

# **GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY**

## **of Ebbinghaus Styria Coating GmbH**

**April 2014 version**

### **A) SCOPE OF APPLICATION**

1. The terms of sale and delivery (in short: terms) regulate the legal relationship between us, Ebbinghaus Styria Coating GmbH and our clients/recipients of our deliveries and services (hereinafter referred to as purchaser).
2. Our deliveries, services and quotations are made on the basis of these terms exclusively. These terms also apply to all future business relationships even if they are not referred to once again expressly prior to each individual business case. Deviations from these terms are only effective if they are confirmed by us in writing.
3. The purchaser's terms of business, purchase and acceptance do not take precedence over these terms and they are binding only if we expressly acknowledge them in writing in each individual business case. In particular, we are not obligated to object the terms used by the purchaser which conflict with these terms. If there is no objection or execution of delivery or service on our part it does not mean consent or acknowledgement and not even if we are aware of the purchaser's terms which are conflicting or deviate from our terms. Reference on our part to the purchaser's documents does not mean acknowledgement of its terms or rules and regulations. If the purchaser becomes aware of the existence or the wording of our terms for the first time in our commercial confirmation letter or our order confirmation, these will be acknowledged to the full extent through the uncontradicted acceptance of the confirmation letter or the order confirmation.

## **B) OFFER AND CONTRACT CONCLUSION**

1. Our offers are non-binding. The information about services and products shown on our catalogues, price lists, brochures, information materials, prospectuses, advertisements at trade fair stands, newsletters, advertising broadcasts or other media is non-binding.
2. The details stated in our prospectuses, catalogues or similar documents as well as in our offer, particularly images, drawings, descriptions, dimension, data on weight, performance and use, delivery terms as well as details regarding the usability of our products are just about binding if these details have been expressly described as binding. Minor deviations from the description of our offer are allowed unless the deviation is unacceptable for the purchaser. An assurance of the quality of our services requires prior written agreement.
3. Deals and any other agreements shall become binding upon our written confirmation. With reference to validity as written confirmation, electronic mail is equivalent to correspondence.
4. Orders whose wording deviates from the offers presented by us in any point require our express written confirmation for the justification of an obligation.
5. Spelling mistakes or calculation errors entitle us to withdraw from the contract if the purchaser refuses adjustment. The purchaser's claims for compensation are excluded in this case.

## **C) DELIVERY PERIOD**

1. The delivery terms and delivery dates only apply if they have been agreed upon expressly as fixed dates in writing.
2. The delivery terms commence at the earliest on the date of our contract confirmation but not prior to full clarification of order details, particularly not prior to providing all the necessary documents to be provided by the purchaser and the items to be processed, clarification of all questions regarding production or processing of the product as well as the fulfilment of payment agreements made. The same applies to delivery dates.

Delivery terms and delivery dates are quoted ex works. If the goods cannot be collected or dispatched in good time and it is not our fault, the delivery terms and delivery dates will be considered as adhered to with notification of readiness for dispatch.

In case a date for collection has been agreed upon, then collection has to be done on that date or within 5 working days after receipt of our notification of readiness for collection. If the purchaser does not fulfil its obligation, then it will be in default of acceptance without the need for a reminder.

3. Unless otherwise regulated in individual contracts, we have a period of at least 6 weeks for the first-time provision of our services and deliveries. If the ordered deliveries or services are not being produced by us in series or samples are being produced in order to check feasibility, the period shall extend to at least 8 weeks.

Even upon lapse of the delivery term, the purchaser is obligated to accept and pay for the processed goods.

4. If delivery is delayed due to reasons beyond our area of influence, the purchaser shall make the agreed upon payment at the time it would have been due if delivery were made on time. The purchaser shall reimburse all costs that arise in connection with the delay.
5. We shall not be in default of delivery if the purchaser on its part is in default of payment. In this case, we are exempt from each obligation to perform until the payments are done.
6. We are not responsible for delays in delivery and cost increment which arise due to incorrect, incomplete or subsequently altered details and information or subsequently provided documents. This will not lead to default on our part. Extra costs arising in this regard shall be borne by the purchaser. The Postponement of deadlines for which the purchaser is responsible requires a new deadline to be fixed by us.
7. In case of postponement of deadlines for which the purchaser is responsible, we have the option of asking the purchaser in writing – after setting a grace period of 8 days – to fulfil his duty to cooperate to the agreed upon extent, failing which we can withdraw from the contract without granting further grace periods and have a right to get paid for

the services provided so far on a time and material basis plus the lost profit. Counterclaims cannot be asserted by the purchaser during this period.

In case we declare that we are withdrawing from the contract as per this provision and we bill the production costs that we've incurred until then and the expenditure for the previous services including the lost profit, the purchaser shall be entitled to the already (partly) completed or processed parts of the goods.

8. The purchaser cannot assert any claims due to delay in delivery even if the delay was our fault.
9. We are entitled to make partial deliveries which the purchaser has to accept.
10. In case the order or delivery is delayed, hindered, unreasonable or impossible due to acts of God, we can postpone the delivery term or withdraw from the contract partially or totally. In these cases, the purchaser has no claims for compensation against us. In case we partially or totally withdraw from the contract, we have a right to aliquot payment corresponding to the services provided so far. Alternatively, we can invoice the previous service on a time and material basis. In this case, the purchaser is entitled to the already (partly) completed or processed parts of the goods.

Acts of God are all unforeseeable events or such events which, even if they were foreseeable, are beyond our control or that of the purchaser and their impact on the contract fulfilment cannot be hindered by reasonable efforts.

Acts of God include dispute, lock-out, lack of means of transport, interference by the authorities, power supply problems or other circumstances which considerably hamper or even make delivery or performance impossible, irrespective of whether they occurred at our premises or at one of our sub-suppliers.

#### **D) DELIVERY AND TRANSFER OF RISK**

1. Deliveries will be done ex works at the purchaser's account and risk if this was not expressly otherwise agreed upon in writing.

2. The risk of damage, destruction or the risk of the purchase or delivery item becoming useless is transferred to the purchaser as follows:
  - a) If the agreement is “ex works”, as soon as the goods are availed at our premises for collection;
  - b) If the agreement is “free carrier”, as soon as the goods have been handed over for loading to the person handling transportation;
  - c) If the agreement is “carriage paid to”, as soon as the goods have been handed over for loading to the person handling transportation;
  - d) In case of assembly of the purchase item by us at a place disclosed by the purchaser, loading, transportation and assembly of the individual parts will be done at the risk of the purchaser.
3. In case of loss or damage during transportation, the recipient is responsible for lodging a complaint against the carrier or freight forwarder.
4. The purchaser is obligated to accept the goods sent or availed for collection as per agreement without delay. If dispatch is delayed at the purchaser’s request or due to reasons within his sphere, the risk transfers to him upon notification of readiness for dispatch.
5. We are entitled to store the goods at the purchaser’s expense and risk in our premises or those of the freight forwarder in case of default in acceptance or if delivery is impossible due to acts of God.

#### **E) FULFILLMENT OF REPAIR ORDERS**

When accepting repair orders, without contrary, express written agreement, we shall decide to what extent, using which means and in what manner these are to be executed.

## **F) PRICES**

1. The prices stated in our quotations apply on the condition that the order data which forms the basis of the submission of the quotation remain unaltered. The quotations are valid for 90 days.

The prices indicated in our order confirmations apply. Value added tax in the respective legally standardised amount is added to the prices including all ancillary costs.

The prices quoted apply ex store or ex works. They do not include freight, postage, insurance, duty and other packaging, transportation and forwarding charges. Transport insurance shall only be concluded upon the purchaser's express request.

If tool costs are invoiced, we shall have ownership over the tools.

2. The purchaser shall dispose of the packaging that we've delivered with the goods at its own expense. An obligation to take back the packaging material only exists if this was agreed upon in writing.
3. Increments of freight and duty rates which were valid at the time of conclusion of the business transaction and the introduction of new levies entitle us to increase the agreed upon selling price proportionately. The purchaser is not entitled to declare its withdrawal. We have a right to increase prices due to increments of freight and duty rates or the introduction of new levies if delivery is delayed and the corresponding freight, duty rate and levy increase after the initially agreed upon delivery date.
4. Price quotations as well as cost estimates on our part are basically non-binding unless their binding nature was expressly confirmed in writing.
5. If delivery is done more than four months after contract conclusion, the prices valid on the date of dispatch shall be invoiced.
6. Exceeding our quotation (cost estimate) which is effectuated by alterations of the quotation on the part of the purchaser shall be deemed as approved by the purchaser even without notification by us. The purchaser waives its right of withdrawal in such cases.

## **G) DISCOUNT CHARGEBACK**

Discounts on our catalogue prices are only granted on condition that the purchase price is paid in full. If the purchase price is not paid in full – particularly due to the institution of insolvency proceedings on the purchaser's assets – we are entitled to assert our catalogue prices.

## **H) TERMS OF PAYMENT**

1. The purchasing price is due for payment immediately after receipt of invoice without deduction at least within 30 days after transfer of risk in any case. A payment will be considered done if we can dispose of the amount without restrictions.
2. If the purchaser refuses to collect or accept the goods despite notification of readiness for dispatch, the invoice amount has to be paid in full 30 days after notification of readiness for dispatch or delivery at the most.
3. The purchaser's right of retention, particularly based on the defence of lack of performance of the contract due to asserted defects is expressly excluded. The purchaser is not entitled to off-set with whichever claims.

## **I) DEFAULT IN PAYMENT**

1. In case of default in payment, we are entitled, according to § 456 of the Austrian Commercial Code, to charge annual interest amounting to 9.2% above the respective base rate of the Austrian National Bank from the previous 30.06. or 31.12.

The assertion of other damages caused by default shall not be excluded by this. The purchaser is liable for those other types of damages particularly also for interest losses as a result of late fulfilment of the obligation to pay.

2. If we claim for outstanding money, the purchaser commits to pay EUR 40.00 per reminder regardless of the actual expense. For the reimbursement of operating costs which exceed this lump sum, § 1333 para. 2 of the General Civil Code shall apply.

3. Moreover, all outstanding accounts shall be due if the terms of payment are not adhered to or circumstances become known which in our opinion are likely to reduce creditworthiness. In this case, we are entitled to provide services only upon advance payment or withdraw from the contract after fruitless lapse of an appropriate deadline set by means of a reminder.
4. In case of default in payment, we are entitled to declare withdrawal not only regarding this contract but also with regard to other business that has not yet been transacted or with regard to successive deliveries.

Moreover, we have the right to retain goods that have not yet been delivered and to stop working on current orders if we do not receive the prorated payments. We also have a right to reclaim the goods that have already been delivered but have not been paid for from the purchaser and also return them at its expense.

5. If the purchaser's economic situation worsens considerably, insolvency proceedings are instituted upon the purchaser's assets or the institution of such proceedings is imminent, insolvency proceedings are not instituted due to lack of assets covering the costs or we get information which is likely to justify doubt on the purchaser's solvency or willingness to pay, we are entitled to demand payment of all receivables immediately. If another form of payment other than cash has been agreed upon, we are entitled to demand payment in cash.

With this clause, our right to contract dissolution as per point S) of these terms remains unaffected.

#### **J) USER FEES/PENALTY**

If we declare withdrawal from the contract due to default in payment or due to other reasons or the contract is annulled due to other reasons, the purchaser has to send back the already delivered goods. User fees amounting to 40% of the purchase price have to be paid for wear and devaluation of the goods unless we can prove greater damage or lost profit.

## **K) REQUEST FOR COLLATERAL**

Even if at the time of contract conclusion a request for collateral was not agreed upon, we are entitled to request for collateral prior to dispatch for the fulfilment of the obligation to pay and withdraw from the contract in case of noncompliance.

## **L) TECHNICAL SPECIFICATIONS AND DOCUMENTS**

1. Our diagrams, drawings, blueprints, dimensions and indications of weight are only approximately representative and are subject to alterations.
2. All documents provided contain know-how, ideas and development achievements from us and our sub-suppliers. We shall have ownership over the intellectual property and all property rights to these documents. The purchaser shall have the right of use to the extent necessary to operate and service the item covered by the contract. This right of use is terminated when the item covered by the contract is rendered inoperative.
3. All documents and information may not be copied fully or in extract without our permission. They may not be utilised, duplicated or made accessible in any way to third parties. Even details from such documents are subject to legal safeguard provisions.

## **M) RETENTION OF TITLE**

1. We shall have ownership over all parts and items delivered by us until full clearance of all financial obligations including interest and costs.
2. We shall still have ownership if the delivered item is connected with or integrated into the purchaser's property.

The purchaser has to take all measures at its own expense in order to indicate our ownership over the delivered item vis-à-vis every person according to the legally stipulated publicity requirements. In case of attempted claims by third parties, the purchaser must expressly refer to our proprietary right.

3. If parts or items which we have delivered become a dependent component of the purchaser's property through combination with its property, the purchaser is obligated, in case it doesn't settle all debts in due time, to tolerate the disassembly of all parts or items at its own risk and expenses and to bear all costs which accrue in connection with the measures necessary during disassembly until the items are received at our plant grounds. The purchaser acknowledges our ownership over such disassembled objects.
4. As long as the retention of title exists, the sale, pledging, securities transfer and leasing or alternatively surrendering the items we delivered is not permitted without our written consent.
5. If parts and items that we delivered are subjected to further processing or handling by the purchaser, the retained ownership over the new product shall remain as joint ownership at least to the extent of the value (purchase price) of the item.

The products which were manufactured using the goods which we delivered under retention of title can only be sold by the purchaser under retention of our ownership over the goods and the proceeds.

If the new product is sold, there shall be corresponding joint ownership over the proceedings of the sale which the purchaser has to receive from third parties as our trustee.

6. In case of attachment of the parts and goods which we delivered and which are still under retention of title by third parties, the purchaser is obligated to immediately give us the name of the prosecuting party, the amount of the claim, the intervening court, the file number and if need be the date of auction. Moreover, the purchaser is obligated to notify us of each extraordinary decrease in value of the goods delivered under retention of title.
7. If a different law is agreed upon with the purchaser other than the Austrian law or if a different law other than the Austrian law applies for other reasons and retention of title is not effective according to its provisions, the possible securities based on the other law shall be considered as agreed upon. If the collaboration of the purchaser is

necessary, the purchaser is obligated to take all measures which are necessary for the justification and preservation of such rights.

#### **N) COMMISSION BUSINESS**

1. If an item is not sold but is delivered on commission, the commission agent is obligated to store the goods given to him properly so that in case we take back the goods they can be resold as new.
2. The commission agent is liable for every decrease in value of the item that has occurred in his sphere through weathering or improper storage.
3. The goods on consignment must be listed in the commission agent's books as goods on consignment with the classification and hardware.
4. We are free to check the delivered goods for quantity and condition or have them checked. The commission agent commits to collaborate in the inspection and facilitate the necessary access to the goods on consignment.
5. The commission agent has to notify us about each resale immediately – 8 days after the client has placed an order at the latest.
6. All other resold or missing parts of the item as well as the decrease in value detected on returned goods on consignment are to be paid for by the commission agent according to the specified evaluation within 14 days after written notification.
7. If notification is not done on time pursuant to point 5., we are entitled to demand the full purchase price from the commission agent including default interest as per point I) 1. of these terms – from the day of the actual resale.
8. These terms apply to the resale or own acquisition entirely. The commission agent has to make sure that the purchaser gets these terms and they become components of the contract.

9. If a commission duration was agreed upon for the goods on consignment, upon lapse of this term, we have the right to take back the goods or to extend the commission duration.
10. If no commission duration was agreed upon, we have the right to dispose of the goods at any time. A return delivery on the part of the commission agent requires our express consent and is to be done by the commission agent free of charge and carriage-free.

## **O) WARRANTY**

All defects on the goods delivered by us shall be warranted according to the following provisions:

1. The warranty period commences with the dispatch or collection of the goods. If the purchaser is in default of acceptance, the warranty period commences with the notification of readiness for dispatch.
2. The warranty period ends after 12 months.
3. The warranty obligation basically exists only for defects which are claimed in writing immediately, at the latest within a period of 3 working days as from the time the purchaser detects them and simultaneously states the possible cause. If the purchaser does not report defects in a timely manner, it can no longer assert the claims mentioned in § 377 para. 2 of the Austrian Commercial Code. In order to make use of our warranty obligation, the purchaser has to prove that we are responsible for the alleged defect and that this defect was there at the time of delivery. Further limitations of liability in these terms remain unaffected.
4. The warranty obligation only applies to defects which arise when adhering to the foreseeable operating conditions, when observing the stated maintenance and service intervals and upon normal use. It particularly does not apply for defects for which the purchaser or third parties are responsible.

The purchaser is obligated to do preparatory work on the raw materials in such a way that the work can be carried out properly. If this does not happen, we shall not be liable

regardless of the claims we are entitled to. We are not liable for errors which occur due to incomplete instructions or instructions which were not conveyed.

Upon delivery, the raw materials must be paintable (free from rust and scales) and the surfaces may not be subject to material variations (no metals of different qualities).

The additives used by the purchaser during production must be in a position to be removed with a mild alkaline, watery degreasing agent free of residue. Moreover, the additives must not saponify and they have to be AOX-free. Basically, the criteria of the German Association of the Automobile Industry apply in this regard.

The subsequent condition of the raw materials may not deviate from that of the sample if the sample which we have produced is deemed good. We are to be notified in good time about alterations on drawings. If the mentioned requirements are not fulfilled even partly, we shall not be liable for any defects.

5. The warranty is excluded if the delivered item is handled or used improperly and particularly if respective instructions and regulations given by us are not observed.

If quality, colour, quantity and weight of our delivery slightly deviates from the target state without its function being affected by this then there shall be no defect. Slightness applies to quantity and weight if there are deviations of not more than 5% based on the delivery quantity or the delivery weight. Relevant for this is our weighing at the beginning and at the end.

6. We do not warrant normal damage due to wear and tear and visual damages. If assembly is necessary on the item and we do not carry this out, the requirement for each warranty is the proof of proper and professional processing and handling of the item by an authorised craftsman.
7. The warranty obligation terminates if the purchaser carries out alterations of whatever kind without authorisation on the delivered item without prior written confirmation from us.
8. The warranty exclusively applies to the goods and parts delivered by us. For those goods, parts and materials which we have obtained from sub-suppliers, we shall only be liable inasmuch as we are entitled to warranty claims against the sub-suppliers.

9. If we are obligated to remedy defects, we can replace the defective goods or their defective parts, remedy the defect on the premises during the normal working hours or have the defective item or its defective part sent to us for the purpose of improvement. We are to be granted the necessary time to inspect the defect as well as to repair or for the delivery of spare parts.

The costs and risk for outbound and return transport for the defective goods or parts will be borne by the purchaser. Upon remedying of the defect on the premises, the purchaser will bear our travelling costs and any overnight stay costs.

10. The warranty period shall not be extended after defects have been remedied or the item has been exchanged.
11. We shall only pay for defects remedied by the purchaser itself or by third parties only if we have issued our written consent in this regard.
12. In any case, we are released from every warranty obligation as long as the purchaser is in default with its payment duties.
13. Warranty claims do not entitle the purchaser to retain the agreed upon payments.
14. As from commencement of the warranty period, we do not assume further liabilities other than dictated above, not even for defects which happened prior to transfer of risk.
15. If a promise of warranty is made, the preceding provisions apply correspondingly. Warranty repairs shall only be acknowledged after preceding consultation with our warranty department and subsequent written confirmation.

## **P) LIABILITY**

1. We are liable to the purchaser for injuries to persons, for damages on goods which are not subject matter of the contract, for other damages other than on the goods which are subject matter of the contract, for loss of profit, consequential damages due to defects as well as for damages due to production interruption and operating hold-ups only in case of gross negligence or intent.

The above limitations of liability apply to the same extent to our vicarious agents.

2. For ordinary negligence, we are only liable for damages on goods which are subject matter of the contract and only up to the amount of the purchase price.
3. All claims for compensation become time-barred at least a year after delivery or provision of the service.
4. We shall on no account be liable for damages on work pieces provided.
5. The obligation to pay compensation for claims arising from the product liability act due to damage to property as well as product liability claims which can be derived from other clauses are excluded.
6. In all cases, each obligation to pay compensation is limited with the available limit of liability of our employer's liability insurance.

#### **Q) CHANGE OF CIRCUMSTANCES**

If the circumstances under which the contract was concluded change considerably such that it can rightfully be assumed that the conclusion of the contract would not have happened under the altered circumstances or only on other conditions and if the change of circumstances at the time of contract conclusion was not foreseeable even with the diligence of a proper businessman, we have a right, depending on the nature of the case, to withdraw from the contract or to demand alteration of the provisions of the contract which allows for the changed circumstances

#### **R) PURCHASER'S WITHDRAWAL/FINE**

1. If the purchaser – for whatever reason – declares its withdrawal from the contract, we are free to accept this withdrawal upon payment of a penalty or refuse the withdrawal.
2. In case of acceptance of the withdrawal, the penalty will be as follows:

- a) For saleable goods: 10% of the purchase price;
- b) For non-saleable goods: 10% of the purchase price plus manufacturing costs which have accrued since acceptance of the withdrawal whereupon the purchaser is entitled to parts of the goods which are already (partly) finished or processed.

## **S) PREMATURE TERMINATION OF CONTRACT**

1. All contracts concluded with the purchaser can be terminated by us prematurely for cause at any time without notice.
2. An important reason for the premature termination of the contract exists particularly if
  - a) a motion for the institution of insolvency proceedings on the purchaser's assets is rejected due to lack of assets covering the costs or we get information which is likely to justify doubt on the purchaser's solvency or willingness to pay (§ 25b of the Insolvency Code remains unaffected by this clause);
  - b) the purchaser has not paid outstanding debts despite a reminder being sent;
  - c) the purchaser does not fulfil its obligation to provide documents necessary for order fulfilment or other obligations to cooperate despite prompting.

## **T) PLACE OF FULFILMENT AND PLACE OF JURISDICTION**

1. If nothing different has been agreed upon, the place of fulfilment for delivery and payment is the headquarters of Ebbinghaus Styria Coating GmbH in 8055 Graz, Puntigamerstraße 127.
2. The place of jurisdiction for legal disputes regarding the existence or non-existence of a contractual relationship which is based on these terms, or for disputes from such contractual relationships is the competent court for Graz for the purchaser's lawsuits exclusively. For lawsuits which we file, the place of jurisdiction shall be the competent court for Graz or the purchaser's general place of jurisdiction.

3. Austrian law applies with the exception of the reference norms. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

#### **U) GENERAL PROVISIONS**

1. All deviations from the terms at hand must be in written form for them to be valid. This also applies to deviation from the requirement of the written form. Verbal side agreements are ineffective.
2. If individual clauses of these terms are partly or wholly ineffective or infeasible, the effectiveness of the other clauses shall not be affected. The contractual parties commit to replace the ineffective or infeasible clause with an effective or feasible regulation whose economically intended purpose comes closest to the partly or wholly ineffective or infeasible regulation within the framework of the entire contract.
3. In case of subsequent occurrence of a gap, the clause which corresponds to the one which would have been agreed upon with regards to the purpose of the contract at hand if one had considered the solution for matters which are not contractually regulated from the outset is agreed upon.
4. If beyond these terms contractual agreements are made between us and the purchaser and these conflict with the clauses of the terms, it is being agreed upon that the clauses in the contractual agreements beyond the terms shall have priority in application if it was expressly agreed upon in writing that the corresponding clauses of these terms are of secondary importance.
5. The contractual parties commit to maintain secrecy regarding all commercial and technical details which they become aware of through this business relationship unless they are generally known.
6. The purchaser agrees that we shall save the data we received from the business relationship according to the data protection act and use it for our own business purposes.