

**General Terms and Conditions of Delivery
of
TCM International Tool Consulting & Management GmbH**

1. Scope of application

- 1.1. These Terms and Conditions apply between us (TCM International Tool Consulting & Management GmbH) and the natural or legal person (hereinafter Customer) with respect to this legal transaction as well as all other future business – even if no specific reference to these terms is made – in particular in the case of **future extensions of existing orders or follow-up orders**.
- 1.2. The version of our General Terms and Conditions of Business applicable at the time of the conclusion of the contract shall apply and can be viewed on our **homepage** (www.tcm-international.com).
- 1.3. We enter into contracts **exclusively** on the basis of our General Terms and Conditions of Business.
- 1.4. **Customer's Terms and Conditions**, respectively changes to and amendments of our own Terms and Conditions, shall be disregarded unless explicitly recognized by us in writing.
- 1.5. Customer's Terms and Conditions are not recognized even if we do not **contradict** them expressly upon their receipt by us.

2. Offers, conclusion of contract

- 2.1 Our offers are **without commitment**.
- 2.2 No **commitments**, assurances and guarantees by us, nor any agreements that depart from our General Terms and Conditions in connection with the conclusion of the contract, shall be binding without our express confirmation in writing.
- 2.3 The Customer shall disclose any and all **information** about our products and services in catalogues, price lists, brochures, advertising at exhibition stalls, in circular letters, mailings or other media (information materials) that are not attributable to us if the Customer uses the same as the basis for the decision to contract our products or services. In this case, we may pronounce ourselves as to their veracity. If the Customer violates this obligation, such statements shall be without commitment unless their content is expressly made part of the contract in writing.
- 2.4 **Cost estimates** are without commitment.

3. Prices

- 3.1 Prices are always quoted net before **value added tax** at the legally applicable rate and ex works. The costs of packaging, transport, loading and dispatch as well as customs duties and insurance shall be borne by the Customer.
- 3.2 The Customer shall be responsible for the proper and environmentally sound disposal of **waste materials**. If we are separately ordered to take charge of disposal, the Customer shall pay an additional fee as stipulated in the disposal agreement or, if no remuneration has been agreed, Customer shall pay an amount deemed to be appropriate in view of the disposal task.
- 3.3 We are entitled to **adjust** the contractually agreed fees appropriately on our own initiative if the following has changed since the conclusion of the contract:
 - a) the wage costs by virtue of an act of law, a regulation, collective bargaining agreements, shop agreements and/or
 - b) other cost factors relevant for the calculation or costs required for the provision of the service such as the price of materials, energy, transport, third-party labour, financing etc.
- 3.4 In the absence of an express written agreement, we are entitled to an adequate consideration for services requested by the Customer, but which are **not included in the original scope of the contract**.

4. Payment

- 4.1 The terms and conditions of payment are governed by the written agreement made for each case individually. Unless the order confirmation or other documents with relevance contain provisions applicable to the relevant case, the following shall apply: Payable net within 30 days from the date of the invoice.
- 4.2 The entitlement to deduct a **cash discount** requires an express written agreement.
- 4.3 Any express instruction on transfer vouchers by the Customer **specifying how a payment is to be applied** does not have a binding effect on us.
- 4.4 If the Customer is late with respect to the satisfaction of payment obligations in connection with other existing agreements with us, we are entitled to **suspend** the fulfilment of the obligations arising to us out of this contract until such time when the Customer shall have fulfilled its obligations.
- 4.5 In this case, we are also entitled to **accelerate the maturity** of all services already provided to Customer within the scope of this business relation.
- 4.6 If **the term of payment is exceeded**, even if only for a single item of work, all granted discounts (rebates, deductions and similar) shall automatically be forfeited and added to the invoice.
- 4.7 In the event of a delay in payment, the Customer shall replace to us all costs that are required and appropriate for **the collection of the debt** (dunning charges, collection charges, lawyers' fees etc.).
- 4.8 The Customer **shall not offset** any charges against its counterclaims unless they have been established by a court or recognized by us.
- 4.9 The Customer shall not, without our written approval, **assign** any claims and rights arising to it out of this contractual relationship.

5. Credit assessment

The Customer expressly agrees that its data may be transmitted, exclusively for the purpose of credit protection, to the following state-privileged **associations for the protection of creditors**: AKV EUROPA Alpenländischer Kreditorenschutzverband für Kreditschutz und Betriebswirtschaft, Creditreform Wirtschaftsankunft Kubicke KG and Kreditschutzverein von 1870 (**KSV**).

6. Performance

- 6.1 Our **obligation to perform** shall start at the earliest when all technical details have been clarified, when the Customer has created the necessary technical and legal conditions, when we have received the contractually agreed downpayment or deposit, and when the Customer has satisfied its contractual duty to make advance payments and co-operate.
- 6.2 **Factually justified minor changes** relating to our performance whose acceptance by Customer can reasonably be expected shall be deemed to have been approved in advance.
- 6.3 If the contract is **amended** or if its scope is extended for any reason whatsoever after it has been awarded, the term of delivery/performance shall be extended appropriately.
- 6.4 If the Customer wishes to **advance the deadlines** for performance after the conclusion of the contract, then this shall be deemed to constitute an amendment of the contract. Additional costs occasioned as a result have the effect of increasing the fee relative to the required additional input.
- 6.5 **Part performance and partial deliveries** are permissible and may be invoiced separately.
- 6.6 If delivery by means of **call-forward notices** has been agreed but the relevant call-forward notices do not come forward within the agreed period of time, then we are entitled to deliver the corresponding ordered quantities and issue the invoice for them, or we may withdraw from the still outstanding part of the conclusion and/or claim damages for non-fulfilment.

7. Delivery and performance deadlines

- 7.1 Delivery and performance deadlines respectively target dates are only **binding** for us if they have been defined in writing. Any waiver of this rule must also be agreed in writing.
- 7.2 Deadlines and target dates shall be **postponed** by force majeure, strike, unpredictable delay by our suppliers where not attributable to us, or other comparable events that are outside our sphere of influence. The extent of the postponement shall be defined by mutual agreement, but in any event it shall be not shorter than the duration of the effects of the force majeure. The aforesaid is without prejudice to the customer's right to withdraw from the contract if the extent of the delays is such that the Customer cannot reasonably be expected to continue to be bound by the contract.
- 7.3 If the beginning of the performance is **delayed** or interrupted by circumstances that are attributable to the **Customer**, the deadlines for performance and the completion target dates will be postponed accordingly.
- 7.4 We may invoice 0.1% of the gross invoice amount for each started calendar day of the delay in performance for the **storage** of materials and equipment and similar on our premises, which will be required as a result of the delay. The aforesaid neither affects the Customer's obligation to pay nor its responsibility to accept the performance/output.

8. Risk of loss and dispatch

- 8.1 The risk shall pass to the Customer as soon as the purchased item/the work is **ready to be picked up from our premises or warehouse**, respectively as soon as it is handed over to the forwarder or haulage contractor. Dispatch, loading and unloading as well as transport are always carried out at Customer's risk.
- 8.2 The Customer approves every appropriate **method of dispatch**. At Customer's written request and for its account, we shall conclude a transport insurance.

9. Cancellation of the contract, default of payment, default of acceptance

- 9.1 In the event of default of acceptance or for other important reasons, in particular if Customer is insolvent or if insolvency proceedings are rejected for want of funds, or in the event of default of payment by the Customer, we may **cancel the agreement** if it has not yet been fulfilled entirely by both parties. In case of a cancellation of the contract attributable to Customer, we may choose to either demand a flat rate compensation of 15% of the gross invoice amount or the replacement of the actual damages. A **default of payment** by the Customer will release us from all further obligations to perform and deliver. Therefore, we may withhold pending deliveries or outstanding performance and request advance payment or collateral, or we may cancel the contract after having set a reasonable period of grace. If we dispatch items, we may have the packaging and shipping expenses as well as the consideration **collected in cash** from the Customer **on delivery**.
- 9.2 In the event of a **default of acceptance** by Customer, we may store the goods in our warehouse if we insist on the fulfilment of the contract, in which case we are entitled to the **storage fee** pursuant to item 7.4.

10. Retention of title

- 10.1 The goods shipped, assembled or otherwise handed over by us shall remain our property until they have been paid for in full.
- 10.2 A **resale** is only permissible if we have been notified of such resale sufficiently in advance with disclosure of the name and the exact address of the buyer, and always providing that we approve of the sale in writing. If we should approve of the sale, the entitlement to receive the sales price shall already be considered to have been assigned to us.
- 10.3 Until the payment of the full consideration or sales price shall have been made, the Customer must attach a note of this **assignment** in its books and on its invoices, and it must **point out** the assignment to its debtors. Upon request, it shall provide to the

- contractor all available documentation and information that is necessary to assert the assigned claims and demands.
- 10.4 The Customer declares its express agreement that we may enter the **site** where the goods subject to retention of title are kept in order to assert our retention of title.
 - 10.5 All **costs** that are necessary and reasonable in order to assert of our legal rights for the aforesaid purposes shall be borne by the Customer.
 - 10.6 The assertion of the retention of title only constitutes a **cancellation of the contract** if we expressly declare that such cancellation is desired by us.
 - 10.7 We may freely – i.e. without restriction and to the best of our ability – **exploit or realize** goods which are subject to retention of title and were taken back by us.
 - 10.8 Until the full satisfaction of all of our claims, the subject of performance/purchase may neither be pledged nor given as security nor otherwise encumbered with the **rights of third parties**. Should such goods be seized or otherwise claimed, the Customer shall point out that they are owned by us and shall immediately notify us.

11. Industrial property rights

- 11.1 For objects we manufacture **according to the customer's specifications** (design information, drawings, design models, or other specifications), the Customer exclusively guarantees that the manufacture of these items does not infringe the industrial property rights of third parties.
- 11.2 If, notwithstanding the aforesaid, a third party should assert industrial property rights, we may **suspend the manufacture** of the items at Customer's risk until such time when the rights of the third parties are clarified, unless the claims are obviously unjustified.
- 11.3 Equally, we may demand the replacement of necessary and expedient **costs** incurred by us from the Customer.
- 11.4 We may demand appropriate **advances** for costs of litigation, if applicable.

12. Our intellectual property

- 12.1 Items and relevant execution documents, **plans**, design records, sketches, cost estimates and other documents as well as software provided by us or created through our contribution remain our intellectual property.
- 12.2 Their use and in particular their transfer, duplication, publication and provision, even if only for the purpose of copying extracts, as well as their imitation, processing or exploitation require our express **consent**.
- 12.3 Furthermore, the Customer undertakes that it shall treat all knowledge it gains in connection with our business relationship as **confidential** vis-à-vis third parties.

13. Warranty

- 13.1 The **warranty period** for items delivered by us shall be 6 months from the date of delivery.
- 13.2 No refusal of the delivery by Customer without statement of reasons shall be regarded as a failure to have delivered the relevant items. In any event, the warranty period shall commence at the time of **use** – even if only partial – of the delivered items/services by Customer.
- 13.3 A **removal of a defect** claimed by the Customer does not constitute the recognition of the defect.
- 13.4 The Customer must always **demonstrate** that the defect existed at the time when the item was delivered.
- 13.5 Unless Customer immediately notifies the registered office of our company in writing of any **claims for defects** and of any manner of complaints, all claims under warranty are forfeited. The aforesaid **written** notification must contain the best possible **description of the defect** as well as a statement of possible causes of the defect. Where feasible, the items to which the complaint relates must be handed over by Customer.

- 13.6 If Customer's **allegations of defects** are **unjustified**, Customer shall replace the costs incurred by us to ascertain that the item was free of defects, respectively to remove the defects.
- 13.7 We are entitled to make or order any **investigation** deemed necessary by us, even if this results in the uselessness of the goods or workpieces. If the outcome of this investigation is that we are not responsible for the defects, Customer shall bear the costs of this investigation in the form of reasonable fees.
- 13.8 Transport and travelling costs occasioned in connection with the removal of defects shall be borne by Customer.
- 13.9 We shall be granted at least **two attempts** to try and remove the defect.
- 13.10 We can prevent a **demand for redhibition** by means of improvement or an adequate reduction of the price provided that the defect is not a major or irremovable defect.
- 13.11 If the items are made according to **Customer's information**, drawings, plans, design models or other specifications, we only warrant for the unconditional execution of the received instructions.
- 13.12 **Recourse claims** within the meaning of **Section 933b of the Civil Code** are **excluded**.

14. Liability

- 14.1 We are liable for damages which Customer can demonstrate to have been caused by intent or gross negligence on our behalf. Any liability for slight negligence as well as the replacement of consequential damages and financial losses, unmaterialized savings, loss of profits, loss of interest and losses by virtue of claims of third parties against Customer are excluded. This restriction of liability also applies to the impossibility to deliver and delayed delivery.
- 14.2 In any event, our liability is **restricted** to the maximum amount of coverage of a liability insurance concluded by us, if necessary.
- 14.3 The liability restrictions do not apply to the scope of application of the product liability law.
- 14.4 Any claims for damages are **forfeited** unless they are asserted in a court of law within 6 months.
- 14.5 The restrictions and exclusions of liability also extend to claims against our **employees**, representatives and vicarious agents based on damages caused to the Customer by them without being related to a contract concluded by them with the Customer.
- 14.6 We do not accept liability for damages attributable to the following: **improper treatment** or storage, overloading, failure to comply with operator's manuals and installation instructions, faulty installation, commissioning, maintenance, performance of service/repair by Customer or third parties other than those authorized by us, as well as natural wear and tear, always providing that the damage was causally related to the aforesaid. Furthermore, we do not accept liability if the required maintenance measures were not carried out.
- 14.7 If and to the extent that the Customer is able to claim for damages we are liable for under a **damage insurance contract** (e.g. third party liability insurance, fully comprehensive, transport, fire, business interruption or other insurance) concluded by it or in its favour, Customer shall take advantage of this insurance cover, restricting our liability vis-à-vis Customer to disadvantages arising to Customer as a result of claiming under his insurance (e.g. higher insurance premiums).
- 14.8 **Recourse claims** within the meaning of **Section 12 of the Product Liability Act** are **excluded** unless the party entitled to recourse is able to demonstrate that the fault has occurred in our sphere or was at least caused by gross negligence.

15. Saving clause

- 15.1 No ineffectiveness of certain parts of these General Terms and Conditions shall affect the effectiveness of its other parts.

15.2 The parties undertake to **replace** the ineffective provision with the provision that comes closest to the economic result of the original but ineffective provision, duly taking into account common industry practice.

16. Miscellaneous

16.1 **Austrian law** shall apply, ousting the conflict of laws regulation.

16.2 The United Nations Convention on Contracts for the International Sale of Goods is excluded.

16.3 The **place of performance** is the registered office of our company.

16.4 The **venue** for all disputes arising out of or in connection with this contractual relationship or future agreements between us and the Customer is the court with subject matter jurisdiction in Graz/Austria.

16.5 The Customer shall notify us forthwith in writing of any **changes** of his name, company, address, legal form or other **relevant information**.

As of 10/12