

WIL AG – General Terms and Conditions

The following terms and conditions apply exclusively and for all agreements reached with us, unless differing arrangements have expressly been made. We are not put under any obligation by differing terms and conditions of customers, even if we do not reject them particularly.

1. Offers and Conclusions of Agreements

- 1.1. The following General Terms and Conditions apply to all contracts, deliveries, services and offers. In case of business operations with merchants for their trade they also apply to all future agreements, even if not expressly agreed upon once again. Deviations from these General Terms and Conditions shall only be effective, if agreed upon and accepted in writing.
- 1.2. We do hereby object to the customer's conditions of purchase. They will not be recognized on no account, even if on receipt we do not expressly reject them once again. As far as our terms and conditions coincide with the customer's conditions, the congruent stipulations shall apply.
- 1.3. Offers submitted by us are subject to confirmation and not binding, unless they have expressly been marked as binding. We can accept a customer's orders by sending them a confirmation of order or a delivery note within 10 working days after receipt of order, or by carrying out the delivery to the customer. We only accept orders subject to the possibility of delivery and/or acceptance.
- 1.4. Relevant for contents and scope of the delivery shall be our written confirmation of order. Supplementary agreements and modifications are not effective unless confirmed by us in writing. In case of receipt of order by telephone, the customer bears responsibility for the correctness of all individual particulars.
- 1.5. Unless indicated differently in our confirmation of order, our prices are free at point of delivery indicated by the customer.

2. Delivery

- 2.1. We are allowed to exceed scheduled delivery dates on our part by up to five working days, unless they have expressly been indicated as fixed dates by both contracting parties. If any default in delivery occurs due to circumstances to be justified by us, the customer is only entitled to back out of the agreement or claim damages after the unsuccessful expiration of a reasonable extra time allowed by the customer. If we fall into arrears with any delivery, in case of only light negligence our liability for damages is restricted to a maximum of 50 % of the predictable damage.
- 2.2. The delivery deadline is extended appropriately in case of circumstances we cannot be held responsible for (force majeure), in particular substantial interruptions of shipment. This also applies if that kind of circumstances occurs at our suppliers. In important cases we shall notify the customer of begin and end of such impediments as soon as possible.
- 2.3. We are entitled to refuse to carry out the contract:
 - as long as the customer is in arrears with the acceptance or receipt of a consignment or with any payment with regard to any contract made with us;
 - after the conclusion of the contract substantial deterioration of the customer's financial circumstances, in particular the opening of any conciliation procedure and/or bankruptcy proceedings, default in payment or cessation of payment, become known or occur afterwards, unless the consignment has been paid for in advance or the payments are guaranteed in any other way agreeable to us (e.g. bank guarantee).
- 2.4. The customer reserves the right to declare the annulment of contract in accordance with statutory provisions.
- 2.5. In case of delaying the shipment of the goods at the customer's request, he will be charged for the storage charges starting 2 weeks after our notification of readiness for shipment. After fixing a reasonable time limit, we are entitled to dispose otherwise of the goods, and to supply the customer after an appropriately extended delivery period or to back out of the contract.
- 2.6. Relevant for the calculation of the quantity delivered are the quantities recorded in our delivery note and determined by means of standardized scales.
- 2.7. Part-shipments are permitted.

3. Transport, Shipment and Transfer of Risks

- 3.1. Place of performance for the delivery is the place of dispatch. The risk of loss or deterioration of the goods passes onto the buyer without any explicit notification necessary, as soon as the consignment has been handed over to the person carrying out the shipment. This shall apply regardless of whether the dispatch takes place from the place of performance and irrespective of who will bear the freight charges.
- 3.2. In case of delayed dispatch due to circumstances to be justified by the customer, the risk shall pass onto the customer starting from the day of readiness for shipment.

4. Liability for Defects and Warranty

- 4.1. Defects and shortfalls must be reported to our management in writing or by telefax. E-mail messages and/or verbal or telephone messages only serve as advance information, and won't bring about any valid notice of defect without written confirmation. Only the management is entitled to accept any notice of defect. Notices of defect shall be sent to the address in Vienna. No notice of material defects will take effect without the same-day transmission of digital photographs of the rejected commodity. The number of affected "Big Bags" as well as their identification code (Big Bag Labels) shall be indicated in the notice of defect. In addition, no notice of defect will take effect without a conclusive description of defects as well as an authorized company signature or at least the signature of the customer's responsible site manager.
- 4.2. Obvious defects, quantity variances or wrong consignments must be announced in writing upon receipt of the consignment without delay; in case of nonobvious defects, the respective defects must be announced within 10 working days after their discovery.
- 4.3. In case of any warranty claims submitted as a result of material defects we have a legitimate claim to receive a sample of at least one kilogramme of the delivered commodity, in particular also of the commodity that has already been used, without delay. Nature and scope of the sample shall comply with our instructions. In addition, we shall be given the opportunity to verify the proper realization of the sampling procedure on site for ourselves. After the receipt of the sample at our address in Vienna, the customer shall refrain from processing the delivered commodity within a period of at least 24-hours in order to enable us to inspect the commodity on site. The costs of any earlier processing and/or disposal shall definitely be borne by the customer. Besides, the non-compliance with the 24-hours period shall result in the loss of any claims based on warranty whatsoever.
- 4.4. In case of considerable defect, we shall at our own option satisfy the customer's warranty claims either through rectification or substitute delivery (replacement) within a reasonable time. In case of any other warranty-activating events, the customer is only entitled to call for price reduction. Any additional claims for indemnification for lost profits are excluded, unless they

are covered by subsection 7.1. in terms of type and extent. Warranty claims are inapplicable, if the customer eliminates asserted defects without our written approval himself or has them eliminated through any third party, unless rectification through or substitute delivery by us has already gone wrong.

- 4.5. Warranty claims come under the statute of limitations not later than one month after the rejection of the notice of defect, but in any case must be legally asserted within two months after the receipt of the consignment so as to avoid forfeiture of rights.

5. Payment

- 5.1. The prices effective on the day of the order will be invoiced plus the respective statutory sales tax. The prices are ex factory or warehouse plus the cost of freight and customs duties, if applicable.
- 5.2. Our invoices are due and payable within 20 days from the date of invoice without deductions. If the customer falls into arrears, we are entitled to claim interest on arrears at the rate of 12%. If we are able to prove any higher damage caused by default, we are entitled to claim compensation for this damage as well.
- 5.3. Bills of exchange or cheques will only be accepted on account of payment, cash payment can be required instead at any time. In case of acceptance of bills of exchange, the usual discount and collection charges in terms of banking will be charged and are payable right away.
- 5.4. The customer only has a right of set-off, if his counterclaims have been ascertained final and absolutely, are undisputed or have already been accepted by us. Notices of defects or claimed rights of retention do not entitle the customer to refuse payment.

6. Reservation of Title for Goods Delivered by Us

- 6.1. We reserve the ownership of the goods until the receipt of all payments for the underlying transaction. In addition, the ownership of the goods shall remain reserved until the settlement of all – including those arising in the future as well as conditional – accounts receivable from the business relation. In case of any behaviour of the customer contrary to the contract, we are entitled to take back the goods; the assertion of the abatement claim on account of the reserved ownership does not imply withdrawal from the contract.
- 6.2. Until further notice, the customer is entitled to sell the goods in the regular run of business. This entitlement does only come into effect, if the debt resulting from the resale is effectively ceded to us at the same time for security already now. In this case, upon request the customer shall reveal his customers to us and notify them of the cession beforehand in good time. The cession must be registered in the accounting records, in particular in the open-item list, and made apparent to the buyers on delivery notes, invoices, etc. If the customer is in arrears with his payments to us, the proceeds received by him shall be segregated, and the customer only holds them on our behalf. The customer is revocably entitled to collect these accounts receivable, as long as he keeps up with his obligations to pay. If we collect the accounts receivable ourselves, the customer shall give us all particulars required for the collection and place all required documents at our disposal.
- 6.3. In case of pawning, ownership transfers by way of security or other seizures by third parties, the customer shall refer to our right of ownership and inform us without delay. Costs and damages accruing from a required release statement must be born by the customer, if their accrual is not to be justified by us.
- 6.4. If the goods supplied by us should have been mixed inseparably with other goods, we acquire joint ownership in proportion to the values of the individual goods to one another at the time of mixing. Any processing or reshaping of the goods is always carried out for us by the customer. If the supplied goods are processed together with other goods from any other party, we acquire joint ownership of the new item in proportion to the value of our goods compared to the value of the other, processed item free of charge for us. In the case of resale, subsection 6.2. is valid subject to the proviso that we shall receive a share in the debt resulting from the sale corresponding to our joint-ownership share of the new item.
- 6.5. On the customer's request, we undertake to release the securities we are legally entitled to to that extent that their value exceeds the claims to be safeguarded by more than 20 %.

7. Liability

- 7.1. We only accept liability for damages resulting from breach of contract, unlawful act, fault at the conclusion of the agreement, positive breach of contract, impossibility of performance or delay, if the respective damages have been brought about through the deliberate or grossly negligent behaviour of our authorized representatives or persons employed by us in the performance of our obligations. Our liability is limited to the indemnification for the positive damage; we do not accept liability for the indemnification of consequential damages, damages to property, lost profits as well as damages resulting from claims of third parties against the customer. Any liability for light negligence is excluded. In case of any claim for damages, we are free to choose between compensation in kind (improvement or replacement) or cash payment, in which our liability – with the exception of intention – is limited to the amount of the agreed payment. Recourse claims as defined by § 12 of the Austrian Product Liability Law are excluded, unless the person seeking recourse can prove that the mistake has been caused in our sphere and at least by gross negligence.
- 7.2. As far as we have excluded or limited our liability, this also applies to any possible personal liability of our collaborators, workers, employees or other persons employed by us in the performance of our obligations.

8. Obligation of the Customer to Cooperate

- 8.1. The customer undertakes to verify the agreed composition and/or purity of the supplied materials within the period of inspection according to subsection 4.2. In particular, the customer is obliged to finally analyze and confirm to us in writing the examination prior to the processing of the materials, in order to avoid more far-reaching damages. We do not accept any liability for damages during the production and/or processing of the supplied materials.

9. Place of Performance and Place of Jurisdiction

- 9.1. All disputes arising from this agreement or relating to the violation, dissolution or avoidance of this agreement shall be settled definitely according to the Rules of Arbitration and Conciliation of the International Tribunal of the Austrian Federal Chamber of Commerce in Vienna (Vienna Rules) by arbitrators appointed in accordance with these rules. The number of arbitrators to be appointed is three; the substantive law of Austria shall be applicable, the language to be used in the arbitration proceedings is German. In accordance with § 598, section 2 of the Austrian Code of Civil Procedure, the contracting parties waive the application of § 595, section 1, line 7 of the Austrian Code of Civil Procedure.