



General Terms and Conditions of Sale and Delivery for domestic and foreign Customers

General Information

- These General Terms and Conditions of sale and delivery of products and services for domestic and foreign Customers (hereinafter referred to as "**TaC**") shall be applicable for all business relations between USNER Gesellschaft m.b.H., FN 51347k, Am Ausfergenufer 4, A5400 Hallein (hereinafter referred to as "**USNER**") and domestic and foreign contracting parties (hereinafter referred to as the "**Buyer**" and, together with USNER, as the "**Parties**"). In particular, USNER provides all sales and deliveries of products and services to the Buyer exclusively subject to these General Terms and Conditions, irrespective of whether any express reference is made to the General Terms and Conditions in a particular case. Any deviating legal regulations, in particular conflicting terms and conditions of purchase of the Buyer, shall not be applicable, unless explicitly approved by USNER in writing.
- The Buyer accepts these TaC at the latest with the submission of his contractual declaration to USNER. The general terms and conditions of the Customer shall not be an integral part of any Agreement between USNER and the Buyer. This applies, in particular, even if USNER does not expressly contradict the Buyer's general terms and conditions or renders a service without any reservation, whilst being aware of the Buyer's differing, contrary, or supplementary general terms and conditions.
- Any side agreements shall be made in writing to be effective.

Definitions

In these General Conditions the following terms shall have the meanings hereunder assigned to them:

- "**Agreement**": the contract in writing between the Parties concerning sale and delivery of the Products and Services, and all appendices, including agreed upon amendments and additions in Writing to said documents;
- "**Approximate**": if the quantity to be delivered is specified in the Agreement as an approximate quantity or if it is identified by any similar clause or if a quantity deviation is customary under Austrian law and reasonable for the Buyer, USNER shall be entitled to determine the amount of the deviation within a tolerance limit of more or less than 10 % of the initial order.
- "**Contract Price**": the payment to be made for the Products;
- "**Documents**": in particular illustrations, calculations, and examples;
- "**Information**": knowledge, expertise and data contained within Documents;
- "**In Writing**": communication by document signed by both Parties or by letter, fax, electronic mail and by such other means as are agreed by the Parties;
- "**Product**": the goods, chemical substance or compound, materials, articles, documentation, software and other products to be supplied by USNER under the Agreement
- "**Services**": the Products, installation of the Products and any other work to be carried out by USNER under the Agreement.

Conclusion of the Agreement

- All offers made by USNER shall be subject to changes and handed out without any obligation. A Buyer's order, which does not specify a deadline, shall be binding for a minimum of thirty (30) days.
- Agreements with USNER shall only be entered into by means of an order confirmation in Writing or acceptance from USNER in Writing or performance of the delivery.

- Deviations in the order confirmation in Writing or the Documents referenced therein from the declarations previously issued by the Parties shall be deemed to be approved, if the Buyer does not expressly object to the deviation concerned within a reasonable period of time, at the latest within seven (7) days from receipt of the order confirmation. The Buyer shall have no right of objection with regard to the application and validity of these TaC.

Scope of the Delivery Obligation

- The Products and Services are exclusively determined by the Information provided in the order confirmation in Writing and the Documents referenced therein.
- References to third-party reference numbers shall refer to the corresponding Products and Services from USNER.
- Furthermore, USNER reserves the right to change technical details of the Products and Services to be supplied and/or services to be rendered, as far as such changes are
 - customary under Austrian law or
 - if they are made due to regulations applicable under Austrian Law or
 - if they reflect the technological progress and are reasonable for the Buyer.

Delivery Period, Partial Delivery

- Unless USNER expressly stated in Writing a fixed period or a fixed deadline for the delivery, USNER may perform its deliveries shortly before or after (not more than three (3) days) the delivery periods or delivery deadlines indicated in the Agreement as far as this is adequate and reasonable for the Buyer.
- USNER shall be entitled to part deliveries up until the agreed upon date of delivery, if prior notice thereof is given to the Buyer and to the extent, that partial deliveries are reasonable for the Buyer. Refusal to accept a partial delivery shall not release the Buyer from his obligation to pay the Contract Price. If the Buyer is entitled to the right of withdrawal on account of legal provisions due to delay by USNER, this shall, in the case of partial deliveries, be limited to the delayed part of the deliveries.
- The buyer shall be informed in due time via e-mail or fax in case of any delay or default of delivery.
- Should delays occur to delivery provisions due to events beyond the sphere of influence of USNER, in particular due to force majeure, official measures, confiscation, natural disasters, unrest or war, transport interruptions, operational disruptions, industrial action, or where deliveries to USNER have failed to occur or occurred in breach of contract, then the delivery deadlines shall be extended accordingly. Should a delivery provision be delayed due to events such as these by more than the duration of the original delivery period (or the period between the order confirmation and the delivery deadline), then each Party shall be entitled, within fourteen (14) days from the end of this extension period, to withdraw from the part of the delivery affected by the delay by means of an express written statement.
- In case USNER is in default of delivery or becomes unable to perform a delivery, regardless of the reason, its liability shall be limited to damages in accordance with Art IX.

Prices

- USNER's prices shall apply ex warehouse or free domicile as individually agreed upon on with the Buyer, including customary packaging, plus the applicable value added tax at the legal rate. Any extra or special Products and Services ordered, shall be charged separately.
- As far as USNER imports Products and Services from foreign countries for the purpose of providing a delivery to the Buyer and insofar as import customs (import duties, import tariffs) on these Products and Services are increased or decreased in the period between the conclusion of the Agreement and the delivery, USNER shall be entitled and, in case of any decrease of the import duties, obliged to increase or decrease the Contract Price agreed with the Buyer by the amount of the higher or lower import duty by written statement to the Buyer.

Place of Fulfilment, Delivery

- Place of performance for both Parties for all obligations arising from the Agreement shall be A5400 Hallein.
- Unless expressly agreed upon in Writing, USNER's deliveries shall be made EXW according to the Incoterms® 2010, all packaging shall be borne by the Buyer.
- If USNER's delivery is not made in due time, Buyer shall be entitled to remedies of any kind only after USNER has been granted an adequate grace period. After the grace period has

expired, Buyer may declare the Agreement void or alternatively, claim damages under the conditions set forth under these TaC.

- Apart from cases in which no or incorrect deliveries have been made USNER by pre-suppliers, USNER shall not be liable for the consequences of late deliveries, as far as the delay was caused by circumstances beyond USNER's control and which could not be overcome even by applying all reasonable efforts, in particular in case of natural disasters or similar cases of force majeure, interventions of public authorities or labour disputes. The Buyer's right to terminate the Agreement shall not be impaired by this regulation.

Right of Withdrawal

- Subsequent to giving an appropriate grace period of no more than fourteen (14) working days, USNER shall be entitled to withdraw from the Agreement if the Buyer is in default with regard to the fulfillment of material contractual obligations, in particular the obligation to pay the purchase price or to carry out any necessary collaborative actions required by USNER for performance of the Agreement.
- If it becomes evident, after conclusion of the Agreement, that USNER's claim for payment is endangered by lack of performance by the Buyer, in particular due to poor financial circumstances, then USNER may request a security deposit. If the Buyer refuses to comply or does not comply within the period set, USNER shall be entitled to withdraw from this Agreement and seek compensation for damages.
- USNER shall have the right to withdraw from this Agreement for good cause, in particular, in the case that insolvency proceedings have been opened concerning the assets of the Buyer, or have not been opened due to there being insufficient assets to cover costs.

Liability for Defects in Title and Material Defects, Duty to Inspect and Complain

- The warranty period shall be twelve (12) months from the receipt of the Product or Service by the Buyer.
- Certain properties, characteristics, and possible uses of the Products and Services shall be confirmed by express Agreement in Writing. In particular, USNER does not guarantee certain use ability, unless expressly confirmed in Writing. Furthermore, the warranty shall be excluded for defects caused by the material or instructions provided by the Buyer for the manufacturing of the Products and Services. Statements and commitments by USNER, in particular with regard to promised characteristics, shall not serve as guarantees or warranties in any legal sense, unless expressly agreed otherwise in Writing.
- In the event of a claim under warranty, USNER shall provide, according to their discretion, either an improvement or replacement within a reasonable period of time. Replaced Products and Services shall become the property of USNER and be returned to USNER. USNER shall be given a minimum of two attempts to eliminate a defect in the delivery. Should USNER fail to carry out the improvement or replacement within an appropriate period of time or should an improvement or replacement prove impossible, then the Buyer may at its own discretion request a price reduction or, provided it is not simply a minor defect, cancellation of the Agreement. In the case of an Agreement, which permits partial deliveries, the right of cancellation shall be restricted to partial deliveries which have not yet been duly executed. Buyer renounces his right of cancellation through the sale, modification, or treatment of the Products and Services in the knowledge of their defectiveness.
- Buyer shall inspect the Products and Services within four (4) work days after their receipt. Buyer must make any defect complaints with regard to the Products and Services under the Agreement without delay, to USNER expressly in Writing. Obvious defects shall be reported within three working days from receipt of the Products and Services, and concealed defects at the latest within three working days of their discovery. In the case of partial and successive deliveries, a separate complaint shall be made for each delivery subject to a defect. The defect complaint is delayed in any case, if USNER is no longer able to inspect the rejected Products and Services. From the time of discovery of the defect, any sale, processing, or treatment of the affected Products and Services requires prior written approval of USNER to avoid the loss of the entitlement to assert claims.
- Buyer shall ensure that the defect complaint is actually received by USNER. The mere return of Products and Services shall not constitute a proper defect complaint.
- In the absence of a timely defect complaint, the assertion of claims for warranty, compensation on account of the defect itself and due to an error as to the non-defective nature of the Products and Services, shall be excluded.
- Buyer shall remove the components affected by the defect complaint and return them to USNER at his own risk. If it is not possible to return the components, Buyer shall give USNER the opportunity to inspect the components affected by the defect complaint. USNER shall not waive its right to object defect complaints, which were delayed or defect complaints,

which were not raised, either on the grounds of this Products and Services inspection or the unreserved acceptance of the returned Products and Services. During inspection and correction of the defect subject to the complaint, Buyer shall make all reasonable efforts to collaborate and, in particular, to provide Information. If, after inspection, USNER does not accept the Products and Services subject to the complaint, then the Buyer shall be obliged to compensate USNER for all costs associated with the inspection. Work days as used in this paragraph means days from Monday to Friday of any week, except public holidays in the country of the Buyer.

- Presumption according to § 924 ABGB shall be excluded.
- Buyer not be entitled to the right of recourse according to § 933b ABGB.

Liability for Damage

- USNER shall not be liable for defects according to Art VIII, the liability for damages, regardless of the legal reason, in particular arising from impossibility of performance, delay, faulty delivery, for other violations of the Agreement, breaches of duties during precontractual negotiations or tort shall be limited in accordance with these provisions.
- USNER shall only be liable in the case of intent or gross negligence. USNER's liability in case of a slightly negligent violation of contractual duties shall be excluded. The burden of proof for the presence of any negligence rests exclusively with the Buyer.
- The liability of USNER for return, assembly, and removal costs, consequential damages, indirect damages, financial losses, in particular loss of profit etc., and claims from third parties against the Buyer, shall be excluded.
- The contract terms set forth above shall not apply to claims under Austrian Product Liability Law or comparable regulations applicable in foreign legal systems, if and to the extent such regulations provide for a liability without fault. In these cases, USNER's liability shall be limited to the indemnification provided by the liability insurer. Insofar as the latter will not or not completely provide the indemnification, USNER shall only be obliged to pay damages up to the amount of the sum insured.
- Insofar as USNER provides technical information or becomes active as consultants without having been contractually obliged to do so, these services will be rendered free of charge and to the exclusion of any liability whatsoever.
- Insofar as USNER's liability is excluded or limited, that shall also apply to the personal liability of its executive bodies, employees, staff members, personnel, representatives and vicarious agents.
- However, USNER's liability shall be unlimited, if any damage was caused by intent, or if USNER is liable under a guarantee or if the Buyer loses his life or suffers bodily injury or damage to his health due to an act or omission attributable to USNER.

Payment Terms

- All prices quoted by USNER are in Euros and subject to Value Added Tax. The Information given in price lists is provided for general information purposes only.
- Invoices from USNER are payable within thirty (30) days from the invoice date clear of any charges and deductions to the bank account specified in the invoice.
- In case Buyer is in default of payment, USNER shall be entitled to request interest in the amount of nine (9) percent above the base interest rate of the European Central Bank (ECB) and to withhold all further deliveries to the Buyer, for as long as the default in payment prevails. Claims for the reimbursement of higher damages caused by the default of payment shall remain unaffected.
- If concerns arise regarding the solvency or creditworthiness of the Buyer after the conclusion of the Agreement, e.g. USNER's claims for payment seem to be endangered, then USNER shall have the right to suspend its service and/or deliveries or to request advance payment prior to the deliveries and/or request the provision of a security in form of a directly enforceable, irrevocable and unconditional guarantee issued by a bank, with its registered seat in Austria. If the Buyer fails to comply with any of the mentioned requests, despite having been granted a grace period with warning of repudiation of the Agreement, USNER may withdraw from the Agreement. Any claims of the Buyer shall be excluded in this case.
- All charges, fees and taxes originating from payment transaction outside of Austria as well as confirmation charges shall be borne by the Buyer.
- Payment to third parties shall not be accepted by USNER as reduction of debts.
- Buyer shall only be entitled to offset claims against USNER, which have been legally determined or which have been expressly acknowledged in Writing by USNER.

Intellectual Property Rights and Confidentiality

- USNER retains all property rights and all protective rights and copyrights to all Documents regarding Products and Services, as well as all Information contained within them or otherwise provided by the Buyer. Even if the delivery of a Product or a Service is carried out on the basis of the Buyer's specifications or if the Buyer makes any contribution otherwise to it, the exploitation and usage rights shall be assigned to USNER fully and exclusively. The transmission of Documents and Information to third parties and any use, which extends beyond the specific Agreement, shall be prohibited without the prior express written permission of USNER.
- Buyer must maintain confidentiality with regard to all of USNER's business Information and expertise known or otherwise obtained, even after termination of the business relationship, as far as such Information is not a matter of public knowledge and does not relate to Information legitimately obtained from third parties.

Retention of Title

- USNER reserves the right of ownership of all sold Products and Services until full payment has been made for all present and future claims resulting from a purchase Agreement and/or an ongoing business relationship (secured claims).
- Prior to full payment of the secured claims, the Products and Services are subject to the reservation of property rights, may not be sold, pledged nor assigned by way of security to third parties. Buyer shall notify USNER immediately in writing if and insofar as any Product or Service belonging to USNER are accessed by third parties.
- In the event, that the Buyer's behaviour is in breach of this Agreement, in particular in the case of non-payment of the due purchase price, USNER shall be entitled, in accordance with the statutory provisions, to withdraw from this Agreement and to return the Products and Service on the basis of the reservation of property rights and withdrawal. Should the Buyer fail to make payment of the Contract Price, then USNER may only assert such rights, if USNER has unsuccessfully set a reasonable deadline for payment in advance, or if the setting of such a period is legally superfluous according to the statutory provisions.
- Buyer shall have no right of retention with regard to USNER.
- Buyer shall immediately inform USNER about any claim put forward by third parties with respect to the Products delivered and Services rendered subject to retention of title or to the claims assigned hereunder.

Place of Jurisdiction, Applicable Law, and Severability Clause

- The exclusive place of jurisdiction for all disputes arising of and in connection with these TaC with Customers with their seat in the European Union, including those relating to the conclusion of the Agreement and its validity, shall be Salzburg, Austria. However, USNER may take legal action against the Buyer at his registered office.
- These TaC shall be subject to Austrian substantive law with the exclusion of the reference norms of International Private Law ("IPRG") and the provisions of the UN Convention on Contracts for the International Sale of Goods ("CISG").
- If any of the provisions of these TaC are ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the remaining provisions. In cases such as this, the relevant provision shall be replaced by another provision which comes as close as possible to the economic effect of the original provision, but which is neither ineffective, invalid, nor unenforceable.

Value Added Tax Identification Number

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