

General Terms and Conditions of Delivery and Sale

1. General – Scope

1.1 Our Terms and Conditions apply exclusively; we do not recognise any contrary conditions or differing conditions of the orderer unless we have explicitly agreed their validity in writing. Our Terms and Conditions also apply if we carry out a delivery without reservations with knowledge of any contrary conditions or of conditions of the orderer that differ from our Terms and Conditions.

1.2 All agreements made between us and the orderer for the purpose of the execution of this Agreement are set in writing in this Agreement. Any amendments to and supplements of the Agreement must be made in writing.

1.3 Our delivery conditions only apply to companies, legal entities under public law and publicly-owned entities.

1.4 Our Terms and Conditions also apply to future transactions with the orderer from a current business relationship.

2. Tender – Tender Documents

2.1 Our tenders are subject to alteration and are non-binding provided we have not explicitly declared anything to the contrary in writing. Until the point in time of the transmission of a binding tender or a written order confirmation there shall be no intent to enter into a legal commitment and therefore no agreement may come about. This applies accordingly to any amendment, supplementary or cancellation agreements. Our written order confirmation, and then our written tender as subordinate, are authoritative for the contents of the Agreement.

2.2 We reserve rights of ownership, trademark rights and copyright to illustrations, drawings, costings and other documents; these must not be made accessible to any third parties. This applies in particular to our conditions and to those written documents that are labelled as “confidential”; the orderer requires our explicit written consent before any disclosure of these to third parties.

3. Prices – Terms of Payment

3.1 If nothing to the contrary is set in the order confirmation our prices apply “ex works”. The minimum order in the event of decentral delivery is €250.00 net and in the event of delivery to a central warehouse of the orderer €2,500.00 net.

3.2 All prices are ex Value-Added Tax and “ex works”. OTG Lager und Frachtkontor GmbH & Co. KG; Messmerstrasse 31, D-97508 Grettstadt (INCOTERMS®2010).

3.3 Our prices are fixed prices and include the licence fees for “ARA Altstoff Recycling Austria AG” provided nothing to the contrary is disclosed on the invoice. If these licence fees decrease after the conclusion of an agreement the orderer shall not have any entitlement to a reduction in the agreed prices.

3.4 If no terms of payment are granted in our written order confirmation or in any other manner, the net purchase price (free of all charges) is due for payment directly after the receipt of the delivered merchandise and of the invoice. The deduction of an early payment discount is only permissible if this was explicitly agreed in writing in advance. If the orderer falls into arrears of payment we shall charge interest on arrears of 9.2 percentage points p. a. above the applicable base rate of the ECB. We reserve the right to assert any further loss.

3.5 The orderer shall only be entitled to set-off rights if its counterclaims have been legally established or are recognised by us. The orderer is only entitled to exercise a right of retention if the same conditions are met for the counterclaims of the orderer and in addition, their counterclaim relates to the same contractual relationship.

3.6 Bills and cheques shall only be accepted (if at all) on account of performance. The costs of bills and cheques shall be borne by the orderer.

3.7 If we are obliged to provide advance performance and if after the conclusion of an agreement we become aware of circumstances that on an objective assessment of the overall situation lead to a suspicion of a material deterioration in the assets of the orderer, regardless of any further rights we may at our discretion either make all invoices that are not yet due subject to immediate payment or demand provision of security within an appropriate deadline. If the orderer does not meet this demand we shall be entitled to withdraw from the agreement subject to further legal rights.

3.8 In the event of part-deliveries we shall be entitled to submit part-invoices, provided no recognisable interests of the orderer contradict this.

4. Delivery time

4.1 The condition for the commencement of the delivery time we give is the clarification of all technical questions. Provided nothing to the contrary is agreed or nothing to the contrary results from the contractual relationship the delivery time we give is always non-binding.

4.2 In the event of delays to delivery due to force majeure or due to unforeseeable circumstances for which we are not responsible, such as business interruptions, strikes, lock-outs, lack of means of transport, war, terrorism, raw material and energy procurement difficulties, official orders or non-punctual delivery by our suppliers, the orderer shall, after setting an appropriate period of grace, be entitled to withdraw from the Agreement.

4.3 If after our delay the orderer sets an appropriate period of grace, after the fruitless expiry of this period of grace the orderer shall be entitled to withdraw from the Agreement; the orderer shall only be entitled to claims to compensation in place of performance if the delay related to intent or gross negligence with regard to a material obligation (an obligation whose compliance the orderer could rely upon); in all cases of our negligence our obligation to provide compensation shall be limited to foreseeable losses typical for the Agreement.

4.4 The limitation of liability as per point 4.3 does not apply provided a corporate transaction to be settled on a fixed date was agreed; the same applies if due to a delay for which we are responsible the orderer can assert that its interest in fulfilment of the Agreement has lapsed.

4.5 If the orderer falls into arrears of acceptance or if it breaches any other obligation to cooperate, we shall be entitled to demand any losses we incur including any additional expenses. In this case the risk of accidental loss or of accidental deterioration of the purchased item shall transfer to the orderer at the point in time at which the orderer falls into arrears of acceptance.

4.6 We are entitled to make part-deliveries, provided no recognisable interests of the orderer contradict this.

5. Transfer of risks

5.1 If nothing to the contrary is set in the order confirmation delivery is agreed to be “ex works”: OTG Lager und Frachtkontor GmbH & Co. KG; Messmerstrasse 31, D-97508 Grettstadt (INCOTERMS®2010).

5.2 At the explicit wish of the orderer we shall cover the delivery with goods-in-transit insurance; the costs incurred in this respect shall be borne by the orderer.

6. Claims for defects

6.1 The condition precedent for all claims of the corporate orderer to a warranty (sections 922 et seq. ABGB), to compensation due to the defect itself (section 933a (2) ABGB) and to an error with regard to the freedom of the item from defects (sections 871 f. ABGB) (hereinafter “Claims for defects”) is that the orderer has properly met its obligation to give the notice of defects owed pursuant to section 377 UGB. The orderer must give notice of defects in writing and in detail. The orderer must give notice of hidden defects without delay after their discovery (section 377 UGB). Insofar as quantity and weight defects as per the preceding inspection obligations were already recognisable on delivery, the orderer must complain about these defects to the carrier on receipt of the merchandise and have the complaint certified. Any unpunctual or improper notice shall exclude any claims of the orderer to a warranty (sections 922 et seq. ABGB), compensation due to the defect itself (section 933a (2) ABGB) and to an error with regard to the freedom of the item from defects (sections 871 f. ABGB).

6.2 There shall be no Claims to defects provided there are only insignificant differences from the agreed or usual properties and conditions or there is only an insignificant impairment to usability.

6.3 All our specifications are only service specifications and not guarantees provided nothing to the contrary has been explicitly agreed.

6.4 Insofar as there is a defect to the purchased item for which we are responsible we are at our discretion entitled to rectify the defect or to provide a subsequent delivery.

6.5 Payments of the orderer in the event of notices of defects may only be retained in a scope that is in an appropriate relationship to the defect that has occurred. These payments also may only be retained under the pre-conditions of point 3.4 sentence 2 of these conditions.

6.6 If the orderer unjustifiably complains that we are responsible for a defect on grounds for which we are not responsible, we shall be entitled to invoice the appropriate expenses that we incur to rectify and/or substantiate the defect to the orderer.

6.7 We may charge the orderer the additional costs for the purpose of supplementary performance, in particular transport, travel, work and material costs, insofar as the expenses are increased by provision of the delivered merchandise at a location other than the delivery address.

6.8 Claims to recourse of the orderer for consumer goods purchases (section 933b ABGB) that due to an agreement between the orderer and its customer go beyond the legal entitlements of the customer are excluded. The orderer must inform us about the Claims to defects of its customer in good time so that we are in a position, at our discretion, to meet these claims of the customer in place of the orderer.

6.9 Warranty entitlements shall expire twelve months after handover insofar as we did not cause a defect with intent or gross negligence or fraudulently concealed the absence of a defect. This also applies to any binding warranties we have given provided nothing to the contrary is agreed. The legal time limits for claims to recourse pursuant to section 933b ABGB, consequential damage and other periods of limitations that are longer than two years remained unaffected.

6.10 Before the orderer can assert any further claims or rights (withdrawal, reduction, compensation or reimbursement of expenses) we must initially be given an appropriate deadline for supplementary performance, insofar as we have not given any guarantee to the contrary. If despite two attempts to provide supplementary performance the supplementary performance fails, or if we refuse to provide supplementary performance, or if this is unreasonable for the orderer, the orderer may withdraw from the Agreement or reduce (decrease) the payment. Figure 7 of these Conditions applies to the assertion of claims to compensation.

6.11 Otherwise the following applies to claims as a result of defects of title: Insofar as nothing to the contrary is agreed we are merely obliged to make deliveries in the country of the delivery address free of third-party rights. In the event of a breach of third-party property rights for which we are responsible we can at our discretion either obtain sufficient usage rights for the agreed or provided use at our cost and transfer this to the orderer, or amend the merchandise delivered so that the property right is not breached, or exchange the merchandise delivered insofar as this does not impair the agreed or provided usage of the merchandise delivered. If this is not possible for us or if we refuse to provide supplementary performance, the orderer shall be entitled to statutory entitlements and rights. Figure 7 of these Conditions applies to claims to compensation.

7. Compensation

7.1 The assertion of compensation and recompense of expenses due to defects to the merchandise delivered is excluded, insofar as we cannot provide supplementary performance for reasons for which we are not responsible. The assertion of compensation for defects and consequential damage that relates to the delivery of defective merchandise is excluded provided we are not at fault for the defect.

7.2 The assertion of compensation for a breach of a durability guarantee given by us or by a third party for which we are responsible is excluded if we are not at fault for the defect.

7.3 Otherwise claims to compensation and the recompense of expenses (hereinafter “Claims to compensation”) of the orderer, regardless of the legal grounds, in particular due to a breach of obligations arising from and in connection with the contractual obligation, from fault before or on the conclusion of the Agreement and from tort are excluded. In the event of our negligence our liability is limited to foreseeable losses typical for the agreement. The preceding does not apply to claims made as per the Austrian Product Liability Act (Produkthaftungsgesetz, or PHG), for our own intentional or grossly negligent breaches of obligation by legal representatives or vicarious agents, in the event of death, personal injury or damage to health, also those caused by legal representatives or vicarious agents, due to the assumption of a guarantee for the presence of properties and conditions (properties and conditions guarantee) or in the event of a negligent breach of material obligations (obligations upon which the orderer may rely). We shall not be liable for any claims beyond legal entitlements whatsoever. We shall only be affected by liability from the assumption of a procurement risk if we have explicitly assumed the procurement risk by virtue of a written agreement. Any amendments to the burden of proof are not associated with this regulation.

7.4 Insofar as our liability is excluded or is restricted, this also applies to the personal liability of all our employees, workers, representatives and vicarious agents.

7.5 The period of limitations for claims between us and the orderer is oriented pursuant to point 6.9, insofar as no claims arising from the Austrian Product Liability Act (Produkthaftungsgesetz) are affected.

8. Retention of title

8.1 We retain title to the objects delivered until the receipt of all payments including ancillary costs and interest from the business relationship with the orderer. In the event of each breach of contract by the orderer we are entitled to retrieve the merchandise delivered (“repossession clause”). In the event of material breaches of contract by the orderer, in particular in the event of arrears in payment, we are furthermore entitled to withdraw from the Agreement at our discretion in this respect. In the case of a mere repossession of the merchandise delivered the Agreement remains in effect, however, the merchandise must now be surrendered to us exclusively and concurrently in return for payment of the purchase price in full including ancillary costs and interest. Both in the event of the mere repossession of the merchandise and in the event of a withdrawal from the Agreement, the orderer is obliged to reserve the merchandise at its cost. In addition, we reserve the right to collect the merchandise without the agreement of the orderer at its cost and in an appropriate manner. We reserve the right to assert claims to compensation.

8.2 Our retention of title shall not be affected by offsetting or reconciliation statements.

8.3 The orderer is obliged to treat the object delivered with care; in particular the orderer is obliged sufficiently to insure it at replacement value against fire and water damage and against theft at its cost.

8.4 In the event of attachments or other third-party interventions the orderer must inform us in writing without delay. The orderer shall be liable to us for all costs that are incurred as a result of attachments or third-party interventions, in particular for court and extra-judicial costs of third-party proceedings (section 37 EO).

8.5 The orderer is entitled to resell the object delivered in the ordinary course of business. However, in order to secure our receivables from the delivery the orderer now assigns all receivables that accrue from a resale from their customer or third party, regardless of whether the object delivered has been sold without or after processing. The disclosure deed necessary for the effectiveness of the assignment of security can at our discretion be made either by communication to the third-party debtor or by means of a book entry in the business books of the orderer. In the event of a communication to a third-party debtor the orderer must declare the assigned receivables and their debtor and all the disclosures required for collection, surrender the accompanying documents and notify the debtor (third party) of the assignment. We are authorised to satisfy ourselves from the assigned receivable if the orderer no longer meets its payment obligations arising from the proceeds collected, falls into payment arrears or has made an application to open insolvency proceedings or such an application was made or if payment has ceased. However, collection by us is not possible provided the insolvency code contradicts this.

8.6 We and the orderer agree that we acquire in addition a right of lien to the receivables in the amount of the final invoice amount (including VAT) of our receivables that accrue to the orderer from a resale from its customer or third party as per point 8.5 and this also regardless of whether the object delivered has been sold without or after processing. We are only entitled to report the pledge to the customer or third party if the orderer no longer meets its payment obligations arising from the proceeds collected, falls into payment arrears or has made an application to open insolvency proceedings or such an application was made or if payment has ceased. In the event of these cases we can also demand that the orderer declares the assigned receivables, makes all the disclosures required for collection, surrenders the accompanying documents and notifies the debtor (third party) of the pledge.

8.7 If the orderer resells the reserved goods to a third party and for this purpose collaborates (in variance from point 8.6) with a factor to which the purchase price receivable of the orderer from the third party is transferred by means of non-recourse factoring, the orderer now assigns its current and future claims from the factor arising from the purchase of resale receivables, insofar as these relate to the merchandise delivered, to us and we hereby accept the assignment. The orderer is obliged to report this assignment to the factor and instruct the factor to pay us only. However, the authorisation to resell the reserved goods only applies if the factor has given its agreement to an assignment of the claim to disbursement of the factoring revenues from the resale. Otherwise the resale of the merchandise subject to retention of title is excluded. Provided the orderer wants to collaborate with a factor in recourse factoring, the resale requires our explicit agreement.

8.8 Any processing or reforming of the object delivered is always carried out by the orderer for us. If the object delivered is processed with other objects that do not belong to us, we acquire co-ownership to the new item in relationship to the value of the item delivered to the other processed objects at the time of the processing. Otherwise the same applies to the item created by processing as to the objects delivered subject to reservation.

8.9 If the delivery object is inseparably mixed with items that do not belong to us, we acquire co-ownership to the new item in relationship to the value of the delivery item to the other mixed items at the time of the mixing. If such mixing is carried out in a manner so that the item of the orderer is seen as the main item, we acquire pro rata co-ownership. The orderer shall keep the co-ownership item safe for us.

8.10 If the delivery object is outside Austria and if Austrian law no longer applies, the following shall apply: If the delivery object was delivered before payment of all the amounts owed by the orderer from the Agreement, this object remains our property until payment in full, insofar as this is permissible pursuant to the law applicable to the territory in which the object is. If this jurisdiction does not permit retention of title but permits us to retain other rights to the delivery object, we may exercise all rights of this nature. The orderer is obliged to cooperate in any measures that we take to protect our ownership rights or any other rights to the delivery object in place of these.

9. Court of jurisdiction – Place of Performance

9.1 The court of jurisdiction and the exclusive local jurisdiction of the materially competent court is agreed to be Innsbruck. However, we are also entitled to file a suit against the orderer at its place of residence or domicile.

9.2 If nothing to the contrary is set in the order confirmation, the place of performance is Hall in Tirol.

10. Applicable Law, Severability clause

10.1 The legal relationship between the Parties is oriented exclusively pursuant to the law of the Republic of Austria under exclusion of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

10.2 Should any provisions of this Agreement or these General Terms and Conditions be or become ineffective in full or in part, this shall not affect the validity of the remaining provisions.