

General terms and conditions



Martin Paul KG

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I. Application of Martin Paul KG

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The deliveries, services and offers of our company are made exclusively on the basis of these General Terms and Conditions (GTC), irrespective of the nature of the legal transaction. All of our declarations of intentions under private law are to be understood on the basis of these terms and conditions. We do not acknowledge conditions of the customer which differ from our general terms and conditions, unless we have agreed in writing and expressly to their validity. The fulfillment of contractual obligations on our part does not constitute acceptance of terms and conditions deviating from our general terms and conditions. These terms and conditions shall also be regarded as a framework agreement for all further legal transactions between the contracting parties.

II. Conclusion of contract

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a) Our offers are non-binding as well as subject to change. Of these terms and conditions or other written declarations deviating verbal promises, special agreements and suchlike, in particular those which are submitted by sellers, deliverers, etc. , are not binding for us. The content of the brochures, advertising announcements etc. used by us shall not become a contractual part, unless expressly referred to.

b) Each contract requires a contract confirmation to conclude the contract. The dispatch or delivery of the goods ordered by the customer also results in the conclusion of the contract. If offers are addressed to us, the bidder is bound by a reasonable, at least eight-day deadline, from receipt of the offer. Point II. a) shall not apply to consumer transactions.

III. Price

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All prices mentioned are, unless expressly stated otherwise, **including VAT**. Should the labor costs between contract conclusion and delivery be altered as a result of collective agreements in the industry or in - house contracts, or other costs, such as those for materials, energy, transport, external work, financing, etc we are entitled to increase or reduce the prices accordingly. **Point III. does not apply to consumer transactions.**

IV. Terms of payment, default interest

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a) In the absence of an agreement to the contrary, our claims shall be paid cash in arrears on delivery of the goods. Unless otherwise agreed, our invoices are due for payment from the date of receipt of the goods. Without a special agreement, deduction of a discount is not permitted. In the event of a delay in payment, even with partial payments, any discount agreements expire. Payments by the customer shall only be deemed to have been made on the date of the receipt of our business account.

b) In the event of a delay in payment, **we are entitled to charge default interest at the rate of 9% of the net selling price**. Further claims, such as, in particular, the right to higher interest, from the title of the compensation shall remain reserved. **Point IV. b) the first sentence does not apply to credit transactions with consumers.**

V. Cancellation of the contract

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a) In addition to the general legal provisions, we are also entitled to withdraw from the contract even in the case of default of acceptance (Point VII) or other important reasons, such as, in particular, opening of the bankruptcy proceedings over the assets of a contracting party or the rejection of a bankruptcy petition. In the event of cancellation by fault of the customer, **we have the option to demand a lump sum compensation of 15% of the gross invoice amount or compensation for the actual damage.**

b) **In case of default of payment of the customer, we are released from all further performance and delivery obligations and are entitled to withhold any outstanding deliveries or services and demand advance payments or guarantees** or - if necessary after a reasonable period of grace - withdraw from the contract.

c) If the customer - without being entitled to do so - withdraws from the contract or desires unauthorized termination, we have the choice to insist on the fulfillment of the contract or to agree to the abolition of the contract; in the latter case, **the customer is obliged to pay a lump sum compensation of 15% of the gross reimbursement amount or the actual damage incurred at our discretion.**

VI. Reminder and collection charges

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In the event of a delay in payment, the customer shall pay the sum of € 9.00 plus postage per reminder and the amount of € 3.70 per month for evidencing of the debt relationship in the dunning system. For the appropriate legal prosecution, in addition, all necessary reminder and collection costs, such as a collection agency, must be replaced by the customer. The maximum remuneration is derived from the ordinance of the Ministry of the Republic of Austria on the maximum rates of collection institutions. (Link to Austrian legislation in German: <https://goo.gl/5h6o6D>)

VII. Delivery, transport, acceptance delay

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a) Our sales prices do not include any costs for delivery, assembly or installation. On request, however, these services will be rendered or organized by us for a separate payment. In this case, the costs actually incurred are charged for transportation or delivery, including an appropriate additional charge for the administration costs, but at least the freight and freight charges applicable on the day of delivery of the selected mode of transport. Installation work is calculated according to time, whereby an industry-standard man-hour rate is considered as agreed.

b) If the customer has not accepted the goods as agreed (**default of acceptance**), we are **entitled to store the goods** either with us, for which we charge a storage fee of 1% of the gross invoice amount per calendar day or at the expense and risk of the customer with a licensed professional. At the same time, we are entitled either to insist on fulfillment of the contract or to rescind the contract after setting a reasonable deadline and to use the goods elsewhere.

VIII. Transfer of Risk

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Without prejudice to the statutory provisions, the risk of accidental loss or accidental deterioration will in any event pass to the buyer upon delivery to the carrier - even at delivery free

destination.

IX. Delivery period

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a) **We shall only be obligated to carry out the work as soon as the customer has fulfilled all his obligations for execution**, in particular all technical and contractual details, preparatory work and preparatory measures.

b) We are entitled to exceed the agreed dates and delivery deadlines up to one week. The customer can only withdraw from the contract after the expiry of this period and after a reasonable period of grace has been set.

X. Place of fulfillment

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Place of performance is the seat of our company.

XI. Minor performance changes

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Minor or other changes of our service or delivery obligation, which are reasonable for our customers, are initially approved. This applies in particular to deviations caused by the thing (eg raw materials, delivery times by suppliers, quality standards, etc).

XII. Warranty, obligation to inspect and requirements to give notice of defects

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a) We fulfill warranty claims by the customer in case of a remediable defect at our discretion by replacement, repair or price reduction. **Claims for damages by the customer which are aimed at remedying the defect can not be valid if we have been in default with the fulfillment of the warranty claims.**

b) Within the meaning of § 377 UGB (Austrian Commercial Code), the goods shall be inspected immediately after delivery, but at most within six working days. Any deficiencies identified shall be reported to us immediately in writing, but within a maximum period of three working days after their discovery, indicating the nature and extent of the defect. Concealed defects must be reported in writing without delay, but at least within three working days after their discovery. If a complaint is not filed or is not filed in time, the goods shall be deemed to have been approved.

XIII. Compensation

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a) All claims for damages against us are excluded in cases of slight negligence. The injured party must prove the existence of **slight or gross negligence**.

b) The period of limitation of claims for damages shall be two years from the passing of the risk. The provisions on compensation for damages included or otherwise agreed in these terms and conditions also apply if the claim for damages is claimed alongside or instead of a warranty claim.

XIV. Product liability

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Recourse claims under § 12 PHG (Austrian product liability law) are excluded, unless the claimant proves that the error was caused in our sphere and was at least gross negligence.

XV. Retention of title and its assertion

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a) **All goods and things are delivered by us under retention of title** and remain until full payment our property.

b) In the case of the restitution or withdrawal of the object subject to retention of title by us, a rescission of the contract shall only take place if the latter is expressly declared. When returning goods, we are entitled - without prejudice to further claims - to charge incurred transport and manipulation charges.

c) If the purchaser processes or treats the goods or objects delivered by us before fulfilling all our claims, he **does not acquire property thereby**. We acquire co-ownership of the resulting new item in the ratio of the value of the goods delivered by us to the other processed goods at the time of the processing.

d) **The goods subject to retention of title may neither be pawned nor secured by the**

buyer. In case of seizures or other claims by third parties, the buyer is obliged to assert our right of ownership and to notify us without delay.

e) **The customer bears the full risk for the conditional goods**, especially for the risk of destruction, loss or deterioration.

XVI. Assignment of claims

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a) In the case of delivery subject to retention of title, the customer assigns to us already now his claims against third parties, as far as these arise by the sale or processing of our goods, until the final payment of our claims for payment. If the customer is in arrears with his payments against us, then the sales proceeds to him shall be segregated and the customer has them only in our name. Any claims against an insurer are already assigned to us.

b) Claims against us may not be assigned without our express consent.

XVII. Retention

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In the case of a justified complaint, **the customer is not entitled to withhold the entire, but only an appropriate part of the gross rebate amount, except in the cases of reverse processing.**

XVIII. Date loss

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a) To the extent that the customer has to pay his payment obligation in partial amounts, it is agreed that a delay in payment, even only one instalment, all outstanding deliveries, partial services and/or instalments, without further postponement, are due immediately.

b) **Point XVIII. a) in the case of consumer transactions as long as we have performed our service completely, even if a backward partial service of the customer is due at least six weeks, and if we have reminded the customer of a deadline of at least two weeks under the threat of the loss of the appointment.**

XIX. Legal choice, jurisdiction

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Austrian law applies. The applicability of the UN purchase right is expressly excluded. The contract language is German. The Parties agree to Austrian domestic jurisdiction. In order to resolve all disputes arising from this contract, the competent court at the registered office of our company is exclusively responsible for the local jurisdiction.

XX. Data Protection, Change of Address and Copyright

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a) The customer grants his consent that personal data are saved and processed by us in the form of automated support in accordance with this contract.

b) The customer is obligated to announce changes to his / her business or business address, as long as the contractual business is not completely fulfilled on both sides. If the notification is omitted, declarations shall also be deemed to have been sent if they are sent to the last notified address.

c) Promotional documents, table stands, advertising materials, etc., as well as samples, catalogs, brochures, illustrations, etc., always remain our material / intellectual property; the customer does not receive any intellectual property or exploitation rights.

XXI. Severability clause

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Should individual provisions of these General Terms and Conditions be or become invalid or impracticable in whole or in part, this shall not affect the validity of the remaining provisions.