 6. RETENTION OF TITLE

- 6.1 The seller retains the title to the goods supplied by the seller until all the buyer's obligations have been fully discharged. The buyer must comply with the necessary formalities with regard to the observance of retention of title. In the event of attachment or any other claim, the buyer is required to assert the right of ownership and notify the seller immediately.
- 6.2 If for deliveries abroad the observance of retention of title is governed by the relevant statutory provisions applicable at the location where the machinery is installed, the buyer undertakes in this case to take the necessary steps to legally validate the seller's retention of title. If the law covering the delivered goods does not allow the seller right of retention but allows the seller to reserve other rights to the delivered goods, the seller can exercise all the rights of this kind. In the event of failure to comply with this obligation, seller is entitled to retain the parts not yet delivered until the fulfillment of this condition is proven or to withdraw from the contract without allowing any deadline extension with the legal consequences of points 12.2 and 12.3 of these terms and conditions.

### 7. DELIVERY PERIOD

- 7.1 Failing any agreement to the contrary, the delivery period starts at the latest of these points in time:
  - a) date of confirmation of the order;
  - b) date of the buyer's fulfillment of his technical, commercial and financial conditions;
  - c) date on which the seller receives a down payment to be made in advance of delivery of the goods and/or a letter of credit is opened.It is deemed complied with if at the end thereof the delivery is completed at the production plant. In the event that the inspection of the delivered goods by the customer takes place at the production plant, the time of sending notification that the delivery is ready for inspection is interpreted as the delivery deadline.
- 7.2 The delivery deadline is extended
  - 7.2.1 if information which the seller requires for executing the order does not reach the seller on time or if it is subsequently changed by the buyer;
  - 7.2.2 if hindrances arise which are outside the seller's control, irrespective of whether they arise on the seller's, buyer's or a third party's premises. Such hindrances can be epidemics, mobilization, war, insurrection, significant interruptions to operations, accidents, industrial disputes, late or defective supply of the necessary raw materials, semi-finished or finished products, the rejects of important manufactured parts, official action or natural phenomena;
  - 7.2.3 if the buyer falls behind with the work to be carried out by him or defaults on the performance of his contractual obligations, and particularly if he does not comply with the terms of payment.
- 7.3 The deadline is extended in the event of circumstances under point 7.2 by that period of time for which the hindrance concerned lasts. In the event of the continuation of a hindrance defined in point 7.2.2 for a period exceeding 12 months, both parties to the contract are entitled to withdraw in writing from the contract, whereas in the event of a hindrance defined in points 7.2.1 and 7.2.3, the seller alone is entitled to withdraw in writing from the contract. The provisions of point 12.4 and 12.5 of these terms and conditions apply analogously in the event of the circumstances of points 7.2.1 and 7.2.3 as well as 7.2.2 arising on the part of the buyer. Under no circumstances will any interest be paid on the buyer's payments already received. The buyer waives all pleas of compensation and retention rights. The provision in point 12.2 applies analogously.
- 7.4 The seller is entitled to carry out part or advance deliveries.
- 7.5 If the seller is to blame for default of delivery, the buyer can either insist on performance or, after allowing a reasonable deadline extension, announce his withdrawal from the contract. In the case of items made to order, the deadline extension must be calculated to take account of the fact that the seller cannot use parts on which work has already been started for a different purpose.

### 8. PACKING AND SHIPMENT

- 8.1 The goods are packed in the conventional manner to protect them from the weather under normal transport conditions. The seller does not carry out any further packing even in the event of agreement on Incoterms to the contrary.
- 8.2 The seller is to be notified in good time of any special requests concerning the packing. Such notification is given in good time if the desired packing can be effected without subsequent delays and without any problems. If notification of the special type of packing is not given in good time or if considerable expense or effort is necessary for the special type of packing, the seller is entitled to refuse the request for the special type of packing without any legal consequences. The refusal must be given immediately and in writing.
- 8.3 The buyer will be invoiced separately for packing and shipment in each case and the packing will not be taken back.

### 9. TRANSPORT AND INSURANCE

- 9.1 The transport arrangements are made by the buyer at his own risk and expense. If, as agreed, the carrier is hired by the seller and on seller's account, the buyer still bears the risk and is also obliged to properly secure the goods in transit from door to door to protect them from sliding off, slipping, tipping over, any external mechanical damage and the like.
- 9.2 The buyer must make any complaints in connection with transport to the last carrier immediately upon receipt of the goods or transit documents. The buyer is also obliged in accordance with the contract of carriage and the forwarder's general terms and conditions to lodge any claim for damage in transit immediately with the carrier. At the same time the seller must be informed of any such complaint.
- 9.3 The buyer is obliged to take out at his own expense door-to-door goods-in-transit insurance for the value of the goods being delivered. Even if this insurance is to be taken out by the seller as per agreement, it is for the account and at the risk of the buyer. Under no circumstances is the seller liable for damage in transit. 9.4 If delivery of the goods is covered by the agreement, the prices do not include unloading.

### 10. PASSAGE OF RISK AND USE

- 10.1 The time of the passage of risk is determined in the following cases as follows:
  - a) for sale "ex works", the risk passes from the seller when the goods are placed at the buyer's disposal. The seller must inform the buyer of the time from which the goods are at the buyer's disposal. This information must be given in good time so that the buyer is able to make the usual necessary preparations;
  - b) for sale "freight car, truck, barge" (agreed place of dispatch), "border" or "destination" or for sales "free carrier to ..." ("free to"), the risk passes from the seller to the buyer when the means of transport laden with the goods is accepted by the first carrier;
  - c) for sale "fob" or "cif" or "c&f", the risk passes from the seller to the buyer when the goods have actually crossed the ship's railing in the agreed port of shipment.
- 10.2 Unless anything is agreed to the contrary, the goods are deemed sold "ex works".
- 10.3 The seller is only obliged to take out insurance if and in so far as this is agreed in writing.
- 10.4. Otherwise the Incoterms in the version valid on the date of conclusion of contract apply.
- 10.5. In the event in a delay in dispatch ex works for which the seller is not to blame, the risk passes to the buyer on the date of notification of readiness for dispatch.

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## 11. ACCEPTANCE OF GOODS

11.1 The goods must be accepted by the buyer immediately upon receipt and any defects reported to the seller in writing without delay, otherwise all claims are excluded.

11.2 If the goods on inspection do not comply with the provisions of the contract, the buyer must immediately give the seller an opportunity to rectify the defects. The seller reserves the exclusive right to decide how and where the defects are to be rectified.

11.3 The buyer cannot refuse acceptance of the goods on the grounds of defects.

11.4 If the buyer nevertheless refuses to accept the goods, the provisions of § 373 of the Austrian Commercial Code and the provisions of points 12.3 and 12-2 of these terms and conditions apply.

## 12. DELAY IN PERFORMANCE

12.1 If the seller is to blame for delay in delivery, the buyer can either insist on performance or, after allowing a reasonable deadline extension for delivery, announce his withdrawal from the contract under the terms as outlined in the following. In the case of items made to order, the deadline extension must be calculated to take account of the fact that the seller cannot use parts on which work has already been started for a different purpose.

12.2 If the seller is to blame for failure to comply with the deadline extension envisaged in 12.1, the buyer can cancel the contract by written notification in relation to all still undelivered goods and all delivered goods which he cannot make appropriate use of on their own without the undelivered goods. In this case the buyer has a right to compensation for the undelivered goods or for payments made for unusable goods (without the charging of interest and with allowance for the following deductions) and, in so far as the default in delivery is attributable to the seller's gross negligence, to compensation for the justified expenditure which is incurred up to cancellation of the contract and for its implementation and which cannot be used for a different purpose. In the event of withdrawal from the contract, the buyer must surrender possession to the seller of the goods received, with reimbursement of the loss in value incurred in the meantime (with the waiver of any pleas of compensation and retention rights) and reimburse the seller for all outlay, and particularly for the cost of shipment, customs duties, charges, travel expenses, design and administrative expenses etc. Included in this outlay is that expenditure already or yet to be necessarily incurred by the seller for the ordering of parts of the delivery from third parties (subcontractors). The loss in value amounts to 3% of the purchase price per month, a proportion of which is apportioned to the goods already supplied. In the case of items made to order, the seller can make the produced parts available to the buyer and charge the corresponding share of the sales price for these.

12.3 The buyer is not entitled to demand damages in the event of failure to punctually complete a fixed-date transaction.

12.4 Any claims of the buyer against the seller owing to default other than those listed above are excluded.

12.5 If the buyer does not accept the goods supplied in accordance with the contract at the contractually agreed place or at the contractually agreed time and if the delay is not attributable to an action or omission on the seller's part, the seller can either demand performance or withdraw from the contract after setting a deadline for acceptance. If the goods have been separated, the seller can store the goods at the buyer's expense and risk. The seller is also entitled as a result of a delay to demand reimbursement for all the justified expenditure incurred in the implementation of the contract and not covered by the payments received.

12.6 The seller is not liable to pay damages – except in cases of intent – for any late delivery (performance) or any delivery not conforming to contract.

12.7 If the buyer under the terms of these provisions withdraws from the contract, he has a right to repayment of the sums already paid, but without the charging of interest.

Disclaiming any pleas of compensation and retention rights, the buyer for his part must surrender possession of the goods received from the seller under this contract. The restoration of the original state by both parties is effected concurrently.

12.8 If a part delivery has already been put to use by the buyer and this part delivery is still usable by the buyer, withdrawal from the contract in respect of this part delivery is excluded.

## 13. WARRANTY

13.1 For the deliveries made by the seller, the seller undertakes to repair or replace as quickly as possible any parts which prove to be damaged or unserviceable as a result of substandard materials or faulty design or production. The seller reserves the exclusive right to decide how and where the defects are to be rectified. The replaced parts become the property of the seller.

13.2 Other warranty claims of the buyer – even for characteristics of the goods promised explicitly or implied ("dicta et promissa") – are excluded.

13.3 Unless otherwise agreed, the seller only bears the costs arising from the repair or replacement of the faulty parts in the seller's workshops. If the faulty parts cannot be repaired or replaced in the seller's workshops for reasons for which the seller is not responsible, e.g. parts from items made to order differing from the catalogued scope of supply, all the resultant extra costs are charged to the buyer.

13.4 The buyer is obliged to inform the seller immediately in writing of the defects which have occurred or else forfeits all warranty claims.

13.5 The warranty period is 6 months. It starts with the departure of the goods ex works or, if commissioning is supervised by the seller, at the end of commissioning. If dispatch or commissioning is delayed and if the seller is not to blame for this delay, the warranty period ends 6 months at the latest after the communication of readiness for dispatch.

13.6 In the event of the rectification of defects or admission, the warranty period defined in 13.5 is extended neither for the main delivery nor for new parts, even if new parts are employed in the main delivery.

13.7 The buyer is obliged in the event of defects to return the defective parts to the seller or a third party appointed by the seller on request for repair or replacement. In this case the buyer bears the cost and risk of shipment to the seller and of shipment of the repaired or replaced parts back to the buyer.

13.8 Excluded from the warranty is damage resulting from normal wear and tear, inadequate maintenance, disregard of operating instructions, excessive stressing, unsuitable operating media, chemical or electrolytic influences, and construction and assembly work not carried out by the seller and any other reasons for which the seller is not to blame.

13.9 The warranty expires if the seller or a third party undertakes modifications or repairs to the delivered goods without the seller's written consent; the warranty also expires if the buyer does not take appropriate immediate action to contain the damage and the seller can rectify these defects.

13.10 If an order is carried out to the buyer's design specifications, drawings or models, the seller's liability does not extend to the correctness of design and only to the conformity of the design to the buyer's specifications. The buyer must indemnify the seller for any infringement of third-party industrial property rights and protect him from legal action.

13.11 The seller assumes no liability whatsoever when undertaking repair orders or conversions or modifications to old or third-party products. Old products are those for which the warranty period specified in point 13.5 has already expired or which were already in use on the seller's or third-party premises with the buyer's knowledge.

13.12 The seller is only liable for those parts which he has obtained from subcontractors only to the extent of the warranty claims held by the seller himself against the subcontractor.

13.13 If parts of a delivery or the delivery as a whole are taken back, a sum amounting to 3% per month of the total or part purchase price for the loss in value is to be deducted from the sum charged to the buyer for the duration of use of the whole or part delivery taken back.

13.14 From the start of the warranty the seller accepts no further liability than that specified in this article, not even for defects originating before the passage of risk.

## 14. DAMAGES

14.1 The seller is fundamentally only liable for damages if his gross negligence can be proven. Damages for loss of profit are excluded in all cases. If loss is suffered by the item or production line supplied by the seller, the seller is only obliged to replace the latter if it cannot be repaired under the warranty.

14.2 The object sold only offers that level of safety that can be expected as a result of approval regulations, operating instructions and seller's regulations concerning the treatment of the object sold – particularly in respect of any prescribed checks – and other advice given.

14.3 All claims for damages as a result of defects in deliveries and/or services – unless the defect is explicitly acknowledged by the principal – must be asserted in court within the warranty period stipulated in the contract, or else they expire.

## 15. PLACE OF PERFORMANCE AND JURISDICTION

15.1 Place of contract and performance is Attnang-Puchheim, Austria, even if the delivery of the goods takes place as per agreement in a different place.

15.2 The buyer may not transfer his rights to third parties without the seller's consent.

15.3 The contract remains binding even if individual points of its terms are void.

15.4 The contract is subject to Austrian law upon exclusion of the UN Sales Convention.

15.5 The court with material jurisdiction for the registered office of ISH GmbH has local jurisdiction for any direct or indirect disputes arising from this contract. However, the seller also has right of recourse to another court having jurisdiction for the buyer.

## 16. GENERAL

16.1 Changes to and deviations from the seller's General Terms and Conditions of Delivery are only valid if explicitly agreed in writing. Any other terms and conditions of the buyer conflicting with the seller's terms and conditions of delivery only apply if and to the extent that they are explicitly acknowledged in writing by the seller.

16.2 Promises and agreements by the seller's staff are only legally binding if they are confirmed by the seller's management.

16.3 The buyer's claims for damages are excluded in all cases except intent to cause damage by the seller. Under no circumstances is the seller liable for consequential loss of any kind, and particularly for loss of profit.

16.4 The seller is entitled to store, transmit, revise and erase the buyer's personal data in the course of normal business.

16.5 The parties agree to absolute confidentiality towards third parties concerning the knowledge obtained from these business relations.