

## General Sales and Delivery Conditions

Orderman GmbH, Bachstr. 59, A-5023 Salzburg, Austria

### 1 General information

1.1 All supplies and services of the Orderman GmbH (subsequently referred to as the "seller") take place exclusively in accordance with these general sales and delivery conditions. Any divergent conditions of the buyer are herewith expressly excluded. They will also not be recognized, even when not explicitly contradicted on receipt by the seller.

1.2 All agreements, in particular by word of mouth or telephone, as well as all auxiliary agreements, are only legally binding when confirmed by the seller in writing. This also applies to subsequent alterations or additions to existing agreements.

1.3 The sales and delivery conditions are also valid for orders, which may be given in the future, irrespective of whether specific reference is made to them in each individual case.

1.4 Deviations from these sales and delivery conditions require special written agreement with the buyer. This also applies to divergence from the agreed mandatory form requirement.

### 2 Offers and contractual agreement

2.1 The information contained in catalogues, brochures, mailings, advertisements, pictures, homepage and price lists is not binding. It is only binding when expressly agreed in contractual form. Orders from the buyer are only binding for the seller following acceptance. This also applies to orders given to representatives. The buyer is bound by the offer provided for a period of 20 working days. The order is first valid when written confirmation has been given by the seller.

2.2 Should the order confirmation contain additions, limitations or other alterations to the original order, it is assumed that the buyer is in agreement unless written objection is provided without delay, or at the latest within ten days of the sending of the order confirmation.

2.3 Business negotiated through representatives is first binding following written confirmation by the seller.

### 3 Scope of contractual obligations

3.1 The seller is obligated to render deliveries and/or services only to the extent explicitly agreed upon in writing. Any duty to warn or obligation is generally excluded.

3.2 The written confirmation of the seller is decisive with regard to the content and scale of the supplies and services made. The seller retains the right to make changes due to further technical and/or electronic developments and technical manufacturing related alterations during completion of the order.

### 4 Delivery period

4.1 The delivery periods and dates given by the seller are not binding unless expressly agreed. Delivery periods are valid ex seller. Unless the seller meets the delivery dates, the buyer may request from the seller to declare whether the seller will cancel or perform delivery within a reasonable period of time. Unless the seller makes such declaration within 14 days, the buyer is entitled to cancel. In no event can the buyer hold the seller responsible for any damage arising therefrom. Claims of the buyer due to the seller's negligent non-observance of delivery dates are excluded.

4.2 The seller is entitled to make partial or pre-deliveries. A basically justified letter of withdrawal from the buyer following an additional period of grace does not effect the completed partial or pre-deliveries, unless the buyer could not employ these in isolation without the remainder of the delivery.

4.3 In the case of an agreed alteration to the order, the seller is permitted to reassess the delivery periods and dates.

4.4 Should the delivery depend upon preparatory activities of the buyer (e.g. the supply of necessary data, documents, etc.) and should the buyer default in this regard, the delivery period and dates will be postponed accordingly.

4.5 The delivery period can be reasonably prolonged should unexpected events occur or obstacles arise, which are beyond the responsibility of the seller, e.g. acts of god, strikes, lock-outs, non-culpable interruptions to production irrespective of the causes such as machine defects, transport delays, disruptions to the power supply, delays in the supply of materials, etc. In particular, all events beyond the influence of the seller are regarded as acts of god. In all these cases, the seller is permitted to prolong the delivery period by a

reasonable, chosen amount, or to fully or partially withdraw from the contract. Claims for damages by the buyer are excluded in such situations.

4.6 Should dispatch be delayed at the request of the buyer, the costs resulting from storage will be charged to the buyer one month after notification of readiness for dispatch. At least 1/2 % of the billed amount can be expected as a monthly charge for storage within the premises of the seller. However, following a reasonable period of grace, the seller is entitled to otherwise use the contractual object and to supply the buyer within a reasonable period, or to withdraw from the contract.

### 5 Passing of risk

5.1 In the case of a lack of divergent written agreements, the seller is entitled to select the transport company or freight haulier, as well as the dispatch route and method of transport. Dispatch always takes place ex seller at the expense and risk of the buyer, even when sale takes place free (delivery free) to the place of destination, or other location. All risks, including those related to accidental destruction, are transferred to the buyer as soon as the articles have left the store of the seller. From this point in time, the buyer also bears the risk relating to third party damage.

5.2 Should dispatch be delayed by factors beyond the control of the seller, then the risks relating to damage are transferred to the buyer on the day of readiness for dispatch, irrespective of the location of the goods to be dispatched at this point in time.

5.3 Insurance cover will only be supplied by the seller when this has been especially agreed in writing.

5.4 Delivered goods must be accepted by the buyer, even when they are damaged, but not to the detriment of the buyer's rights contained under Item VI.

5.5 Unless the goods are taken over by the buyer within the time stipulated, the seller is entitled to store the goods at the buyer's expense. In no case can the seller be held responsible for any delays in delivery caused by incorrect, incomplete or subsequently changed information supplied by the buyer, nor can such delays lead to delayed performance. Any additional costs resulting therefrom are borne by the buyer.

### 6 Guarantee

6.1 The buyer is obliged to examine the goods supplied by the seller for defects immediately following receipt.

6.2 Slight deviations in quality, colour and exterior design do not entitle the buyer to complaint concerning defects.

6.3 Defect complaints are only valid when made known to the seller without delay following delivery to the contractually agreed point of destination, or at the latest within eight days. Decisive in adherence to the deadline is the arrival of the written complaint at the premises of the seller. The defect complaint must contain details concerning the type and scope of the defect. A precondition for a valid defect complaint is the provision of the seller with sufficient opportunity to examine the goods subject to question.

6.4 Should the goods be defective due to reasons for which the seller is responsible, the seller will choose to either complete repairs or make a replacement delivery. The buyer can first request order cancellation when the seller has been offered the opportunity to repair or replace the goods three times during the guarantee period. A claim for price reduction by the buyer is excluded under all circumstances.

6.5 Any further claims of the buyer, in particular claims for damages for personal or property damage, for consequential damage caused, and for loss of profits are excluded as far as permitted by cogent law.

6.6 Claims of the buyer under the guarantee are excluded when a claim concerning a defect in a delivered article is not made immediately in writing and a decision from the seller is not awaited. The guarantee is also null and void when the buyer, or third parties, interfere with the delivered goods, operate the goods improperly, subject them to excessive use, the goods have been damaged due to external influences, or when foreign components or accessories are employed. The same applies when the defect can be traced to the fact that the buyer or third parties failed to adhere to the operational instructions supplied by the seller.

6.7 Unless an amicable settlement on the defects complained about is reached, the buyer must assert the alleged claims by action in court within 12 months. The period of time granted starts on the day of passing of risk.

6.8 Any claims not explicitly granted in these terms and conditions of sale and delivery, in particular claims for damages due to impossibility, delay, positive violation of claims, culpa in contrahendo, and unlawful act are excluded as far as permitted by cogent law.

6.9 Until the expiration of 12 months from the day of passing of risk, it is assumed that any defect that may arise existed already when the goods were handed over. This does not apply to wearing parts, such as in particular rechargeable battery packs, safety cords, Orderman touch pens etc.

## **7 Prices and conditions of payment**

7.1 Unless otherwise agreed in writing, the prices are FOB Salzburg in Euro. They do not contain the costs of packing, duty, insurance, transport or other auxiliary costs.

7.2 Should the seller fail to provide details of prices, the latest list price at the time of order is valid.

7.3 Unless otherwise agreed, accounts are to be paid within 8 days less 2% rebate, or at the net price within 30 days of the date of the invoice. Payment must be free of expenses or deductions. Checks or cash will only be accepted on special agreement and only as payment and not in lieu. Cheques and bills are first valid as payment following their redemption as valuta under which they are entered at the bank to the credit of the seller. The seller is entitled to reject payment offered by means of cheques or bills without providing a reason. The costs relating to discounting or collection are always borne by the buyer.

7.4 In the case of invoices amounting to over € 7.000,- and/or when due to several deliveries the total of the open accounts amounts to more than € 7.000,- the buyer must prepare a bank guarantee or other standard bank assurance for the sum in excess of € 7.000,-.

7.5 Initial deliveries can only take place against payment in advance.

7.6 The assertion of counterclaims through offsetting or the exercising of withholding rights by the buyer is excluded wherever legally permitted.

7.7 Should payments be deferred, completed later than agreed, or not made within 30 days of the date of the invoice, during the period of payment interest is agreed at monthly rate of 1.25%. The seller expressly retains the right to assert a claim for additional compensation for delay. Specific notification of delay is not required.

7.8 In case of a default on the payment of an account, all other billings that may possibly be open will become due for immediate payment.

7.9 A payment default by the buyer is accompanied by an obligation of the same to pay for reminder, debt collection and information costs.

7.10 Payment is always made initially at cost (reminder costs, legal costs, etc.) then with interest and finally on capital, calculated on the basis of the oldest debt. Conflicting dedications by the buyer are ineffective.

## **8 Buyer withdrawal rights**

8.1 The buyer is entitled to withdraw from the contract if delivery is impossible for the seller prior to the transfer of risk. The same applies to the inability of the seller to deliver. The buyer is also entitled to withdraw from the contract when for an order of the same merchandise, the supply of a part of the order in the required amount is not possible and the buyer has a justified interest in rejecting a partial delivery. If this is not the case, the buyer can reduce counter-performance in accordance with the portion of the order not supplied. In any event, the buyer has to grant the seller an adequate additional respite of at least 14 days.

8.2 Should impossibility or inability occur during the delay to delivery, or due to the fault of the buyer, then the obligation to counter-performance remains.

8.3 If the buyer withdraws from the contract in accordance with Item VIII.1. then there is no obligation to counter-performance. Further claims by the buyer are expressly excluded.

## **9 Reservation of ownership**

9.1 Until full payment of all outstanding debts relating to the business relationship between the seller and buyer is made, the complete merchandise remains the property of the seller (reserved goods).

9.2 The buyer may only sell or process the reserved goods during ordinary business operations at the normal conditions, as long as there is no default on payment. While the reservation of ownership is in force, the reserved goods in the possession of the buyer must be maintained in an orderly condition. In the case of the sale of reserved goods, the buyer immediately transfers all rights relating to the purchaser and all auxiliary rights relating to the sale to the seller. The buyer is obliged to immediately enter the transfer of these rights to the seller in its accounts, whereby the amount and legal basis of the rights, the debtor, assignee and date of the transfer must be noted. On

request, the buyer is also obliged to demonstrate to the seller that the note in the accounts has been completed in an orderly manner in every case. The seller is empowered to call in the transferred rights at any time, but may not dispose of them in another manner. If the buyer's purchaser insists on a rights transfer prohibition, the buyer must immediately inform the seller of this fact. Should the buyer be unable to provide sufficient alternative security for the rights of the seller, the seller is entitled to prevent the sale of the reserved goods to the purchaser requiring a transfer prohibition. Should the reserved goods be sold for cash, the ownership rights to the value of the price of the merchandise plus Value Added Tax pass to the seller. In this case, the buyer is obliged to keep the cash involved separately from company or any other cash reserves. In such a situation an appropriate note must be made in the accounts.

9.3 In case of the working or processing of the goods, or their combination with other objects, the seller will receive joint ownership of the new product in the same value ratio as that of the supplied goods to the new product.

9.4 The buyer is obliged to insure the reserved goods in accordance with correct commercial principles and immediately transfers all rights relating to insurance or other replacement claims for damage, or the loss of the reserved goods to the seller.

9.5 In the case of other claims for damages, the buyer is obliged to immediately inform the seller of an interference with the reserved goods by third parties. This is especially the case of a seizure of the reserved goods.

9.6 In cases of defaults on payment, discontinuation of business, bankruptcy or an application for a financial settlement (judicial or out of court), or should such an application be rejected on the grounds of insufficient capital cost coverage, the seller is entitled to immediate repossession of the goods, in accordance with § 918 ABGB, without the setting of a deadline or a claim for damages by the buyer. In this case the seller, or a third party empowered by the same, is entitled at any time to immediately collect the object of sale from the buyer without any prior notice. The buyer hereby renounces any claims to trespass or unjust deprivation.

## **10 Confidentiality**

10.1 Technical drawings and electronic data from the seller are subject to secrecy. In the case of other claims for damages by the seller, the buyer is obliged to refrain from using this data, or to make it available to third parties.

## **11 Legal venue and place of performance**

11.1 The place of performance is the seat of the seller.

11.2 For conflicts resulting from the contractual relationship between the seller and the buyer, including the question of the existence or non-existence of a contract, the competent court in the provincial capital of Salzburg is responsible.

## **12 Applicable law**

12.1 Seller and buyer expressly agree on the use of Austrian law. The validity of UN purchase rights is explicitly excluded.

## **13 Final provision**

13.1 The invalidity of individual provisions in these sale and delivery conditions have no effect on the remaining conditions. The invalid conditions will be replaced by legally permissible provisions, which come closest to the content of the invalid conditions.