

# **GENERAL TERMS AND CONDITIONS**

## **of**

### **item international Handel GmbH**

(Last revised: January 2023)

## **1. GENERAL/SCOPE OF APPLICATION**

**1.1.** These General Terms and Conditions (GTC) as amended from time to time shall apply exclusively to all deliveries and services provided by item international Handel GmbH, FN 81994f, Hollabererstrasse 4, 4021 Linz (**ITEM**) to companies (**CUSTOMER** or **CUSTOMERS**) as well as to all other transactions between ITEM and another company. The version valid at the time when the respective contract is concluded shall apply.

**1.2.** **ITEM** only concludes contracts based on these GTC. The **CUSTOMER** expressly understands and acknowledges that these GTC shall be deemed incorporated into each contract, forming an integral part thereof. This shall also apply in the event that the **CUSTOMER** refers to its own general terms and conditions.

**1.3.** These GTC shall also apply to all contractual relationships in the future without there being a need for pointing this fact out in each contract.

**1.4.** We accept no general terms and conditions of the **CUSTOMER**, even if we have knowledge of them, unless expressly agreed otherwise in writing in individual cases. **ITEM** hereby expressly objects to any general terms and conditions of the **CUSTOMER**. There is no need to further object to any GTC of the **CUSTOMER**.

## **2. CONTRACT FORMATION**

**2.1.** **ITEM** quotations are non-binding and valid on the quotation date, unless agreed otherwise in writing between **ITEM** and the **CUSTOMER**.

**2.2.** **CUSTOMER** orders sent to **ITEM** are binding offers to enter into a contract with **ITEM**. A contract between the **CUSTOMER** and **ITEM** shall not come into effect until **ITEM** has confirmed it by signing the written purchase order. **ITEM** is not obliged to accept any orders.

**2.3.** **ITEM** is entitled to engage third parties (subcontractor) for fulfilling, in whole or in part, **ITEM**'s contractual obligations. Only **ITEM** will pay the third party. No contractual relationship of any kind will exist between the third party and the **CUSTOMER**.

### **3. DELIVERY**

**3.1.** The delivery period agreed upon by **ITEM** and the **CUSTOMER** begins on the date on which the order is confirmed by **ITEM**, but not before **ITEM** and the **CUSTOMER** have agreed on all details relating to the order.

**3.2.** Binding delivery dates are subject to an express agreement and written confirmation by **ITEM**. Proper fulfillment of the **CUSTOMER**'s obligations is a prerequisite for the fulfillment of **ITEM**'s delivery obligations.

**3.3.** The **CUSTOMER** shall ensure acceptance of the goods delivered by **ITEM** by the **CUSTOMER** itself or a person appointed/authorized by the **CUSTOMER**. The person who signs the delivery note and accepts delivery for the **CUSTOMER** will be deemed to have been authorized by the **CUSTOMER** to accept the goods.

**3.4.** In the event of impeded or prevented delivery, in whole or in part, due to unforeseeable events and obstacles that are not attributable to **ITEM** or due to circumstances beyond **ITEM**'s control, **ITEM** shall have the right to withdraw from the contract without the **CUSTOMER** being entitled to a substitute or subsequent delivery or any other claims for compensation (such as damages etc.) arising therefrom.

**3.5.** Unforeseeable events and obstacles which are not attributable to **ITEM** and/or delays as well as any circumstances beyond the control of **ITEM** which lead to a delay of the agreed delivery date shall not entitle the **CUSTOMER** to claim compensation of any kind (such as damages etc.) from **ITEM**. **ITEM** undertakes to deliver the goods as soon as possible once the unforeseen obstacle that is not attributable to **ITEM** ceases to exist.

**3.6.** **ITEM** shall be entitled to make partial deliveries. **ITEM** shall be entitled to invoice partial deliveries separately according to section 10 of these provisions, with the terms of payment being fully applicable.

**3.7.** **ITEM** takes out, at its own expense, cargo insurance providing minimum coverage for the goods (*Institute Cargo Clause C*) against the **CUSTOMER**'s risk of

loss or damage while the goods are in transit until they arrive at the place/port of destination. Should the **CUSTOMER** request a higher level of insurance coverage, the **CUSTOMER** must promptly notify **ITEM** in writing and thereafter make its own additional insurance arrangements.

**3.8.** It is the responsibility of **ITEM**, in properly exercising its discretion, to select the packaging as well as the delivery method.

**3.9.** All deliveries are made from our Logistics-Center in Fuchsengutstrasse 7D, 4030 Linz, Austria, CIP agreed destination, duty unpaid, Incoterms® 2020 apply.

#### **4. PASSAGE OF RISK**

**4.1.** All deliveries are made from our Logistics-Center in Fuchsengutstrasse 7D, 4030 Linz, Austria, CIP agreed destination, duty unpaid, Incoterms® 2020 apply.

**4.2.** If the **CUSTOMER** does not accept in time or in full goods delivered properly, **ITEM** shall be entitled to retrieve the goods and/or put them into storage at the expense and risk of the **CUSTOMER**. Such goods in storage shall be considered to have been delivered in conformity with the terms of the contract. **ITEM** shall also be entitled – but not obliged – to withdraw from the contract and resell the goods after having set a grace period of fourteen days. In this case, the **CUSTOMER** shall pay a penalty equivalent to 15 % of the purchase price as compensation for the increased effort required and a potential shortfall in proceeds without prejudice to the right to assert further claims.

#### **5. PRICES**

**5.1.** **ITEM** and the **CUSTOMER** stipulate the price for each order in a contract. With respect to transport costs, the price agreed in writing between **ITEM** and the **CUSTOMER** shall apply.

**5.2.** Prices are in EUROS, unless **ITEM** and the **CUSTOMER** agree in writing on another currency. **ITEM** assumes no liability for any printing and/or clerical errors.

**5.3.** Should additional costs arise in the course of supplying the goods due to economic, logistical or technical reasons, **ITEM** shall notify the **CUSTOMER** thereof in writing in advance and charge the **CUSTOMER** for these costs thereafter.

#### **6. WARRANTIES**

**6.1.** **ITEM** gives a 6-month guarantee for defects that are present upon transfer of the movable goods.

**6.2.** Upon delivery, the **CUSTOMER** shall promptly check the goods delivered for completeness, accuracy and absence of defects. The **CUSTOMER** shall give written notice of any defect detected without delay, but not later than 48 (forty-eight) hours after receipt of the goods, failing which any claims to which the **CUSTOMER** is entitled based on a proper investigation of detectable defects will lapse.

**6.3.** If unjustified notice of defects is given, all expenses and costs associated with processing and investigating such a notice of defects incurred by **ITEM** shall be borne by the **CUSTOMER**. The **CUSTOMER** shall indemnify and hold **ITEM** harmless in this regard.

## **7. LIABILITY/DAMAGES**

**7.1.** **ITEM** shall only compensate the **CUSTOMER** for damage (material damage and pure financial loss) it caused in connection with the performance of the contract with the **CUSTOMER** if such damage results from gross negligence or willful misconduct. Liability for gross negligence is limited to the remuneration payable under the respective contract. **ITEM** will not compensate the **CUSTOMER** for damage (material damage and pure financial loss) caused in connection with the performance of the contract with the **CUSTOMER** if such damage results from negligence. These limitations of liability do not apply to any compensation for personal injury.

**7.2.** **ITEM** will not compensate the **CUSTOMER** for damage arising from any improper handling, storage, overstraining, maintenance or incorrect further processing of the goods on the part of the **CUSTOMER**. The **CUSTOMER** shall indemnify and hold **ITEM** harmless in this regard.

**7.3.** Moreover, **ITEM** will not compensate the **CUSTOMER** for the impacts of losses incurred in connection with the execution of an order and arising from circumstances beyond the control of **ITEM** and thus not attributable to **ITEM** (e.g., force majeure, blackout, etc.). In this regard, the **CUSTOMER** shall not have a right to claim damages from **ITEM** and/or assert warranty claims.

**7.4.** The liability provisions set out above shall apply, to the same extent, also to **ITEM**'s subcontractors.

## **8. TRANSPORT DAMAGE**

**8.1.** The **CUSTOMER** shall, upon receipt, immediately inspect the goods for transport damage and follow the written instructions “*TRA How to handle damage reports*”, which are provided by **ITEM** in the course of the performance of the contract. Any transport damage detected must be reported to **ITEM** in writing, with photographs showing the damage, within 48 (forty-eight) hours at the latest, failing which any claims to which the **CUSTOMER** may be entitled based on a proper investigation of visible transport damage will lapse.

## **9. DATA PROTECTION**

**9.1.** **ITEM** processes the personal data required for the purpose of contract performance, such as name, address, telephone number, email address, etc. in compliance with the applicable statutory provisions relating to data protection and its data privacy statement.

## **10. REMUNERATION/ PAYMENT TERMS/INVOICING**

**10.1.** **ITEM** shall receive, from the **CUSTOMER**, payment of the price for the goods contractually agreed by **ITEM** and the **CUSTOMER**.

**10.2.** **ITEM** shall issue an invoice that entitles to deduct input tax and contains all elements required by law.

**10.3.** Unless agreed otherwise in writing by **ITEM** and the **CUSTOMER**, the agreed price shall be due and payable according to the payment terms agreed upon in writing between **ITEM** and the **CUSTOMER**.

**10.4.** In the case of special orders having been placed by the **CUSTOMER** with **ITEM** in writing, the payment terms agreed upon in writing by **ITEM** and the **CUSTOMER** shall apply. Irrespective of the payment terms agreed upon by **ITEM** and the **CUSTOMER**, the **CUSTOMER** shall, however, immediately make a down payment equivalent to 15% of the total order value upon receipt of the order confirmation from **ITEM**. Should the **CUSTOMER** cancel the special order/the contract, **ITEM** will keep the down payment equivalent to 15% of the total order value already paid as cancellation fee. The **CUSTOMER** shall indemnify and hold **ITEM** harmless in this regard.

**10.5.** In the event that invoices are not paid, **ITEM** is no longer under obligation to provide further goods and services. The assertion of claims resulting from the non-payment – e.g., non-payment of the total outstanding remuneration for the complete goods and services agreed, irrespective of those actually provided – is not affected thereby.

**10.6.** Any follow-on and ancillary contracts to already existing contracts will not affect the payment deadlines for the prices to be paid according to the original contract.

**10.7.** If the **CUSTOMER** is in default, statutory default interest at the rate applicable to business-to-business transactions shall be payable. Moreover, the **CUSTOMER** shall reimburse **ITEM** for any dunning and collection charges as far as such charges are necessary for appropriate legal action upon default of payment. This compensation for collection costs according to § 458 UGB (Austrian Commercial Code) shall amount to the lump-sum of EUR 40.00. The assertion of further rights and claims remains unaffected thereby.

**10.8.** If the **CUSTOMER** is in default, **ITEM** will be entitled to require the **CUSTOMER** to pay immediately for all goods and services provided under other contracts concluded with the **CUSTOMER**.

**10.9.** In the event of non-delivery of the contracted goods and services due to reasons arising from or within the sphere of the **CUSTOMER** or because of a legitimate early termination of the contractual relationship by **ITEM**, **ITEM** will still be entitled to claim full payment of the agreed invoice amount.

**10.10.** The **CUSTOMER** shall have no right to offset any debts owed to **ITEM**.

## **11. TERM OF THE AGREEMENT / EARLY TERMINATION**

**11.1.** The contractual relationship normally ends upon provision of the agreed service (delivery of goods) by **ITEM**.

**11.2.** **ITEM** shall be entitled to terminate the contract for cause with immediate effect by giving written notice to the **CUSTOMER** if

- a) performance of the service (delivery of the goods) either becomes impossible due to reasons attributable to the **CUSTOMER** or is further delayed, even after a grace period of fourteen days;

- b) the **CUSTOMER**, despite a written warning and being granted a grace period of 14 (fourteen) days, continues to breach material obligations under this contract, such as e.g., payment of an amount due or obligations to cooperate;
- c) there are legitimate concerns about the **CUSTOMER**'s creditworthiness and the **CUSTOMER**, despite **ITEM**'s request, refuses to make down-payments or provide adequate collateral before **ITEM** delivers a performance.

**11.3.** The **CUSTOMER** shall be entitled to terminate the contract for cause with immediate effect, by giving written notice, under the circumstances defined by law.

**11.4.** The **CUSTOMER** shall, in principle, not be entitled to withdraw from the contract with immediate effect except for cause. If the **CUSTOMER** withdraws from the contract nonetheless, the withdrawal will not be legally effective without the consent of **ITEM**. Unless agreed otherwise in writing between the Parties, the **CUSTOMER** shall pay **ITEM** a cancellation fee equivalent to 15% of the order total in the case of such a withdrawal from the contract.

## **12. RESERVATION OF OWNERSHIP**

**12.1.** The goods supplied by **ITEM** shall remain the sole and unrestricted property of **ITEM** until the full purchase price is paid. Until full payment is made, the goods will only be entrusted to the **CUSTOMER**'s care and shall not be sold or pledged or given away or loaned. The **CUSTOMER** shall not be entitled to dispose of such goods without the prior express consent of **ITEM** and bears the full risk for the goods entrusted to it in every respect, including, but not limited to, the risk of destruction, loss and deterioration.

**12.2.** In the event of seizure of the goods covered by the reservation of ownership, the **CUSTOMER** shall immediately take all measures required for the release of the seized goods. Moreover, the **CUSTOMER** shall promptly notify **ITEM** of the seizure of the goods.

## **13. FINAL PROVISIONS**

**13.1.** These GTC and the contracts concluded between **ITEM** and the **CUSTOMER** on the basis of these GTC shall be governed by and construed in accordance with the

Austrian law only, giving no effect to the UN Convention on Contracts for the International Sale of Goods or other conflict of laws rules.

**13.2.** The competent court at the location of the registered office of **ITEM** shall have exclusive jurisdiction to settle any disputes between **ITEM** and the **CUSTOMER** arising in connection with this contractual relationship.

**13.3.** The contract language is German unless another language, e.g., English, was expressly agreed in writing.

**13.4.** All ancillary agreements or amendments or supplements must be in writing in order to be legally effective. The same applies to any waiver of this written form requirement.

**13.5.** If any provision of these terms and conditions is or becomes ineffective, invalid and/or void, the legal effect and validity of the remaining provisions shall remain unaffected thereby. The contracting parties shall replace the ineffective, invalid and/or void provision (the provision that has become ineffective, invalid and/or void) by a provision that is legally effective, and valid, and compliant with the replaced provision in its economic impact, as far as possible and permitted by law.