



GENERAL TERMS OF DELIVERY AND SALE

EMPL Fahrzeugwerk Gesellschaft m.b.H. / Austria, Kaltenbach

1. General

Unless contrary agreements have been made expressly and in writing in individual cases, the following general terms of delivery and sale shall apply to all business transactions during which we (EMPL Fahrzeugwerk Gesellschaft m.b.H.) shall purchase goods or services or place orders.

2. Definitions

These terms of delivery shall apply to purchase agreements as well as for service contracts and contracts for work and materials. The terms "Purchaser, prices, etc. used in these terms of delivery also comprise and mean the "Buyer, hourly rate etc".

3. Contract conclusion

Conflicting general terms of business that the Purchaser may use are only valid if these have been expressly acknowledged by us.

Our offers are non-binding and with no obligation for acceptance.

Our prices are deemed ex factory Kaltenbach/Zillertal; prices in sales offers are always subject to confirmation. Our sales representatives have no authority to conclude contracts, they are merely intermediaries. We shall not be bound to verbal agreements made with the sales representatives and special agreements deviating from the written contract and from these terms of delivery shall only be valid in writing and require our express consent. The contract shall be concluded by our written order confirmation or by our actual delivery.

4. Delivery

Unless expressly agreed otherwise, the Purchaser must inspect and collect the delivered goods from our factory in Kaltenbach or the works in Hall respectively, without delay on receipt of the written or verbal notification of completion. We shall strive to observe delivery deadlines; agreed delivery deadlines should however, not be understood as "fixed dates" and customary lenience shall apply. In the event that we should default on delivery after completion of the lenience time limit, the Purchaser shall only be entitled to withdraw from the contract by written statement, after he has set a reasonable lead time which we have failed to observe. However, the Purchaser shall not be entitled to make any claims for compensation.

The delivery deadline shall commence at the end of the date of our order confirmation and the receipt of a potential advance payment. In the event that the Purchaser revises his order prior to the delivery, the commencement of the delivery deadline shall be deemed interrupted and will restart on arrival of the revised order and/or the arrival of the signed supplement to the order confirmation.

All cases of force majeure within the meaning of these terms of delivery shall release us for the duration and the extent of the obstruction from the execution of the contract. In such cases we shall also be entitled, at our discretion to declare the contract rescinded. In the event that the contract is declared rescinded by us for the aforementioned reasons, we shall be liable to repay any advance payments without interest. However, we shall not be liable for damages. „Force Majeure“ within the meaning of these terms of delivery shall be deemed all circumstances that are beyond our control, in particular e.g. default of deliveries by subcontractors, force majeure in the narrower context (e.g. warfare, combustion, flooding, earthquakes etc.) unforeseeable operational interruptions, shortages of electricity, supplies and raw materials, interventions by the authorities, transport and customs delays and employment disputes.

We reserve the right to make constructional changes and modifications in the design of the construction samples during the delivery period, as far as the user value of the goods is not significantly changed. The data contained in the specification of services, weights, measurements, speed etc. are deemed "approximate".

5. Risk, Transport insurance, Default of acceptance

The risk, including carriage free delivery and delivery carriage free to the Austrian border as well as delivery ex works – independent of who accepts the freight charges and who actually carries out the transport – shall be transferred to the Purchaser, as soon as the goods are at the Purchaser's and/or the hauler disposal in the factory in accordance with the contract. Transport insurance shall only be taken out on request and on account of the Purchaser. If the Purchaser defaults on the acceptance or the goods cannot be delivered to the Purchaser as a result of non-payment of the agreed sum, from the day the default of acceptance commences, we shall be entitled to charge the customary standing or storage fee as compensation without compromising any further extending claims for compensation and other legal consequences resulting from the default of acceptance.

6. Guarantee, Compensation and Product Liability

The risk, including carriage free delivery and delivery services is six months. Technical data in catalogues, brochures, price lists and similar are non-binding and may be changed if required. They shall only be binding for us, if they are expressly included in our order confirmation.

Our products and services are to be inspected by the Purchaser immediately on acceptance and defects should be reported in writing or fax without delay. A delay in the inspection and report of defects shall incur the loss of any claims on the guarantee or for compensation. Further processing or manipulation of the delivered products shall be deemed as the acceptance of the correct delivery.

In the event of defects, the Purchaser shall not be permitted to repair the defect himself or have it resolved by a third party. He must grant to us the opportunity to repair the defect within a reasonable time limit.

b) The Purchaser shall only be permitted to make claims for compensation in the event of gross negligence. The Purchaser must provide evidence of gross negligence. This particularly applies to defaults of delivery and defective deliveries. Claims for compensation in any case only comprise the costs for the actual repair of damage, however, not the subsequent damages and lost profits.

c) Claims for product liability due to material damages are excluded unless the Purchaser is not a user in the context of

Art. 9 BHG (Federal Law of Commerce).

d) Vehicles / equipment belonging to customers but taken into custody by EMPL Fahrzeugwerk Gesellschaft m.b.H. for workmanship purposes are stored in the open (without a protective roof) and are therefore not insured against hail damage. The risk of hail damage must therefore be borne by the customer. In individual cases, it is possible to take out insurance against hail damage, but this is only provided at the explicit request and expenses of the customer.

7. Retention of Title

a) The delivered goods shall remain our property until all outstanding payments have been received in full (invoice amount, interest, expenses and charges). Our proprietary rights to the goods shall not expire by processing or manipulation, moreover it is expressly agreed, that the manufactured product shall be manufactured on our behalf. The retention of title shall also be applicable for all receivables that arise in connection with the delivered goods, i.e. accounts receivable for repairs, deliveries of spare parts and accessories.

As long as the retention of title exists, a sale, pledge, transfer of risk, rental or other surrender of the delivered goods is not permitted without our written consent. We shall be entitled to note down the retention of title in the vehicle type certificate and to make ownership apparent on the vehicle.

With intervention of the Purchaser's debtors, in particular in the event of attachment of the delivered goods, the Buyer must notify the Seller in writing immediately by registered post and accept the charges for the re-

moval the intervention, in particular costs for intervention procedures, if they cannot be reclaimed from the opposing party.

During the period of retention, the Purchaser is obligated to maintain the object of purchase in good condition and to have repairs carried out when due in our factory – excluding in emergency situations.

If the Purchaser does not comply with his payment obligations and the responsibilities arising from our retention of title; if he ceases his payments or if his assets are used as a legal method of compensation or if he files bankruptcy, the total outstanding payments shall be due immediately, including bills of exchange with a later due date. If the total outstanding payment is not paid, the user right of the Purchaser to the delivered goods shall expire and we shall be entitled to demand the return of the goods immediately under exclusion of any retention rights. All charges incurred by the retaking of the delivered goods are for the account of the Purchaser. We shall be entitled, irrespective of the payment obligation of the Buyer, to dispose of our products and accessories by direct sale as best as possible.

In the event that the Purchaser does not comply with his obligations and we retain the title to the goods, under no circumstances can the argument prevail, that the goods are vital for the running of his business.

b) Extended retention of title:

If the buyer, whether it be with or without our consent, sells the delivered goods, although still our property, the receivable which the buyer acquires vis-à-vis the second vendor shall be deemed to be assigned to us (assignment in lieu of payment). In case of sale, the buyer is obligated to notify us as well as the second vendor without undue delay in writing with respect to the assignment of the receivable. Should the second vendor pay the purchase price to the first vendor (for example, because he was notified of the assignment), then the proceeds that the buyer has procured should be regarded "as transferred to EMPL" and EMPL shall therefore be the proprietor of this sum without any further act of transfer (anticipated constructive possession).

8. Payment:

If not agreed separately, our invoices are due immediately on receipt and without any discounts. Payments will be offset against the oldest accounts receivable. In the event of queries, the agreed deadline for payment shall commence from the date of the invoice. Bills of exchange and cheques are only accepted as payment with a special agreement; all costs and expenses shall be for the account of the Purchaser. On acceptance, we shall not accept any guarantee for the prompt submission and protest of bills of exchange.

With a default of payment – including through no fault of the Purchaser's – we shall be entitled to charge the statutory default interest in accordance with Art. 1333 (2) ABGB (Austrian Civil Code). The consequences of the default shall also apply to a default of acceptance, without compromising further legal or contractual consequences of the default of acceptance.

If circumstances that diminish the creditability of the Purchaser become evident, we shall be entitled to demand advance payments or withdraw from the contract, if these are not met. In the event of payment by instalments, the Purchaser defaults on an instalment or with bills of exchange or cheques he partly or fully defaults, the full outstanding purchase price shall be due immediately.

The Purchaser shall only be entitled to make counterclaims, if these counterclaims have not been disputed by us or an effective execution title is available.

9. Cancellation agreement:

If the contract is dissolved amicably, the Purchaser shall pay a cancellation fee of 25% of the invoice value (incl. VAT) without compromising our right to make claims for damages that at best extend beyond this payment.

10. Place of execution, Jurisdiction and applicable Law

The place of execution for both parties is A-6272 Kaltenbach. The jurisdiction for all disputes directly or indirectly related to the contract (including bill-of-exchange and cheque receivables) shall be the local relevant Austrian Court in A-6272 Kaltenbach. For disputes with regard to contracts, Austrian Law shall apply. The application of UN purchasing law is excluded. Only in the event that the agreement of applicable Austrian law is invalid (e.g. within court proceedings in a state belonging to the "third world") shall UN purchasing law (Treaty of the United Nations for contracts relating to international purchase of goods, BGBl (German Federal Law Gazette) 1988/96) apply.

The contract language is German.

11. Changes to conditions:

Subsequent changes to the aforementioned terms are reserved if deemed necessary due to legal action or changes in the economic situation.

12. Partial invalidity:

In the event that individual rules of these terms of purchase are or shall become legally invalid, the validity of all other rules of these terms of purchase shall not be affected. A valid rule containing the stipulations that are nearest to the economical purpose of the relevant invalid rule shall replace the invalid rule.