

## 1. General - Scope of application

1.1 Our deliveries, services and offers are made exclusively on the basis of these Terms and Conditions of Sale and Delivery; we do not recognise any terms and conditions of the Customer which contradict or deviate from our Terms and Conditions of Sale and Delivery unless we have expressly agreed to their validity in writing. Our Terms and Conditions of Sale and Delivery shall also apply if we deliver to the Customer without any reservations although we are aware of Customer's terms and conditions which contradict or deviate from our Terms and Conditions of Sale and Delivery.

1.2 Our Terms and Conditions of Sale and Delivery shall only apply to entrepreneurs (§ 1 UGB - Austrian Civil Code), legal persons under public law and special funds under public law ("öffentlich-rechtliches Sondervermögen").

## 2. Offers – offer documents

2.1 Our offers are made without engagement, are not binding and are subject to prior sale unless they are explicitly specified as binding. The order of the goods by the Customer shall be viewed as a binding offer to contract. Unless otherwise stated in the order, we are entitled to accept this offer to contract within two (2) weeks of receipt.

2.2 The documents supplied by the Customer (specifications, drawings, samples, models or similar) are considered by us as true and binding; the Customer is liable for the correctness of their content, technical feasibility and completeness, which we are not obliged to check and / or verify.

2.3 We reserve property rights and copyrights to figures, drawings, calculations and other documents. This also applies to written documents which are marked as "confidential". The Customer requires our explicit written consent before passing on such to third parties. Upon request the Customer shall return these items to us in full and destroy any copies which may have been made if they are no longer needed during the normal course of business or if negotiations do not lead to the conclusion of a contract.

## 3. Prices - Terms of payment

3.1 Unless stated otherwise in the order confirmation, our prices shall be EXW (pursuant to Incoterms 2010 or in their respective version valid in time) ex our works as stated in the order confirmation or, in case this is not specified, ex our works fulfilling the order, packaging excluded; packaging shall be invoiced separately.

3.2 Our prices do not include value-added tax; it is indicated separately on the invoice at the applicable statutory rate on the date of invoice.

3.3 Unless indicated otherwise in the order confirmation, our invoices show net amounts and shall be due and payable (without deductions) within 14 days after the date of invoice and receipt.

3.4 The Customer is not entitled to withhold payments based on counter-claims or offset counter-claims unless these counter-claims have been recognised by us, are undisputed or have been established by a final non-appealable court decision (res judicata). However, counter-claims of the Customer existing or arising under the same contract for defects or non-performance and/or unfinished or incomplete performance remain unaffected.

## 4. Obligations of the Customer regarding the condition of delivery - Base materials suitable for coating

4.1 The Customer undertakes to supply the parts to be coated in a condition suitable for coating. In this context the meaning of 'suitable for coating' is including but not limited to the following: The parts to be gal- vanised must be demagnetised and shall not exhibit any material, processing or surface defects which might have a negative impact on the technical functions, corrosion protection, the bonding with the base material and/or the appearance of the coatings. Such defects are, for example, cracks, cluster of pores, components of different materials, inclusions and laps in the case of parts made from rolled products, sink and weld marks, shrinkage and three-dimensional cracks as well as eddying and voids in the case of cast- ings. In particular, the surfaces must be free of anticatalysts (such as zinc and sulphur), silicon, conserva- tion, lubrication and cutting agents.

4.2 The Customer undertakes to provide us with information on the following criteria:

4.2.1 Material composition (crucial for lattice type, crystalline structure, strength, hardness, ductility, activation capability)

4.2.2 Degree of purity (crucial for homogeneity of the structure, especially important in the area of the surface zone)

4.2.3 Heat treatment and surface treatment condition and internal stresses

4.3 The Customer shall ensure that heavy and bulky parts are provided with appropriate transport protection, attachment and transport facilities. Furthermore, the customer has to meet the standards of cargo and transport control.

4.4 The Customer shall ensure that only components which are to be coated, and no attachments of other materials as the one to be coated, are delivered. It is possible that the attachments be destroyed or damaged during the coating process with or without masking, therefore we do not assume liability for any damage resulting from this.

## 5. Delivery period

5.1 Unless explicitly agreed otherwise, the indicated delivery times are approximate only. The period for delivery only starts to run when all details of the order execution have been clarified and both parties have mutually agreed on the conditions of the order. Any agreed delivery dates will be postponed accordingly.

5.2 A further precondition for the fulfilment of our delivery obligations is the timely and proper fulfilment of the Customer's obligations, in particular timely delivery of the parts to be coated by the Customer in a condition suitable for coating pursuant to Article 4 of these Terms and Conditions of Sale and Delivery as well as, in case we have to perform a contract in accordance with drawings, specifications, specimens, figures and / or other documents of the customer, timely and completely delivery of the documents to be delivered by the customer. The defence of an unfulfilled contract shall remain reserved.

5.3 If we are prevented from keeping agreed delivery dates as a result of force majeure, labour disputes, governmental action, energy or raw material shortages, transport bottlenecks or hindrances, operational hindrances, for example due to fire, water and/or machine defects, for which we are not responsible, or other disruptions in the flow of operations either at our premises or those of suppliers or subcontractors for which we are not responsible and which can be proved to have a significant impact, we are obliged to inform the other party without undue delay ("unverzüglich"). In such cases we are entitled to extend the delivery period by the period of the event of force majeure or the disruption if we have informed the Customer pursuant to the above information obligation. If delivery becomes impossible as a result thereof, our obligation to supply shall become null and void to the exclusion of claims for damages. If the Customer proves that subsequent performance of the contract is of no interest to him as a result of the delay, he may rescind the contract to the exclusion of any further claims. If the event of force majeure or the disruption lasts longer than one month, we may rescind the contract as regards to that part which has not yet been performed if we have informed the Customer pursuant to the above information obligation and if we have not assumed the risk of procurement ("Beschaffungsrisiko") or a delivery guarantee.

5.4 Article 5.3 applies mutatis mutandis if and to the extent that we had entered into a covering transaction before the conclusion of the contract with the Customer which – if properly executed – would have enabled us to fulfil our contractual obligations in our relationship with the Customer, and we have been supplied by our suppliers incorrectly and/ or belatedly with no fault on our part.

5.5 If we are in default, the Customer shall be entitled to set a reasonable additional period of time in

writing and, if said period elapses to no avail, to rescind the contract. An additional period of time need not be set if we seriously and finally refuse to perform the contract or if the underlying contract is a fixed-date transaction in accordance with Section 919 of the Austrian Civil Code (ABGB) or Section 376 of the Austrian Commercial Code (UGB) or if there are special circumstances which justify the immediate rescission of the contract taking into account the interests of both parties.

5.6 We shall be liable for damages only in accordance with Article 10 of these Terms and Conditions of Sale and Delivery. The Customer's right to withdraw from the contract shall be governed by the statutory provisions.

## 6. Transfer of risk - Dispatch - Packaging

6.1 Unless indicated otherwise in the order confirmation, delivery EXW (pursuant to Incoterms 2010 or in their respective version valid in time) is deemed to have been agreed on. Place of delivery and place of performance is our works as stated in the order confirmation or, in case this is not specified, our works fulfilling the order. This shall also apply if we have assumed the transport costs or paid them in advance for the Customer or if part deliveries are made.

6.2 If dispatch has been agreed, the risk of incidental loss or incidental deterioration of the goods shall pass to the Customer on delivery of the goods to the freight forwarder or any other person or establishment entrusted with the execution of the dispatch. This shall also apply if we have assumed the transport costs or have advanced the costs for the Customer or if part deliveries are made. If dispatch or the hand over is delayed for reasons attributable to the Customer, the risk shall pass to the Customer on the date on which the goods are ready for dispatch and we have notified the Customer of such.

6.3 Transport packaging shall be taken back at our place of business during regular business hours.

6.4 The Customer shall inform us in writing if he requests a special mode of transport and/or coverage by a transport insurance policy for the return of the treated parts; the Customer shall bear any costs thus incurred even if we have assumed the transport costs by way of exception otherwise.

6.5 We are entitled to make part deliveries if these are reasonably acceptable to the Customer under consideration of the Customer's interests.

6.6 If the Customer is in default of acceptance or if the delivery is delayed for reasons which are attributable to the Customer, we will be entitled to claim compensation of the damage incurred as a result thereof, including additional expenses, if any. In these cases, we will store the goods at the Customer's risk and invoice the Customer for such storage.

## 7. Reservation of title

7.1 We reserve title to the goods delivered until receipt of all payments deriving from the business relation with the Customer. If we agree with the Customer on payment of the purchase price on the basis of the cheque/bill of exchange procedure, reservation of title shall also extend to the Customer's encashment of the bill of exchange we have accepted and shall not cease to exist when the cheque received has been credited to us.

7.2 The goods subject to reservation of title may neither be pledged to third parties nor assigned by way of security by the Customer without our explicit written consent before complete payment of the secured claims. In the case of pledges or other third party intervention, the Customer must notify us immediately in writing so that we may file an action pursuant to Section 37 of the Austrian Enforcement Code (EO). Insofar as the action was successful and the third party is unable to reimburse us the court and out-of-court costs of legal action pursuant to Section 37 of the Austrian Enforcement Code (EO), the Customer shall be liable for the costs we have sustained.

7.3 The Customer shall be entitled to resell the goods delivered in the normal course of business. He herewith assigns to us, however, all claims amounting to the final invoice amount (including value-added tax) of our claims which accrue from the resale vis-à-vis his customers or third parties, irrespective of whether the goods purchased have been sold again with or without further processing. After such assignment the Customer shall also remain entitled to collect this claim. Our right to collect this claim ourselves shall remain unaffected thereby. However, we undertake not to collect the claim provided that no bill or cheque protests are raised and the Customer fulfils his payment obligations arising from the proceeds received, the Customer is not in default of payment and, in particular, no application to initiate insolvency proceedings with regard to the Customer's assets has been filed. If this is the case, however, we may demand that the Customer notifies us of the claims assigned and their debtors, provides all details necessary for their collection, delivers the relevant documents and informs the debtors (third parties) of said assignment.

7.4 The processing or conversion by the Customer of the goods supplied subject to reservation of title shall always be deemed to be performed for us and on our behalf. If the goods supplied subject to reservation of title are processed with other items/materials not belonging to us, we shall acquire co-ownership of the new article in a ratio of the value of the goods subject to reservation of title to the other processed items/materials at the time of processing. In all other respects, the provisions applicable to the goods supplied subject to reservation of title shall also apply mutatis mutandis to the articles resulting from such processing.

7.5 If the goods supplied subject to reservation of title are mixed or joined inseparably with other items/materials not belonging to us in such a way that they become major components of a uniform article, we shall acquire co-ownership of the new article in a ratio of the value of the goods subject to reservation of title to the other mixed or joined items/materials at the time of the joining or mixing. If joining or mixing takes place in such a way that the Customer's article is to be regarded as the main item, it is already agreed here and now that the Customer transfers pro-rata co-ownership to us. The Customer shall keep the jointly held property thus produced in safe custody for us. Furthermore, the same shall apply to the article resulting from such joining or mixing as to the goods supplied subject to reservation of title.

7.6 Racks and tools produced at the Customer's order shall remain our property even if the Customer has paid for them in whole or in part. The same shall apply to chemical containers which shall be returned to us free of charge and in a proper condition four weeks after receipt at the latest.

7.7 The Customer is obliged to treat the goods subject to reservation of title carefully and in particular the Customer is obliged to adequately insure such against fire, water damage and theft at replacement value. The Customer is obliged to perform any necessary service and inspection work in good time and at own expense.

7.8 In the event of loss or damage to the goods subject to reservation of title, the Customer hereby assigns to us any claims to insurance payments existing in this connection in the amount of the final invoice (including value-added tax) of our claims with respect to the object of delivery by way of additional security in advance.

7.9 In case of deliveries abroad, if certain measures and / or declarations by either party are necessary to ensure the effectiveness of the above mentioned reservation of title and / or certain other rights referred to in the paragraphs above, the Customer is obliged to inform us accordingly in writing or in text form and to take all necessary measures and / or make all necessary declarations without undue delay at its own expense. If the law of the country of import does not permit reservation of title to the delivered goods, the Customer is obliged to provide without undue delay ("unverzüglich") another appropriate security interest in the goods delivered or any other equivalent collateral based on equitable discretion (s. Section 1056 Austrian Civil Code - ABGB) at its own expense.

7.10 We undertake to release, at Customer's request, the securities due to us if the realisable value

of our securities exceeds the claims to be secured by more than 10%; we reserve the right to select of the securities to be released.

## 8. Acquisition of ownership through machining or processing of items provided to us

- 8.1 If the Customer delivers us an item for machining or processing and if the Customer remains sole owner of the machined or processed item also after machining or processing, it is already agreed here and now that the Customer assigns to us pro-rata co-ownership in a ratio of the value of our machining or processing (final invoice amount including value-added tax) to the value of the item made available at the time of processing.
- 8.2 If the item is mixed or joined during machining or processing with items/materials belonging to us in such a way that they become essential components of a uniform article, we will acquire co-ownership of the new article in a ratio of the value of our items/materials to the value of the Customer's item made available at the time of joining or mixing.
- 8.3 If joining or mixing takes place in such a way that the Customer's article is to be regarded as the main item, it is already agreed here and now that the Customer transfers pro-rata co-ownership to us in a ratio of the value of our machining or processing (final invoice amount including value-added tax) to the value of the item made available at the time of joining or mixing.
- 8.4 The provisions of Article 7 of these Terms and Conditions of Sale and Delivery shall apply mutatis mutandis to items of the Customer in which we have acquired co-ownership in accordance with the above provisions. For clarification: we shall transfer the co-ownership we have acquired pursuant to the above terms and conditions to the Customer on delivery of the item in accordance with the provisions set forth in Article 7 of these Terms and Conditions of Sale and Delivery.

## 9. Warranty - Liability for infringement of obligations

- 9.1 The statutory provisions shall apply to the rights of the Customer with respect to defects in quality or title (including incorrect delivery and short delivery) if nothing to the contrary is determined in the following. In all cases section 933b of the Austrian Civil Code (ABGB) (dealer regress) and section 924 of the Austrian Civil Code (ABGB) (presumption of a defect) are not applicable. It is the customer who has to prove that a defect existed already at the time of delivery.
- 9.2 If we have to perform a contract in accordance with drawings, specifications, specimens or figures supplied by the Customer, the latter shall bear the risk of the suitability for the intended use. The Customer shall also be responsible for ensuring the correctness and completeness of the information to be provided for surface treatment as per Article 4 of these Terms and Conditions of Sale and Delivery and provided pursuant to Article 2.2 of these Terms and Conditions of Sale and Delivery and for ensuring that the treatment instructions are adapted for the subsequent use.
- 9.3 If the surface treatment is not successful due to reasons beyond our control and responsibility, e.g. because the Customer provided incorrect information as per Article 4 of these Terms and Conditions of Sale and Delivery, because concealed defects which we were not aware of and could not have been aware of existed in the item prior to surface treatment or because properties of the material, its shape, surface condition or the condition of the supplied parts made successful surface treatment impossible and we were not and could not have been aware of this, the Customer shall still be required to pay for the surface treatment. Any necessary reworking shall be invoiced separately subject to the above terms and conditions.
- 9.4 The Customer's right to warranty claims under this contract presupposes that the Customer has duly discharged his obligations of inspection and notification of defects in accordance with Section 377 of the Austrian Commercial Code (UGB). If the contractual relationship between us and the Customer constitutes a contract for work and services ("Werkvertrag"), Section 377 of the Austrian Commercial Code (UGB) shall be applied respectively.
- 9.5 If an acceptance inspection or an initial specimen inspection has been agreed with the Customer, a complaint about defects which the Customer could have detected during a careful acceptance or initial specimen inspection shall be excluded.
- 9.6 We shall be given the opportunity to examine on site any defect complained about. In case of unauthorized modifications or improper repairs of the goods by the Customer or third parties, any warranty claims for this and resulting consequences shall be excluded.
- 9.7 If the delivered goods or the work created is defective, the Customer shall be entitled to the statutory rights as follows:
  - (i) We are first entitled to either remedy the defect or to supply the Customer goods free from defect as we so choose or in the case of a contract for work and services to produce a new work (subsequent performance (*Nacherfüllung*)). The Customer must give us the necessary time and opportunity for this. Our right to refuse to provide subsequent performance on the conditions provided for by law remains unaffected.
  - (ii) We are obliged to bear all expenses necessary for subsequent performance, in particular transport, labour and material costs. If the Customer's request for defect remedy proves to be unjustified, we are entitled to claim from the Customer compensation of the costs incurred by us as a result of the request. Where we were under no obligation originally to install/ assemble the product, the subsequent performance ("Nacherfüllung") does not comprise the deinstallation/ disassembly of the defective product nor its installation/ reassembly.
  - (iii) In the event of a replacement delivery or new production in the case of contracts for work and services, the Customer must return the defective goods to us on request.
  - (iv) We are entitled to make the subsequent performance contingent on the Customer paying the price agreed for the goods delivered. The Customer is entitled, however, to retain an appropriate part of the price.
  - (v) If the subsequent performance fails, the Customer is entitled to rescind the contract or to request a reduction in the agreed purchase price as he so chooses. However, there shall be no right of rescission in the case of a minor defect.
  - (vi) Claims of the Customer for compensation of damages or replacement of expenses only apply in accordance with the provisions in Article 10 of these Terms and Conditions of Sale and Delivery.
- 9.8 The limitation periods are governed by Article 11 of this Terms and Conditions of Sale and Delivery.

## 10. Liability exclusions and limitations

- 10.1 Subject to the provisions in Article 10.2, we are only liable for damages – in the case of contractual, non-contractual or other damage claims, irrespective of the legal reason, in particular due to defects, default and impossibility, culpa in contrahendo and tort – in case of wilful intent and / or gross negligence, including wilful intent and / or gross negligence on the part of our representatives or vicarious agents. In addition, we are also liable in the case of mild negligence, including mild negligence of our representatives and vicarious agents, for damages arising from the infringement of an essential contractual duty, i.e. a duty, the satisfaction of which makes the due implementation of the contract at all possible and which the Customer can therefore usually expect to be satisfied by us (cardinal duty). The reversal of the burden of proof pursuant to section 1298 of the Austrian Civil Code (ABGB) is excluded. Therefore, the Customer bears the burden of proof for intent and / or gross negligence as well as for simple negligence. If and to the extent that we are not liable for wilfully infringing a duty, the liability for damages shall, however, be restricted to the foreseeable, typical damage.
- 10.2 Claims for damages arising from injury of life or limb or health as well as claims of the Customer pursuant to the German Product Liability Act as well as other mandatory statutory liability regulations shall not be affected by the liability exclusions and limitations set out in Article 10.1. The above liability exclusions and limitations shall also not apply insofar as we have fraudulently con-

cealed a defect or insofar as we are liable because of the assumption of a guarantee or of the risk of procurement ("*Beschaffungsrisiko*").

- 10.3 Articles 10.1 to 10.2 shall also apply if the Customer demands replacement of useless applications instead of a claim to reimbursement of the damage.
  - 10.4 Insofar as our liability of damages is excluded or limited, this shall also apply with regard to personal liability for damages of our employees, representatives and vicarious agents which is based on the same legal reason.
- ## 11. Statute of limitations
- 11.1 In derogation of Section 933 of the Austrian Civil Code (ABGB), claims of the Customer arising from material and legal defects shall become statute-barred within one year starting from the statutory commencement of limitation.
  - 11.2 Mandatory provisions on the statute of limitations shall not be affected. The facilitation of limitation set out in Article 11.1 shall therefore not apply to claims based on an injury of life, limb or health, to claims based on wilful intent and gross negligence and to claims based on an assumption of a warranty or the risk of procurement ("*Beschaffungsrisiko*"). The longer limitation periods pursuant to Sections 1472 in conjunction with 1488 and 1489 in conjunction with 933a of the Austrian Civil Code (ABGB) – constructions (*Bauwerke*), construction materials and construction components as well as planning services for a construction, Sections 1487 in conjunction with 1489 of the Austrian Civil Code (ABGB) – cunning ("*List*"), error ("*Irrtum*") and fear ("*Furcht*") and Section 933b of the Austrian Civil Code (ABGB) – supplier regress, shall remain unaffected.
  - 11.3 The limitation periods resulting from Articles 11.1 and 11.2 for claims due to defects in quality or title shall apply mutatis mutandis to competing contractual or non-contractual damage claims of the Customer which are based on a defect to the contractual goods. If, however, in an individual case the application of the statutory limitation rules lead to an earlier statutory limitation of the competing claims, the statutory period of limitation shall apply to the competing claims. In any case, the statutory periods of limitation pursuant to the German Product Liability Act shall not be affected.
  - 11.4 Insofar as pursuant to Articles 11.1 to 11.3 the limitation period for claims towards us is shortened, this shall apply mutatis mutandis to any claims of the Customer against our statutory representatives, employees, authorised representatives and vicarious agents which are based on the same legal reason.

## 12. Right of rescission / right of termination

- 12.1 The Customer is only entitled to rescind the contract for a breach of duty on our part other than a defect if we can be made responsible for such breach of duty.
- 12.2 An unjustified withdrawal of the contract by the Customer is excluded.

## 13. Jurisdiction - Applicable law - Severability

- 13.1 If the Customer is a entrepreneur, legal persons under public law or a special funds under public law ("*öffentlich-rechtliches Sondervermögen*") as defined by Austrian law, the place of jurisdiction for any and all disputes arising directly or indirectly from the contractual relationship shall be the competent court for Uttendorf; we shall, however, be entitled to also take legal action against the Customer before the court having jurisdiction at its place of residence.
- 13.2 The law of Austria shall apply to the contractual relationship. The application of the UN sales law (CISG - United Nations Convention on Contracts for the International Sale of Goods) is excluded.
- 13.3 Should any individual provision of these General Terms and Conditions of Sale and Delivery or any individual provision of any other agreements be or become void or illegal, the validity of the remaining provisions or agreements shall in no way be affected.

## Information on the company:

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**Managing Director: Dr. Hartmut Sauer**  
**Competent Court: Landesgericht Ried im Innkreis HRB 217**

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