

## 1. Scope and Validity

These "General Terms and Conditions of Sale and Delivery" apply to all deliveries and services of Ing. Gerhard Fildan GesmbH (hereinafter referred to as the "Seller") equally to the extent that the parties to the agreement have not agreed other terms and conditions expressly and in writing. Terms and conditions used by the contract partner (hereinafter referred to as the "Buyer") are only applicable insofar as they do not contradict the "General Terms and Conditions of Sale and Delivery" of the Seller and/or if they are acknowledged by the Seller expressly and in writing before orders are placed; in particular, no contract actions taken by the Seller shall be interpreted as an agreement to changes, amendments and/or supplements to this "General Terms and Conditions of Sale and Delivery". Any alterations of our company's conditions for sales and delivery are only valid when both sides have agreed to them in writing.

## 2. Offers and Orders of the Buyer

All offers and marketing devices of the Seller, especially all drawings, plans, or other disclosures, including any reference to material, weight, dimensions, price estimates, etc., are in each part non-binding, unless otherwise expressly stated in writing. The agreement or the acceptance of any order of a Buyer requires a written order confirmation on the Seller's part and shall not be binding otherwise, except if the Seller dispatches the Buyer's requested goods.

## 3. Prices

All prices are to be regarded ex-works and solely include standard packaging of the goods; the costs for special packaging, loading, transportation and transportation insurance shall be borne by the Buyer. VAT is NOT INCLUDED. The Seller is entitled to adjust the price in case the period of time between contract conclusion and delivery date agreed is longer than 6 months, and relevant cost elements (especially prices of raw materials and transportation) have changed to a reasonable degree.

The Seller may, however, also adjust the price in case the client has, after conclusion of the contract, demanded adjustments in delivery date, quantity, or quality of the good. In addition to the price, the buyer shall pay for any increase on costs due to changes of the delivery date, the invoice address, the contract partner or delivery address. Any additional work or costs as a result of the client providing inaccurate or inadequate instructions or information to the seller, or as a result of the client failing to comply with any terms of contract or unjustified return of goods will be charged.

Price is per 1.000 pieces = reference, colour and material. Package included. Please pay attention to the valid SUPPLEMENTARY CONDITIONS referring to COLOURS and QUANTITIES. Invoicing in Euro or in a currency agreed upon at our stated currency value.

## 4. Payment

The first three deliveries are matter of prepayment, afterwards payments within 14 days (2 weeks) are granted. These are eligible for a 2% discount; alternatively please pay the full amount within 30 days from the date of invoice. These terms of payment only apply unless otherwise agreed.

Samples are not charged for quantities and colors of our choice. Customers' wishes shall be respected as much as possible. Prices and delivery of special items have to be negotiated.

If no agreement is made otherwise, the agreed price shall be due for payment without delay in full upon presentation of an invoice by the Seller in Euros. The date of payment is deemed to be the day on which full payment enters the account of the Seller. Cheques and drafts will be accepted by the

Seller only on special agreement, and even then only for payment purposes. In the case of a delay in settlement of a due payment, the Buyer must pay the Seller interest on the arrears at the rate of 6% p.a. Associated fees and charges of any kind are payable by the Buyer. Moreover, in the case of delayed payments, or the introduction of bankruptcy or insolvency proceedings for the purchaser's assets, the Seller shall, at his own discretion, be entitled to retain all deliveries and services, to withdraw from all unfulfilled parts of the contract or to or to supply any outstanding services only with payment in advance or with security without having to grant a period of grace before. All other rights of the Seller remain unaffected thereof.

## **5. Delivery, Fulfilment, *Transfer of Risk***

Unless otherwise agreed, all deliveries shall be EXW (Ing. Gerhard Fildan Straße 1, 2490 Ebenfurth, Austria) as per Incoterms 2020. The Seller shall be entitled to carry out part or advance deliveries and to present partial invoices for such partial and advance deliveries. Unless explicitly agreed otherwise in writing, delivery dates and deadlines are always considered to be only approximate; exceeding or falling short of these dates by up to 10 working days is, however, deemed to be on time. Solely after the expiry of this period, the Buyer shall be entitled to withdraw from the contract after setting an appropriate period of grace of at least 14 days. However, the Buyer shall be only entitled to withdraw regarding partial deliveries he cannot make appropriate use of on their own without the undelivered goods. The Buyer shall return to the Seller at his own expense all delivered goods and the goods that cannot be used.

### **Delivery ex-factory/warehouse:**

Confirmed delivery-date = week of expedition ex-factory/warehouse

We shall do our best to keep the terms agreed for delivery. In the case of an insignificant delay, claims for damage are restricted to the purchase price of the delayed consignment. Force majeure, strikes, lockouts or work stoppages through official measures at the time of manufacture release the company from the obligation of delivery within the agreed period.

### **Delivery deadlines:**

Standard colours and transparent: 2 to 4 weeks.

Special colours: on demand

### **Means of transportation:**

Best available, referring to the gross weight of the consignment or according to customer's instructions.

## **6. Reservation of title**

The Seller retains all rights of ownership of the goods supplied until complete payment of the purchase price. Resale of retained goods shall only be possible with the Seller's written consent. The Buyer shall, however, assign all claims arising out of such resale of the goods to the Seller. Assertion of the reservation of ownership by the Seller does not imply any withdrawal from the contract, except if otherwise expressly stated. In case goods have to be returned to the Seller, the Seller shall have the right to invoice the Buyer all transport and manipulation expenses incurred. In the event of claims by third parties on the goods subject to retention of title, in particular in the case of attachment, the Buyer shall state that such goods are property of the Seller, and notify the Seller without delay. The Buyer shall take the full risk for the retained goods, in particular for its destruction, loss or deterioration.

## 7. Conversion right

Should the Seller exceptionally declare itself ready to exchange the goods sold; such possibility solely applies to mere trade goods that have not been modified and/or designed according to customer specifications. The right to exchange goods is excluded where the goods are damaged (minor), have signs of use, or for other reasons cannot be resold under the label of new. Under this provision, the Buyer shall only be entitled to exchange for another good, and, unless expressly stated otherwise, never be entitled to the return of the good and the refunding of the purchase price.

## 8. Warranty, Obligation to examine and give notice

The Seller undertakes to correct defects affecting the usability of the goods to the extent that these defects are the result of defective materials or manufacturing. Obvious defects must be reported to the Seller in writing within 14 days after receipt of the goods and hidden defects within 7 days after discovery. Such report has to include a detailed description of the defects and/or deficiencies claimed by the Buyer. The Buyer is obliged to provide proof of such claim; otherwise, the Buyer shall reimburse the Seller for all costs incurred as a result of an unjustified claim. Unless inconsistent with mandatory legal provisions, warranty claims are limited at Seller's option to correction of the deficiency defect or replacement of the goods within a reasonable period or the reduction of the purchase price. The warranty period shall be 6 months commencing on the date of delivery of the goods (transfer of risk). Any works or deliveries by the Seller due to warranty claims do not extend the original warranty period. The Seller's obligations under warranty shall expire in any case after elapse of the warranty period; a special recourse of the Buyer extending beyond this period because of obligations fulfilled by the Buyer under warranty shall be expressly excluded. Warranty will cease immediately, if the goods are modified, reworked, changed or adapted by the Buyer or third parties without written consent of the Seller. Special items sold at discount prices shall not be subject to any warranty. The Seller assumes no liability for consequential damages. In case of disagreement, the Seller can decide to either replace the goods or refund the value.

## 9. Damages

All claims for compensation are excluded where there is no criminal intent or gross negligence of the Seller. The Buyer has the full onus of responsibility for all conditions of entitlement. As far as legally permissible, the liability of the Seller is limited to damages, which arise to the object of delivery itself. The Seller is therefore not obliged to pay damages to the Buyer for damage to items, which are not objects of the contract, for loss of profits or for any other consequential damages howsoever caused. The liability of the Seller shall generally be limited to the typical, foreseeable damage and to the amount of the relevant purchase price of the respective good(s). Damages claims expire after six months from notification of the damages and damaging party, but in any case after one year from passing of risk. If an order is carried out according to the Buyer's design specifications, drawings or models, the Seller's liability does not extend to the correctness of design and only to the conformity of the design to the buyer's specifications. The Buyer must indemnify and hold harmless the Seller if any claims are asserted by third parties against the Seller due to an infringement of protective rights of third parties.

## 10. Product Liability

Our maximal liability is limited to the value of the consignments supplied by our company. No responsibility will be assumed as a result of defects. All and any regress claims raised against the Seller by the Buyer or third parties based on product liability in the meaning of the Austrian Law on Product Liability (PHG) are expressly excluded, unless the claimant can prove, that a defect was caused in the sphere of responsibility of the Seller and was caused at least by gross negligence of the Seller.

## 11. Governing Law and Jurisdiction

The contract is subject to Austrian law. For Buyers based within the European Union or an EFTA State the designated court of jurisdiction shall be the appropriate competent court in *Wiener Neustadt*. All disputes arising out of or in connection with contracts with Buyers based outside of the European Union or EFTA State shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce by one or more arbitrators appointed in accordance with the said rules. The place of arbitration shall be *Wiener Neustadt*. However, the Seller shall be entitled, at its own discretion, to alternatively bring an action against the Buyer at the Buyer's venue.

Place of jurisdiction and performance is *Wiener Neustadt (Austria)*.

## 12. Miscellaneous

The Buyer may only offset against undisputed or legally confirmed receivables or in case, the Seller has acknowledged expressly. The Buyer is entitled to retain only a reasonable part of the payments due even in case of legally justified reclamations. The seller is entitled to store, communicate, process and delete personal data relating to the Buyer in the context of business dealings.

## 13. Severability

Should one provision of these "General Terms and Conditions of Sale and Delivery" or one provision of an agreement individually concluded between the parties be invalid, the validity of the remaining provisions of these "General Terms and Conditions of Sale and Delivery" or of the individual agreement shall not be affected. The same shall apply accordingly to gaps in these "General Terms and Conditions of Sale and Delivery" or the individual agreements, if any.

## 14. Distributor

Server Intranet	Quality Manager	developments coordinator
-----------------	-----------------	--------------------------