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 where the order is not expressly objected to by us.
2. Our terms and conditions have priority in all cases over any standard terms of business 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 their notification 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 concerning technological, processing or contractual terms, as well as 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, drawings, prospectuses, illustrations, remain our intellectual property at all times.
7. 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 accessibility for our delivery vehicles. Our delivery vehicles must be unloaded without delay. Dead freight or damage resulting from one or more of these instruments shall be borne by the buyer / contracting party.

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 all legal requirements for performance.
2. The buyer / contracting party is required to provide all required third-party or administrative consents and to provide all required third-party or administrative notices at its own costs and expense.
3. 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 special 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 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 deadlines commence on the date on which all technical and commercial prerequisites to be prepared by the buyer / contracting party have been addressed.
2. 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 incurs to us either for this or another contract.
3. 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 not 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.
4. We may not be held liable in any manner for damages incurred or lost profits in the event a delivery deadline is exceeded.
5. 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 not fault on our part or on the part of the supplier/manufacturer.

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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.
6. 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.
7. 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.
8. We are entitled to make partial or advance deliveries.

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 our rights based on a delay on the part 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, unimpended and safe transport along access roads. The buyer / contracting party is responsible for ensuring sufficient accessibility for our delivery vehicles. Our delivery vehicles must be unloaded without delay. Dead freight or damage resulting from one or more 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 in 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 event 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 otherwise agreed, are deemed to have been agreed as "ex works" without packing and without any additional work costs. Our prices will increase in corresponding fashion in the event of a delay or interruption in performance.
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 obligations within the scope of which we have already delivered.
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.

1. 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.
2. 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.
3. Repaired equipment / systems are shipped at the cost and risk of the contracting party in all cases.
4. Equipment / systems that are not picked up will be disposed of two months following the last-given completion deadline in order to cover the costs of repair. The provisions of Section 13.5. apply in such cases.
5. 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.
6. We assume no liability with regard to damage to equipment, accessories or systems subject to delivery.
7. 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 to the contractor / party goods, equipment or systems as well as cases of the delivery of services, respectively, delivered or produced. In particular, we are not liable for damages resulting from the facts or actions of third parties, atmospheric disturbances, excessive voltage / chemical influences.
8. If goods / systems 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 the information provided by the buyer / contracting party and not to the correctness of such specifications, drawings or models.
9. 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.
10. 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.
11. 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.

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 incurred, 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 dispute the existence of 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 retention 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 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 subject to retained title, in whole or in part, 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 unreserved. The name and address of the buyer, the amount and due date of the sales price and must provide substantiation.
5. We are entitled to access the warehouse and business premises, or other premises (including construction sites), 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 fresheras as well as the right to object the assertion that goods subject to retained title are necessary for the maintenance of business operations, and further waives any claims for damages or lost profits.

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 is liable to reimburse the costs of repair or replacement incurred under § 361 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 remission.
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, treats the contractual product intentionally 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 facts or actions of third parties, atmospheric disturbances, excessive voltage / chemical influences.
5. If goods / systems are prepared by us based on construction specifications, drawings or models provided by the buyer / contracting party, our liability applies solely to the execution of such specifications based 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. Our liability is limited to the sum of €10,000.00 plus VAT for each payment reminder. In the event of a default in payment, we are entitled to exercise our right of seizure based on retained title, the buyer / contracting party waives the right to assert a claim of fresheras as well as the right to object the assertion 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.
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 cases 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.


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.