

STANDARD BUSINESS TERMS for SUPPLIES OF GOODS and SERVICES

I. Scope and validity:

1. The following terms relate to all orders accepted and executed by us (supplies of goods and services) and, upon placement of the order by the buyer / contracting party, are deemed to be acknowledged and legally binding, even in the event we have not expressly objected to contrary terms and conditions. Supplies of goods and services are made based on the technological state-of-the-art, which is hereby deemed to be acknowledged by the buyer / contracting party.
2. Our terms and conditions have priority in all cases over any standard business terms of the buyer / contracting party.
3. We reserve the right to amend these standard business terms. New standard business terms become effective 14 days after transmittal without objection.
4. The Terms and Conditions for Assembly Work issued by the Austrian Power Current and Light Current Engineering Industry, or those applicable to electro-medical technologies, respectively, apply in addition to these standard business terms.

II. Offer and conclusion of a contract:

1. Offers / quotes are fundamentally issued in writing. They are subject to charge and are non-binding; we wish the buyer /contracting party to make express note of this. The preparation of an offer / quote does not obligate us to accept an order and to perform the services described therein.
2. Prices and terms contained in an offer are fundamentally valid for a period of four weeks from the time of the order.
3. Prices listed in an offer / quote are prices in effect on the date indicated in the offer /quote.
4. In cases in which the order varies from the offer / quote, we reserve the right to make corresponding adjustments in price in the event the order is accepted.
5. Information contained in catalogs, prospectuses, circulars, advertisements, illustrations, price lists, etc. are only definitive if they are expressly referred to in the order confirmation.
6. Offer / project documentation, plans, sketches and other technical documents, as well as samples, catalogs, prospectuses, illustrations, etc., remain our intellectual property at all times. Any exploitation, duplication, publication, provision or presentation requires our express consent. A request for their return may be made at any time. In any event, they must be returned if a contract is not concluded.
7. A contract is deemed to have been concluded if we send a written order confirmation, or complete the order, following receipt of the order.

III. Performance:

1. At the earliest, we are obligated to provide the goods or services ordered as soon as all technical and contractual details have been clarified and the buyer / contracting party has satisfied its obligations and has satisfied all legal requirements for performance.
2. The buyer / contracting party is required to obtain all required third-party or administrative consents and to provide all required third-party or administrative notices at its own costs and expense.
3. During the period of performance, the buyer / contracting party must make available, at no charge, lockable rooms for our employees as well as for storing tools and materials; furthermore power needed for execution of the order, as well as for trial operations, must be provided at no charge by the buyer / contracting party.
4. The buyer / contracting party must ensure that materials, equipment and machines required for execution of the order may be delivered without hindrance. The buyer / contracting party is solely responsible for the secure storage of materials and equipment delivered by us or our suppliers and stored and/or installed at the place of performance. The contracting party is solely liable for loss and damage.

IV. Delivery deadlines and dates:

1. Delivery deadlines are fundamentally non-binding on us in all cases. Fixed delivery dates and commitments may only be given as an exception and require a separate written agreement.
2. Delivery deadlines begin on the date an order is accepted (order confirmation), however at the earliest following clarification of all details regarding desired manner of execution and following our receipt of all necessary documents. In cases where the contract is for the creation of a work, the delivery period commences on the date on which all technical / commercial prerequisites to be prepared by the buyer / contracting party have been addressed.
3. Confirmed delivery deadlines are extended - without prejudice to our rights based on a delay on the part of the buyer / contracting party - by the amount of time the buyer / contracting party fails to or is late in satisfying obligations it owes to us under this or another contract.
4. In the event of a delay or interruption in performance, the agreed delivery deadlines are extended accordingly and agreed completion dates and likewise extended accordingly, provided the delays or interruptions are not caused by circumstances for which we are at fault on the basis of gross negligence. In cases where we are not at fault, the buyer / contracting party must bear all extra costs incurred as a result of any such delay or interruption and we are entitled to submit interim invoices for work and expenses.
5. We may not be held liable in any manner for damages incurred or lost profits in the event a delivery deadline is exceeded.
6. A delivery deadline is deemed to have been satisfied upon notice of readiness for shipment, even in cases where shipment is not possible on a timely basis or at all through no fault on our part or on the part of the supplier/manufacturer.

Goods for which notice of readiness for shipment has been given but for which shipment has not been immediately requested will be stored at our discretion at the cost and risk of the buyer / contracting party and charged as having been delivered.

7. In the event of a delay for which the buyer / contracting party is at fault, it must grant us a reasonable period of time for performance. The buyer / contracting party is only entitled to revoke the un-fulfilled part of the order only after such period has expired without results, unless notice of readiness shipment has been provided before such period has expired. Partial deliveries may not be refused.
8. If the buyer / contracting party does not accept goods or services conforming to the contract at the agreed location or on the agreed date, we are not at fault for the related delay; we may demand either performance or revoke the contract after providing additional time for acceptance.
9. We are entitled to make partial or advance deliveries.
10. No liability is assumed in the event of a delay in delivery as a result of an act of God (Section 14.1.). In such cases, we are entitled to extend obligations we have assumed for a reasonable period or revoke the contract in whole or in part in the exercise of our discretion.
11. Claims for damages or later delivery are precluded in such cases. However, we reserve the right to deliver / ship in any event and in such cases, the buyer / contracting party is not entitled to revoke a confirmed order.

V. Delivery:

1. We are fundamentally free to choose the manufacturer, the plant or warehouse that is to be charged with delivery goods on order.
2. To the extent not otherwise agreed, goods are deemed to be delivered and sold "ex works" and, subject to the complete exclusion of liability, we are free to choose the transportation route and means (delivery at the risk of the buyer / contracting party and without insurance). The foregoing applies likewise in the event of a delivery "free at destination" with our vehicles or those of a third party in the case of freight-free consignments.
3. Prices calculated on a freight-free basis require open, unimpeded and safe transport along access roads. The buyer / contracting party is responsible for ensuring sufficient access for our delivery vehicles. Our delivery vehicles must be unloaded without delay. Dead freight or damage resulting from one of these instruments shall be borne by the buyer / contracting party.

VI. Transfer of possession/Acceptance:

1. The buyer / contracting party will be informed of the transfer date on a timely basis and will be placed on notice that, in the event it fails to appear at the transfer of possession, goods and/or services we have provided will be deemed to have been accepted at the intended date of transfer.
2. Enjoyment and risk pass to the buyer / contracting party upon delivery ex works regardless of the agreed-upon pricing. The foregoing applies likewise in the case of installation work. In the case of services/partial performance, the risk passes to the buyer / contracting party upon performance at the place of performance.
3. If components produced or delivered by us are placed into service prior to acceptance, the buyer / contracting party is deemed to have accepted such components by doing so and likewise commences all limitations periods.

VII. Prices:

1. Prices are understood to be net prices without deduction and, to the extent not agreed otherwise, are deemed to have been agreed as "ex works" without packing and without loading.
2. We establish prices based on the date of delivery in the case of orders without an express agreement as to price.
3. All ancillary fees, public duties (in any event new taxes to be levied), freight (/ an increase of which will cause delivery to be more expensive directly or indirectly) are to be borne by the buyer / contracting party.
4. If, between the conclusion of the contract and performance, wage costs increase - as a result of changes in law, regulation or collective bargaining agreement - or material costs or procurement costs increase based on changes in the market situation for raw materials or if circumstances occur outside of our sphere of influence triggering additional work or costs, our prices will increase in corresponding fashion provided more than four weeks have lapsed between confirmation of the order and performance.
5. The use of the phrase "as before" in an order only refers to, inter alia, the performance of our work, however not to prices and ancillary fees.
6. To the extent not otherwise expressly set out in price lists, all prices for materials refer to goods of ordinary commercial quality.
7. We are entitled to invoice the relevant costs for accepting the return of and disposing packaging materials.
8. If the buyer / contracting party exercises an expressly agreed right of revocation for previously delivered goods, it is required to pay 10% or 20%, respectively, of the net invoice price in order to cover expenses related to the goods to be returned. Already-consumed materials, as well as materials ordered and delivered exclusively for the buyer / contracting party will not be accepted for return.

VIII. Service terms:

1. Repair work will be performed on equipment and systems solely on the basis of defects reported to us. If such information has not been provided, repairs will only be conducted with regard to defects we have acknowledged.
2. For repair orders, we will perform work we deem necessary and appropriate and invoice such work based on cost.

The foregoing applies likewise for services and additional work the necessity and appropriateness of which only becomes apparent during the execution of the order, whereby no special notice of this need be given to the contracting party.

3. It is within our discretion to refuse to make repairs in the event unauthorized repairs were attempted or the safety of our staff cannot be guaranteed.
4. We will only provide quotes for repair work on request. Such quotes are non-binding and must be paid for even in the event work is not ordered.
5. Repaired equipment / systems are shipped at the cost and risk of the contracting party in all cases.
6. Equipment / systems that are not picked up will be disposed of two months following the last-given completion date in order to cover the costs of repair. The provisions of Section 13.5. apply in such cases.
7. All other claims beyond those related solely to curing a defect (including consequential damages) are expressly precluded, except in cases of gross negligence on our part.
8. We assume no liability with regard to damage to equipment, accessories or systems subject to delivery.
9. The party placing the order is required to provide notice of non-conformities, damage or defects it has discovered as well as of urgent matters requiring service / repair work or must indicate the scope of inspections to be performed. Available technical documentation regarding the object to be repaired must be provided. The contracting party commits to obtain supplemental information from the manufacturer in the event we request additional technical documentation.
10. The party placing an order must make appropriate workspace available in the case of service work to be performed on-site. The contracting party must obtain replacement parts and make them available on a timely basis, provided they are not to be supplied by us according to the order confirmation. The contracting party is responsible for disassembly and transportation.
11. The contracting party expressly call to our attention cases in which particular care must be taken in relation to it or third parties or if applicable regulations must be complied with.

IX. Payment/Due dates/Consequences of default:

1. The purchase price / labor costs / costs for work performed stated in an invoice is due for payment to the account indicated by us upon receipt of the invoice without deduction.
2. In the event of a default in payment, default interest will be charged at a rate of 8% above the applicable base interest rate. We charge €5.00 (plus VAT) for each payment reminder. In the event of a default in payment, the customer / contracting party commits to reimburse us for all costs and expenses, in particular costs of collection, court costs and attorneys' fees for judicial and non-judicial proceedings, incurred as a result of the payment reminder.
3. Payments are deemed to have been made on the date on which we may dispose of the funds in the agreed currency.
4. Non-compliance with the terms of payment or circumstances which give rise to doubts as to the creditworthiness of the buyer / contracting party entitle us to accelerate all amounts due from the buyer / contracting party, revoke all pending contracts and to demand compensation for damages for non-fulfillment.
5. In specific cases, we may demand payment in advance for supply or performance under still-outstanding contracts.
6. In addition, we are entitled to demand additional security and in such cases the buyer / contracting party is obligated to secure all outstanding amounts owed by ceding security interests or pledging other assets in our favor.

X. Retention of title:

1. We retain title to all goods delivered, installed or otherwise transferred by us until the satisfaction of all then-outstanding or future claims, in particular current account balances, to which we are entitled in relation to the buyer / contracting party regardless of legal basis. This applies in like manner in cases where payment is made in relation to specially-designated obligations.
2. In the event of a default in payment, we are entitled to exercise our right of retained title and seize the goods without this being deemed to be a revocation of the contract.
3. If the buyer / contracting party processes or combines goods subject to retained title with goods not belonging to us, we retain title to the new goods or products (systems) or the buyer / contracting party assigns to us its title to the new goods or product as applicable.
4. Until invoice amounts have been paid, the buyer / contracting party is obligated to view all goods delivered by us, whether processed or not, or whether combined to form a new product, to insure such goods at replacement costs and to handle them with care. All claims to benefits from the insurance provider are deemed to have been assigned to us with immediate effect.
5. The buyer / contracting party is not authorized to make other dispositions of the goods subject to retained title, in particular assignments by way of a security or pledge.
6. The buyer / contracting party is obligated to inform us of any attachment or other impairment or goods we have delivered subject to retained title by a third party without delay and must provide us complete information at all times regarding the whereabouts, any potential re-sale and the name and address of the buyer, the amount and due date of the sales price and must provide substantiation.
7. We are entitled to access the warehouse and business premises, or other premises (include residences), of the buyer / contracting party at all times in order to safeguard our rights. In the event we exercise our rights, in particular a right of seizure based on retained title, the buyer / contracting party waives the right to assert a claim of trespass as well as the right to assert the objection that goods subject to retained title are necessary for the maintenance of business operations, and further waives any claims for damages or lost profits.

The buyer / contracting party is solely responsible for any resulting costs.

XI. Warranty and defects

1. The warranty period is generally six months; two months in the case of repair / service work and commences on the passage of risk. Application of the presumption rule of § 924 Austrian Civil Code (ABGB) is precluded. The buyer/contracting party has no right of recourse under § 933b ABGB.
2. In our capacity as a re-seller, we only assume warranty liability to the extent of the scope of liability of the supplier (manufacturer). We assume no additional guarantees or remuneration.
3. The warranty lapses in the event goods are modified by a third party or as a result of processing and the defect bears a casual relationship to the modification.
4. Furthermore, the warranty lapses in the event the buyer / contracting party fails to comply with regulations regarding the handling of the contractual product, does not comply with installation requirements and conditions for use, subjects parts to excess stress or handles the contractual product incorrectly or carelessly or does not inform us of future use or place of deployment of goods or services, respectively, delivered or produced. In particular, we are not liable for damages resulting from the acts of third parties, atmospheric disturbances, excessive voltage / chemical influences.
5. If goods / services are prepared by us based on construction specifications, drawings or models from the buyer / contracting party, our liability applies solely to the execution of such specifications based on the information provided by the buyer / contracting party and not to the correctness of such specifications, drawings or models.
6. The buyer / contracting party is required to indemnify and hold us harmless in the event work performed on such a basis infringes the industrial property or other intellectual property rights.
7. We assume no liability when accepting repair orders or modifications of used or third-party goods, equipment or systems as well as cases of the delivery of such goods, equipment or systems.
8. All costs incurred in connection with curing a defect (for example, installation and removal, transportation, travel expenses and travel time) are to be borne by the buyer / contracting party. All necessary staff, lifting equipment, scaffolding, incidentals, etc. must be provided free of charge in the case of warranty work to be performed at the buyer's / contracting party's premises or plant.
9. We will only perform temporary repairs pursuant to an explicit order and they are only of an extremely limited duration.
10. Consumables only have a service life in accordance with the applicable state-of-the-art.
11. We must be informed of defects without delay, at the latest within three days of receipt of the goods; notice must be provided in writing by means of registered mail, by telephone, fax or e-mail. All information needed to assess the defect and its causes (including documents) must be provided to us.
12. Patent defects must be objected immediately upon receipt of the goods subject to delivery. Written notice must be given of latent defects immediately upon their discovery subject to the immediate cessation of all processing work.
13. Notice of defects will not be acknowledged if the goods or the work are/is not at the indicated location or in the same condition as on delivery. Defective goods may only be returned to us with our express written permission.
14. In the case of a legitimate complaint, we will accept return of the goods/work and we are free to grant credit or make a replacement.
15. Any claims will fundamentally be compensated by curing the defect without charge and by replacement if cure is not possible. Any further claims of any sort, regardless of legal basis, in particular compensation for direct or indirect damages or lost profits, are precluded.
16. In the event cure or replacement, respectively, is not possible or may only be done so at an unreasonable cost, we will grant an appropriate reduction in price.
17. We will provide notice of appointments for repair / replacement of goods or systems 14 days in advance. If the buyer / contracting party does not object the proposed date within 8 days, the appointment is deemed to have been approved. If the buyer / contracting party is not present at this appointment or impedes or makes the repair / replacement impossible, the buyer / contracting party is required to pay for each additional attempt at repair.

XII. Compensation for damages:

1. We are liable only for damage to objects belonging to the buyer / contracting party incurred directly in the course of performance / or which were accepted for processing and which were caused by us intentionally or through gross negligence. All other claims on the part of the buyer / contracting party, in particular claims for any additional damages, including all possible consequential damages related to defect, are precluded.
2. Goods/systems subject to delivery / services provided only offer that degree of safety which is to be expected on the basis of licensing regulations, operating instructions and manuals, guidelines from the supplier (manufacturer), etc. as well as any other notices provided.
3. Any form of compensation for damages is precluded in the event of a failure to comply with all conditions for installation, operation and use (for example, those contained in operating manuals) or official licensing conditions. The foregoing applies likewise in cases where we are not informed of the future use or place of deployment of the goods/services subject to delivery or supply.
4. Our liability is limited to the sum of €10,000.00 - with the exception of personal injury and damage to due intentional acts.
5. In the case of loss or damage to an item to be repaired, our liability is limited to the costs of repair or the costs of replacement, respectively, of the item to be repaired/delivered. We are only liable for any other damages in the event of an intentional act. Items to be repaired that are not picked up on the agreed date, or absent such a date after notice that such items may be picked up, will be stored at the risk and costs of the buyer / contracting party.

Liability for simple negligence is excluded in the same manner as compensation for consequential damages, financial damages, unrealized savings, loss of interest, or damages from claims of a third asserted against the buyer / contracting party. We must be provided proof of intent or negligence.

7. Any action for damages may only be brought within six months after those entitled to assert a claim have gained knowledge of the damage, but not later than three years after the occurrence of the (primary) loss following the incident upon which the claim is based, unless other statutory limitation periods are laid down in other legal provisions.

XIII. Revocation of the contract:

1. If the buyer / contracting party is in default of the agreed payment or other performance, we may delay the satisfaction of our own obligation until payments in arrears have been made or outstanding performance has been completed, impose a reasonable extension of the delivery deadline, accelerate the still-outstanding remainder of the purchase price (due for immediate payment), revoke the contract upon the expiration of a reasonable grace period.
2. Furthermore, we are entitled to revoke the contract in whole or in part: if performance of the delivery or service is not possible due to circumstances for which the buyer / contracting party is at fault, or delay continues as a result of granting additional time; if concerns arise as to the solvency of the buyer / contracting party and, upon our request, it does not make advance payment or provide suitable security; if the delivery deadline is extended by more than one-half of the originally-agreed period, however six months at the least, as a result of the circumstances described above.
3. In the event insolvency proceedings are initiated as to the assets of one of the parties to the contract, or a petition to initiate such proceedings is rejected due to a lack of assets, the other party is entitled to revoke the contract with immediate effect.
4. Without prejudice to claims for compensation on our part, if the contract is revoked we are entitled to invoice previously-provided work or partial work; payment is due immediately. The foregoing also applies to the extent the supply or performance was not yet accepted by the buyer / contracting party and with regard to preparatory work already performed by us. However, we also have the right to demand the return of already-delivered objects.

XIV. Relief from performance:

Labor disputes as well as all circumstances outside of the control of the parties (acts of God), for example fire, mobilization, seizure, embargo, prohibitions on currency transfers, riot, scarcity of common supplies, restrictions on energy consumption, coincidence, disaster, etc., give us the right to be relieved of contractual performance.

XV. Set-off and retention

1. The buyer / contracting party is precluded from setting off any purported counterclaims against amounts we are owed.
2. In the case of a legitimate claim to repair, a right of retention of the purchase price or labor costs is limited to expenses necessary for such repair.

XVI. Place of performance and arbitration clause:

1. Vienna is deemed to be the place of performance for payments related to all contracts even if carriage paid to the receiving station or ex works has been agreed.
2. All disputes arising under this contract or related to its breach, rescission or invalidity shall be subject to final resolution based on the Rules of Arbitration and Conciliation of the Austrian Federal Economic Chamber, Vienna (Vienna Rules) by an arbitrator appointed pursuant to such Rules.
3. The language of the proceedings shall be German. Austrian law shall be applied subject to the exclusion of conflict of laws principles and the Rome Convention. The application of the United Nations Convention on Contracts for the International Sale of Goods is excluded.

XVII Miscellaneous:

1. Side agreements, amendments and supplements must be in writing in order to be effective. This also applies to the waiver of the foregoing written form requirement.
2. In the event provisions or material components, respectively, of these Standard Business Terms are or become invalid or incomplete, in whole or in part, the remainder of these Standard Business Terms remain in full force and effect. An invalidity provision or gap, respectively, is to be replaced by a provision that the parties would have agreed to in furtherance of the same (economic) objective had they been aware of its invalidity or incompleteness.