

# GARANT TIERNÄHRUNG

## General Terms and Conditions

GENERAL TERMS OF SALE AND DELIVERY | Version May 2018

### CONTENT

1. General terms: .....	1
2. Order acceptance: .....	2
3. Right of withdrawal for consumers: .....	2
4. Fulfilment, transfer of risk, reclamation: .....	3
5. Offers and cost estimates: .....	4
6. Prices: .....	4
7. Retention of title: .....	4
8. Payment: .....	5
9. Warranty: .....	6
10. Withdrawal from the contract: .....	6
11. Liability: .....	7
12. Address: .....	7
13. Data processing: .....	8
14. Place of jurisdiction.....	8

### 1. General terms:

- 1.1 We deliver our goods to our customers exclusively on the basis of the following conditions, unless otherwise stated in special terms and conditions. Alternative agreements must be made in writing (does not apply to consumer transactions). Our employees are not entitled to make alternative oral promises or agreements even to consumers without a written power of attorney.
- 1.2 The eventual invalidity of individual provisions of these general terms of sale and delivery does not affect the remaining provisions. It is agreed with entrepreneurs that an invalid provision shall be replaced by one which most closely reflects the invalid clause.
- 1.3 These conditions also apply to services or other deliveries carried out by us, unless otherwise stated in special terms and conditions.
- 1.4 We do not accept conflicting general terms and conditions of customers.

# GARANT TIERNÄHRUNG

## 2. Order acceptance:

- 2.1 If we do not decline an oral order within three working days after receipt, the order is considered accepted. The rejection of a written order must be made in writing within 14 days after its reception, otherwise it shall be considered accepted on the date it was placed.
- 2.2 If the order was sent by mail, a rejection is made in due time if it was posted within that time limit.

## 3. Right of withdrawal for consumers:

- 3.1 If the consumer has not transmitted his contract declaration either in the offices permanently used for our commercial purposes or at a stand we use for that purpose at a trade fair or market, he shall be entitled to withdraw from his contract request or contract within one week; the period begins as soon as a document has been handed over to the consumer which contains at least our name and address as well as instructions on the right to revoke the contract, but no earlier than the conclusion of the contract; for purchase agreements, the period shall begin at the earliest on the day the consumer has come into possession of the goods.

If such a document is not handed over, the withdrawal period shall be extended by twelve months. If we later hand over this document within 12 months from the beginning of the period, then the withdrawal period shall end 14 days following the date at which the consumer has received the document.

- 3.2 The consumer has no right of withdrawal if he has himself initiated the commercial relationship with us or if no discussion has taken place between the parties prior to the conclusion of the contract.
- 3.3 The declaration of withdrawal is not restricted to a specific form. The withdrawal period is met if the declaration of withdrawal is sent within the period.
- 3.4 The consumer can also withdraw from his contract request or from the contract if circumstances relevant for his agreement, such as the consent of third parties, prospect of tax benefits or public funding or a credit which we have presented as likely to happen during the contract negotiations have not occurred or occurred only to a limited extent at no fault of his.

Withdrawal can be declared within one week as soon as the consumer realises that said circumstances have not occurred or occurred only to a limited extent and he has received a written instruction regarding this right of withdrawal. The right of withdrawal shall expire, at the latest, one month after the complete fulfilment of the contract by both contractual parties. Point 3.3 applies.

The consumer is not entitled to this right of withdrawal if

- a he already knew or should have known during contract negotiations that the relevant circumstances will not occur or will occur only to a limited extent,

# GARANT TIERNÄHRUNG

- b the exclusion of the right of withdrawal has been negotiated separately or
- c we have already declared our willingness to undertake reasonable adjustments of the contract.

3.5 The consumer shall bear the direct costs for returning the goods.

## 4. Fulfilment, transfer of risk, reclamation:

- 4.1 The place of fulfilment and payment is our headquarters, even if the handover takes place at another location as agreed; in this case, the customer authorises us to send the goods by rail, mail, road transport or another suitable mode of transport and shall bear the costs of delivery (transport, temporary storage, as well as loading and unloading).
- 4.2 Risks and rewards are transferred to the customer at the latest upon departure of the delivery from our warehouse (for ex works deliveries), regardless of the pricing agreed for the delivery (such as "carriage paid", etc.); possible claims for damages remain unaffected.
- 4.3 Such circumstances also justify an extension of the delivery period if they occur with a producer or supplier. In such cases, consumers are entitled to assert their right of withdrawal in accordance with point 10.1.
- 4.4 In the event of a delayed departure from our plant or warehouse due to circumstances attributable to the customer, then the risk shall be transferred to the customer on the day the delivery becomes ready for dispatch. If delivery as needed has been agreed upon, the goods are considered called three months after placing the order at the latest. We shall inform the customer of the expiry of the deadline and the consequences of his conduct in due time. Should this not be possible due to the lack of a corresponding disposition of the customer, then the consequences of default of acceptance shall begin on this date.

If, contrary to the terms of the contract, the customer does not collect goods, we are entitled to charge the customer a contractual penalty amounting to 1.5% of the net invoice amount per commenced week from the date of default of acceptance (does not apply to consumer transactions). This does not exclude further claims for damages.

- 4.5 We are entitled to carry out and settle partial or advance deliveries.
- 4.6 Complaints due to a delivery allegedly not carried out or not carried out in full must be made in writing immediately and within seven days from the receipt of the delivery note at the latest. If the customer has not received a delivery note, then the period shall start upon receipt of the invoice. A violation of this obligation shall not restrict the right of a customer to warranty but makes him liable for damages.

# GARANT TIERNÄHRUNG

## 5. Offers and cost estimates:

- 5.1 Our offers are non-binding and do not imply any obligation to accept an order.
- 5.2 Cost estimates are only provided in writing. Only written paid cost estimates are binding. Unless otherwise stipulated in the cost estimate, we are bound to the pricing laid down in the cost estimate for one month. Point 5.2 does not apply to consumer transactions.
- 5.3 Order changes and/or additional orders are invoiced separately.

## 6. Prices:

- 6.1 If cost increases occur between the time of conclusion of the contract and delivery due to circumstances beyond our control, such as an increase in our acquisition prices, an increase in producer or retail prices, an increase in wage costs stipulated by law, a regulation or a collective agreement, or an increase or new introduction of taxes or due to indexation clauses, then we shall increase our prices accordingly (does not apply to consumer transactions).
- 6.2 Prices apply ex warehouse. Packaging, transport packaging in particular, pallets, shipment etc. is charged additionally.
- 6.3 If the customer choose to have additionally charged packaging, transport packaging in particular, pallets, etc. taken back for a fee, then the customer shall keep these objects properly until they are returned. Should these objects no longer be usable, then we shall not be obligated to take them back for a fee.
- 6.4 Entrepreneurs cannot invoke Sec. 934 ABGB (reduction by half) against us.

## 7. Retention of title:

- 7.1 We shall retain the right of ownership to the purchase object until the purchase price has been paid in full. In case of seizure or other utilisation of the goods by third parties, the customer shall be obliged to indicate the retention of title and to advise us immediately thereof.
- 7.2 Resale of the goods delivered under retention of title requires our prior written consent. In such case the retention of title shall extend to the proceeds or purchase price from this transaction which is thereby relinquished to us. In case of such a resale, the customer undertakes to keep the proceedings separate. We are entitled to inform the third-party debtor of the relinquishment.
- 7.3 If the goods are processed, connected or combined with other items, we shall own the resulting share in the new items in the proportion of the value of our goods to the value of the new items at the time they are processed or combined.

# GARANT TIERNÄHRUNG

## 8. Payment:

- 8.1 In the absence of other agreements, payments are payable promptly net upon receipt of the invoice.
- 8.2 In the event of default of payment, we are entitled, without prejudice to our other rights, to take back the goods, devices and other items under retention of title – without it constituting a withdrawal from the contract.
- 8.3 If no contractual interests have been agreed, then the interest rate for default payment shall be of 9% per year with quarterly settlement.
- Should an entrepreneur default on his payment, we are entitled to charge interest and compound interest amounting to 13% per year with quarterly settlement. If changes occur on the money or capital market, which cause a general change in interest rates, then we are entitled to adjust the agreed interest rate accordingly.
- 8.4 The defaulting customer is obligated to pay back all judicial and extrajudicial culpably caused by him for the purpose of prosecution such as reminder fees, involving a collection agency as well as lawyer costs – insofar as these are in a reasonable proportion to the claims.
- 8.5 All offsetting of costs with alleged counterclaims from the customer is excluded unless the customer is a consumer and the other contractual party has become insolvent or the counterclaim stands in legal connection with the liabilities of the customer, was judicially ascertained or accepted by us. Retention of the purchase price or work wages in the event of a justified improvement claim is only acceptable to the extent necessary for the improvement, unless the customer is a consumer.
- 8.6 Payments received by us are used first to cover compound interest, interest and ancillary costs, and then the outstanding capital, whereby unsecured debts are covered before secured debts, beginning with the oldest amount.
- 8.7 We shall in principle provide deliveries and services on the basis of a current account relationship to customers with whom we have a durable business relationship, and mutual claims shall thereby be charged on a current-account basis, taking into consideration point 8.6. The balance of account is disclosed in a separate notification.
- 8.8 Unless otherwise agreed in an actual individual case, the current-account borrowing rate of 13% per year with quarterly accounting applies. If changes occur on the money or capital market which cause a general change in interest rates, then we are entitled to adjust the agreed interest rate accordingly (2nd sentence does not apply to consumer transactions).
- 8.9 It is expressly noted that the balance can be acknowledged in writing, orally or tacitly if the customer has not raised an objection against the balance disclosed by us within a reasonable period, at the latest however within 4 weeks. This is indicated in the balance notification.

# GARANT TIERNÄHRUNG

- 8.10 We explicitly reserve the right to decide not to add individual claims to the existing current account relationship.

## 9. Warranty:

Statutory provisions apply to consumer transactions, and the following applies to all other cases:

- 9.1 We are entitled to exchange faulty goods against similar faultless goods within a reasonable period or to correct the default within a reasonable period. This negates any claims to cancellation of the contract or to a price reduction.
- 9.2 The warranty claim presupposes that the customer has notified us of the defect within a reasonable period, at the latest however within 14 days from the date of delivery, in writing and with a detailed description of the defect. Point 4.5 remains unaffected.

The period of limitation for warranty claims is of 6 months for movable objects and 2 years for immovable objects from the date of delivery.

- 9.3 The customer must prove that the object was faulty at the time of delivery.
- 9.4 The warranty does not cover defects resulting from placements and mountings not performed by us, inadequate installation, overuse of the components beyond the indicated capacity, negligent or incorrect handling and use of inappropriate operating material; this also applies to defects resulting from material provided by the customer. We are in particular not liable for damage due to acts of third parties or chemical influences. The warranty does not cover natural wear and tear.
- 9.5 We are entitled to charge the transport and road costs incurred in reaching the agreed location for correcting the defects.
- 9.6 Public statements made by the manufacturer, the importer or other third parties concerning special characteristics of the goods, in particular in advertisement, are not part of the contract – unless specifically stated.

## 10. Withdrawal from the contract:

- 10.1 If we are unable to keep the delivery date due to malicious or negligent conduct, then our customer shall be entitled to withdraw from the contract after the fruitless expiry of a reasonable grace period set in writing. An entrepreneur is not entitled to exercise his right of withdrawal from the contract in the event of default delivery due to force majeure and slight negligence with regard to goods that were created or procured specially according to the specifications of the customer; in such a case, a consumer is entitled to withdraw from the contract after the fruitless expiry of a grace period set in writing of at least four weeks. The customer is only entitled to claim damages for non-performance or delay in the event of a delay due to our malicious or gross negligent conduct.

# GARANT TIERNÄHRUNG

- 10.2 Otherwise, if the customer defaults on his payment, we are entitled, without prejudice to our other rights, to withdraw from all or part of the contract after granting a reasonable grace period; in case of our withdrawal, we are entitled to a compensation fee amounting to 10% of the price of the goods affected by the withdrawal. The assertion of further damages shall remain reserved.
- 10.3 If a contractual partner suspends his payments, opens insolvency proceedings against his assets or if a request for such proceedings is dismissed for lack of assets to cover the costs, or if his financial situation worsens so that the collection of the claims appears to be at risk, the other contractual party shall be entitled to withdraw from the contract without setting a grace period if deadline and delivery problems or insufficient coverage is to be expected.
- 10.4 We are in principle not obligated to take back delivered goods. Should we, in individual cases, agree to take back goods, we shall charge the customer a handling fee amounting to 10% of the invoiced amount in addition to the compensation for any damage to the reclaimed goods which is calculated on the basis of the original value – not taking into account any decrease in fair value. If the return of goods results in the purchaser not meeting the required quantity of goods purchased to qualify for the agreed rebate in accordance with the respective rebate scale, the purchaser will also be charged for the quantity discount originally offered.

## **11. Liability:**

- 11.1 For consumer transactions, our liability is excluded for damage due to slight negligence with the exception of personal damage. In all other cases, our liability is limited to damage caused to the delivery itself insofar as there is no proof of malicious intent or gross negligence on our part.
- 11.2 The customer shall inform us immediately of any damage known to him caused by an object delivered by us, in particular if he is prompted by third parties to compensate for damage in the context of product liability or to disclose his suppliers, otherwise becomes aware of a product defect in our goods or has been himself damaged.
- 11.3 The assertion of liability, request for information or recourse shall be addressed to our management in writing along with detailed information on the damage, the event giving rise to liability including proof that the delivery and service were provided by us.
- 11.4 Unless otherwise agreed, loading is not part of our contractual obligations. The customer is solely responsible for load securing and cargo safety.

## **12. Address:**

The customer shall notify us immediately and expressly of any change of address. Otherwise, written communications sent by usual mail delivery to the last known address are considered received.

## **13. Data processing:**

The customer undertakes to process personal data sent by us according to the currently valid data protection regulations, to exclusively process them for the purpose of fulfilling the contract and to erase these data immediately once there is no longer any justifiable reasons for processing the data (does not apply to consumer transactions).

Furthermore, by concluding the contract, the customer agrees to receive information and advertising from us in electronic form and by telephone on the basis of the Telecommunications Act. The customer can revoke this consent at any time. This shall not affect the lawful processing of his personal data pursuant to the data protection provisions. This revocation shall only lead to the termination of electronic and telephonic advertising/notifications.

At the request of the customer, we shall provide him with a copy of this privacy statement free of charge.

## **14. Place of jurisdiction**

The exclusive place of jurisdiction for all disputes resulting directly or indirectly from a transaction is the court which has competence for our registered office (does not apply to consumer transactions).

Austrian law shall apply exclusively under the explicit exclusion of the UN Convention on Contracts for the International Sales of Goods as well rules on as the international conflict of laws.