

GENERAL TERMS AND CONDITIONS  
OF SALE AND DELIVERY  
of  
**pewag austria Vertriebsgesellschaft mbH**

**Definitions**

For the purposes of these General Terms and Conditions of Sale and Delivery (hereinafter referred to as "GTCSs"), "AMG" shall refer to pewag austria Vertriebsgesellschaft mbH and the term "CUSTOMER" shall refer to all natural persons or legal entities with which AMG shall enter into business relations.

**General provisions**

These GTCSs shall apply to the exclusion of all and any terms and conditions of business of the CUSTOMER in respect of all contracts concluded between AMG and the CUSTOMER relating to the supply of products by AMG as well as any subsequent orders in the context of an ongoing business relationship, whereby any amendments to these GTCSs shall only be valid subject to the express written approval of AMG.

Terms and conditions of business of any type whatsoever which stand in contradiction to these GTCSs, in particular terms and conditions of purchase of the CUSTOMER, shall lack all validity. Any differing counter-confirmation in respect of order confirmation by AMG shall be without effect.

INCOTERMS by way of the respective current version of the ICC (International Chamber of Commerce) (currently: INCOTERMS 2000) shall only apply on the basis of express written agreement and to the extent specified therein.

**Conclusion of contract and prices**

Offers by AMG shall be subject to confirmation and shall be non-binding. Price lists issued by AMG shall merely serve informational purposes and shall not be deemed an offer of sale. The prices issued by AMG shall be net prices and, within Austria, where the order value totals up to EUR 150, shall be deemed ex-works; where an order value exceeds EUR 150, prices shall be carriage paid to the named destination, and in respect of export consignments, these shall be free at Austrian frontier. With regard to other separate price agreements, the INCOTERMS respectively underlying such agreement shall apply. Prices shall be based on current cost factors and exchange rates. In the event that, prior to the date of delivery, these shall undergo a significant upward change, AMG reserves the right to effect a corresponding adjustment. The CUSTOMER shall always be invoiced the prices valid on the date of delivery, plus value added tax.

An order by the CUSTOMER shall only be deemed as having been accepted once it has been confirmed by AMG in writing, or on the basis of prompt delivery accompanied by invoicing. The absence of a response from AMG shall not be deemed consent. If the order confirmation of AMG contains changes in relation to the order placed, such changes shall be deemed as approved by the CUSTOMER unless the latter shall immediately object to the same.

In the event that bankruptcy proceedings are instituted in respect of the CUSTOMER, or a petition for bankruptcy proceedings shall be rejected due to lack of cost-covering assets, in the event of an application for and conclusion of judicial or extra-judicial composition proceedings or suspension of payments in relation to the CUSTOMER, the discount rates granted or other compensation shall no longer apply.

**Payment**

Unless otherwise agreed in writing, invoices of AMG shall be payable immediately upon receipt without deduction, to the exclusion of any right to retention or offsetting against counterclaims. No discount may be deducted from invoice amounts if invoices due and issued prior to the invoice in question remain outstanding, even if only in part. Payments shall be applied to the respective oldest claim.

Bills and cheques shall only be accepted as a means of payment further to separate agreement, exclusively subject to receipt of the corresponding counter value and coverage of any interest, charges and costs by the CUSTOMER. Any bank charges arising, in particular discount interest, collection charges, bill and cheque fees (and charges) shall be borne by the CUSTOMER. No warranty is assumed for timely and proper presentation, protest or collection of bills or cheques.

Any agreed payment period shall, in the event of doubt, run with effect from the invoice date. If the payment deadline is exceeded, default interest shall be charged according to the credit costs of AMG,

whereby this shall be at least 4% above the base rate of the European Central Bank, even if no fault is attributable in respect of the payment default. Place of performance with regard to payment shall be Graz.

In the event of default, the CUSTOMER undertakes to indemnify the necessary reminder and collection costs incurred by AMG for the purpose of related legal prosecution, whereby the CUSTOMER in particular undertakes to indemnify any fee of the collection agency engaged based on the current version of the Rules on Maximum Rates for Collection Agencies pursuant to Federal Law Gazette (*Bundesgesetzblatt*) 141/96. If AMG itself actions the reminder process, the CUSTOMER undertakes to pay a sum of EUR 15.00 per reminder. In addition, any further losses shall be indemnified, in particular such loss as shall arise on the basis that, as a result of non-payment, higher interest rates become payable on any credit accounts of AMG.

### **Delivery**

The delivery dates/periods stated by AMG in price lists, order confirmations or elsewhere shall be non-binding unless they have been agreed in writing as fixed.

Delivery periods shall commence at the earliest upon despatch of the order confirmation by AMG, but not prior to the date on which full agreement has been achieved as to the content and scope of the order. The order confirmation shall be determining as regards the terms and conditions of delivery and the scope of performance. Unless otherwise expressly agreed in writing, AMG shall be entitled to effect delivery by way of one or several part consignments as well as also prior to any agreed delivery date. Notwithstanding the other terms of these GTCSDs, each delivery consignment shall be deemed a separate contract. Disrupted performance in respect of one or several consignments shall not affect the remainder of the contract.

Unless otherwise agreed in writing, delivery shall take place at the discretion of AMG without warranty; consignments shall be forwarded uninsured and at the cost and risk of the CUSTOMER.

Events of force majeure or other unforeseeable events which prevent timely delivery shall entitle AMG to extend the delivery period by the duration of the hindrance in question plus a reasonable lead time or to withdraw either wholly or in part from the contract, whereby any claims on the part of the CUSTOMER (in particular damages claims) shall be excluded.

In the event that AMG shall not adhere to a delivery date, the CUSTOMER shall set in writing a reasonable extension of time of at least 4 (four) weeks. In the event that such extension of time expires without the delivery being fulfilled, or if AMG declares that it is not able to deliver, the CUSTOMER shall be entitled to cancel the purchase in respect of the delayed delivery quantity. Cancellation must be declared in writing within a period of 1 (one) week following expiry of the extension of time or following submission of the relevant declaration by AMG.

Rights extending over and above the cancellation right, in particular rights to damages, shall only be held by the CUSTOMER if the delivery default is due to intent or gross negligence attributable to AMG. Upstream suppliers which AMG uses in order to fulfil its contractual duties shall in any event not be deemed vicarious agents within the meaning of Section 1313a of the Austrian General Civil Code (*Allgemeines Bürgerliches Gesetzbuch*, ABGB).

If the CUSTOMER refuses to accept the goods, consequently, notwithstanding the CUSTOMER'S payment obligation, it shall bear all costs of transport and storage. In the event of a delay in acceptance, the purchase price shall become immediately due for payment. Notwithstanding the CUSTOMER'S right to give formal notice of defects, defects shall not entitle the CUSTOMER to refuse acceptance of the goods.

Delivery obligations and delivery dates/periods shall in any event remain in abeyance for as long as the CUSTOMER is in arrears with a payment obligation.

### **Packaging**

The requisite packaging shall not be separately invoiced. Deduction of packaging on the part of the CUSTOMER shall not be permitted unless otherwise agreed.

### **Despatch and transfer of risk**

Unless otherwise agreed in writing (in particular in the form of INCOTERMS), or unless expressly accepted in writing by AMG in the order confirmation, risk shall pass to the CUSTOMER upon rendering of service by AMG at the place of performance. With freight-paid delivery, and delivery free at Austrian frontier, risk shall pass to the CUSTOMER as soon as AMG has passed the goods at the place of performance to the forwarding agent, carrier or other person appointed to undertake despatch, whereby this shall be irrespective of which party shall bear the freight costs and which party shall actually execute transportation.

Transport insurance shall only be taken out at the request and cost of the orderer. Within Austria, in the case of freight-paid delivery, any additional freight costs for express goods shall be charged to the CUSTOMER. In the absence of sufficient references from a CUSTOMER, despatch shall take place against advance payment or cash on delivery.

In the event that transportation or despatch shall be delayed at the request of the CUSTOMER or for other reasons attributable to the CUSTOMER, risk shall pass to the CUSTOMER upon readiness for delivery. Subject to the above provisions, the same shall apply in the event of default of acceptance or refusal of acceptance on the part of the CUSTOMER, whereby in such context, the determining date shall be the date of default or refusal of acceptance.

In the event that the CUSTOMER shall be in default of acceptance, AMG shall be entitled either to store the goods at its premises, for which AMG shall charge a storage fee of EUR 4.00 per square metre for each calendar day or part thereof, and at the same time to insist upon contractual fulfilment, or, further to setting of a reasonable extension of time, to withdraw from the contract and make other use of the goods. In such event, in addition, a contractual penalty in the sum of 30% of the invoice amount shall be deemed agreed, whereby this shall apply notwithstanding the right to assert any additional damages.

### **Guarantee, damages**

With regard to characteristics of the goods forming the subject of the contract which have been expressly warranted in writing, as of the date of transfer of risk, AMG shall provide a warranty for a period of 12 (twelve) months pursuant to the following terms. Any warranty as to particular suitability, a particular purpose or a particular application of the goods shall be expressly excluded unless expressly warranted in writing. AMG shall in particular provide no warranty in respect of defects arising as a result of improper handling, usual wear and tear, storage or other acts and omissions of the CUSTOMER or third parties. The warranty shall also be excluded if the goods have not been used according to the directions given by AMG. Oral information provided as to characteristics of the product of AMG, technical advice and other indications as to suitability and use, weights, dimensions, forms, performance and appearance of the goods of AMG shall be non-binding and shall be issued to the exclusion of any liability. Such indications and information shall only be binding upon AMG if expressly stated and warranted in the order confirmation.

The CUSTOMER shall be under a duty to check the goods delivered immediately following receipt as to their completeness and freedom from defects. Deviations in quality, colour, form or get-up as are usual in the trade, which are minor, or technically unavoidable, shall not be deemed defects. This shall also apply in the case of delivery according to a specimen or sample.

Notices in respect of incompleteness and other defects must be served in writing within a period of 1 (one) week following receipt, whereby the factual circumstances, order date and delivery date, as well as the delivery note number, must be precisely stated. At the same time as the notice of defects, the CUSTOMER must provide AMG with all documents serving as evidence. If the notice of defects is not submitted in accordance with the above terms, all warranty, damages and other claims of the CUSTOMER shall be precluded.

Further processing or alteration of the products supplied shall be deemed acknowledgement that the products in question have been supplied in due and proper form. Prior to use, the goods must be closely inspected by an expert to assess whether they are suitable for their intended purpose. Notice of defects on the part of CUSTOMER shall be deemed in any event too late if a further examination of the goods in respect of which a complaint has been made is no longer possible.

In the event of verifiable errors in material or work, the warranty shall be limited to the supply of replacement goods of the same type and quantity, or rectification, as AMG shall see fit. Any further claims, in particular rights to rescission, damages or substitute performance, shall be excluded. Any liability on the part of AMG for consequential losses shall also be excluded. Trader recourse on the part of a CUSTOMER pursuant to Section 933 b of the Austrian General Civil Code shall also be excluded except in the event of intent or gross negligence on the part of AMG. Products already in use shall not be taken back. The existence of a defect shall not entitle the CUSTOMER to remedy the defect itself or arrange for the same to be remedied by third parties; rather, AMG must initially be given the opportunity to undertake rectification within a reasonable period of time.

The CUSTOMER shall be under a duty, when presenting the AMG products – in particular in the context of sales discussions, provision of advice concerning application technology, advertising, etc. – to observe the respective safety/security rules and operating instructions and to pass on to the purchaser all warning indications comprised therein. The CUSTOMER shall indemnify AMG and hold AMG harmless in respect of all costs and expenses arising from any breach of this obligation.

It shall be a precondition of fulfilment of warranty obligations on the part of AMG that all contractual

duties incumbent upon the CUSTOMER shall be fulfilled, in particular the agreed terms and conditions of payment.

Damages claims shall only be held on the part of the CUSTOMER in the event of gross negligence. The burden of proof as to the existence of gross negligence shall be incumbent upon the CUSTOMER. In contracts with its own purchasers, the CUSTOMER shall limit the liability of AMG through inserting an identical clause. If the CUSTOMER fails to comply with this obligation, it shall be under a duty to indemnify all expenses and costs, in particular including court costs and lawyers' fees, which AMG shall thereby incur.

Damages claims existing on merit pursuant to mandatory statutory rules/according to this contract and these GTCSDs shall be limited in terms of amount to the sum of the purchase price of the consignment in question.

These provisions shall not affect any rights held by an end user according to mandatory statutory rules.

### **Product liability**

The CUSTOMER undertakes to use the goods only in the manner stated in the instructions and directions for use, i.e. as intended, and to ensure that the said goods are only passed for use as intended to persons familiar with the hazards/risks of the products in question and are only introduced onto the market by such persons. The CUSTOMER further undertakes to enquire of AMG in writing in the event that the CUSTOMER should have any queries as to the intended use of the goods, whereby the CUSTOMER shall bear the burden of proof in this regard.

Where the CUSTOMER'S purchaser suffers product liability losses, the CUSTOMER shall immediately transmit to AMG written documentation as to the circumstances and claims asserted, whereby any right of recourse shall otherwise be excluded. In the event of a product liability claim, the CUSTOMER shall bear the recourse liability in relation to AMG, irrespective of fault, if the CUSTOMER has not sufficiently explained to its purchasers any particular features of the product in question, has not passed on the instructions and directions for use or has otherwise presented to the said purchaser the safety/security of the product in a manner other than could be expected taking account of all circumstances.

Particular characteristics of the products shall only be deemed agreed if they have been expressly warranted in writing.

The CUSTOMER shall further be under an obligation to comply with its advisory duty under product liability law also in respect of the goods supplied by AMG when using the goods supplied by AMG as a base material or component in its own products when introducing such products onto the market.

The CUSTOMER shall be under a duty to monitor products which it has introduced onto the market also following such introduction in respect of harmful characteristics and hazardous consequences of use and to monitor developments in science and technology with regard to such products and to notify AMG and its purchasers immediately of any errors in the goods supplied by AMG identified as a result of such monitoring.

In so far as no consumer transactions are involved within the meaning of the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*), the following shall apply: the duty of indemnification on the part of AMG shall be excluded in respect of material losses suffered by the CUSTOMER and its purchasers. The statute of limitations with regard to claims pursuant to Section 13 of the Austrian Product Liability Act (*Produkthaftungsgesetz*, PHG) as well as recourse claims is reduced to three years. Recourse claims on the part of the CUSTOMER'S purchaser against AMG shall be excluded in so far as permitted by statute and shall be limited to the scope of cover granted by AMG's insurer.

In the event that the CUSTOMER receives information from AMG or the manufacturer of purchased goods as to a possible defect in the said goods, and is requested to render the same accessible for the purpose of rectification, the CUSTOMER undertakes to deliver such goods immediately to the headquarters of AMG or a branch establishment, its distribution partner or another business partner of AMG, as AMG shall see fit. The CUSTOMER undertakes to tolerate rectification attempts in respect of the goods, to accept exchange of the goods in return for an equivalent product or to consent to cancellation of the purchase contract without assertion of damages claims. In the event that the CUSTOMER fails to comply with its obligation to return the goods, it declares assumption of liability in respect of all losses arising in relation to the product both in relation to AMG and third parties.

The CUSTOMER shall be under a duty to hold AMG harmless in respect of all liabilities, losses, damages, costs and official requirements imposed upon AMG as a result of failure on the part of the CUSTOMER to comply with the above obligations.

### **Retention of title**

Until full payment of the purchase price including any default interest already accrued, reminder and collection costs as well as other costs, title to the goods supplied shall be retained by AMG. In the case of a running account, retention of title shall be deemed security for the balance claimed by AMG. If the goods supplied are subject to treatment or processing, co-ownership shall accrue in the proportion of the value of the work undertaken to the value of the goods.

Under the following terms and conditions, the CUSTOMER shall be entitled to resell the goods to third parties in the course of due and proper business operations.

Irrespective of the condition in which the CUSTOMER resells the goods, upon acceptance of the goods, it assigns to AMG all claims arising from resale against its purchasers, including all ancillary rights. At the time of resale, the CUSTOMER shall notify its purchaser of the said assignment and note the assignment in its business records at the same time as the resale. Further, the CUSTOMER shall at the request of AMG immediately notify the latter in writing of the person/entity to which it resells such items/the claims which it holds based on such resale, and shall provide to AMG the documents required in order to assert AMG's rights.

AMG shall be entitled to notify the purchaser of assignment. The CUSTOMER shall indemnify us and hold us harmless in respect of all losses arising from a breach of this obligation. AMG shall accept assignment. Despite the said assignment, the CUSTOMER shall be entitled to collect claims on a fiduciary basis for the account of AMG. In the event of payment default on the part of the CUSTOMER, the latter shall be under a duty to provide all documents required for the purpose of collecting the claims assigned, whereby in such event, the CUSTOMER'S fiduciary collection authority shall be deemed revoked.

The CUSTOMER shall notify AMG immediately in writing as to any enforcement measures taken by third parties in respect of the goods to which title is retained or the assigned claims, whereby the documents required for raising objections shall be supplied.

In the event that payments are suspended, bankruptcy or judicial or extra-judicial composition proceedings are applied for or instituted, the CUSTOMER shall be under a duty to immediately return at its own expense to AMG the goods subject to retention of title.

In the event of payment default, AMG shall be entitled to take action of its own to remove goods subject to retention of title from the safekeeping of the CUSTOMER. In such event, the CUSTOMER shall have no protection of possession and shall give advance consent to removal without presenting any de facto or legal hindrance.

### **Force majeure**

Force majeure within the meaning of these GTCSDs shall consist of all circumstances independent of the will of the parties, such as in particular failure to deliver on time on the part of upstream suppliers, instances of force majeure in the narrower sense (e.g. war, fire, flood, earthquake), unforeseeable operational disruptions, shortage of energy, materials and commodities, intervention by official bodies, transportation and customs clearance delays and labour disputes.

### **Sundry provisions**

In the event that any individual terms of these GTCSDs shall be invalid on the basis of mandatory statutory provisions, this shall not affect the binding nature of the other terms hereof and the legal transactions concluded on the basis of these GTCSDs. Any invalid term shall be replaced by such valid provision, the content of which shall come as close as possible in economic intent to the purpose of the respective invalid clause which it replaces.

The content of all documents and information of an economic, financial or technical nature which the contracting parties shall receive from their respective contractual partner within the framework of these terms and conditions/in connection with products, must be treated by the contracting parties as confidential, irrespective of whether or not identified as confidential, and may only be copied or passed on to third parties with the prior written consent of the other contracting party.

All agreements between AMG and the CUSTOMER must be made in writing. Any subsidiary oral or telephone agreements shall be invalid. Any amendments and additions to these general terms and conditions of delivery and payment shall accordingly only be valid if agreed in writing, whereby a fax shall also be deemed to satisfy the written-form requirement.

### **Applicable law, place of performance and place of jurisdiction**

Austrian law shall apply to disputes under the purchase contracts. The applicability of the United Nations Convention on the International Sale of Goods is excluded. The contractual language shall be German. Place of performance for both parties shall be Graz.

Place of jurisdiction with regard to all disputes arising either directly or indirectly from the contract is

hereby agreed as the Austrian court having subject-matter jurisdiction and territorial jurisdiction for Graz. AMG shall however also be entitled to invoke another court having jurisdiction in respect of the CUSTOMER.

With regard to all legal action against a consumer in connection with disputes under this contract within the meaning of the Austrian Consumer Protection Act, which consumer has his/her domicile, habitual residence or place of work in Austria, the court having jurisdiction shall be a court situated in the district in which the consumer has his/her domicile, habitual residence or place of work.