

# General Terms and Conditions of Business (GTC)

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## General Terms and Conditions (GTC) | AMADA Austria GmbH

Exclusively the following Allgemeinen Geschäftsbedingungen (AGB) in the most recent version (most recent version is available from the internet on [www.amada.at](http://www.amada.at)) shall apply for the business terms and conditions with our Customer/Orderer. Our AGBs shall apply only for entrepreneurs. Entrepreneurs are considered to be all persons who are not "consumers", whereby a consumer is understood to be any natural person who acts in business dealings for purposes which cannot be attributed to their commercial, trading or professional activities. We shall not recognize any opposing or deviating terms and conditions of the Customer/Orderer, or their AGBs, unless we approve their validity in writing. Our AGBs shall also apply for all future business dealings with the Customer/Orderer. These terms and conditions shall apply subject to any special agreements specified on the order confirmation, delivery note and invoice. All amendments of the provisions of the AGB must be in writing. Our offers are non-binding. The guarantee of quality features, technical specifications and descriptions of the delivery object shall only then be binding for us if we have expressly committed to or confirmed them in writing.

### 1. Scope of Validity

- 1.1. These General Business Terms and Conditions are an essential and indivisible contractual component of all business dealings with regards to our goods and other performances and shall apply provided that the contractual parties have not agreed in writing to something to the contrary.
- 1.2. Any opposing general terms and conditions of the Customer/Orderer are only effective if we have expressly approved them in writing.

### 2. Contractual Conclusions

- 2.1. Our offers are non-binding; in the event that we make a written commitment, this shall in cases of doubt amount to two (2) months from the time the signed offer is returned.
- 2.2. The contractual conclusion shall be made either by means of the submission of the written order confirmation or the shipment of the goods to the Customer/Orderer. Ancillary agreements shall apply only in the event that express written confirmation is made.

### 3. Plans and Documents

- 3.1. The information provided in brochures, announcements, technical descriptions and the like shall be prevailing and binding only if they are committed to on the order confirmation.
- 3.2. All technical documents and written documents, computer programmes, drafts, plans, photographs and other technical illustrations, regardless of the type, shall be considered to be our intellectual property and be excluded from further use by the Customer/Orderer, regardless of the form, without our express approval. This shall also apply for all intellectual property rights such as patents, trademarks, rights to samples and in accordance with unfair competitive practices law.

### 4. Prices

- 4.1. Provided that nothing to the contrary has been agreed between us and the Customer/Orderer, the prices shall not include either the main transport between us and the Customer, the conclusion of transport insurance for any such delivery obligation or, when transported to or through other countries, customs duties, taxes or levies or costs for the preparation of additional documents. Our prices do not include the respectively valid turnover tax or VAT which must be separately shown on the invoice.
- 4.2. In cases of doubt, the prices which we have respectively committed to for the order shall apply for the agreed delivery timeframe; if the delivery timeframe is extended for reasons for which we are not exclusively responsible, then we shall be consequently entitled to pass on price increases to the Customer/Orderer. We shall pass on to the Customer/Orderer any increases in customs duty rates, pre-taxes and consumption taxes, particularly EU levies and anti-dumping or compensatory duties or any newly introduced consumption taxes.

### 5. Payment Terms and Conditions

- 5.1. Payments may be made with a debt-discharging effect only to our designated payment centre, in the agreed currency and in the agreed manner and form.
- 5.2. In the absence of a written agreement to the contrary, the purchasing amount shall become due and payable upon the receipt of the invoice. The Customer/Orderer shall enter into default without any special warning letter being required if they have not paid the purchase price within fourteen (14) days from the invoicing date.
- 5.3. The Customer/Orderer shall not be entitled to withhold or offset against payments owing to warranty claims or other counter-claims, even those from other business transactions (exclusion from right of retention and offsetting ban).
- 5.4. In the event of delayed payment upon the part of the Customer/Orderer, notwithstanding any more extensive compensation claims, default interest in the amount of eight percent (8 %) above the base lending rate of the European Central Bank shall be charged per anno.

### 6. Supply Basis

- 6.1. In the event that a supply agreement is concluded, the supplying shall be carried out as specified on the order confirmation in accordance with INCOTERMS. In the absence of another agreement, EXW shall apply and the acceptance of the goods shall be made from our supply warehouse. Regardless of this, risk for the goods shall be transferred to our Customer/Orderer when the goods are surrendered to the carrier.
- 6.2. The packaging of the goods shall be made in a manner that is customary for the industry in order to prevent the adverse effects of weather upon the services and goods under normal transport conditions. Transport costs shall be assumed by the Customer/Orderer. Packaging carried out with any transport pallets and other forms of packaging shall be specifically charged to the Customer/Orderer and we shall not take any such packaging back. The costs for any special packaging requested by the Customer/Orderer shall be assumed by the Customer/Orderer.
- 6.3. Any door-to-door transport insurance shall be concluded by the Seller only if an express written agreement to do so has been concluded and only at the expense of the Customer/Orderer.

### 7. Delivery Timeframes

- 7.1. Agreed timeframes shall be extended:

- 7.1.1. If specifications which we need for the processing of the order are not provided in a timely manner, if subsequently amended by the Customer/Orderer or if incomplete;
- 7.1.2. If the Customer/Orderer are late with the work they are required to carry out or with the fulfillment of their contractual obligations, particularly if they do not make their payments (even from other business dealings);
- 7.1.3. If hindrances arise which lie outside our control, regardless of whether they involve us, the Customer/Orderer or a third party, such as for example, labour disputes, late or defective delivery of goods to us by our own suppliers, etc.
- 7.2. In the event that hindrances exist as specified in Sub-clauses 7.1.1, 7.1.2. as well as 7.1.3., the delivery timeframe shall be extended by that period of time in which the relevant hindrance exists. If the hindrance continues to exist in accordance with Sub-clause 7.1.3. for a timeframe of more than twelve (12) months, both contractual parties shall be entitled to withdraw from the agreement; however, in the event of a hindrance in accordance with Sub-clauses 7.1.1. and 7.1.2., we alone shall be entitled to withdraw from the agreement.
- 7.3. Notwithstanding the aforementioned provisions, the delivery timeframe shall begin in all cases no later than when: the agreement is concluded; all governmental formalities such as importing permits have been obtained and issued; the contractually-agreed payments have been made; any security, if required, has been provided by the Customer/Orderer; and the essential technical items have been clarified.

## **8. Acceptance of the Performance**

- 8.1. The supplied goods must be promptly accepted by the Customer/Orderer in a suitable manner and all actions must be undertaken which are required for the unloading of the transport vehicles and transport into the factory of the Customer/Orderer.

## **9. Default Damages**

- 9.1. The Customer/Orderer shall be entitled to withdraw from the agreement in the event of a delayed delivery for which we alone are responsible while providing an appropriate notice period of at least six months. In this case, the payment made to us must be paid back without interest to the Customer/Orderer, in which case any other possible liabilities of the Customer/Orderer to us and the performances already rendered for it shall be deducted provided that the Customer/Orderer can continue to use them; the goods which have been supplied must be returned to us subject to any possible retentions, in which case the benefit created through the supplied goods shall also be subject to offsetting.
- 9.2. If a partial performance has already been rendered or a portion of the goods have already been used by the Customer/Orderer and this partial performance in and of itself is able to continue to be used by the Customer/Orderer, a rescission for this partial performance is excluded.
- 9.3. If the Customer/Orderer is late with an agreed payment or other performances, then we may insist upon the fulfillment of the agreement and, at our discretion.
  - 9.3.1. The suspension of our own contractual obligations until we receive the payments in arrears or the rendering of other performances and/or
  - 9.3.2. An appropriate extension of the delivery timeframe and/or
  - 9.3.3. Outstanding payment shall become due for immediate payment and/or
  - 9.3.4. Charge default interest in the amount of eight percent (8 %) above the respective base lending rate of the Europäischen Zentralbank from the payment due date, provided that the Customer/Orderer has no mitigating circumstances owing to force majeure, and/or
  - 9.3.5. Declare our rescission from the agreement, subject to providing sufficient notice. In the event of a rescission upon our part owing to the aforementioned reasons, the Customer/Orderer must return to us the products which they have received while providing reimbursement for any value reduction which has occurred in the meantime as well as for any benefit obtained from the use of the goods and the services which we have provided (installation work, etc.) and must reimburse us for all other outlays such as customs duties, taxes, fees, etc. The value reduction shall be charged to the Customer/Orderer upon a monthly basis of at least six percent (6 %) of the purchase price, which shall be proportionally applied to the goods and services already provided.
- 9.4. If the Customer/Orderer are late with their call-off order, acceptance or picking-up of the goods or they are responsible for a delay in the shipment or supplying of such goods, then we shall be entitled, notwithstanding any more substantial legal claims.
  - 9.4.1. To store the goods at their expense and risk in our or third-party warehouses and to bill them for storage costs of at least 0.35 % of the applicable invoiced amount for the quantity of goods not yet accepted for each new week of storage begun or
  - 9.4.2. After the expiration of an appropriate notice period which we have set, to sell the quantity of goods not accepted elsewhere if other Customers/Orderers have an interest in purchasing such quantities of goods; in this regard, the Customer/Orderer shall be liable for the difference between the agreed purchase price and proceeds from any sale to a third party.

## **10. Warranty and other Liability**

- 10.1. In accordance with the law which is applicable for us, we shall provide a warranty for the services we render and goods we supply. The warranty shall be applicable only for defects owing to substandard materials, flawed design or defective processing – provided that processing does not concern the permanent standard factory settings and the performance prescribed by the manufacturer – and is only then valid if the Customer/Orderer makes immediate written notification of the defect subject to providing a more detailed description of the defect which has been discovered. The warranty timeframe shall begin to run at the time delivery is made, in the event of delayed acceptance when notification of readiness for shipment is made and shall in no way be extended by the elimination of the defect or an acknowledgment of a defect, even if new parts are used in the previous performance.
- 10.2. The Customer/Orderer must carefully and completely examine each performance immediately upon receipt. In the event that obvious defects or insufficient quantities are discovered during the examination, prompt written notification of defects must be made. Otherwise, the entire performance shall be considered as having been accepted. If a hidden defect is later discovered which was not found during the initial examination, then the Customer/Orderer must promptly notify us of it. In the event that notification of defects is made, then the Customer/Orderer must describe the defect in detail in writing which is being claimed and particularly disclose in what manner and under what circumstances the defect occurred or is supposed to have occurred.
- 10.3. We reserve the exclusive right to decide as to the place, time and manner of the elimination of the defect.
- 10.4. In the event that the defect is eliminated on our business premises, then the Customer/Orderer shall assume the transport risk for the transport to and from our business premises. The Customer/Orderer shall then assume the costs for any possible transport to another location if the defect was caused by defective/incorrect and/or inappropriate use of the software.
- 10.5. We shall only then be liable for costs incurred by the Customer's/Orderer's own elimination of the defect if we have expressly agreed to this in writing.

- 10.6. Not included under the warranty are damages owing to natural wear-and-tear, defective maintenance, non-adherence to operational directives, excessive workloads, unsuitable operating resources, chemical or electrolytic effects, defective building and mounting work not carried out by us as well as owing to other reasons for which we are not at fault.
- 10.7. The warranty shall cease to apply if the Customer/Orderer or a third party undertake modifications or repairs to the product/goods without our written approval; furthermore, if the Customer/Orderer does not promptly undertake suitable measures for ensuring that the damages do not become more extensive (obligation to minimize damages).
- 10.8. In the event that we accept orders to provide repair services, we shall assume no such warranty or liability for modifications or reworking of any kind for products produced by third parties if these products produced by third parties have been provided or requested by the Customer/Orderer.
- 10.9. Regardless of the legal grounds, warranty and damage compensation claims shall become statute-barred within six (6) months.

#### **11. Retention of Ownership**

- 11.1. Until the complete fulfillment of all financial obligations upon the part of the Customer/Orderer, we shall reserve the ownership rights to the goods and services we have provided.
- 11.2. The Customer/Orderer must fulfill any required form-related directives for the safeguarding of the retention of ownership rights and, in the event of seizures or other legal claims asserted by third parties, the Customer/Orderer shall be furthermore obliged to assert the ownership rights and to promptly notify us of this.
- 11.3. Notwithstanding the performance and the transfer of risk or other provisions of these General Business Terms and Conditions, the ownership to the goods shall not be transferred to the Customer/Orderer as long as the entire purchase price has not been paid. We shall be entitled to demand the return of the goods, to sell them to third parties or otherwise dispose of them as long as the purchase price has not been paid in full. As long as the goods have not been paid for in full, the Customer/Orderer must keep the goods in safe custody for us and store the goods separately from its own property and any third-party property as well as to expressly label the goods as being the property of the Seller. Until the complete payment of the purchase price is made, the Customer/Orderer may use the goods in customary business dealings or resell them with our approval. Nonetheless, the Customer/Orderer must hold any payments received (including any possible insurance benefits) for the Seller and keep the monies separated from their own assets and any third-party assets. If the goods are further processed and further processing is also made with parts to which the Seller (we) holds reservation of ownership rights, then the Seller holding reservation of ownership rights shall acquire corresponding co-ownership rights. The same shall apply in the event that our goods are combined with goods of a third party.
- 11.4. We shall at any time be entitled to have controlling measures undertaken by our authorized representatives with regards to adherence to the required form-related directives specified in Clause 11.2. at the mounting site for the goods/products we have supplied during regular business hours. If the Customer/Orderer violates such form-related directives or does not permit our authorized representatives to carry out such controlling work on-site, we shall be entitled, at our discretion, to either declare that the entire outstanding purchase price is immediately due for payment and/or withdraw from the agreement. In the event that we withdraw from the agreement, the directives of Sub-clause 9.3.5. shall apply analogously.

#### **12. Legal Venue and applicable Law**

- 12.1. The legal venue for all disputes arising, directly or indirectly, from the agreement, including involving check and bill of lading procedures, shall be the court holding competence in Wiener Neustadt, exclusively and mandatorily.
- 12.2. With regards to lawsuits involving retention of ownership, however, we shall be entitled to assert legal claims against foreign Customers/Orderers before a court in their country and under their *lex patriae*. In this case, the retention of ownership provision shall be considered to be agreed which most closely corresponds to the commercial intent of the retention of ownership provision contained herein. The United Nations Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded by mutual agreement.
- 12.3. Substantive and procedural Austrian law shall be effective for our agreements.

#### **13. Miscellaneous**

- 13.1. Any possible damage compensation claims which the contractual partner or a third party assert against us owing to product liability in accordance with the Produkthaftungsgesetz (Product Liability Act) are excluded unless the party entitled to legal recourse are able to document that we were responsible for the flaw and committed gross negligence.
- 13.2. Commitments and agreements made by our salaried personnel/employees are only then legally binding if our executive management have confirmed them in writing.
- 13.3. In order to determine in which sphere any possible defects lie, the Customer/Orderer shall be obliged to first contact our quality control department; the Customer/Orderer shall also do this before taking any legal action.