

General Terms and Conditions of Sale and Delivery for Service

Preamble:

Hertwich Engineering GmbH (in the following "Hertwich", a company of the SMS group, is active worldwide with design, supply, construction and commissioning of machinery and equipment for the aluminum industry, foremost aluminum casthouses.

I. General

All, including prospective, supplies and performances are based on these terms and conditions as well as any separate contractual agreements.

We are not bound by the purchasing conditions of the ordering party even if we do not expressly contradict them.

Furthermore, we are not bound by explanations which deviate from our General Terms and Conditions, for example, in the order acknowledgement of the ordering party sent after conclusion of the agreement.

II. Quotation and conclusion of contract

The documents, such as illustrations, drawings, weights, and dimensions specified are only approximately relevant unless they have been expressly deemed binding.

The right of ownership and copyright in respect of cost estimates, drawings and other documents shall remain with us; these may not be used or made available to third parties without our express approval. The same shall apply to other technical details which are obtained from our delivery or which we reveal to the customer in the quotation, in other correspondence or during negotiations.

All our quotations which do not contain an acceptance date are subject to change without notice. The order shall become binding for us only when we have confirmed acceptance in writing.

Conclusions and other agreements, in particular insofar as they modify these conditions, shall become binding only with our written confirmation.

III. Price, payment, security

The prices shall in the absence of a special agreement be valid ex works, including loading of the works, but excluding packaging. Should there be an increase in the cost factors (prices of materials, operating materials, wages, and freight) decisive for the pricing, we are entitled to adapt the price accordingly.

Unless otherwise agreed the following payment terms are valid:

- 1/3 as down payment upon receipt of order confirmation
- 1/3 half at delivery time
- 1/3 upon notification of readiness for despatch

Payments must be made within a period of 30 days from date of invoice without deductions.

The ordering party is under no circumstances entitled to exercise a right of retention, not even if he has objections to the delivery item. If we accept bills or cheques, the debt shall be cancelled only upon encashment. Discount charges and all costs incurred in conjunction with the encashment of the bill or cheque amount shall be borne by the ordering party.

If the agreed payment dates are exceeded, we can without special notice of default demand default and compound interest and commissions according to the legal bank rates. This shall not exclude the assertion of a further claim for damages in the event of delay on the part of the Buyer. After unsuccessful elapse of a reasonable grace period the contract may be terminated to our convenience.

We are entitled to request additional security from the ordering party at all times for our demands, insofar as sufficient security has not been provided or is no longer available.

All bank guarantees will be issued on the respective net-amount of the contract value notwithstanding any gross advance payment invoicing

IV. Duties, Taxes, etc.

Contractual prices are payable net without any deductions.

Our prices do not allow for any local taxes, import duties, fees, levies or other charges which may be brought on by authorities in the buyers' country or any transit country. In case such taxes and dues are incurred, including source tax / withholding tax, they shall be borne and paid by the ordering party

V. Delivery

The agreed delivery clauses shall be interpreted in line with the INCOTERMS 2020. Should the contract not contain any specific delivery clauses, the subject of delivery shall be deemed to have been delivered "Free Carrier" (FCA). Cost for packing will be paid by ordering party.

Part deliveries are unless otherwise agreed permitted.

The delivery period depends on the agreements among the contracting parties. The prerequisite for meeting the delivery dates is that all commercial and technical queries between the contracting parties must be clarified. If this is not the case, the delivery period shall be extended accordingly.

The delivery period commences with the dispatch of the order acknowledgement, however only conditional after furnishing of the documents and approvals to be provided by the ordering party, and receipt of the agreed down payment.

The delivery dates are deemed to be met according to each agreement if the delivery item has left the works or notification of readiness for shipment has been submitted within the delivery period.

The delivery period shall be extended accordingly in the event of unforeseeable hindrances occurring which are beyond our control, regardless of whether they occur in our works or in the works of our sub-supplier, e.g., operating malfunctions or delays in the supply of essential raw and construction materials, insofar as such hindrances influence the completion of delivery of the delivery item. We shall also not be responsible for the aforementioned circumstances if and when they occur during a delay period that has already started

Events that adequately extend the delivery period are all union activities, in particular strikes and lockouts.

VI. Passage of risk and receipt

The risk shall pass to the ordering party at the latest with placing the parts at the ordering party's disposal inclusive partial shipments or other services, e.g., the shipment costs or transportation and erection/assembly.

At the ordering party's request, we shall insure the consignment at his expense against damage caused by breakage, transport, fire and water. If shipment is delayed as a result of circumstances attributable to the ordering party, we have the right to store the delivery item or have it stored by our previous supplier at the ordering party's expense and risk at our discretion. The due date of the purchase price shall not be affected by the delay in shipment. We have the right to set the ordering party a grace period acceptance and, in the event of unsuccessful expiry of said grace period to withdraw from the contract or to use the delivery item for other purposes. The ordering party must reimburse the damage hereby incurred.

The ordering party has to accept delivery of the goods, in case of defects, notwithstanding the rights under Section VII.

A special examination or acceptance can be demanded by both parties only on the basis of an agreement in this respect. The ordering party shall bear the costs of such test of acceptance.

VII. Reservation of ownership

The ownership of the delivery items shall be passed to the ordering party only after receipt of all payments arising out of the contract from the ordering party.

From the time of delivery to the transfer of ownership, the ordering party must insure the delivery items against any infringement up to the full value. The ordering party shall inform us immediately in case of seizure or any other infringement of our rights by third parties.

Insofar as the validity of the reservation of ownership is linked to formalities or other preconditions or is legally not possible outside the Republic of Austria, the ordering party shall ensure that a corresponding security is granted to us.

VIII. Liability for defects in delivery

For defects in delivery, we shall in the absence of an alternative agreement be liable as follows precluding all further claims:

1. All those parts which within six months of commissioning prove to be unusable on delivery or are considerably impaired in terms of their usability, in particular due to faulty manufacturing or faulty workmanship, are either to be remedied or delivered new at our reasonable discretion and at no charge. The Buyer shall carry full burden of proof for such defects. The ordering party shall inspect the consignment immediately after arrival for defects and inform us of such defects forthwith. If the ordering party fails to inspect the item and inform us forthwith, all claims are inapplicable, insofar as the defects were identifiable during proper performance of the inspection. Replaced parts will become our exclusive property.
If shipment, erection or commissioning are delayed for reasons not attributable to us, all liability and warranty shall expire at the latest 12 months after passage of risk.
In case of manufacture according to the ordering party's drawings we shall be liable only for the execution according to the drawing and shall not be liable for defects based on the materials provided by the ordering party or a design stipulated by the ordering party.
2. The ordering party's right to assert claims from defects shall in all cases become statute-barred within 6 months from the time of timely notification of the defect, at the latest, however, within the legal expiry of the warranty period. The aforementioned statutory limitation applies regardless of whether an acceptance was agreed upon or not.
3. No warranty shall be assumed for damage which has occurred for the following reasons:
Inappropriate or improper use, faulty installation or putting into operation by the ordering party or by a third party, normal wear, faulty or negligent treatment – in particular excessive strain or load - , unsuitable operating materials, substitute materials, faulty construction work, unsuitable subsoil, chemical, electro-chemical or electrical influences insofar as these are not attributable to us, etc. generally all adverse conditions and influences out of our reasonable control
4. To perform all the rectification work and substitute delivery, which is considered necessary at our reasonable discretion, the ordering party shall give us the necessary time and opportunity after notification; otherwise, we are exempted from any liability for defects. Only in urgent cases of jeopardy to operational safety, of which we have to be notified forthwith, a substitute performance through the ordering party is allowed.
5. Of the direct expenses incurred by the rectification and/or substitute delivery, we shall bear – insofar as the objection proves to be justified – the costs of the replacement item, including shipment and as well as the appropriate costs of dismantling and installation; furthermore, we shall also bear the costs of providing fitters, if necessary, if this can be reasonably demanded in the individual case. In all other cases, the ordering party shall bear the costs, in particular for auxiliary personnel, lifting equipment etc.
6. The provisions concerning the delivery date and liability shall apply accordingly if rectification work or replacement items are insufficient or defective; compensation for delay cannot be claimed, unless ordering party can prove gross negligence of us.

7. We are entitled to refuse elimination of the defects as long as the ordering party does not fulfil his obligations.

All cases of contractual violations and their legal consequences as well as all claims of the ordering party, notwithstanding the legal grounds on which they have been raised, are exclusively regulated in these conditions. In particular, all claims for damages, price reduction, and cancellation of the contract or withdrawal from the contract that have not been expressly mentioned are excluded.

Other claims, in particular for compensation of indirect and/or consequential damage, such as loss of profit, loss of production, loss of use, loss of orders, shutdown costs as well as other direct or indirect damage, on whichever legal grounds, are explicitly excluded.

This exclusion of liability does not apply to bodily injuries and to illegal intent or gross negligence. This is also valid for auxiliary personnel.

IX. Right of rescission

We can rescind the contract in full or in part if it subsequently turns out that execution is impossible. A partial rescission is only possible if the ordering party is interested, solely for his own purposes, in that part of the agreed delivery that is not affected by the aforementioned circumstances.

The ordering party is not entitled to claim damages on account of such a rescission. We shall, inform the ordering party hereof immediately after finding out about the implications of the event, if an extension of the delivery period had initially been agreed upon with the ordering party. The right of rescission is also possible in this case.

X. Confidentiality

The contracting parties undertake to keep secret any information which is made available to them in conjunction with this contract or within the scope of the business relationship and which is described as confidential or can be identified as a business or operating secret on the basis of other circumstances and not to record or use them in any way unless appropriate for attaining the contractual purpose.

The Buyer shall use the information and Know How received from the Seller in the form of technical drawings and documentation, in the form of instructions given by the Seller's personnel as well as in the form of the equipment purchased under this contract only for operation of the single plant that is subject of this contract.

XI. Applicable law

These terms and conditions and any contracts concluded hereunder shall be governed by the substantive laws of Austria under exclusion of conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

Any and all disputes arising out of or in connection with these terms and conditions and any contracts concluded hereunder shall be finally and exclusively settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with the said Rules without recourse to the ordinary courts of law. Place of arbitration shall be Vienna, Austria. The language of the arbitration proceedings shall be English.
Number of Arbitrators: 1

XII. Export Control

This quotation is issued subject to assessment for clearance by the Austrian Federal Ministry of Economy in terms of export to your country of the quoted scope of supply (export control).

IN THE EVENT THAT INDIVIDUAL TERMS WILL BECOME INEFFECTIVE BY COMPELLING LAW, ALL OTHER TERMS HEREIN SHALL REMAIN BINDING.