

# GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY – HAI AUSTRIA (8/2018)

## 1. CONCLUSION OF THE CONTRACT

All of our deliveries and services shall be performed in accordance with the following terms and conditions, which shall apply mutatis mutandis to contracts of sale, works contracts and work delivery contracts. Any terms and conditions of purchase of the buyer are hereby expressly rejected and shall only oblige us if we acknowledge them individually in writing. Our offers are always subject to change. Orders or amendments to orders of any kind, especially those that our employees receive or take verbally or by telephone, shall be binding, and shall only oblige us if the order is confirmed in writing. The buyer shall not, however, have any recourse in the event that we do deliver without written confirmation. These conditions and the general rules of ordering and acceptance of the aluminium industry are also made available on the Internet at <http://www.hai-aluminium.com/en/downloads>, so that they may be deemed to have been noted in a reasonable manner.

The following shall form the basis for the contract:

- a. a written general agreement;
- b. our offer;
- c. our order confirmation;
- d. these terms and conditions, supplemented in the case of a general agreement, by the general (supplemental) rules of ordering and acceptance of the aluminium industry (on recommendation of the Professional Association for the Non-Ferrous Metal Processing Industry, i.e., the Fachverbandes der Nicht-Eisen-Metallverarbeitenden Industrie); The above-mentioned documents on which the contract is based shall apply in such a way that those documents mentioned first in the list above shall have priority over those mentioned later. Anything else that is to form a part of the contract needs to be expressly confirmed by us in writing.

## 2. PRICES

Our prices are current prices. For orders without explicit agreement on prices, the prices on the day of delivery shall apply. All prices are ex works, exclusive of statutory VAT, packaging, freight, customs, insurance, etc. We shall be entitled to make reasonable price increases if, after the order has been placed, any changes occur to the prices of raw or auxiliary materials, wages, salaries, freight, taxes, or any foreign public dues. The buyer shall not acquire ownership of the tools. By participating in the tooling costs or acquisition costs of the tools, the buyer shall not acquire ownership or any other rights in such tools.

The tools shall remain our property in any case. Any discounts, rebates, and terms of payment with respect to the tools need to be agreed upon separately in writing. The tools will be disposed of by us three years after our last shipment has been made.

## 3. DELIVERY

Our deliveries shall be subject to timely and proper delivery by our own suppliers. Delivery or performance deadlines shall not be binding upon us unless expressly agreed to in writing, but will be adhered to whenever possible. In the absence of any other written agreement to the contrary, the delivery deadline shall begin once the order confirmation has been sent by us, but not before all technical details and all legal and business conditions, in particular the dispatch of documents, information, approvals, clearances, etc., are available or a down-payment has been made. The required export documents are always to be provided by the buyer. Our delivery and service shall be deemed to have been fulfilled once the notification of readiness for shipping has been issued. The buyer shall not be entitled to reject partial deliveries. Deviations in weight, quantity, running meters, etc. up to +/- 10% in our delivery shall be permitted in terms of both the total amount and the stipulated partial deliveries, unless explicitly agreed otherwise in writing. The units - generally weights, in special cases, also numbers, running meters, etc. - determined by us shall be used to calculate the invoiced amount.

In the event of industrial disputes, strikes and lock-outs, and any circumstances that are independent of the parties' intention, such as fire, mobilisation, confiscation, embargo, prohibition of the transfer of currency, insurgency, lack of any means of transport, general shortage of supplies, limitation of energy consumption, delays in the delivery of essential materials, traffic disruptions, failure of machines and tools, etc., the delivery or performance deadline shall be extended. This shall also apply if the circumstances occur with suppliers. The delivery or performance deadline shall be extended by the duration of such measures and obstacles. We shall also not be liable for the aforementioned circumstances if they occur during an existing default. For any subsequent amendments and additions to the contract, the performance or delivery period is to be renegotiated. If a delivery date stipulated in writing is exceeded by more than 4 weeks due to our fault, the buyer may, under threat of rescission, demand performance by us or set a reasonable deadline of at least 21 days for us to perform our entire delivery again. In particular in regard to custom designs, the extension of the subsequent deadline should accordingly take into account that we cannot use parts that have already

been manufactured anywhere else. If the subsequent deadline is not met and we are at fault, the buyer may rescind the contract in writing by registered letter with respect to all parts that have not yet been delivered or are ready to be shipped or those services that have not yet been performed. We shall be liable for damages only in the case of intent and gross negligence. We shall be entitled to the stipulated remuneration for the partial performance not covered by the rescission.

#### 4. ACCEPTANCE BY THE CUSTOMER

Our delivery and performance shall be deemed to have been fulfilled once the notification of readiness for shipping or collection (notification of readiness) has been despatched. The buyer is to accept the contractual item immediately after notification of readiness for that contractual item. The risk shall pass to the buyer at this time. The contractual item will only be insured by us if correspondingly and expressly stipulated. If the buyer does not accept our contractual performance at the contractually stipulated place and at the contractually stipulated time, we may either demand performance and store the goods with the next forwarding agent at the buyer's expense or rescind the contract and demand compensation of least 25% of the stipulated net remuneration for any costs incurred. In both cases, we shall be entitled to full compensation. A formal acceptance (taking delivery) shall only occur if the corresponding material standards provide for such or if explicitly stipulated upon placing the order. The cost of a formal acceptance is to be borne by the buyer. The acceptance is to take place within a reasonable deadline, at the latest however within two weeks of receipt of the notification of readiness; otherwise, the acceptance shall be deemed to have occurred and the goods deemed to have been delivered in compliance with the contract, and the risk shall pass to the buyer. In this case, we shall be entitled to ship the goods or store them at the buyer's expense and risk.

#### 5. PACKAGING

If the seller is of the opinion that packaging is necessary, it shall be carried out in a customary manner, and at the buyer's expense.

#### 6. SHIPPING, PASSING OF RISK AND INSURANCE

The freight costs, the costs of any insurance for the consignment at the buyer's request, or any duties, etc. shall be borne by the buyer. Any special loading and shipping instructions issued in writing by the buyer shall be carried out at the buyer's risk and expense. The risk shall pass to the buyer upon notification of readiness for shipping.

#### 7. Tolerances, weight, other quality features

Unless expressly agreed otherwise in writing, the relevant

standards, such as EN 755, EN 12020 or ISO 2768 shall apply to the agreed specifications. Commercially, customary deviations in size or weight or other quality features are permitted, and shall not give grounds for complaint. The costs of any investigations, analyses, etc. are to be borne by the buyer in any case.

#### 8. WARRANTY

The warranty period shall begin on the day that the notice of readiness or the stipulated formal acceptance has been issued, or upon the price risk passing to the buyer, and shall end after six months. The contractual condition of the goods shall be based on the time that they leave the factory. Only those properties that we have expressly assured in writing shall be deemed to have been assured. The buyer shall always bear the burden of proving that any defects already existed at the time of delivery. Once a stipulated formal acceptance of goods by the buyer has been carried out, the assertion of any defects which are or could have been ascertainable with the stipulated type of acceptance shall be excluded. The buyer shall be obliged to immediately check our delivery upon receipt of it, at the buyer's own expense and in a diligent manner. The buyer shall be required to report any defects to us in writing immediately upon receipt of the delivery. Any defects which cannot be detected at the time of such inspections are to be reported immediately after they occur, and any treatment or processing is to be ceased immediately. All claims, especially in regard to warranty or damages, and any that may arise as a result of an error concerning the lack of defects in the item, shall lapse and may no longer be asserted. In regard to the parts of our product that we have obtained from our suppliers, we shall only be liable within the context of our own warranty claims against the supplier. Any claims asserted against us in accordance with Section 933b of the Austrian Civil Code (ABGB) shall be expressly excluded. Our warranty obligation shall only apply to any defects that occur in compliance with the conditions provided and under normal use. In particular, they shall not apply to any defects arising from normal wear and tear or any slight deviations in the surface, measurement, colour, form, structure or composition. In the event of the buyer not giving us an opportunity to inspect the allegedly defective goods or if, particularly at our request, the buyer does not make available the goods or samples without delay, all warranty claims shall lapse. If a defect is acknowledged by us, only we shall have the right to choose whether to take back the goods at the price charged, remedy the defect or make a replacement delivery for the return of the goods. The buyer expressly waives the right to annul the contract. The remedying of defects shall not extend, suspend, or interrupt the warranty period. Warranty claims shall expire no later than one month after we have rejected the complaint in writing.

## 9. FORCE MAJEURE

Any occurrences of force majeure or any other circumstances beyond our control (regardless of whether they occur to us or our suppliers, etc.) shall, under exclusion of any claim for damages, entitle us to extend the delivery deadline by the duration of the impediment or rescind the contract in full or in part.

## 10. LIABILITY

We shall not be liable for any indirect damages, consequential damages (especially resulting from production downtimes), loss of profits or pure economic loss. We shall also not be liable in cases of slight negligence, unless personal injury forms the subject matter of the claims asserted against us. Our total liability shall be limited to benefits from our business liability insurance and, in any case, also to the contract value of the respective delivery that caused the damage in cases of a breach of contractual obligations. However, this exclusion shall not include mandatory claims under the Austrian Product Liability Act (Produkthaftungsgesetz). In the event of deliveries being made in accordance with any drawings or other specifications of the buyer, our liability shall only extend to performance in accordance with the conditions. If this should violate the rights of third parties, in particular violate proprietary rights, the buyer shall indemnify us in full and hold us harmless in this respect. All claims for damages must—inasmuch as is not otherwise provided for in mandatory law—be asserted before the court within one [word missing], or will otherwise lapse. In the event that we have contractually assumed an obligation to pay a contractual penalty, this shall in any case be limited to 3% of the order value.

## 11. PAYMENT

The invoice amount shall be payable in accordance with the stipulated terms of payment. If no payment deadlines or objectives have been stipulated, invoices shall be due for payment immediately and without deduction. Transfer fees are to be borne by the buyer. The payment must be made in the stipulated currency, by transfer to one of our bank accounts. The application of any discounts stipulated assumes that there are no outstanding payment obligations. This shall also apply in relation to other invoices. Offsetting by the buyer with a counterclaim is expressly excluded. Cheques and bills of exchange shall require a separate agreement, and shall only be accepted on account for the buyer. Any interest and fees shall be borne by the buyer. Payment by bill of exchange shall not qualify for a discount. The buyer shall not be entitled to withhold payment for any reason whatsoever. In the event of default, we shall be entitled to charge interest at 8% above the prevailing base rate of the European Central Bank, at least however 12% per annum. In cases of default in payment, all reminder and collection expenses are to be reimbursed by the buyer. Payments shall always be applied to the oldest outstanding invoice or

claim. Any expenses incurred in connection with transfers or on the basis of documentary collections and documentary credits for our deliveries that arise in the country of the buyer or in the country of destination shall be borne by the buyer.

## 12. Obligation to provide advance payments and guarantees, rescission

If these payment terms are not observed or any circumstances become known to us after conclusion of the contract that we believe diminish the creditworthiness of the buyer, we shall, without regard to any conflicting earlier agreements, be authorised to perform outstanding deliveries and services only in return for advance payment or a security deposit or to rescind the contract and claim damages for non-performance. In the event of default of payment or becoming aware of any payment difficulties, we shall be entitled to declare all outstanding debts to be immediately due for payment, while stopping any additional deliveries (Terminverlust), rescind all contracts not yet fulfilled and retain any advance payments received until the compensation has been determined, or apply them to our claims.

## 13. RETENTION OF TITLE

The goods delivered by us shall remain our property until full payment (retained goods). The buyer shall be obliged to store our retained goods for us securely until our claims have been fulfilled. The buyer shall be obliged to take all reasonable measures, including labelling, separate storage, etc., to prevent a seizure or any other interference by third parties. We shall be entitled to inspect the buyer's warehouse at any time. Our goods, which are subject to retention of title, are to be insured by the contractual partner against all types of damage or destruction. The contractual partner shall be obliged to notify us immediately of any seizure or any other interference with our ownership in the retained goods by a third party. We shall be entitled to simultaneously demand the performance of the contract, and that the goods be handed over due to the retention of title. For the retained property taken back, we shall credit the contractual party with the value thereof less the reduction in value that has occurred in the meantime or any of the proceeds from the free liquidation, to which we are entitled, and less all of the costs that we incur or may incur in asserting the retention of title and liquidating the retained goods. In the event of the goods being processed, mixed or combined by the buyer with other items that do not belong to us, the buyer thereby assigns to us the right of ownership in the new inventory or item to the extent of the invoice value of the goods, subject to the retention of title. The buyer may only sell the retained goods in the ordinary course of business, on the buyer's normal terms and conditions of business, and if the buyer is not in default, provided that the buyer stipulates the retention of title to its customer. The buyer's claims resulting from the resale of the retained goods are hereby assigned to us to secure our claims. The buyer shall be obliged to notify us without delay of any circumstances that prevent an assignment (e.g. complete assignment to a bank). Otherwise, the buyer shall be

obliged to inform its customers of the assignment of the claim, and make an entry in the buyer's accounts (open item list). If the retained goods are sold by the buyer together with other goods not sold by us, the assignment of claims from the sale shall only apply to the invoice value of the retained goods sold. If the retention of title or assignment pursuant to property law does not apply where the goods are located, the security that corresponding to the retention of title or the assignment shall be deemed to have been stipulated in this area. If the participation of the buyer is necessary in this respect, the buyer shall take all measures necessary to establish and maintain such rights.

## 14. DATA PROTECTION

We and the buyer undertake to fulfil the requirements of the respectively applicable data protection provisions and shall also impose this obligation to the same extent to any individuals otherwise employed by us to fulfil the commercial relationship (assistants, commissioned data processors, etc.). Furthermore, we and the buyer shall collect, process and use any personal data received solely in accordance with the respectively applicable data protection provisions. This obligation continues even after the termination of activities within the framework of this contract. We and the buyer shall also ensure our employees are given training and are obligated to comply with the various applicable data protection provisions. Following prior notification to do so, we and the buyer shall be entitled to verify compliance with the data protection provisions at any time. We and the buyer give the explicit consent for all data collected as part of the commercial relationship (name, contact details, account details, etc.) to be subject to computerised processing. We and the buyer give consent in particular for this

data to be transferred and processed by commissioned data processors if they have been obligated to comply with data protection provisions by way of a suitable written agreement.

## 15. APPLICABLE LAW AND JURISDICTION

All contracts shall be subject to Austrian law, excluding the referral provisions and international conflict of laws rules (Rome Convention, Swiss Private International Law Act). It is expressly stated that the UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply to contractual relationships. The place of performance for all services performed under this contract shall be Ranshofen, Austria. Inasmuch as the buyer is domiciled in a country to which the Brussels I Regulation (Regulation EC No 44/2001 of the Council from 22 December 2000), the Brussels Convention (EuGVÜ), or the Lugano Convention (LGVÜ) applies, the exclusive international jurisdiction of the respective court having jurisdiction over the subject matter and local jurisdiction for Ranshofen, Austria shall be deemed to apply to all disputes arising from this contractual relationship; otherwise, in cases of dispute, an arbitral tribunal, which is composed in accordance with the Conciliation and Arbitration Rules (Vergleichs- und Schiedsordnung) of the Chamber of Commerce (IHK), shall make the final decision. We may also call upon another court having jurisdiction over the buyer.

## 16. VALIDITY

In the event of any individual provisions of these terms and conditions being invalid in whole or in part, all the remaining provisions shall remain valid.