

GENERAL TERMS OF DELIVERY AND PAYMENT OF SOVATEC PRODUKTIONS GMBH (as per September 29th 2015)

The present General Terms of Delivery and Payment have primarily been drafted for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in Art 1, paragraph 1, item 2 of the Consumer Protection Act, Federal Law Gazette No I 1979/49, they shall only apply to the extent that they do not conflict with the provisions of the first main section of the aforementioned law. Convenience translation, for information purposes only. The German text prevails.

Scope

- 1.1. These General Terms of Delivery and Payment are a constituent of the contract between Sovatec Produktions GmbH (the "Supplier") and the contracting partner (the "Orderer"), inasmuch as the contracting parties have not explicitly agreed anything to the contrary in writing.
- 1.2. These General Terms of Delivery and Payment shall apply to deliveries of goods and the provision of work (performances) by the Supplier.
- 1.3. For installation work, the installation conditions of the Austrian Trade Association of the Mechanical Engineering and Structural Steel Industry shall additionally apply.

Contractual content

- 2.1. If the Supplier dispatches an order confirmation, then this shall be authoritative with respect to the contractual content, inasmuch as the Orderer does not immediately oppose it in writing (within three days at the latest). General Terms and Conditions of the Orderer shall be inoperative and shall not be deemed to have been agreed. Amendments and supplements to the contract or to these General Terms of Delivery and Payment or other agreements at the expense of the Supplier shall only be valid provided the latter confirms these in writing.
- 2.2. The Supplier shall provide initial quotations for goods without charge. Documents of the Supplier that are attached to quotations, such as illustrations, drawings, weight and dimensional details etc., unless explicitly designated as binding, shall only be approximately authoritative and non-binding.
- 2.3. The Supplier's quotations shall be subject to confirmation.
- 2.4. The Supplier shall be responsible for obtaining any export approvals. The Orderer must arrange in good time for import and foreign exchange approvals and other official authorisations (e.g. in relation to the technology transfer), and shall hold the Supplier safe and harmless in this respect.

Plans and documents

- 3.1. Details of the Supplier in catalogues, prospectuses, memoranda, advertisements, price lists etc. that are its own or that it makes available shall not be binding, and it accepts no liability for mistakes or for typesetting or printing errors.
- 3.2. The Supplier shall retain all copyright, patent, design and other protective rights to the delivery item, to catalogues, prospectuses, quotations, drawings, plans, drafts, models etc., and these may not be passed to third parties without its explicit written approval.
- 3.3. The Orderer shall grant the Supplier explicit authority to use its plans and other technical documents, inasmuch as the Supplier considers this necessary or expedient for the purposes of execution of the supply. The Orderer shall warrant the material and technical accuracy, completeness and expediency of the information provided by it, and shall be answerable for the fact that no third party rights are infringed through execution of the order.

Packaging

- 4.1. The Supplier shall package goods in the habitual commercial manner, with a view to normal transportation conditions, at the Orderer's expense, and shall not accept returned packaging.
- ### Transfer of risk and transportation
- 5.1. Risk in relation to the delivery item shall in all cases pass to the Orderer at the time it is made available by the Supplier in its factory in Vienna, and in the case of generic items, when the Supplier selects these in its factory in Vienna.
 - 5.2. Risk for partial deliveries shall also transfer in accordance with no. 5.1, even if the Supplier still has other services to provide.
 - 5.3. Risk for partial deliveries shall also transfer in accordance with no. 5.1, even if the place of destination has been agreed as the Supplier's factory and/or the Supplier has undertaken transportation. The Orderer shall in all cases exclusively bear the costs of a different place of destination.
 - 5.4. Unless agreed otherwise in writing, delivery shall be deemed to be EXW (ex works) (ready for collection). If the Supplier has undertaken transportation, then execution of the same, and in particular the choice of carrier, shall be at the Supplier's discretion at the expense of the Orderer. The Supplier shall be entitled but not obliged to contract insurance at the Orderer's expense. At the request of the Orderer, the Supplier shall contract insurance at the Orderer's expense and in its favour.

Delivery times

- 6.1. Unless explicitly agreed otherwise in writing, the delivery times stated shall not be binding on the Supplier and transactions shall not be for a fixed time.
- 6.2. The Supplier may make partial and early deliveries at its own discretion.
- 6.3. Delivery times shall commence on the date of the Supplier's order confirmation and following performance of all technical, commercial, legal, financial and other preliminary work to be undertaken in advance by the Orderer (such as technical information, plans, approvals, payments on account, opening of letters of credit). The delivery time shall be extended to cover periods of delay on the part of the Orderer.
- 6.4. The delivery time shall be deemed to have been adhered to as soon as the delivery is made available to the Orderer (see no. 5 above).
- 6.5. If delivery should be delayed, through the fault of the Supplier, where a binding commitment to a specific date has been given, then the Orderer may demand fulfilment or else set a reasonable additional time in writing, giving an explicit declaration that it will refuse to accept performance following expiry of this time limit. If the additional time is not adhered to, through the fault of the Supplier, then the Orderer shall be entitled to declare its withdrawal from the contract in writing. The Orderer may make no further claims, in particular claims for damages for late fulfilment, except in the case of gross negligence on the part of the Supplier. Withdrawal from the contract may only be declared with respect to all goods not delivered, and for delivered goods that cannot be used alone as intended. To the extent of the withdrawal, payments already made (partial payments) are to be refunded to the Orderer provided partial deliveries received have been returned.
- 6.6. The following in particular shall not be considered as negligence on the part of the Supplier: all delays caused by subsidiary suppliers and all instances of force majeure, such as employment disputes, accidents, fire and other disasters, mobilisation, delayed or failed grant of official approvals, revolution, absence of means of transport or general lack of means of supply, including energy etc.
- 6.7. The Orderer shall also be obliged to accept in the event of any defects. Nos. 8.5 to 8.7 shall apply accordingly in the event of delayed acceptance, but no additional time needs to be allowed. In the event of delayed acceptance, the Supplier may additionally charge for storage and all other expenses. It may also store the goods at the Orderer's expense and risk. If the Supplier stores the goods itself, then the monthly storage charge shall be 1.5% of the associated final invoice amount.
- 6.8. The provisions of this clause shall apply accordingly to delivery timings.

Price

- 7.1. Prices shall be ex works, excluding packaging, loading, transportation, insurance and all other incidental costs (e.g. procuring an export licence) and installation (assembly). The same shall apply if a different place of destination is agreed. If transport is included in the price in individual instances, on the basis of special written agreements, then the price shall not include unloading and handling goods.
- 7.2. Prices shall be net of value added tax at the statutory rate.
- 7.3. In the event of conclusion of a contract without an explicit agreement on a price (consideration), the price valid on the delivery date shall be charged.

Maturity of the purchase price and reservation of title

- 8.1. Unless agreed otherwise, the Orderer shall be obliged to pay cash in advance. The Supplier shall not be obliged to make delivery before the Orderer has met all its financial obligations in full. The Orderer's payment obligation shall also apply to partial deliveries.
- 8.2. The Orderer shall not be entitled to withhold payments or to offset against them, in particular on the basis of warranty claims (defect remedy etc.) or other counterclaims not acknowledged by the Supplier in writing.
- 8.3. All payments must be made into the bank account designated by the Supplier, free of all charges (the BIC and IBAN) in the currency designated in the invoice.
- 8.4. If the Orderer defaults on an agreed payment or other performances, then the Supplier may
 - a) insist on fulfilment of the contract and withhold its own performance until this takes place (Orderer's advance payment obligation) or
 - b) declare withdrawal from the contract subject to grant of a reasonable additional time, which shall not, however, exceed 14 days.Any other claims, in particular compensation for damages, are not affected by this provision.
- 8.5. In the event of default in payment on the part of the Orderer, default interest in the amount of 10 % per annum or the statutory default interest applicable between merchants (enterprises), whichever is the greater, shall be agreed. The Orderer shall bear all reminder costs, including the costs of legal intervention and/or the involvement of a debt collection agency.
- 8.6. Following expiry of the additional period referred to under no. 8.4 b), the Supplier may withdraw from the contract, and may also combine this declaration with the setting of an additional period. The Supplier may also initially insist on fulfilment of the contract and subsequently withdraw from the contract. Goods already delivered must immediately be returned to the Supplier, at the Orderer's expense and risk. The Supplier shall also be due compensation for the reduction in value that has arisen, even in the absence of negligence on the part of the Orderer. The Orderer must reimburse the Supplier all expenses that it deems necessary and has incurred in conjunction with execution of the contract. In the case of special production orders, the Supplier's payment claim shall be upheld inasmuch as the products cannot be utilised elsewhere within a reasonable period.
- 8.7. The Supplier shall retain right of title to all items delivered until the Orderer has met all of its financial obligations in full. Right of title shall not pass to the Orderer until the purchase price has been paid in full. The Orderer must comply with the requisite formal requirements in order to safeguard reservation of title. The Orderer may specifically neither pledge or transfer the delivery item by way of security, nor dispose of it in any other manner. In the event of seizure, confiscation or other transfers of possession by third parties, the Orderer must safeguard the Supplier's right of title and must immediately notify the latter of such circumstances. If the Orderer unlawfully disposes of the delivery item, the Orderer hereby assigns to the Supplier all present and future payment claims that arise out of or in conjunction with such disposal. The Orderer must bear the costs of the extrajudicial and judicial assertion of the Supplier's right of title against such third parties.

Warranty and liability

- 9.1. The Supplier's warranty shall extend to faults related to design, material or execution, that are demonstrably due to circumstances that have arisen prior to the transfer of risk.
- 9.2. This obligation shall only apply to defects that seriously restrict usability. A warranty claim may only be made provided an immediate notice of defect is served by registered letter, fax or e-mail (at most within eight days). The notice of defect shall only be operative once it has been served on the Supplier. The warranty period shall be six months. Damage claims arising out of and in this context shall be excluded, except in the event of gross negligence on the part of the Supplier. The reversal of the burden of proof as laid down in Art 924 Austrian General Civil Code (Allgemeines Bürgerliches Gesetzbuch) shall not apply, and the Orderer must provide evidence of defectiveness.
- 9.3. The Supplier must remedy serious defects at its own expense. It may elect either to repair the delivery item (or arrange for it to be repaired) in situ where it is located or in its own factory, or else to replace the defective goods or the defective parts. If the Supplier arranges for the defective goods or parts to be returned for repair or replacement, then the Orderer shall bear the expense and risk of their transportation. If defects are remedied in situ, at the Orderer's request, then the latter shall bear travelling, transportation and accommodation costs.
- 9.4. Defect remedy shall not have the effect of extending the warranty periods. However, the same warranty shall apply to the replacement part and the repair as that which applied to the delivery item. The Supplier may, at its own discretion, claim replaced defective goods or parts, without the Orderer being due any compensation therefore.
- 9.5. The Orderer must allow the Supplier to undertake all improvements and replacement deliveries which the latter considers necessary, subject otherwise to exclusion of liability. The Supplier shall only be required to bear the costs of a defect remedy undertaken by the Orderer itself or its agent in the event of written approval. It shall also carry no warranty in this respect.
- 9.6. A warranty claim may only be made provided the product is properly employed, in particular provided all operational approvals and operational instructions have been adhered to and in the case of normal, proper use. No warranty claim may be made in particular if the product is inadequately operated, maintained or serviced, has been improperly or inadequately set up and as a result of defects that arise after transfer of risk. This shall include in particular poor corrective maintenance, repairs or alterations that are poor or that have been undertaken without the Supplier's approval, or even normal wear and tear.
- 9.7. It shall only be responsible for those parts of the delivery item that the Supplier has procured from subsidiary suppliers to the extent of the warranty claims due to itself against its subsidiary suppliers. It may assign these claims to the Orderer, which assignment shall cause the Supplier's liability to lapse entirely. By way of precaution, the Orderer hereby declares its acceptance of such assignment. The Supplier shall accept no warranty in the event that it takes on repair assignments or in the case of alterations or retrofitting of old goods and goods of third parties, and of delivery of second-hand goods. The Supplier may refuse to remedy defects for as long as the Orderer is in default with fulfilment of its obligations, and in particular of its payment obligation.
- 9.8. The Supplier accepts no liability over and above the above warranty provisions, in particular under the law relating to damages, subject to the provisions set out below. The Orderer shall specifically not have the right to claim cancellation of the contract or a reduction in price. No damages claims may be made, except in instances of gross negligence.
- 9.9 At all events, there shall be no liability for claims arising out of personal injury, damage to goods that are not subjects of the contract, standstill in production, loss of profit, loss of use, loss of contract or any other economic or indirect third party and consequential losses etc. The exclusion of liability shall also apply in relation to enterprises downstream of the Orderer. At all events, the latter undertakes to also provide for such an exclusion of liability in the contracts with its contracting partners (customers). It shall hold the Supplier entirely safe and harmless in this respect. The reversal of the burden of proof according to Art 1298 of the Austrian General Civil Code is excluded.
- 9.10. The delivery item provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, Supplier's rules on the handling of the purchased object – especially with regard to any possible inspections – and other instructions given.
- 9.11. For cases of Supplier's minor negligence, the damages are limited to 5% of the order amount, or EUR 727,000 as a maximum, unless Article 9.9 applies.
- 9.12. All claims for damages due to defects in deliveries and/or performances must be filed in court within one year after the expiry of the contractually agreed warranty period if Supplier does not expressly accept the defect; otherwise all claims become extinct.
- 9.13. If the Supplier manufactures a product on the basis of the Orderer's design details, drawings, models etc., then the former's liability shall exclusively cover defect-free execution according to the details provided by the Orderer. The Supplier shall not be obliged to check the details provided by the Orderer, inasmuch as these are not obviously incorrect. In such cases, Orderer shall keep Supplier harmless and free from any court action, in the event of an infringement of proprietary rights.

Data Protection

- 10.1. Supplier shall have the right to store, to communicate, to process and delete person-related data of Orderer in the framework of their business relations.
- 10.2. The parties shall undertake to keep absolutely confidential vis-à-vis third parties any knowledge obtained in the course of their business relationship.

Final provisions

- 11.1. If individual provisions of the contract or of these General Terms of Delivery and Payment should be null and void or inoperative, the contract shall remain operative notwithstanding this fact. The parties shall replace the null and void (inoperative) provisions by admissible other provisions that reflect the intent of the parties as far as possible.
- 11.2. If the Orderer fails to declare a change of address in writing, then all notifications and declarations may be sent to the address appearing in the order confirmation. The Orderer shall be liable for incorrect or incomplete details relating to its enterprise (company).
- 11.3. The place of performance shall be Vienna. This shall also be the case if delivery is to be made to a different location, at the Orderer's request.
- 11.4. The contract shall be subject to Austrian law. The UN Convention on Contracts for the International Sale of Goods shall not apply.
- 11.5. Exclusively the district court in Vienna dealing with commercial matters, or the Vienna Commercial Court, dependent on their subject matter jurisdiction, shall have jurisdiction to deal with all disputes arising directly or indirectly out of the contract.