

GENERAL TERMS AND CONDITIONS OF SALE



1. Scope

- 1.1 These general terms and conditions apply to the sale of goods and services between companies, and include both the delivery of such products and related services. **Software is governed primarily by the software conditions issued by the Austrian Electrical and Electronics Industry Association. Installation work is subject to the regulations of the Austrian heavy and weak current industry and for electro-medical technology, those of the Austrian electrical and electronics industry.**
- 1.2 Deviations from the conditions stated under Clause 1.1 shall only take effect subject to the written approval of the Seller.

2 Quotations

- 2.1 Seller quotations shall be regarded as non-binding.
- 2.2 Without the permission of the Seller, no quotation or project documentation may be reproduced or made available to third parties. The return of the documentation may be demanded at any time and should the order be placed elsewhere, shall be sent back to the Seller without delay.

3. Contractual agreement

- 3.1 A contract shall be regarded as concluded, when following the receipt of the order the Seller has received written confirmation of the contract, or has dispatched a delivery.
- 3.2 Information contained in catalogues and brochures, etc. as well as other written or verbal statements shall only be of material significance when the order confirmation refers to them expressly.
- 3.3 Subsequent alterations and supplements to the contract shall only be valid when confirmed in writing.

4. Prices

- 4.1 **Prices are valid ex-works or ex-warehouse of the Seller excluding** packaging, loading and sales tax. If fees, taxes or other charges are levied in connection with supply, these shall be borne by the Purchaser. If direct delivery of the order has been agreed, this and any transport insurance required by the Purchaser shall be invoiced separately. However, this does include unloading and carriage. Packaging will only be accepted back subject to express agreement.
- 4.2 In the case of an order that deviates from the overall quotation, the Seller retains the right to make an appropriate price alteration.
- 4.3 Prices are based on costs at the time of the initial quotation. Should the costs increase in the period up to delivery, the Seller shall be entitled to adjust the prices accordingly.
- 4.4 In the case of repair contracts, the performance recognised by the Seller as appropriate will be provided and invoiced on the basis of the related expenditure. This applies to services and additional services, the necessity of which first becomes apparent in the course of the completion of the order, whereby no special information of the Purchaser is required in this regard.
- 4.5 The Purchaser will be invoiced for expenses relating to the preparation of repair quotations or an expertise.

5. Delivery

- 5.1 The delivery period commences with the latest of the subsequent dates:
- The date of order confirmation.
 - The date of the fulfilment of the technical and commercial obligations and other preconditions incumbent upon the Purchaser.
 - The date on which the Seller receives a prepayment or guarantee prior to the delivery of the goods.
- 5.2 The Purchaser shall obtain official and any third party consent required for system implementation. Should such approval not be obtained in time, the delivery period will be extended accordingly.
- 5.3 The Seller shall be entitled to make partial or pre-deliveries and to invoice them. Should on-call delivery have been agreed, at the latest the goods are regarded as having been called off one year after ordering.

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- 5.4 Where situations arise that are unforeseen or cannot be influenced by the parties, such as force majeure, that hinder the fulfilment of the agreed delivery deadline, this shall be extended to include the duration of these circumstances. In particular, such circumstances include armed conflict, official intervention and bans, delays relating to transport and customs, transport damage, shortages of power and raw materials, labour disputes and the loss of an important sub-supplier that is difficult to replace. The aforementioned conditions shall also justify a prolongation of the delivery period when they apply to sub-suppliers.
- 5.5 Should a contractual penalty for delivery delays have been agreed between the contractual parties, this will be dealt with according to the following terms, whereby a deviation from one of the individual conditions shall not affect the remainder. A delay in the fulfilment of supply, which can be proven to be the singular responsibility of the Seller, entitles the Purchaser to claim a contractual penalty of a maximum of 5% for each completed week of delay, but not in excess of 5% of the value of that part of the overall order, which due to the failure to supply an important item punctually could not be employed and where the Purchaser has incurred damages to this amount. Additional claims under the heading of a delay are excluded.
- 6. Transfer of risk and place of performance**
- 6.1 **The use and risk pass to the Purchaser upon the departure of the delivery from the plant or warehouse of the Seller** irrespective of the type of pricing agreed (e.g. free delivery, CIF, etc.). This shall also apply when supply takes place in the course of installation, or should the transport be completed, or organised and managed by the Seller.
- 6.2 The place of performance for supply and performance is the venue at which the performance is completed. The risk related to supply or an agreed partial performance passes to the Purchaser upon their provision.
- 7. Payment**
- 7.1 Unless other conditions of payment have been agreed, one-third of the price shall be paid upon order confirmation, one-third at the halfway point of the delivery period and the remainder upon delivery. Irrespective of these payments, the VAT contained in the bill shall be paid under all circumstances within 30 days following invoicing.
- 7.2 In the case of partial invoices, appropriate partial payments shall be made upon receipt of the respective billing. This shall also apply to clearing amounts, which are additional to the original total amount and relate to subsequent deliveries or other agreements, irrespective of the payment conditions agreed for the main delivery.
- 7.3 Payments without deductions shall be made to the free paying agent of the Purchaser in the agreed currency. The general acceptance of cheques or bills only takes place in lieu of payment. All related interest and costs (e.g. collection and discount expenses) shall be borne by the Purchaser.
- 7.4 The Purchaser shall not be entitled to withhold or offset payments for reasons of warranty claims or other counterclaims.
- 7.5 A payment shall be regarded as made on the day that it becomes available to the Seller for disposition.
- 7.6 Should the Purchaser be in arrears with an agreed payment or other obligations relating to this or other transactions, the Seller may undertake the following without prejudicing its other rights:
- Postpone the fulfilment of own obligations until this payment has been made, or other obligations have been met and claim a reasonable prolongation of the delivery period.
 - Call in all open claims from this or other transactions and charge default interest at a rate of 1.25% per month plus sales tax on the respective debt, unless the Seller proves costs in excess of this amount.
- In all cases, the Seller shall be entitled to invoice for preliminary litigation costs, in particular, reminder costs and legal expenses.
- 7.7 Agreed rebates or bonuses shall be subject to the prompt provision of the complete payment.

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- 7.8. The Seller shall retain ownership of all the goods supplied until complete payment of the invoiced amounts, including interest and costs, has been made. To secure the purchase price claim, the Purchaser hereby assigns to the Seller any claims relating to the further sale of reserved goods, even if these have been processed, altered or mixed and undertakes to make an appropriate entry into its books or on its invoices. On request, the Purchaser shall make known to the Seller the assigned claim together with the debtor and provide the information and documentation needed for a recovery of the debt and to inform the indebted third party of the transfer of the claim. In the case of seizure or other recourse, the Purchaser shall be obliged to point out the right of ownership of the Seller and to inform the latter without delay.
- 8. Warranty and acceptance of responsibility for defects**
- 8.1 Subject to the fulfilment of the agreed conditions of payment, in accordance with the stipulations of the following terms the Seller shall be obliged to repair any design, material or production defects with a negative effect upon functionality that may exist at the date of hand-over. No warranty claims may be made on the basis of information contained in catalogues, brochures, advertising materials, written or verbal statements, which have not been accepted into the contract.
- 8.2 **The warranty period amounts to 12 months**, unless special warranty periods have been agreed for individual delivery items. This shall also apply to supplies and services, attached to a building or real property. The warranty period shall commence with the risk transfer in accordance with Clause 6.
- 8.3 A prerequisite for warranty claims is that the Purchaser has immediately made the defect known in writing. The Purchaser shall prove the existence of a defect immediately and provide the Seller with the information and data available to it. In the case of a defect subject to warranty, in accordance in Clause 8.1 the Seller may either choose to repair the defective article at the place of performance, have it returned for the purpose of repair, or provide an appropriate price reduction.
- 8.4 In the case of guarantee-, damage- and compensation-related claims asserted by the customers of the Purchaser owing to defects, claims on the part of Purchaser to the exclusion of all other rights shall only exist if the Purchaser verifies the contractual agreement with its customers in documentary form (e.g. through a customer receipt).
- 8.5 Should the Seller manufacture an item on the basis of design information, drawings, models or other specifications of the Purchaser, then the warranty of the Seller shall only extend to completion according to the stipulated conditions.
- 8.6 Excluded from the warranty are defects originating from arrangement and installation not carried out by the Seller, insufficient setting-up, a failure to adhere to the installation requirements and conditions for use, overloading of the components beyond the performance levels stated by the Seller, negligent or incorrect handling and the use of unsuitable materials. This shall also apply to defects, which can be traced to material supplied by the Purchaser. In addition, the Seller shall not be liable for damage caused by the actions of third parties, atmospheric discharges, overloads and chemical influences. The warranty does not extend to the replacement of components subject to natural wear and tear. In the case of the purchase of second-hand goods, the Seller does not provide a warranty.
- 8.7 Liability of the Seller is excluded when defects or damage result from the use by the Purchaser of a battery with insufficient capacity or rated power for the intended application. In addition, when a conventional starter battery is employed contrary to the recommendations of the manufacturer (e.g. AGM or EFB battery), or when for hobby or leisure applications, the Purchaser installs a conventional starter battery instead of a long-term discharge battery (e.g. for a caravan, camper or boat). Battery utilisation shall always correspond with the category recommendation contained in the Banner "Book of Power" under <https://www.bannerbatterien.com/en/Company/News>, the battery search <https://www.bannerbatterien.com/en/Battery Search>, or the battery type (OE number, power requirement) prescribed by the manufacturer of the equipment, otherwise resultant defects and damage shall not justify Seller liability.
- 8.8 Claims pursuant to §933b ABGB (Austrian Civil Code) shall lapse with the expiry of the period contained in Clause 8.2.
- 8.9 The conditions contained in Clauses 8.1 to 8.8 shall also apply to each case of defects arising for other legal reasons.

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9. Withdrawal from the contract

- 9.1 Unless a special regulation has been agreed, the prerequisite for the withdrawal of the Purchaser from the contract shall be a delay in delivery, which can be traced to the gross negligence of the Seller, as well as the unsuccessful completion of a reasonable, legally permitted extension to the delivery period. Withdrawal shall be made known in the form of a registered letter.
- 9.2 Irrespective of other rights, the Seller shall be entitled to withdraw from the contract when:
- For reasons that are the responsibility of the Purchaser, completion of the delivery, or the begin or continuation of contractual performance are impossible, or despite a reasonable extension, are subject to further delay.
 - When concerns relating to the solvency of the Purchaser have arisen and despite the request of the Seller, the Purchaser neither makes a prepayment, nor provides suitable collateral prior to delivery.
 - Due to the circumstances listed under Clause 5.4, the extension to the period of delivery amounts to more than half of the period agreed originally, or at least six months.
- 9.3 Withdrawal from the contract may also be declared for the reasons listed above with regard to an open portion of the supplies or services.
- 9.4 Should insolvency proceedings be initiated against one of the contractual parties, or an application for the introduction of insolvency proceedings be rejected on the grounds of a lack of assets, the other contractual party shall be entitled to withdraw from the contract without setting a period of grace.
- 9.5 In the case of withdrawal and irrespective of the damage claims of the Seller, including preliminary litigation costs, supplies and services already completed shall be settled in accordance with the contract and paid. This shall also apply to supplies and services not yet accepted by the Purchaser, as well as preparations made by the Seller. Instead, the Seller shall also have the right to demand the return of items delivered previously.
- 9.6 Other consequences of withdrawal are excluded.

10. Liability

- 10.1 The Seller shall be liable for damage outside the area of application relating to product warranty law only where intent or gross negligence can be proven under the provisions of legal regulations. Liabilities of the Seller for minor negligence, restitution for subsequent damage and asset losses, lost savings, interest losses and damages derived from third party claims against the Purchaser are excluded.
- 10.2 Any claims for damages shall be excluded in the case of a failure to adhere to the conditions relating to installation, commissioning and use (e.g. as contained in the operating instructions), or the official licensing conditions.
- 10.3. Should contractual penalties be agreed, additional claims under the respective item are excluded.

11. Assertion of claims

Unless shorter deadlines have been agreed separately in individual cases or are foreseen under the terms of legal provisions, all Purchaser claims must be asserted before a court within a period of three years following the transfer of risk, otherwise the claims lapse.

12. Commercial rights and copyright

- 12.1 Should an item be manufactured by the Seller in accordance with design instructions, drawings, models or other specifications provided by the Purchaser, then the Purchaser shall indemnify the Seller against claims in the case of any infringements of property rights.
- 12.2 Production documentation, e.g. plans, sketches and other technical information, as well as models, catalogues, brochures, picture, etc. shall remain the property of the Seller and are subject to standard legal provisions with regard to reproduction, copying, competition, etc. Clause 2.2 also applies to production documentation.

13. Miscellaneous

Should individual terms of this contract or their stipulations become invalid, this shall not result in the invalidity of the remainder of the contract. The invalid term shall be replaced by one that serves the purpose of the contract as closely as possible.

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14. Competent court/applicable law

Any disputes arising from this contract, including those relating to its existence or non-existence, are to be dealt with exclusively by the competent court at the head offices of the Seller in Vienna in the area of jurisdiction of the Inner City District Court. **The contract is subject to Austrian law and further transfers of the case are excluded.** The application of the United Nations UNCITRAL agreement concerning the international sale of goods is excluded.

15. Copyright and usufruct

- 15.1 All photos, illustrations, text and other content of both this homepage and the brochures, circulars, pamphlets and advertising of Banner GmbH and its sales companies are subject to copyright.
- 15.2 Any type of application, use, reproduction, provision to the public, etc. requires the prior written approval of Banner GmbH.
- 15.3 The unauthorised use of pictures, illustrations, text and content subject to copyright in the either private or the business area, shall constitute an infringement of copyright and upon coming known will be met by a cease and desist warning, together with the assertion of claims for damages and legal action.

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