

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

of ABC Service & Produktion Integrativer Betrieb GmbH, FN: 98969v

As of May 2013

## I. AREA OF APPLICATION

1. All contract manufacturing and subcontract manufacturing of **ABC Service & Produktion Integrativer Betrieb GmbH, FN 98969 v** (hereinafter referred to *simply as ABC*) are carried out in accordance with the following general terms and conditions of sale and delivery, even if no such explicit reference is made or, as the case may be, even if no such reference is made over the course of negotiations orally or by phone. Agreements that deviate from these general terms and conditions of sale and delivery shall only be considered to be legally binding if **ABC** has approved of the said agreements in writing. These general terms and conditions of sale and delivery terms supersede all previous versions. Contractual terms that contradict these general terms and conditions of sale and delivery are invalid, even if they appear in the client's documents.
2. The placing of an order and/or the sending of an order confirmation implies that these general terms and conditions of sale and delivery have been accepted unconditionally and simultaneously implies that the client has waived his right to use his own terms and conditions.

## II. SUBJECT-MATTER OF THE CONTRACT

1. Deals only become legally binding after **ABC** confirms them in writing. The scope and the contents of the subject-matter of the contract are established through the written order confirmation and the submission of the supplementary items (the project-related documents and components that have been enclosed with the client's order and **ABC's** order confirmation, and which have been validated by **ABC** in writing, e.g. plans, sketches, diagrams, images, samples, technical plans etc.)
2. **ABC's** *silence* is not equivalent to any kind of approval. *Orally* agreements are legally effective only if **ABC** has confirmed them in writing. Even if **ABC** has not explicitly objected to the client's general business conditions, it shall not be bound by the said business conditions. Under no circumstances can the delivery be construed as an acceptance of the said business conditions.
3. Changes made to the contract and/or items that have been added to the contract shall only be effective if they are in writing.

## III. RAW MATERIAL – COMPONENTS - THE CLIENT'S INSTRUCTIONS – THE CLIENT'S MACHINES

1. Being a make-to-order company that does not possess its own research and development department, **ABC** is not obligated to examine the client's order with regard to objective and technical correctness or check whether the contractual product is suitable for the purpose for which the client plans to use it. The client is solely responsible for inspecting the products that are commissioned by the client and delivered by **ABC** with regard to their technical requirements, checking whether they are properly suitable for (from the point of view of legal considerations, technical considerations, factual considerations and considerations related to the building authorities), compatible with and applicable to the case in question. Furthermore, the client explicitly waives **ABC's** obligations to inspect and warn, which means that **ABC** shall not be made liable for claims of any kind.  
If **ABC** manufactures a product based on the client's construction-related data, diagrams, blueprints and models or similar data that has been provided by the client, **ABC** shall only be responsible for ensuring that the workmanship (production, inspection, packaging etc.) conforms to the data supplied by the client. In such cases, the client has to indemnify **ABC** and hold it harmless for any violations of the obligations to protect and exercise diligence. Project-related data (such as plans, sketches, diagrams, images, specimens, technical plans etc.) only becomes a binding component of the contract when it is illustrated in writing and validated by **ABC** in writing.
2. a) Raw materials and components that are delivered/provided by the client shall only be checked by **ABC** with regard to quantity and the presence of overt defects.  
b) All the raw materials and components that are to be provided by the client are to be 'delivered duty paid' (Incoterms 2010 DDP) to **ABC** at the agreed-upon delivery address.  
c) The delivery deadlines for the raw materials and components that are to be provided by the client are, in accordance with § 376 UGB (Austrian Commercial Code) or § 919 ABGB (Austrian General Civil Code), understood to be fixed deadlines.  
d) **ABC** shall only be liable for the destruction or damaging of raw materials and components that have been provided by the client in cases involving gross culpability.  
e) The raw materials and components that have been delivered/provided by the client are considered to be dependent components of the subject-matter of the contract from the beginning of the processing-related activities onwards, and remain the property of **ABC** until the remuneration has been paid in full.
3. If **ABC** acquires the raw materials and components as per the order, **ABC** shall be responsible for inspecting the incoming goods; if the supplier was selected by the client, the incoming goods shall be inspected in accordance with the client's specifications. The client's specifications are to be made known and provided to **ABC** within the order-preparation process.
4. If the client provides machines and/or devices that are to be used in the order-execution process, he is responsible for ensuring that the equipment conforms to the applicable protective regulations. Furthermore, he is also obligated to provide **ABC** with the required documentation/operating instructions of the machines and/or devices.

## IV. PRODUCTION – DELIVERY

1. The acceptance of all orders shall be conditional upon availability. The completion dates and delivery deadlines that appear in the order and/or the order confirmation letter are not considered to be fixed dates as per § 376 UGB (Austrian Commercial Code) or § 919 ABGB (General Civil Code), but are basically non-binding approximations.  
If, under exceptional circumstances, a delivery deadline was agreed upon in writing, the period of delivery shall be considered to begin with the receipt of the order confirmation that has been signed by the client, but not before all the documents and materials that are to be provided by the client have been delivered, and not before all technical and commercial issues have been clarified.  
In principle, **ABC** shall be entitled to effect the order with the help of partial deliveries, especially in situations where it is not possible to supply the entire contractually-agreed delivery quantity within the period of delivery. If partial deliveries are made, the client shall be obligated to accept them. Partial deliveries that are made within the period of delivery are considered to be timely deliveries and cannot trigger a default in delivery vis-à-vis the quantitative deliveries that are yet to be made if the other delivery quantities are delivered after the period of delivery has elapsed, especially since all delivery deadlines and periods of delivery are non-binding.
2. a) If the raw materials and/or components that are either to be provided by the client or acquired by external parties at the behest of the client are not delivered in a timely manner or at the agreed-upon level of quality, **ABC** shall, in accordance with the previous information provided by the client, be entitled to extend the deadlines and/or periods of delivery in a proportional manner.  
b) This condition shall also apply if the client's services are behind schedule or, as the case may be, if the client defaults on the fulfilment of his contractual obligations, e.g. obligations associated with handing over documents and plans or obligations associated with other types of cooperation. It shall also apply in situations involving Acts of God or delays that could not have been foreseen by **ABC**, such as delays associated with machine defects, shut-downs or the subcontractors' delivery-related problems.  
c) However, such delays do not entitle the client to dissolve the contract or demand that **ABC** pay compensation for the damages or additional expenses.
3. If the production quantity associated with the order has not been specified in the order and/or order confirmation, **ABC** shall be entitled to pass the production-fluctuations on to the client and deviate from the delivery quantity specified in the order by up to 10% in either direction.
4. All orders placed with **ABC** shall only be subject to the 'ex works' (*EXW*) delivery conditions of Incoterms 2010, with respect to the production facilities of **ABC** that have been described in the order and/or order confirmation, unless other delivery conditions have been agreed upon in writing and confirmed by **ABC** through an order confirmation.
5. The delivery deadlines shall be considered to have been adhered to if the client had been notified of the fact that the product had been completed or, as the case may be, the fact that the product was ready to be dispatched.

## V. PRICES and PAYMENT CONDITIONS

1. The prices quoted in **ABC's** offers are always non-binding. Objections against **ABC's** bills must be delivered to **ABC** in writing within a period of 10 days after the billing date. Otherwise, the debt claim specified in the bill is considered to have been accepted.
2. The price is calculated in euros and is understood to be the net price. The legal value-added tax and the customs duties shall be invoiced separately. The prices apply to the production/storage costs. They are uninsured, inclusive of packaging expenses and exclusive of transport expenses. If, in a given case, an agreement was reached regarding the delivery/transport, the prices shall be considered to be exclusive of costs associated with unloading, contracts and insurance.
3. In situations involving 'guide price offers' that have been declared separately, **ABC** shall be entitled to modify the price by up to 15%.

4. The prices that are applicable on the date of delivery are always the ones that apply. In case of any potential increases in material costs and/or wage rises, ABC reserves the right to increase the price. If the relationships (especially those that involve wages, cargoes, energy and fuel costs, insurance costs, customs duties, taxes, fees and other levies of any kind) are changed in a significant manner, ABC shall be entitled to charge the prices that are valid on the delivery date. If the client objects to this provision, ABC shall be entitled to withdraw from the contract. Additional discounts on the flat rates or special agreements such as those pertaining to cash discounts shall only be granted if they have been explicitly confirmed by ABC in writing. If the delivery or the provision of the service is scheduled to take place after a period of two months after the finalisation of the contract, ABC shall be entitled to adjust the prices with respect to the changes in the material costs.
5. All of the client's payment obligations are subject to the applicable provisions of the ABGB (General Civil Code) and the UGB (Austrian Commercial Code), which was most recently modified through the payment-default law - ZVG (50. Federal Law Gazette from March 20<sup>th</sup>, 2013, BGBl GP XXIV RV 2111 AB 2178 S. 191; CELEX-Nr.: 32011L0007, 32011L0090).
6. The payments are payable without any deductions within a period of 30 days after the billing date. What is of decisive importance is the arrival of the payment in ABC's account as per § 907a, § 1417 ABGB (General Civil Code).
7. If the client's adverse financial circumstances and, in particular, his failure to make payment for contractual products that have already been delivered convey the impression that the payment of the remuneration is being placed in jeopardy, ABC is entitled to cease production until payment has been made or an appropriate guarantee has been provided. In such a case, the agreed-upon delivery deadlines are extended by an appropriate period of time.
8. In case of a default in payment, the client is, in accordance with § 456 UGB (Austrian Commercial Code), be obligated to render compensation for the default interest that was calculated for the period up to the point at which the payment was actually made. He shall also, in accordance with §§ 1333 ff ABGB (General Civil Code), be obligated to pay compensation for the additional damages that arose as a result of the client's delayed payment.
9. In case of partial payments, a default on a single instalment results in the time limit being cancelled. In such a case, the entire unpaid amount immediately becomes payable. Counter-claims cannot be set off against ABC's payment claim, unless the client has become insolvent.

#### VI. WITHDRAWAL

1. ABC can use a written declaration to withdraw from the contract-production if an important reason exists that justifies such a course of action. In particular, an important reason is considered to exist:
  - a) if there exists a justifiable suspicion that the client's ability to make payment has been endangered;
  - b) if, in spite of the fact that appropriate reminders had been given and deadlines had been set, the client fails to fulfil important obligations that the contractual relationship obligated him to fulfil;
  - c) if a distraint is ordered against the client, insolvency proceedings are initiated against the client or the initiation of such proceedings is rejected for lack of cost recovery;
  - d) in case of destruction, theft or loss of the contractual product and/or important parts of the raw materials or components that are necessary for production, provided the situation does not involve gross culpability on the part of ABC.
2. If, in a situation involving the cancellation of the contract, the client is culpable, he shall be obligated to pay ABC liquidating damages amounting to 30% of the sum specified in the contract within 8 (eight) days.

#### VII. TITLE RETENTION

1. The contractual products remain the property of ABC until the remuneration, including all the additional costs, has been paid in full.
2. In the event of a default in payment, ABC shall be entitled to demand that the remuneration be paid and that the contractual products be surrendered to it at the client's expense. It shall be entitled to retrieve the contractual products from the point of handover at the expense and risk of the client. In such a case, the client does not enjoy the protection of possession. Furthermore, the client agrees in advance to allow the products in question to be removed without raising any practical or legal obstructions.
3. In order to protect the contractual products that have been delivered under retention of title, the client shall store the said products carefully and protect them from fire and theft at his own expense until payment has been made in full; the insurance claims are ceded to ABC.
4. a) The goods that are subject to retention of title may only be re-sold before payment is made in full if ABC has explicitly approved such a course of action in writing.  
b) In case of a resale of the goods that are subject to retention of title, the client cedes his claims from the transaction in question that match the magnitude of the payment that is due to ABC and which relates to the respective contract to ABC. Furthermore, he is obligated to inform his customer of the transfer of debt and release the name of the debtor (customer) to ABC.  
c) Payments that the client receives from his customer are to be forwarded promptly to ABC until such time as the open claims have been paid in full.
5. a) If the product that is subject to retention of title is treated or processed by the client, the title retention extends to the new product(s) that is formed as a result of the processing/treatment.  
b) If the contractual product is processed, blended with another product or connected to another product, ABC acquires joint ownership of the resultant items. In such a case, the client plays the role of a custodian.
6. a) The client is not entitled to pledge the products that are subject to retention of title to external parties, transfer the said products to external parties under the mechanism of collateral ownership or dispose of the said products in any other manner that benefits external parties.  
b) If an external party coercively seizes the contractual products that are subject to retention of title or gains access to the said products, the client shall be obligated to promptly notify ABC to that effect. Furthermore, if an external party seizes or takes control of the contractual products, the client shall be obligated to promptly point out the fact that ABC retains ownership of the said products.

#### VIII. WARRANTY

1. The client is obligated to criticise defects, if any, in writing within a period of 15 calendar days after delivery and describe the defects that have been detected in a precise and comprehensible manner. What is important is the day on which ABC receives the complaint. The provisions specified in § 377 ff UGB (Austrian Commercial Code) are applicable.
2. In all situations involving warranty-related considerations, ABC can free itself from claims demanding that the contract be cancelled or the price be reduced by rectifying the defects within an appropriate time-limit.
3. In principle, the defects should only be rectified by ABC. In individual cases, the defects can be rectified by the client or an external party if ABC has issued prior written authorisation for such a course of action.
4. Apart from that, the legal terms of reference shall apply.

#### IX. CHANGES

Any modifications made to contracts that have already been awarded can only enter into effect after ABC approves the modifications in question in writing.

#### X. DATA PROCESSING

The client accepts that the personal data contained in the order is processed, stored and transferred by ABC through the use of automated processes.

#### XI. APPLICABLE LAW/JURISDICTION

1. All disputes arising from the contractual relationship are subject to the sole jurisdiction of Austrian law.
2. Under no circumstances can the UN Convention on Contracts for the International Sale of Goods be used for cases in which the contract is awarded across international borders.
3. All claims and/or demands arising from the business relationships are agreed to be subject to the jurisdiction of KLAGENFURT. The official address of ABC is understood to be the place of fulfilment for deliveries.

#### XII. MISCELLANEOUS

1. If individual provisions contained in these general terms and conditions of sale and delivery become either completely or partially invalid, it will not affect the validity of the other provisions.
2. If certain sections are not regulated by these general terms and conditions of sale and delivery, the respective legal provisions shall apply. However, none of the provisions of the client that contradict these shall apply.
3. Declarations shall only be legally effective if they have been put down in writing. Declarations embodied in fax messages or e-mails are considered to be declarations that have been put down in writing.