



ELMAG General Terms and Conditions of Sale and Delivery

1. General

- 1.1 Goods deliveries to our customers shall be effected exclusively pursuant to the conditions stated below, unless otherwise regulated in special terms and conditions. Any deviating agreements need to be made in writing. Our employees are not authorised to make any deviating verbal promises or agreements.
- 1.2 These terms and conditions apply with respect to both traders and consumers; in the latter case only and to the extent that the consumer protection legislation does not strictly stipulate other provisions in the consumer's favour. Should any of the provisions of these General Terms and Conditions be or become invalid, this shall not affect the remaining provisions. In place of any ineffective provision, a provision that comes closest to the original provision and is legally admissible is deemed to have been agreed.
- 1.3 These terms and conditions also apply correspondingly for services or deliveries provided by us, unless other provisions have been agreed in special terms and conditions.

2. Quotations

- 2.1 Our quotations are as a matter of principle subject to change and do not obligate us to accept any orders. All goods are subject to prior sale.
- 2.2 The details stated in catalogues, brochures etc. only apply if explicit reference is made to them in the order confirmation.
- 2.3 We shall be bound to the prices stated in quotations for one month, unless otherwise agreed.

3. Purchase Order and Receipt of Order

- 3.1 If we do not issue a rejection within three working days from receipt of a verbal purchase order, the order shall be deemed to have been accepted. We must reject a written order in writing within seven days, otherwise it shall be deemed to have been accepted on the date the order was issued.

4. Transfer of Risk, Complaints

- 4.1 Benefit and risk shall pass to the customer at the latest by the time the delivery is dispatched from our stores, irrespective of the delivery conditions agreed for the shipment (such as "carriage free" or similar), unless the damage was caused through our fault.
- 4.2 Adherence to the agreed delivery time is subject to circumstances that are unforeseeable or out of the party's control, such as all cases of force majeure, warlike events, intervention and prohibition by the authorities, transport and customs delays, transport damage or power failures. Such circumstances also justify an extension of the delivery period if they affect one of our suppliers.
- 4.3 In the event of a delay in the dispatch from our stores due to circumstances attributable to the customer, the risk shall pass to the customer on the day the shipment is ready for dispatch.
- 4.4 We are entitled to make and invoice part or advance deliveries.
- 4.5 Complaints about deliveries that have allegedly not been made in full must be raised immediately, at the latest within three days from receipt of the delivery note.
- 4.6 Shipping is affected to the best of our judgement. We shall only be liable for any disadvantages that might be incurred from unsuitable packaging etc. if a relevant explicit agreement has not been observed. The ordering party shall bear the transport risk in all cases, even if carriage-free delivery was agreed.
- 4.7 Details of performance, dimensions, weights and other technical data contained in catalogues, brochures, images, circulars, advertisements, price lists and similar only apply approximately; the right to make design changes is reserved.
- 4.8 On principle, the recipient of the goods must raise any claims for damages for lost or damaged goods immediately with the relevant destination railway station or forwarding agent.
- 4.9 Goods that arrive in a damaged state must be sent back to us for repair once the carrier that delivered the goods to you has recorded the facts. The shipment must be sent carriage free. On completion of the repair, the ordering party shall be billed for the incurred cost and it will then pass its claims plus the incurred freight charges on to the carrier.
- 4.10 In the case of lost goods, the ordering party can see the value of the goods from our invoice and can use that information to put forward its claim immediately to the carrier at the time the facts are recorded, be it a forwarding agent, the post office, the railway or similar.



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 Commercial court Ried i. I., Place of jurisdiction: Ried i. I. VKB sort code 18600 acct. no. 14.021.786 IBAN AT221860000014021786 BIC VKBLAT2L
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5. Prices

- 5.1 If cost increases which are beyond our control occur between the conclusion of the contract and the delivery, such as an increase in cost price, increases in manufacturers' or wholesale prices, the relevant prices shall be increased accordingly. The same applies to cost increases resulting from increases in labour costs due to act of law, legal ordinance or collective wage agreement, or from any increase in or introduction of duties or from stable value clauses. If the period between the conclusion of the contract and a delivery to be effected by us does not exceed two months, a price increase shall only take effect if a corresponding agreement has been made in the particular case.
- 5.2 Prices are ex-works; applicable shipping costs shall be charged. In Austria and Bavaria, orders are handled via a specialist dealer in the customer's area, whom the customer can select from the dealer directory or whom we shall propose. From an order value of EUR 500.00 (ATS 6,880.15), domestic deliveries (incl. Bavaria) shall be made carriage paid. Abroad, deliveries to EU countries (excluding Bavaria) shall be made directly by us at a flat rate shipping charge of EUR 20.00 (ATS 275.21) or for order values from EUR 200.00 (ATS 2752.06) upwards delivery will be made carriage free.

6. Reservation of Title

- 6.1 Delivery items remain our property until the recipient has paid all our claims, also those from subsequent invoices, including all accessory claims.
- 6.2 If the customer sells on any goods subject to retention of title, the retention of title extends to the future revenue or the outstanding purchase price from that transaction. The resale must be notified immediately and the revenue must be retained separately.
- 6.3 The purchaser may neither pawn the delivery item nor assign it as security. In the event of seizure as well as confiscation or other dispositions by third parties, the purchaser must notify us immediately.

7. Payment

- 7.1 Where no other agreements apply, payments shall become due on receipt of invoice. Abroad, payment shall be made in advance or cash on delivery.
- 7.2 In the event of default in payment, we are entitled to take back the goods, equipment or similar, in which we have retained the title, without this affecting our other rights or representing a withdrawal from the contract.
- 7.3 If the customer is in default, we are entitled to demand interest and compound interest of 13% p.a. plus the applicable VAT, unless otherwise agreed in the particular case. Should there be changes in the money or capital market causing a general change in credit interest rates, we shall be entitled to adjust the agreed interest rate accordingly.
- 7.4 The defaulting customer is obligated to reimburse us for all procedural costs related to the enforcement as well as any relevant non-procedural costs caused through their fault, in particular the cost of a lawyer engaged by us.
- 7.5 Deductions from payments that have not been agreed shall not be accepted under any circumstances.
- 7.6 Withholding payments or offsetting them against any claims by the purchaser is excluded.
- 7.7 Payments received by our company shall first clear the compounded interest, interest and incidental expenses, then the outstanding capital, starting with the oldest debt.

8. Warranty, Guarantee

- 8.1 We guarantee the customer that for a period of 24 months from the delivery date the goods supplied shall be free from material or manufacturing defects which would substantially affect the serviceability of the goods in question, and that the warranted qualities shall be present.
- 8.2 We further guarantee you that the goods shall be serviceable when used appropriately for a period of 24 months from the delivery date.
- 8.3 With respect to defective goods under warranty or guarantee, we can choose
- to perform remedial action on site,
 - to have the defective goods or defective parts returned for the purpose of remedial action or for replacement,
 - to replace the defective goods or
 - to provide you with replacements for the defective parts.
- 8.4 Under no circumstances shall we accept repair invoices submitted by other companies.
- 8.5 Claims for redhibition or price reduction or for compensation for indirect or direct damages such as loss of profits or consequential damages are excluded.
- 8.6 Goods or parts replaced in the course of rectifying any defects shall become our property.



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- 8.7 Excluded from the warranty are defects arising from configuration and assembly not effected by us, deficient installation, use of the parts above the specified rating, negligent or incorrect treatment and use of unsuitable operating materials; this also applies to defects attributable to material provided by the customer. In particular, we assume no liability for damage attributable to the actions of third parties, the effects of chemicals or overvoltage. Wear parts are not covered by the warranty.
- 8.8 We are not obligated to rectify defects in cases where the purchaser has not fulfilled their payment obligations.

9. Rescission of Contract

- 9.1 If there is a delay in delivery after acceptance of the contract because of intentional or negligent conduct on our part, the customer is entitled to withdraw from the contract after a reasonable period of grace granted in writing has expired without the delivery having been effected. The customer does not have the right to rescission if the delay was due to force majeure or ordinary negligence. The customer is only entitled to claim for damages due to non-fulfilment or delay in the event of delay due to intentional or grossly negligent conduct on our part.
- 9.2 Should unforeseen events significantly change the economic importance or the content of the service or have a significant negative impact on our business, and should it in retrospect be demonstrable that the provision of the service was impossible at the time the contract was made, we are entitled to withdraw from the contract in full or in part. If we avail ourselves of the right of rescission, we shall notify the purchaser / ordering party as soon as we have become aware of the full implications of the event; this also applies to cases where an extension of the delivery period has initially been agreed with the purchaser.
- 9.3 On the other hand, if the customer defaults on payment, we are entitled to withdraw from the contract in full or in part after granting a reasonable period of grace, without affecting our other rights; in the event of our rescission, we shall be entitled in any case to a compensation payment in the amount of up to 10% of the price of the goods that are involved in the rescission in addition to any possible claims for damages.
- 9.4 If one contracting party stops its payments, starts insolvency proceedings, or if a bankruptcy petition is rejected due to a lack of cost-covering assets or if its economic situation deteriorates, the other party is entitled, if difficulties regarding deadlines, deliveries or funding are to be expected, to withdraw from the contract without setting a period of grace.
- 9.5 We are as a matter of principle not obligated to take back goods that have already been delivered. Should we agree to take back goods in an individual case as a gesture of goodwill, a handling charge of 10% of the invoice amount shall be chargeable to the customer in every case, plus reimbursement for any damage to the returned goods, which shall be calculated on the basis of the replacement value - disregarding any possible reduced current value. In addition, should the return of the goods mean that the quantity has fallen below that of a specific agreed rebate bracket, any originally granted rebates will be adjusted retrospectively.

10. Liability

- 10.1 Our liability is limited to damage to the delivery items themselves. Further claims for damages by the customer are excluded, unless premeditation or grossly negligent conduct are attributable to us.
- 10.2 Liability to pay compensation pursuant to the product liability law or product liability claims by traders for material damage derived from other legal regulations as well as reimbursement obligations are excluded. The customer is obligated to agree this liability and regress exclusion with its other contractual parties as well and to impose on them the obligation of ensuring that such a liability and regress exclusion will also be contractually agreed with their business partners in further consequence and with effect for us.
- 10.3 The customer must notify us immediately if they become aware of any damage caused by an object supplied by us, especially if the customer is called upon by third parties under the title of product liability to pay compensation for some damage or to divulge their supplier, or if they otherwise gain knowledge of a product defect in our goods or if they suffer damage themselves.
- 10.4 Claims relating to liability, requests for information or regress must be put forward to the management in writing, stating precisely the damage, the facts of the case justifying liability, including proof that the delivered goods were originally supplied by us.

11. Address

- 11.1 The customer must notify any changes in their address to us immediately and explicitly. Otherwise, written notifications shall be deemed to have been received in the normal course of mail if they have been sent to the last address made known to us or of which we have become aware.

12. Data Processing

- 12.1 The customer consents to the data processing of their address and the data required for the business transactions for internal purposes pursuant to section 22 of the data protection law.



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13. Place of Jurisdiction, Applicable Law, Place of Fulfilment

- 13.1 The place of jurisdiction for all disputes arising directly or indirectly from the contract shall be the competent court in Ried im Innkreis; Austrian law shall apply.
- 13.2 Ried im Innkreis shall be the place of fulfilment for both delivery and payment.

14. Final Provisions

- 14.1 These terms and conditions shall also apply to all future business transactions with the customer, even if this is not stated specifically, unless otherwise agreed in writing for those transactions.
- 14.2 If no objection is raised against our General Terms and Conditions of Sale and Delivery, our terms and conditions shall be deemed explicitly as having been accepted by you.
- 14.3 Any deviations from these terms and conditions shall only be valid in law if they have been confirmed in writing by the seller.

Should parts of these terms and conditions be ineffective this shall not affect the validity of the remaining provisions.

As of: 06-2009