

General Terms and Conditions of Sale, Delivery and Assembly of HY-Power Produktions- und Handels GmbH (“Seller”)

1. Scope of application

- 1.1. The following General Terms and Conditions (GTC) shall apply to all current and future legal transactions regarding the sale, delivery and/or assembly of goods between the Seller and the customer. If, by way of exception, legal transactions with consumers in terms of Section 1 (1) item 2 of the Austrian Consumer Protection Act, Federal Law Gazette 140/1979, are based on them as well, they shall only apply insofar as they do not contradict the provisions of the first main part of this Act.
- 1.2. Collateral agreements, reservations, changes or supplements to these GTC shall be made in writing to become effective; this shall also apply to deviations from the written form requirement.
- 1.3. Terms and conditions of the contractual partner that oppose or deviate from these terms and conditions shall always be deemed waived.
- 1.4. Should individual provisions of these GTC be invalid, this shall not affect the binding force of the remaining provisions and of the contracts concluded on their basis. The invalid provision shall be replaced by a valid regulation that comes closest to the purpose of the invalid provision.

2. Conclusion of contract

- 2.1. All offers made by the Seller shall be subject to confirmation. The basis for the conclusion of contract shall be the Seller's respective offer and/or the customer's order that sets out the scope of service and the remuneration.
- 2.2. If the customer places an order, it shall be bound to it for six weeks after its receipt by the Seller. The contract shall be concluded by the Seller's acceptance of the order. The Seller shall accept the order by written declaration of acceptance (confirmation of order) or by executing the order.
- 2.3. The Seller shall not be obliged to check the documents and information supplied by the customer for correctness and/or completeness or whether they are suitable for the customer's intended purpose.

- 2.4. Documentation material of any kind (for quality management, for material tracking purposes or for certificates of origin) shall only be supplied on express agreement.
- 2.5. Potentially required approvals or permits for the installation or the operation of the contractual goods shall be provided by the customer at its own risk.

3. Delivery time/deadlines

- 3.1. The delivery time shall be deemed to have been agreed as being approximate. It shall start with the day of dispatch of the confirmation of order and shall be deemed complied with if the goods have left the premises of the Seller or of the third party commissioned by it at the agreed time or if the readiness for dispatch has been notified to the customer after impossibility of shipping. Hindrances to deliveries the Seller is not responsible for, such as force majeure, strikes, operational disruptions, supply difficulties, shortening or loss of working time, transport problems as well as governmental interventions, shall effect reasonable extension of the delivery times and deadlines; any claims for damages of the customer in this connection shall be excluded.
- 3.2. If the customer has to provide documents, permits or materials, the delivery times shall not start prior to their provision. In addition, the start of the delivery time shall require complete clarification of all technical matters.
- 3.3. The compliance with the delivery obligation on part of the Seller shall be subject to both the timely and proper fulfilment of the customer's obligations and the compliance with the contractual obligations essential for the order, particularly the payment obligations. The Seller shall reserve the right to suspend performance until the other party performs.
- 3.4. The Seller shall make reasonable efforts to comply with the agreed deadlines. Arrangements on dates and deadlines shall be made and/or confirmed in writing. If dates agreed with the customer turn out to be impossible to comply with, the Seller shall inform the customer as soon as possible and suggest an alternative date. Subsequent changes or additional requests made by the customer shall extend the delivery time accordingly. However, the non-compliance with the deadlines shall only entitle the customer to assert its statutorily available rights if it has set a reasonable grace period of at least 14 days to the Seller. This period shall start with the receipt of a reminder letter to the Seller.
- 3.5. In addition, the following applies to assemblies: If the Seller is not able to complete the work in due time, it shall inform the customer by stating the expected completion date. In this case, the customer shall waive its claims based on default on part of the Seller.
If the Seller is not able to meet this new completion date either, the non-compliance with this second deadline only entitles the customer to assert its statutory rights after it has set a reasonable grace period of at least 14 days to the Seller. This period shall start with the receipt of a reminder letter to the Seller. Irrespective thereof, the Seller shall always be entitled to reasonable extension of the period for completion in case of delay due to

- a) circumstances the Seller is not responsible for, such as labour disputes, natural disasters, armed conflicts, general mobilisation, riot, seizure, embargo as well as restrictions of energy consumption;
 - b) requirement of unforeseeable refurbishment work due to statutory provisions or special or additional requests of the customer; or
 - c) own actions or omissions of the customer or other circumstances in the customer's sphere (such as outstanding payments) and/or in case the customer fails to meet other obligations.
- 3.6. Only after the grace period has elapsed to no avail, the customer may withdraw from the contract. However, the Seller shall only be obliged to pay damages due to delay in case of intention on part of the Seller; liability for further damages shall be excluded.

4. Prices/payment terms

- 4.1. The Seller shall be entitled to invoice an advance payment in the amount of one third of the agreed invoice amount after conclusion of contract and to account for separable services separately.
- 4.2. All prices shall be stated in Euros plus the respectively applicable statutory value-added tax and costs for packaging and transport.
- 4.3. The prices agreed upon the conclusion of the contract that are based on the cost factors valid at that time shall be applicable. If these cost factors, particularly material, wages, freight, duties, etc. change between the conclusion of the contract and the agreed delivery time, the Seller shall be entitled to increase the prices accordingly.
- 4.4. Orders for which no fixed prices have been expressly agreed shall be invoiced at the prices applicable at the delivery date. In case of assemblies, they shall be accounted for according to the agreed standard hourly rates, unless an all-inclusive price for assembly work has expressly been offered.
- 4.5. Unless otherwise agreed in writing, the invoices shall be due for payment within 30 days as from the invoice date without deduction and payable clear of any expenses. The payment of the invoices shall be made with discharging effect exclusively to the Seller's account stated on the invoice.
- 4.6. Default interest in the amount of 10% p.a. shall be deemed agreed if payment is made late. If the customer is in delay with a payment, the Seller may demand immediate payment for all services rendered within the framework of other contracts concluded with the customer. In case of partial payment agreements, which must be made in writing without exception, immediate maturity shall arise in case of delay of only one partial payment and the entire outstanding residual amount shall be due for payment within one week as from default.
- 4.7. Goods not accepted by the agreed deadline shall be stored at the customer's risk and cost for the duration of six weeks; the Seller shall charge a storage fee of € 15.00 per calendar day or part-day.

At the same time, the Seller shall be entitled to either insist on execution of the contract or withdraw from the contract and otherwise utilise the goods after having set a reasonable grace period. In case of utilisation, a contractual penalty in the amount of 20% of the invoice amount including value-added tax shall be deemed agreed; the assertion of an actually higher damage shall remain reserved.

- 4.8. The customer shall undertake to bear all costs and expenses in connection with the collection of receivables, such as particularly collection expenses, lawyer's fees or other costs required for adequate prosecution.
- 4.9. The customer shall not be entitled to set off its own claims against claims of the Seller, unless the customer's claims have been confirmed by the Seller in writing or determined by a court. Any right of retention of the customer shall be excluded.
- 4.10. If the customer is in delay with a payment or if circumstances are known or recognisable that give rise to reasonable doubt about the customer's creditworthiness in the Seller's proper commercial judgement, including such facts that already existed upon conclusion of contract, but were not known and should not have been known to the Seller or became recognisable after conclusion of contract, the Seller, without prejudice to other rights, shall be entitled in these cases to cease delivery and to claim advance payment or the provision of reasonable collaterals for outstanding deliveries. If such collaterals are not provided within a period set by the Seller, the Seller shall be entitled, without prejudice to other statutory rights, to withdraw from the contract.

5. Transfer of risk

- 5.1. The customer shall bear the risk of transport. The physical transfer of the goods shall be made by handing them over to the carrier; this may be made by the Seller or by a third party commissioned by it. This shall also apply if a different freight cost regulation is agreed in individual cases (e.g. free domicile) or additional assembly services have been rendered by the Seller. If the dispatch is delayed following circumstances the customer is responsible for, the risk shall be transferred to the customer from the day of readiness for dispatch.
- 5.2. If the transport company returns the dispatched goods to the Seller, because delivery to the customer was not possible, the customer shall bear the costs for the unsuccessful dispatch.

6. Reservation of ownership

- 6.1. The Seller shall reserve the ownership of all delivered or otherwise released goods until all present and future receivables are settled. Any pledging shall be prohibited. The customer shall keep the Seller informed about the exact whereabouts of the reserved goods at all times.

- 6.2. The customer shall be entitled to resell the purchased item in the ordinary course of business; however, the customer shall assign to the Seller all receivables in the amount of the total invoice sum (including VAT) of the Seller that accrued to it from the resale against its purchasers or third parties and shall undertake to make a corresponding note in its books or on its invoices. We shall accept this assignment.
- 6.3. If payment is delayed, the Seller shall be entitled to make use of the agreed reservation of ownership and to have the goods collected at the purchaser's expense without this equalising withdrawal from the contract. If the Seller does not exercise these rights, this shall not affect their existence.
- 6.4. In case of processing or mingling with other goods or items by the customer, the Seller's title to the newly created items (facilities) shall continue to exist and/or the customer shall transfer to the Seller the title to the new item the customer is entitled to.
- 6.5. The customer shall be obliged to handle the goods with care while the reservation of ownership applies.
- 6.6. If the customer is unable to pay, the Seller shall be entitled to separate the remaining available stock on hand. The Seller's right to separation shall also extend to receivables and rights resulting from the resale of the delivered goods.
- 6.7. In case of enforcement measures or other interventions by third parties, the customer shall inform the Seller immediately in writing and at the same time hand all documents required for intervention over to it, particularly for an action in opposition to execution of a judgment brought by a third party who claims title to the attached property (Exszindierungsklage). As far as the third party is not able to reimburse the Seller for the judicial and extra-judicial costs of an action in opposition to execution of a judgment brought by a third party who claims title to the attached property, the customer shall be liable for the loss incurred by the Seller. The customer shall inform the Seller about all damages and changes of ownership of the purchased item as well.

7. Special provisions for assembly work

- 7.1. The customer shall guarantee the unhindered delivery of the materials, devices and machines required for assembly to the place of performance. The customer shall be exclusively responsible for the safe storage of the materials and devices delivered by the Seller or its suppliers and stored or assembled at the place of performance. Loss and damage of these materials and devices shall exclusively be at the customer's expense.
- 7.2. The customer shall make all arrangements and take all measures for its account and at its risk both in due time prior to the agreed start of the assembly work and also during its execution regarding personnel and material that is required for the proper start of the assembly work, its trouble-free execution and proper completion. Unless special instructions are given by the Seller in this regard,

this shall include in all cases the corresponding structural preparation of the working site, the provision of the required facilities (particularly power and water), tools, devices, dressing room areas, sanitary facilities and other work aids, the required materials, auxiliary and working materials (e.g. sand, cement, etc.), the provision of the required temporary workers, etc. All provisions that become required on part of the Seller in this regard, irrespective of whether they are agreed or required due to failures of the customer, shall be invoiced separately.

- 7.3. Since the Seller only has to provide the usual hand tools, the use of further special tools and special devices that are brought by the Seller for lack of provision by the customer shall be charged to the customer in addition to the costs for their transportation to and from the working site.
- 7.4. If the assembly work is prevented or interrupted on part of the customer or if no full shifts can be done for reasons the customer is responsible for, the customer shall bear any resulting extra costs.
- 7.5. Additional orders placed orally by the customer shall be paid by it according to the Seller's standard hourly rates. Dwell times or costs of revisits the Seller is not responsible for shall also be charged according to the Seller's standard hourly rates for travel times plus mileage allowance.
- 7.6. If additional services have been rendered that were necessary to carry out the assembly work, but the customer's consent to them could not have been obtained in due time, the customer's consent to them shall be deemed given. The customer shall compensate this work.
- 7.7. If the work is ready for inspection, the Seller shall notify a date for the acceptance inspection to the customer. The Seller may have itself represented in this acceptance inspection. All costs accruing during the acceptance inspection (personnel expenses, pieces of equipment, material expenses, auxiliary means) shall be borne by the customer. If the customer does not meet this deadline, the inspection shall be deemed as successfully performed at this day.

8. Withdrawal from the contract

- 8.1. The Seller shall be entitled to withdraw from the contract for good cause, particularly if the customer defaults in the course of an obligation, particularly (partial) payment obligations or cooperation activities that make the execution of the purchase order impossible or impair it considerably.
- 8.2. If it has reasonable doubts as to the customer's creditworthiness, the Seller shall be entitled to demand immediate payment of all outstanding, including not yet due receivables and to demand cash payment prior to delivery of the goods for all outstanding deliveries. If the customer fails to comply with this demand, the Seller may withdraw from the contract. If the Seller does not exercise these rights, this shall not affect their existence.

9. Warranty

- 9.1. The customer shall inspect the delivered goods immediately and notify any potential defects in writing within one week. In case of justified and timely complaints, the customer, for the time being, shall only be entitled to the right to improvement or, if improvement is impossible or unreasonable, to the right to exchange. The defects shall only be remedied if the notification of defects is justified; the customer shall facilitate all measures required for removal of defects for the Seller. The Seller shall be entitled to refuse the improvement or exchange of the service if this is impossible or only possible with unreasonably high expenses for the Seller. In this case, the customer shall be entitled to the right to reduce the price appropriately. The right to rescission shall expressly be excluded by mutual agreement.
- 9.2. If transport damages or shortfalls are identified upon delivery, they shall be recorded in the carrier's acknowledgement of receipt; otherwise, it is at the Seller's discretion to recognise them.
- 9.3. The reversal of the burden of proof according to Section 924 ABGB [Austrian Civil Code] at the Seller's expense shall be excluded. The presence of the defect at the time of handing over, the time of identification of the defect and the timeliness of the notification of defects shall be proven by the customer.
- 9.4. Notifications of defects and objections that are not made within 7 days as from handing over shall be late in all cases. The customer shall bear the risk of delay for notifications of defects and objections. If a notification of defects is not made in due time, any warranty claim shall be excluded.
- 9.5. The warranty period shall be twelve months.
- 9.6. The Seller shall not assume any warranty for defects that have been caused by unsuitable or improper use, faulty assembly and/or commissioning by the purchaser or third parties, ordinary wear and tear, faulty or negligent treatment or maintenance, unsuitable operating resources or substitute materials, defective installation work, chemical, electro-chemical or electric influences or other influences (e.g. water, frost, heat). The warranty shall expire if the goods have been changed by third parties or by processing, unless the customer proves that the defects are not in any causal connection with the change.
- 9.7. Defects the customer is responsible for and unjustified complaints shall be remedied by order and at the expense of the customer.
- 9.8. The content of the brochures, technical specifications, etc. used by the Seller as well as public statements, e.g. in advertising, shall not become subject matter of the contract, unless a specific feature of the goods is expressly granted on part of the Seller.
- 9.9. Section 933b ABGB, according to which the customer has a recourse claim against the Seller even after expiry of the warranty period with sales to consumers, shall be waived by mutual agreement.

- 9.10. Only the direct customer shall be entitled to warranty claims against the Seller, which shall not be assignable.

10. Liability

- 10.1. Claims for damages of the customer, particularly based on delay, impossibility of performance, positive violation of a contractual duty, fault at conclusion of the contract, defective or incomplete performance, consequential damage due to defects, or tort shall be excluded, unless they are based on intention or gross negligence on part of the Seller. The existence of gross negligence shall be proven by the customer.
- 10.2. The liability for consequential damages, lost profit, claims of third parties shall be excluded in all cases. This shall also apply to damages that accrue due to late completion (damages caused by delay, particularly if the delay can be attributed to serious and unforeseeable operational breakdowns, supply problems or absence of staff). Liability arising due to incorrect use of the object shall be excluded.
- 10.3. If the Seller carries out assemblies for the customer, it shall not be liable for personnel, agency staff or other third parties potentially provided by the customer.
- 10.4. The customer shall fully indemnify the Seller and hold it harmless with regard to missing or incorrect information and potential infringements of industrial property rights, particularly in the event of third party claims.
- 10.5. Claims for damages shall become statute-barred within six months as from becoming aware of the damage and the damaging party. Claims for damages asserted later than one year as from handing over shall be delayed in all cases.
- 10.6. Recourse claims against the Seller resulting from liability according to the Product Liability Act shall be excluded.
- 10.7. The amount of liability per event of damage shall be limited to the order total, but at any rate to the maximum limit of the Seller's public liability insurance.

11. Miscellaneous

- 11.1. The Seller shall be entitled to use third parties and/or to substitute them for the fulfilment of its contractual obligations ("agent", "Besorgungsgehilfe"). Third parties are commissioned, at the Seller's option, either in its own name or in the customer's name. The Seller shall carefully select third parties and make sure that they have the required professional qualifications. If contracts are awarded to third parties by way of substitution, the Seller shall only be liable for careful selection of the third party, but not for the non-performance or improper performance.

- 11.2. The customer shall agree that the data collected about it in the course of the business relation are saved and processed in an IT system in compliance with the provisions of the Data Protection Act. These data shall be used exclusively to fulfil statutory provisions, to handle the payment transactions and for customer support.

12. Applicable law, place of performance and place of jurisdiction

- 12.1. Austrian law excluding the rules regarding conflict of law shall apply to the legal relations between the Seller and the customer. The provisions of the United Nations Convention on Contracts for the International Sale of Goods shall not apply.
- 12.2. Place of performance for all claims and obligations shall be the Seller's registered office.
- 12.3. The court competent for the Seller's registered office shall be the exclusive place of jurisdiction for all disputes arising between the Seller and the customer. However, the Seller shall be entitled to claim against the customer at its general place of jurisdiction as well.