

# General Terms and Conditions for Delivery

Version: June 2017

## 1. Preamble

- 1.1. These General Terms and Conditions for Delivery apply unless the Parties have expressly agreed otherwise in writing. The version that is valid at the time when the contract is concluded applies.
- 1.2. The following provisions on the delivery of goods apply mutatis mutandis to services as well.
- 1.3. The current version of the ASMAG Terms and Conditions for Installation (as amended) also applies in addition.

## 2. Definitions

- 2.1. Seller (=ASMAG); Buyer (=customer); Parties (=Seller and Buyer); Place of Fulfillment (=registered main office of ASMAG); Transit (=everything needed to prepare for unloading at the actual place or point of destination); Place of Manufacture (=Place of Fulfillment); Provision (=the day when the subject matter of the Contract is made available for collection)

## 3. Conclusion of contract

- 3.1. The contract is deemed to have been concluded when the Seller has sent a written order confirmation after having receiving the order and the Buyer does not object to it in writing within 10 days.
- 3.2. Amendments and supplements to the contract require written confirmation by the Seller to be valid. The Buyer's terms and conditions for purchasing are only binding on the Seller if the Seller expressly recognizes such terms and conditions in writing.
- 3.3. If import and/or export licenses or foreign exchange authorizations or similar authorizations are required to perform the contract, the Party responsible for obtaining them must make all reasonable efforts to obtain the required licenses or authorizations in a timely manner.

## 4. Plans and documents

- 4.1. The information provided by the Seller in catalogues, prospectuses, circulars, adverts, diagrams, price lists and similar documents on weight, dimensions, capacity, price, performance and similar issues are only binding if express reference is made to them in the offer and/or the order confirmation.
- 4.2. Any plans, sketches, cost estimates and other technical documents that may also form part of the offer remain the intellectual property of the Seller at all times; this also applies to models, catalogues, diagrams and similar items. Any use, duplication, reproduction, distribution and provision to third parties, publication and presentation is only permitted with the express consent of the Seller.

## 5. Packaging

In the absence of an agreement to the contrary, packaging is done in the way customary in the trade for scheduled lorry transports in order to prevent the goods being damaged during overland transit under normal transport conditions; the Buyer bears the costs of the packaging, which is only returned if there is a separate agreement.

## 6. Transfer of risk and Place of Fulfillment

- 6.1. Unless agreed otherwise, the goods are considered as being sold "FCA Place of Fulfillment pursuant to INCOTERMS 2010". The risk transfers to the Buyer at the end of the day when the Provision of the goods occurred.
- 6.2. Otherwise, INCOTERMS 2010 apply.

## 7. Deadline for delivery, delivery time

- 7.1. Deadlines and times for delivery are specified by the Seller in the order confirmation. Agreed deadlines and/or times only apply if the Buyer has completely met the contractual obligations that apply to it. If the Buyer meets its contractual obligations late, the Seller will provide a new indication of the new deadline/time, taking its own business circumstances into account. The new deadline and time are deemed agreed when notified. The deadlines that the Seller must comply with are extended and times are postponed by the same period as the Buyer delays.
- 7.2. The Seller is entitled to make partial or early deliveries.
- 7.3. If the delivery is delayed because of a circumstance for which the Seller is responsible that constitutes a reason for release as that term is used in Article 15, an appropriate extension to the deadline for delivery will be granted.
- 7.4. If the Seller is to blame for a delay in delivery, the Buyer may either demand performance or declare its withdrawal from the Contract, setting an appropriate grace period for performance.
- 7.5. If the grace period for performance specified in Article 7.4 is not used by the Seller due to its own fault, the Buyer may issue a written notice to withdraw from the Contract with regard to all goods and services that have not yet been delivered/rendered. The same applies for goods that have already been delivered but which cannot be used properly without the goods that are yet to be delivered. In this case, the Buyer is entitled to reimbursement of the payments it has made for the goods not yet delivered or the goods that it cannot use. Furthermore, if the delay in delivery was caused by the gross negligence or intentional conduct of the Seller, the Buyer is also entitled to compensation for justified efforts that it had to make in the period until the contract was dissolved and that it could no longer benefit from. The Buyer must return goods that have been delivered but cannot be used to the Seller.
- 7.6. If the Buyer does not accept the goods that have been made available in compliance with the Contract at the place agreed in the Contract and at the time agreed in the Contract and the delay is not because of an action or omission of the Seller, the Seller may either demand performance or withdraw from the contract after setting a grace period for performance. If the goods have been separated out, the Seller may store the goods at the expense and the risk of the Buyer. In addition, the Seller has an entitlement to reimbursement of (or compensation for) all justified efforts/expenses and other detriment that it has made/incurred because of implementation of or failure to perform under the Contract and that are not compensated by the payments it has received.
- 7.7. The Buyer has no claims against the Seller because of a delay by the Seller other than those specified in Article 7.

## 8. Acceptance inspection

- 8.1. If the Buyer would like an acceptance inspection, this must be expressly agreed on in writing with the Seller when entering into the Contract. If nothing else has been agreed in writing, the acceptance inspection will be carried out during the Seller's normal working hours at the Place of Manufacture or at a location to be determined by the Seller. The general practice in the relevant branch of industry is decisive for the acceptance inspection. The Seller must inform the Buyer of the acceptance inspection in good time so that the Buyer can be present at the inspection or send an authorized representative. If during the acceptance inspection, it transpires that the items delivered do not comply with the Contract in material aspects, the Seller must remedy the material defects within an appropriate period and ensure that the items delivered are in a condition that complies with the Contract. The Buyer may only demand a repeat inspection if there are material defects. A record of acceptance must be made after an acceptance inspection. If the acceptance inspection shows that the items delivered comply with the Contract, both Parties must confirm this. If the acceptance inspection shows that there are defects or claims to performance outstanding, these must be specified in the record and signed. The Buyer may not effectively refuse acceptance in case of minor or non-material defects or claims to performance outstanding. If the Buyer or its authorized representative is not present at the acceptance inspection despite being notified in a timely manner by the Seller, the record of acceptance only has to be signed by the Seller. In any case, the Seller must send the Buyer a copy of the record of acceptance, the correctness of which the Buyer may no longer dispute if, due to its absence, it (or its authorized representative) was not able to sign it. Unless otherwise agreed, the Buyer bears the costs of the completed acceptance inspection. In any case, the Buyer must bear any costs it incurs in connection with the acceptance inspection, e.g., travel costs, living expenses and out of pocket expenses.
- 8.2. The equipment is automatically deemed accepted in the following cases:
  - a. if the acceptance inspection has been completed and there is a record of inspection that has been signed by both Parties, or
  - b. no more than 2 months after the transfer of risk, or
  - c. by the time the equipment is put into commercial operation by the Buyer, at the latest.

## 9. Price

Unless agreed otherwise, the prices apply net FCA Place of Fulfillment pursuant to INCOTERMS 2010. The currency is EURO.

## 10. Payment

- 10.1. Payments must be made pursuant to the agreed payment conditions. Unless other payment conditions have been agreed in writing, a third of the price will be due for payment upon receipt of the order confirmation, a third will be due for payment halfway through the period for delivery and the rest will be due for payment when the goods/services are made available. In the absence of different payment conditions, the due date for payment will be no more than 10 days after the date of the invoice.
- 10.2. The Buyer is not entitled to withhold payments because of guarantee claims or other claims that the Seller has not recognized. The Buyer is not permitted to set off using its own claims and debts.
- 10.3. If the Buyer is in default with an agreed payment or other aspect of performance, the Seller may either insist upon performance of the contract and
  - a. postpone fulfillment of its own obligations until all payment arrears or other aspects of performance have been satisfied,
  - b. in any case make use of a reasonable extension of delivery deadlines and times and
  - c. declare all outstanding payments due, and
  - d. if there is a reason for release as used in Article 15 on the side of the Buyer, as of the due date for payment, charge the statutory default interest that applies on the day when the invoice is issued, or declare its withdrawal from the contract, setting a grace period for performance.

- 10.4. Without prejudice to the options specified in the above provision, the Seller may assert damage or detriment actually incurred and the Buyer must compensate the costs of warnings issued and debt collection that have actually been incurred.
- 10.5. If the Seller withdraws from the Contract, the Buyer must return to the Seller any goods that have been delivered at the Seller's request, pay compensation for any reduction in value that has occurred and reimburse all justified efforts/expenses that the Seller had to make to perform the Contract. With regard to goods that have not yet been delivered, the Seller may provide the completed or processed parts to the Buyer and request the corresponding part of the purchase price.
- 11. Retention of title, economic power of disposal**
- 11.1. The Seller retains title to the item purchased until the Buyer has completely met all of its financial obligations. The Seller may, but is not obligated to, externally mark the item purchased as its property. The Buyer must comply with the relevant form requirements for preserving retention of title. In the event of an attachment or other assertion of a claim, the Buyer must enforce the Seller's property rights and inform the Seller without delay.
- 11.2. If items are delivered/transferred (even in part), the economic power of disposal transfers to the Buyer, but not ownership under civil law.
- 12. Guarantee**
- 12.1. The Seller is liable for defects in expressly agreed properties.
- 12.2. The time limit for guarantees is one year.
- 12.3. The Buyer may only rely in this provision if it has notified the Seller of the defects found in writing without delay. The presumption rule under Section 924 of the Austrian Civil Code [ABGB] does not apply. If the Seller has received such a notification and is obliged to remedy the defects pursuant to the provisions of this article, the Seller may choose to:
- make improvements to the defective goods on-site, or
  - have the defective goods or the defective parts sent back for improvements, or
  - replace the defective parts/goods.
- 12.4. If the Seller chooses to have the defective goods or parts sent back for improvements or replacement, the Buyer will bear the costs and the risks of transport, unless otherwise agreed. Unless otherwise agreed, the Seller will bear the costs and risk of sending back goods or parts that have been improved or replaced to the Buyer.
- 12.5. The defective goods or parts that have been replaced will be made available to the Seller.
- 12.6. The Seller must only bear the costs incurred by the Buyer for remediation of defects if the Seller has provided its written consent.
- 12.7. For parts of the goods that the Seller has sourced from a sub-supplier prescribed by the Buyer, the Seller's liability is restricted to its guarantee claims against the sub-supplier. If a good is manufactured by the Seller based on the Buyer's design information, drawings or models, the Seller's liability does not extend to the rightness of the design, but does cover the execution according to information provided by the Buyer. In such cases, the Buyer must indemnify the Seller for any breach of intellectual property. The Seller does not provide any guarantees for taking on repair orders, or for modifications or reconstructions of old or third party goods, or for deliveries of used goods.
- 12.8. Starting at the beginning of the guarantee period, the Seller does not accept any liability other than that specified in this article.
- 12.9. The guarantee period begins to run upon delivery. If the agreed delivery time is postponed because of circumstances on the side of the Buyer, the guarantee period still begins to run from the originally agreed delivery time.
- 12.10. No guarantees are provided for used machinery.
- 13. The Buyer's duties of care**
- 13.1. The Buyer/machine operator is responsible for operating the equipment purchased within the scope of the intended use.
- 13.2. The Buyer/machine operator must ensure that all persons engaged to operate, maintain, service or repair the equipment are verifiably trained to use the equipment.
- 13.3. Furthermore, the Buyer/machine operator of the equipment must observe and comply with the generally valid statutory rules and other binding rules on preventing accidents and protecting the environment.
- 13.4. The Buyer/machine operator must ensure that the equipment purchased is always operated with properly installed and functional safety and protection equipment.
- 13.5. The Buyer/machine operator must ensure that the machines are always operated in a faultless condition. The Buyer/machine operator must guarantee cleanliness and order at the place of work at and around the machine by issuing appropriate instructions and making appropriate controls.
- 13.6. The Buyer/machine operator must ensure regular expert maintenance and servicing, in particular regarding the technical documentation for the equipment purchased.
- 14. Liability**
- 14.1. The Seller is only liable for damage outside of the scope of application of the Product Liability Act if the Buyer can prove the Seller acted with intention or gross negligence in the framework of the provision of law. There is no liability for slight negligence, nor any compensation for consequential damage or financial damage, savings not realized, lost interest or damage from third party claims against the Buyer. In any case, the Buyer must prove the fault of the Seller. To the extent permitted by law, the Seller's liability is limited to the value of the relevant delivery in terms of amount, but may not exceed the amount of any insurance benefits actually obtained (product and/or business liability insurance).
- 14.2. The Seller is not liable for any failure by the Buyer, people who can be allocated to it or third parties engaged by it, to comply with any conditions for installment, putting into operation and use (e.g., instructions for use) or official requirements for accreditation.
- 14.3. If contractual penalties have been agreed that the Seller must pay, there will be no further claims against the Seller, whatever their legal basis.
- 14.4. Materials and works provided by the Buyer must be insured by the Buyer in a way that he would prefer to have them insured.
- 14.5. If the Buyer wants special insurance protection that goes beyond the standard property- and third party liability insurance, the Buyer must make a separate agreement on that protection.
- 14.6. The Buyer bears the full risk and sole liability for Transit to the place of destination, including interim and/or end storage.
- 14.7. The Seller is deemed to have third-party damage when goods or services are delivered and/or transferred (even if partially).
- 15. Reasons for release**
- 15.1. The parties are completely or partially released from the obligation to perform the contract in a timely manner if they are prevented from doing so because of force majeure events. Only those events that are unforeseeable and unavoidable for the parties and are beyond their domain are considered to be force majeure. However, strikes and labor disputes are considered force majeure events. A Buyer who has been impeded by a force majeure event can rely on force majeure only if it provides the Seller with an opinion on the beginning and foreseeable end of the impediment, its cause, expected effect and duration of the delay (which opinion must be sent by registered post and be confirmed by the respective governmental authority or chamber of commerce in the country of destination) without delay, but in any case within 14 calendar days. If there is a force majeure event, the Parties must make all efforts to remedy or mitigate the difficulties and foreseeable damage and keep the other Party informed on an ongoing basis. Failure to do so will result in the relevant Party being liable to pay damages to the other Party. Times or deadlines that cannot be met because of the effect of a force majeure event will be extended by the duration of the effect of a force majeure event (at the most) or, if applicable, by a period agreed on by the parties. If a force majeure event lasts for more than four weeks, the Buyer and Seller must negotiate on rules on how specifically to handle performance of the Contract. If no agreement is reached, the Seller may withdraw from the Contract either in whole or in part. In particular, the following circumstances are deemed reasons for relief for the Seller, if they occur after the Contract has been concluded and impede the Seller in performing the contract: Strikes, fire, mobilization, uprisings, (international) sanctions and embargoes, absence of means of transport, restrictions on energy consumption, cyber attacks, and natural disasters.
- 16. Data protection**
- 16.1. The Seller is entitled to store, transmit, edit and delete the Buyer's personal data in the course of business activities.
- 16.2. The Buyer expressly consents to the use (or use for advertising purposes) by the Seller of photos, graphic presentations and descriptions of the products delivered. The Buyer's consent must only be obtained if the Buyer's name is also intended to be used for advertising purposes.
- 17. Legal venue, applicable law**
- 17.1. It is stipulated that the court with subject matter competence in Wels, Austria is the legal venue for all disputes arising from this Contract or associated with its conclusion and validity. The Seller has the right to choose the Buyer's legal venue. If a missing contractual provision cannot be ascertained by means of interpretation, only the substantive provisions of Austrian law on the matter apply. Rules differing from these must be agreed on expressly in writing (e.g., arbitration). The rules and application of UN CISG are excluded.
- 18. General provisions**
- 18.1. Amendments and supplements to this contract must be in writing; dispensing with the written form may only be agreed in writing. There are no oral side agreements.
- 18.2. All rights and obligations under the Contract will transfer to any legal successors of the Parties. Furthermore, each Party must ensure that it binds its successor in law to any obligations it has assumed under the Contract.
- 18.3. If one or more provisions of this Contract, including these terms and conditions for delivery, are invalid or unenforceable, that will not affect the remaining provisions of the Contract. Instead of the invalid or unenforceable provisions, a provision is deemed agreed that comes as close as possible to the economic effect of the invalid or unenforceable provisions and the intentions of the parties.
- 18.4. If problems arise when interpreting multilingual versions of the Contract, the German version is deemed authentic.
- 18.5. Any intangible property rights (in particular patents) that arise when creating a work as part of the Seller executing the contract remain the sole property of the Seller.