

General Terms and Conditions of Sale and Delivery of Neuman Aluminium Austria GmbH

1. Scope of Application:

1.1 Unless agreed otherwise in individual cases, these General Terms and Conditions of Sale and Delivery shall be an integral part of any transaction we conduct in the course of distributing the products manufactured by us and the merchandise we keep on stock. The terms and conditions of purchase of our customers shall only apply where they are explicitly accepted by us in each individual transaction. Failure to object to such terms and conditions of purchase shall in no event constitute any acceptance on our part.

1.2 As regards assembly work performed by us in the course of distributing our Prefa products, our terms and conditions of assembly shall apply additionally.

1.3 As regards transactions with consumers within the meaning of the Consumer Protection Act (Konsumentenschutzgesetz), these General Terms and Conditions of Sale and Delivery shall only apply to the extent they do not conflict with any mandatory provisions of the Consumer Protection Act.

2. Written Form:

Any declaration, advice or transaction given or made by us or any of our employees shall only become binding for us upon our written confirmation. Any declarations to be made by our customer pursuant to these General Terms and Conditions of Sale and Delivery, such as notice of defect and the like, shall only be valid if made in writing.

3. Conclusion of Supply Agreements:

3.1 Our offers are subject to change. Supply agreements (purchase agreements and contracts for work and services) shall only become legally binding for us when we issue a written confirmation of order or deliver the goods or send the invoice.

3.2 Our confirmation of order sets forth the individual contents of the supply agreement (quantity of delivery, prices, and other individual terms) and shall be deemed to be accepted by the customer if the customer does not object within three (3) days of receipt.

4. Prices:

4.1 The prices published or confirmed by us are ex work Markt, unpackaged and without sales tax. Except for the prices set forth in the confirmation of order, any and all prices stated by us are subject to change.

4.2 If an extraordinary increase in the prices for crude metal occurs after the prices have been agreed, we shall be entitled to pass on such increase to our customer, so that the agreed price will increase accordingly.

5. Escalation Clause:

5.1 Export deliveries shall generally be invoiced in EUR and shall also be paid in EUR.

5.2 If payment in a foreign currency is explicitly agreed, invoicing shall be made in such a manner as to exclude any currency risk for us, by comparing, with respect to the agreed currency, the average exchange rate at the Vienna Stock Exchange on the day of dispatching the confirmation of order to such exchange rate on the day of receipt of the invoiced amount. Should the latter exchange rate be lower than the exchange rate first mentioned, the invoiced amount shall be increased proportionally, and customer shall subsequently pay the differing amount in the currency of the invoice.

6. Payment and Default in Payment:

6.1 The invoiced amount shall be payable within eight (8) days of the date of the invoice without any deduction.

6.2 Our customer shall not be entitled to retain or set off against counter-claims any payments on the basis of any notice of defect or claim for damages. If a notice of defect has been acknowledged by us, our customer shall only be obliged to make a payment proportionate to the usable part of the delivery.

6.3 If, in individual cases, we accept eligible bills of exchange or cheques from our customers, such bills of exchange or cheques shall be credited after deduction of interest and subject to due and proper receipt.

6.4 In the event of a default in payment or upon discovery of payment difficulties of our customer, we shall be entitled to demand immediate payment of any outstanding amounts while suspending any further delivery, to repudiate any agreement not yet fulfilled, and to perform any outstanding deliveries only upon advance payment.

6.5 In the event of a default in payment, our customer shall be obliged, as of the due date, to pay interest at a rate customary in banking, however, at a minimum rate of 5% above the respective bank rate of the Austrian National Bank (Österreichische Nationalbank). Additionally, the customer shall reimburse us for any and all reminder and collection expenses.

7. Delivery Item:

7.1 The quality of the delivery item shall be determined by the confirmation of order, our specifications, the relevant DIN standards, the relevant Austrian national standards, as well as by the technical production possibilities in our factory. Each of the above quality standards shall exclude the respective following quality standard.

7.2 In the case of bulk goods, a deviation of the delivery from weight and number of items, etc. as set forth in the confirmation of order of up to +/- 10% shall be permitted. The invoice value shall be based on the quantity units determined by us (generally weights, in particular cases also numbers of items).

8. Delivery and Transfer of Risk:

8.1 The delivery shall be deemed to be effected at the time at which
- we make the delivery item available for collection by our customer in our factory or at any other point of sale, or
- We hand over the delivery item to the freight carrier or forwarder. This shall also apply where we bear the shipping costs.

8.2 Upon effectuation of the delivery pursuant to No. 8.1 above, the risks with respect to the delivery item shall pass onto our customer.

8.3 If we are responsible for shipment – whether at our own cost or at the cost of the customer – we may select the means of transport at our own discretion.

8.4 In the event of a delivery, carriage prepaid, to any destination abroad, our customer shall bear any and all customs duties or other import duties.

9. Delivery Dates:

9.1 Unless specifically agreed otherwise, any delivery dates specified shall be deemed to be approximate and non-binding.

9.2 If we exceed any agreed delivery dates to an unreasonable extent, our customer shall be entitled to repudiate the agreement after expiry of an appropriate period of grace. If the non-observance of any delivery date is caused by operational reasons which we cannot avoid using the diligence of a prudent businessman (including, without limitation, strike, breakdown, lack of raw materials, etc.), the customer's right of repudiation shall only come into existence if the delivery date has been exceeded for two (2) months, and only after expiry of an appropriate period of grace.

9.3 Or customer must immediately request delivery of goods which have been declared ready for shipment, otherwise we shall be entitled, at our own discretion, to store the goods at the cost and the risk of our customer and to immediately invoice such goods.

10. Retention of Title:

10.1 The goods delivered by us shall remain our property until payment of all our claims arising from the delivery (invoiced amount, interest, expenses and costs) has been made.

10.2 As long as the retention of title is valid, any sale, pledging of, or other transfer of title in, the delivery item shall only be permitted with our consent.

10.3 If our customer resells the goods covered by the retention of title, our customer hereby assigns to us its claims under such resale to the amount of our outstanding claims, including collateral charges. Or customer shall be obliged to disclose such assignment in its books and, upon our request, notify the third party purchaser thereof.

10.4 The following procedure shall apply in the event of an unwinding of the agreement due to our enforcing the retention of title:

10.5 The invoiced amount shall be increased by the amount of interest and expenditure for retracting the goods. The amount so determined shall be reduced by the amount of any first installments paid and by the value of the retracted goods which shall be fixed at the residual value. If this procedure results in a credit balance of or customer, such credit balance shall be paid out or set-off against other claims. If however an obligation to pay of or customer remains outstanding, our customer shall be obliged to settle such amount. We shall be entitled to charge default interest.

11. Retention of Title for Deliveries to Germany:

11.1 Until any and all present or future claims (including any and all claims for the balance of a current account) which Seller has against Purchaser for any legal reason whatsoever have been fulfilled, the following securities shall be granted to Seller, which Seller will release, upon request and at Seller's option, to the extent the value of such securities permanently exceeds the value of the claims by more than 20%.

11.2 The goods shall remain property of Seller. Processing or transformation shall always be made on behalf of Seller as manufacturer, but without any obligation of Seller. If the (joint) title of Seller ceases to exist due to joining the goods with other products, it is hereby agreed that the (joint) title of Purchaser to the resulting product shall pass onto Seller at a pro rata basis in proportion to the invoice value. Seller shall store the (joint) property of Seller free of charge. Goods to which Seller has (joint) title shall hereinafter be referred to as "Goods Subject to Retention of Title".

11.3 Purchaser shall be entitled to process and sell the Goods Subject to Retention of Title in the ordinary course of business, provided that Purchaser is not in default. Any pledging or transfer of title by way of security shall not be permitted. Purchaser hereby fully assigns to Seller by way of security any claims (including any and all claims for the balance of a current account) arising under a resale of, or under any other legal reason in connection with, the Goods Subject to Retention of Title (insurance, tort). Subject to revocation, Seller authorizes Purchaser to collect in its own name the claims assigned to Seller for the account of Seller. Such authorization may only be revoked if Purchaser fails to properly fulfill its payment obligations.

11.4 In the event of any third party seizing the Goods Subject to Retention of Title, including, without limitation, in the case of a levy of execution, Purchaser will advert to Seller's title and will immediately notify Seller, in order to enable Seller to enforce its rights of title. To the extent the third party is unable to reimburse Seller for the legal costs incurred in this connection, Purchaser shall be liable for such costs.

11.5 If Purchaser breaches the contract – including, without limitation, in the event of default – Seller shall be entitled to take back the Goods Subject to Retention of Title or to demand assignment of Seller's claims for possession against third parties, if any. The taking back of, or levying of execution upon, the Goods Subject to Retention of Title by Seller shall not constitute a repudiation of contract.

12. Warranty:

12.1 We assume warranty for our delivered goods for a period of half a year from the time of delivery pursuant to No. 8.1 above.

12.2 Our customer shall be obliged to examine the delivered goods for obvious defects immediately upon receipt and to notify us of any defects discovered. Failure to do so will lead to loss of any warranty claims.

12.3 If we are under a warranty obligation towards our customer, we may, at our own option, repair or replace the defective goods.

12.4 Unless agreed otherwise, the customary error rate of 3% with respect to the total number of items shall be permitted in the case of mass production items.

13. Damages:

13.1 Our customer may only claim from us damages arising under or in connection with the supply agreement, and we may only claim from our customer such damages, if the party from which such damages are claimed is liable for gross negligence or willful misconduct, including, without limitation, in the event of default or non-conforming performance.

13.2 In any event, claims for damages shall only include the mere rectification costs, but no consequential damages or loss of profit. They shall become statute-barred at the latest three (3) years after delivery, unless a shorter period of limitation applies.

14. Proprietary Rights:

14.1 The product manufacturing and design technology developed by us during the preparation of performance of the purchase order is subject to special protection, even if no proprietary rights (patent rights, utility models, and the like) exist. Our customer may not use or make accessible to third parties in any way such technology which has been made available to our customer through the provision of designs, delivery, information on the manufacturing process and the like. If our customer violates such contractual obligation we shall have the civil law rights provided under the 1970 Patent Act (Patentgesetz) to a patent owner in the event of an infringement of patent.

14.2 Our customer shall also be liable for ensuring that the manufacturing of the ordered product in line with the customer's instructions does not infringe any third party rights, such as patent rights, utility models and the like. The customer shall indemnify us from, and hold us harmless for, any and all claims made in this respect.

15. Tools:

15.1 Any tools made by us in order to manufacture the ordered goods shall remain our property, even if the customer pays the costs for the tools.

16. Place of Performance and Place of jurisdiction

16.1 Place of performance for the delivery shall be the shipping point. Place of performance for payments, including for claims arising from bills of exchange, shall be our seat of business in Markt.

16.2 The competent courts in Markt shall have jurisdiction for any disputes.

16.3 The application of Austrian law is agreed.