

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF CHRISTOF GROUP



## 1. CONCLUSION OF CONTRACTS

- 1.1 Unless otherwise agreed upon in writing, in the relationship with any ordering party ("**Ordering Party**") all of our offers, contracts, deliveries and services (the last two collectively referred to as "**Services**" or "**Goods**") shall be governed exclusively by these Terms and Conditions of Sale and Delivery.
- 1.2 Deviating terms and conditions or provisions of the Ordering party shall only become part of the contract if explicitly approved by us in writing for each individual case.

## 2. OFFERS

We are not bound by our offers. Any offers are free of charge unless the Ordering Party has asked us to submit an offer. No contract shall become effective until confirmed by us in writing. Any installation work carried out by us shall be subject to our terms of installation in addition to these General Terms and Conditions of Sale and Delivery.

## 3. TERMS OF DELIVERY

- 3.1 We are entitled to carry out partial Services and Services in advance.
- 3.2 Unless explicitly agreed otherwise and unless we supply our Services in the premises of the Ordering Party, the place of performance for our Services shall be the location of our plant. Therefore, unless explicitly agreed otherwise, the risk shall in any event pass to the Ordering Party as the Services or Goods are being handed over by us to the carrier or the freight forwarding agent.
- 3.3 Unless explicitly otherwise agreed, we shall use our reasonable efforts but do not guarantee that we will comply with the agreed delivery dates. Delivery dates shall only be binding in particular if the Ordering Party duly submits all documents to be provided by it, including but not limited to clarification and approved plans and drawings approved in due course, as well as the Ordering Party complies with the agreed terms of payment and other obligations.
- 3.4 For a delivery to be effected in due time, the Goods must be ready for transportation in our plant within the periods agreed. For the Goods to be ready for transportation, they must have been completed and be ready for acceptance or transportation, respectively. Any Goods ready for transportation must be immediately called off by the Ordering Party; any failure to do so will entitle us to store the Goods at the cost and risk of the Ordering Party in our sole discretion after a period of 14 days after the notification that the Goods are ready for transportation.
- 3.5 In the event that it was agreed that the transport will be part of our Services, we are free to choose the mode and route of transport. If a transport company fails to deliver the Goods in due time through no fault of us, the delivery date shall be deemed complied with when we notify the Ordering Party that the Goods are ready for transportation.

- 3.6 Should there be a delay with respect to delivery dates which have been confirmed as binding as set forth in Sec. 3.3 for any reason the Ordering Party is responsible for or are attributable to unavoidable events, these delivery dates shall be postponed to the extent that such postponement can be arranged within our possibilities to deliver. Any additional costs incurred as a result thereof shall be entirely borne by the Ordering Party.
- 3.7 Any installation of the Goods and other goods, which are already owned by the Ordering Party, on the premises of the Ordering Party shall be charged as installation costs and shall be subject to the general terms of installation.
- 3.8 In using/implementing our Services, the Ordering Party will comply with all applicable legal provisions, e.g. obtain all necessary official authorizations and permits.

#### **4. DIMENSIONS, WEIGHTS, QUALITIES**

- 4.1 Deviations of dimension, weight and quality, which are generally presumed to be standard practice, shall be acceptable. If calculated weights apply, an extra charge in the customary amount will become payable for rolling tolerance, rivets, screws, weld metal and the like.
- 4.2 The respective weights shall be determined on public weighing scales and shall be decisive for the calculation. Weights shall be proven by submitting a weight note.

#### **5. ACCEPTANCE**

Acceptance of our Services shall take place immediately after notification of completion. All costs related to the acceptance procedure shall be borne by the Ordering Party. If the Ordering Party fails to accept the Services or Goods in due time within the period agreed and/or fails to complete the acceptance procedure, our Services and Goods shall nevertheless be deemed accepted and our obligations under the contract shall be deemed fulfilled.

#### **6. RETENTION OF TITLE**

- 6.1 All Goods shall remain our property until all contractual obligations of the Ordering Party have been fulfilled in their entirety, including but not limited to the agreed payment of the entire amount agreed including interest and any other costs as may be incurred.
- 6.2 In the event that the Ordering Party is in default of payment, it shall upon our request be obliged to immediately return any Goods, which are already supplied.
- 6.3 Any combination or mixing of the Goods with other goods shall be inadmissible until payment has been made in full, including interest and costs.
- 6.4 In the event that execution is being levied against the Goods, the Ordering Party shall hold us entirely harmless and shall immediately disclose to us the name of the debt-collecting party, the amount of the claim, the intervening court, the case number and any potential date of auction.
- 6.5 In addition, the Ordering Party shall inform us of any extraordinary reduction in the value of the Goods.

6.6 If the parties agree that the laws of a foreign jurisdiction is applicable to the contract and if according to the provisions of such laws a retention of title cannot be effectively agreed, any corresponding securities provided for in the agreed laws of the foreign jurisdiction shall be deemed to have been effectively agreed. The Ordering Party shall undertake to take all measures necessary to constitute, maintain and enforce such rights.

**7. PRICES AND CONDITIONS OF PAYMENT**

7.1 The price payable shall be the order value as contractually agreed between us and the Ordering Party. All prices shall be net prices without deduction and shall not include any other costs, taxes and duties that could be incurred in connection with our Services. These shall be paid separately by the Ordering Party.

7.2 The place of performance for the payments to be made by the Ordering Party shall be the location of our plant. Any payment to be effected by the Ordering Party shall be made in accordance with the agreed terms of payment.

7.3 In the event of default of payment of the Ordering Party, even of only one installment, we are entitled to immediately accelerate maturity regarding the entire price agreed. If the Ordering Party is in arrears with its payments we are furthermore entitled to retain or postpone the performance of our Services until the outstanding payments have been effected or to rescind the contract without granting a period of grace.

7.4 If there is a delay in the performance of any of our obligations and if a payment to be made by the Ordering Party is subject to the performance of such obligation, the Ordering Party shall make such payment irrespective of the delay by the date originally set.

**8. EXCLUSION OF SET-OFF AND RETENTION**

The right to set off against our claims and the right to retain the entire purchase price or individual installments by the Ordering Party are excluded.

**9. PREMATURE TERMINATION OF THE CONTRACT**

9.1 In case of any breach of the contract by the Ordering Party, we are entitled to rescind, in part or in whole, the contract at any time with or without granting a period of grace.

9.2 The same shall apply if we become aware of any circumstance suggesting the illiquidity of the Ordering Party or if there is reasonable doubt as to the liquidity of the Ordering Party. In this case we are furthermore entitled to demand from the Ordering Party to provide a sufficient surety as we see fit.

9.3 The Ordering Party shall in any event compensate us for any Service rendered until the termination of the contract irrespective of any further claims we may have.

## 10. WARRANTY AND LIABILITY

- 10.1 The Ordering Party shall be obliged to examine all Services rendered by us immediately, not later than within three days after they have been rendered, and give notice of any defect within the same period of time; any failure to do so will result in all claims being forfeited. Any notice of possible defects shall be given in writing. In the event of any latent defect our warranty obligation shall furthermore be subject to these defects only if these defects are notified within a period of six months as of the date on which the risk has passed or, in case of deliveries including installation, as of the date on which the installation has been completed, but not later than within nine months as of the date on which the Services or Goods are ready for transportation.
- 10.2 The warranty period shall be 12 months.
- 10.3 Our potential warranty obligation shall be limited to defects that occur under observation of the prescribed operating conditions and during normal use of our Services. We do not assume any warranty for wear and tear or minor defects of the paintwork. The Ordering Party shall furthermore have no warranty claims in the event of any defects resulting from (i) the provision of incomplete information on the part of the Ordering Party, (ii) interventions or changes with respect to our Services that are taken or effected by the Ordering Party and/or any third party at their own authority, (iii) the incorrect installation, implementing or use of our Services by the Ordering Party and/or any third party, (iv) inadequate or improper conditions for our Services for which the Ordering Party or a third party is responsible, (v) repair orders, alterations or structural alterations of equipment or Services already existing or supplied by other parties.
- 10.4 We are entitled to choose the warranty remedy in our sole discretion. In the event of the removal of a defect we may choose to either remove the defect on site during normal working hours, have the defective Goods or parts thereof sent to us for correction, or replace the defective Goods or the defective parts. We shall be given the time necessary to examine and remedy the defects or supply replacement parts or equipment, as applicable.
- 10.5 We shall in any case be free of any warranty obligation for as long as the Ordering Party may be in default with the performance of its payment obligations.
- 10.6 Any removal of a defect or other warranty remedy shall not result in a renewal of the warranty period.
- 10.7 The costs for the removal of a defect carried out by the Ordering Party itself or a third party are borne by us only by our written consent.
- 10.8 We cannot be held liable in terms of either a liability for damages or any warranty for any parts obtained by us from subcontractors against our recommendation at the explicit request or instruction of the Ordering Party or its agent.
- 10.9 We shall only be liable for any damage caused intentionally or by gross negligence and in any event only up to the amount of the respective order value. Any liability for consequential damages shall be excluded to the extent legally admissible.
- 10.10 In the event that we supply or render a Service on the basis of design specifications, drawings, plans, models or other information provided by the Ordering Party, our liability shall be limited to having performed in accordance with the information provided by the Ordering Party.

- 10.11 Should we be held liable by any third party as a result of any action taken by the Ordering Party, the Ordering Party shall be obliged to hold us entirely harmless from, and against, any such claim.

## **11. FORCE MAJEURE**

In the event of any force majeure we shall be entitled to postpone our Services for as long as the event continues plus a reasonable start-up period. Strikes, lockouts or any other circumstance that makes the Services considerably more difficult for us or even renders it impossible shall also be regarded as force majeure events, irrespective of whether they have occurred within our company or at the level of one of our subcontractors.

## **12. CONFIDENTIALITY AND INTELLECTUAL PROPERTY RIGHTS**

- 12.1 The Ordering Party undertakes to treat all information received, be it within the scope of our offers or in performing a contract, including but not limited to documents, data, drawings and technical or economic key figures, strictly confidential. The Ordering Party may use the information received exclusively for the purposes for which they were disclosed and may not reproduce it in any form.
- 12.2 The Ordering Party may only disclose information to its employees or a third party if this is mandatory for fulfilling the agreed purpose and if this confidentiality obligation is being imposed on the respective employees or third parties in its entirety.
- 12.3 The Ordering Party shall hold us entirely harmless from, and against, any violation of this confidentiality obligation on the part of any employee or third party.
- 12.4 All intellectual property rights (e.g. rights relating to patents or trademarks, copyrights or model rights) in our Services shall remain our property. The Ordering Party will not be granted any rights under licenses either.

## **13. CONTRACTUAL PENALTIES**

In the event of a breach of Sec. 12., the Ordering Party shall, irrespective of any fault, be obliged to pay to us a contractual penalty in the amount of EUR 50,000.00 per breach and per day. Such contractual penalty shall not be subject to any court's right to reduce the penalty payable. We are entitled to assert claims in excess of the aforementioned contractual penalties, e.g. claims for damages.

## **14. DUTIES**

All taxes, charges and duties arising in connection with the contracts we conclude or the Services we provide shall be borne by the Ordering Party. Should we be held directly liable for any taxes, charges or other duties in connection with the execution of contracts or the fulfillment of our obligation to perform by any governmental authority, the Ordering Party shall hold us entirely harmless from, and against, any such taxes, charges or other duties.

**15. AVOIDANCE / ADAPTATION**

The Ordering Party shall be unable to avoid or adapt the contract for any reason whatsoever, e.g. on the ground of error (including calculation errors) and/or rescind the contract if it receives less than half of the fair value of the consideration (*Verkürzung über die Hälfte, laesio enormis*). The Ordering Party furthermore waives its right to claim that the contract has not been effectively brought about and/or is null and void.

**16. REQUIREMENT OF WRITING**

Any amendment to or change of the contract as well as any waiver of this requirement of writing must be made in writing within the meaning of § 886 Austrian Civil Code (ABGB).

**17. SEVERABILITY CLAUSE**

Should one or several provisions of any contract concluded be or become invalid and/or unenforceable, this shall not affect the validity of the remaining provisions. Any such provision shall be automatically replaced by such valid and enforceable provision as best reflects the function of the invalid or unenforceable provision.

**18. CHOICE OF LAW**

The legal relationship between the Ordering Party and us shall be governed by Austrian substantive law, excluding the application of any conflict of law rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

**19. JURISDICTION**

Exclusive venue shall be Graz. Notwithstanding the aforesaid, however, we shall be at liberty to bring our claims before the competent court at the registered office of the Ordering Party.