

## **GENERAL TERMS AND CONDITIONS OF THE SELLER**

**AICHELIN GES.M.B.H., A-2340 MÖDLING, AS OF DECEMBER 2022**

### **I. GENERAL**

1. The following terms and conditions form the basis of all transactions between AICHELIN Ges.m.b.H. (hereinafter referred to as "Seller") and its customers (hereinafter referred to as "Purchaser"). They are handed over to the buyer on the occasion of the submission of the offer or thereafter, or they are also available to the buyer at <https://www.aichelin.at/AGB>. They shall apply irrespective of other conditions and ancillary agreements, with the exception of written contractual agreements concluded between the Buyer and the Seller.
2. Deviating terms and conditions of the buyer shall not become part of the contract either by acceptance of the order or in the absence of an objection by the seller.

### **II. NATURE AND SUBJECT MATTER OF THE CONTRACT**

1. The scope of delivery shall exclusively include the items and services listed in the delivery contract (or in the offer on which the delivery contract is based). Unless agreed in writing, the following are excluded: Foundations, cable ducts, all pipelines for supply and disposal of all media, connecting cables outside the furnaces, E-supply, non-specified equipment and plant components, the laying of lines and of duct and pit covers, charging baskets and racks. Ancillary agreements and changes require the written confirmation of the seller.
2. The Seller's written order confirmation shall be decisive for the scope of delivery and performance. If there is no order confirmation, the offer shall apply - in the event of an offer by the seller with a time commitment and acceptance by the buyer in due time.

### **III. OFFER, DOCUMENTS**

1. Offers made by the seller shall be deemed to be subject to change without notice. Quotations and quotation drawings are generally provided free of charge. Further drawing and calculation documents prepared at the request of the enquirer will be invoiced to the customer if no delivery contract comes into legal effect and remains in force.
2. Technical data and plans: In general, weights, dimensions, consumption values, performance data and all other data stated in the Seller's documents are indicative and accordingly not binding. It is the sole responsibility of the Seller, and the Buyer hereby agrees, to make any changes or modifications to the Goods if, in the Buyer's opinion, such changes or modifications may improve the installation or the operation thereof.
3. The seller reserves the property rights and copyrights to samples, cost estimates, offer and project documents, drawings and other information of a tangible and intangible nature -

also in electronic form. The Buyer expressly undertakes to use the information provided to him by the Seller only for the intended use of the delivery item and in strict compliance with the interests of the Seller. All documents may neither be reproduced nor made accessible to third parties without the consent of the seller.

4. Drawings and other documents belonging to offers shall be returned immediately if the order is not placed with the seller.

#### **IV. PRICE AND PAYMENT**

1. Unless otherwise agreed, the prices are ex works (EXW in accordance with INCOTERMS 2020), not insured, excluding loading, packaging, ARA costs and any other levies, charges and VAT. The prices quoted in the Seller's offer, the Buyer's order and the Seller's order confirmation do not include any services and obligations that are not expressly mentioned.
2. In the event of an order deviating from the total offer, the seller reserves the right to adjust the price.
3. The payment terms agreed between the Seller and Buyer shall apply. In the absence of a special agreement, payment shall be made by confirmed bank transfer, without any deduction, immediately after receipt of the invoice, free Seller's payment office, namely: 30% of the total order value as a down payment after receipt of the order confirmation and invoicing, 60% of the total order value after notification of readiness for dispatch of the items specified in the delivery contract and invoicing, and 10% of the total order value after acceptance.
4. If the payment deadlines are exceeded, the Seller shall be entitled to charge interest on arrears in the amount of 9.2 (nine point two) percentage points above the 3-month EURIBOR p.a. plus bank charges, VAT, reminder charges and any legal fees, starting from the first day of default.
5. Any acceptance of bills of exchange shall always be on account of payment only. All interest and expenses in connection therewith shall be borne by the buyer. Bills of exchange shall only be accepted by special agreement and subject to the possibility of discounting.
6. The buyer is not entitled to withhold payments or to offset them against claims of any kind against the seller.
7. If the buyer does not duly fulfil his payment obligations, the seller is entitled to postpone the fulfilment of the contractual delivery and assembly obligations entered into vis-à-vis the buyer until the buyer has remedied the default. The seller is entitled to cancel any payment agreement and to make the outstanding amounts due immediately if the financial situation

of the contractual partner deteriorates considerably, in particular in the event of default of 1/3 or more of the price, in the event of an adverse change in the legal circumstances, in the event of cessation of payments, in the event of unsuccessful execution as well as in the event of the opening of composition or bankruptcy proceedings or in the event of the rejection of such proceedings for lack of cost coverage. In the case of all these events, the seller is entitled to withdraw from the concluded contracts in their entirety or with regard to the scope of delivery not yet delivered or, at his own discretion, to demand advance payment or the provision of security for the deliveries still outstanding. The buyer shall pay damages and in particular reimburse all expenses.

8. The Buyer shall be in default of payment if it fails to pay an invoice of the Seller in full immediately upon receipt. Irrespective of this, the buyer shall be in default if he does not make payment at a time specified in the order according to the calendar. Statutory regulations according to which the buyer is automatically in default after receipt of an invoice and after expiry of the statutory period remain unaffected.
9. If the buyer, after notification of readiness, remains in arrears with the takeover of the subject matter of the contract or the fulfilment of his payment obligation for more than six weeks, the seller shall be entitled, after setting a grace period of 14 days, to withdraw from the contract and to claim damages for non-performance.
10. If the seller claims damages for non-performance, he shall be entitled to compensation in the amount of 15% of the sales price. This does not preclude the seller from claiming any higher damages.
11. If the seller does not make use of the above rights, he shall - without prejudice to his other rights - have the power to freely dispose of the subject matter of the contract.

## **V. DELIVERY DEADLINE, FORCE MAJEURE**

1. Unless otherwise stipulated in the contract, delivery periods shall commence with the counter-signature of the order confirmation by the buyer.
2. The delivery period shall be deemed to have been complied with if the delivery item has left the factory or notification of readiness for dispatch has been given by the time the delivery period expires.
3. Compliance with the delivery period is subject to the fulfilment of the buyer's contractual obligations.
4. If the provided delivery item cannot be delivered to the buyer for reasons for which the seller is not responsible, the delivery shall be deemed to have been executed with legal effect

upon notification of readiness for dispatch. The agreed payments shall then become due; in such a case, the costs of storage, guarding and insurance shall be borne by the buyer.

5. The delivery period as well as the periods for any agreed assembly and commissioning of the delivery item shall be extended appropriately if the buyer does not fulfil his contractual obligations on time, in particular: 1.if payments are not made in accordance with the contract; 2.if the buyer does not provide the information required for the execution of the order in due time or if he does not release the drawings and plans submitted to him for approval in due time; 3.if parts to be provided by the buyer are not available at the time notified in writing by the seller; 4.if the buyer does not provide the contractually agreed support and service. 5. if official approvals or licences required by third parties for the operation of systems are not obtained or procured in good time.
6. In the event of force majeure, the delivery period and other contractual obligations of the seller shall be postponed by the duration of the force majeure and the buyer's right of withdrawal shall be excluded for this duration. Force majeure shall be deemed to be any event whose origin lies outside the Seller's business and over which the Seller has no influence, as well as internal elementary events (including strikes, etc.). Force majeure shall in particular include natural disasters, epidemics, pandemics, war, armed conflicts, civil war, revolution, terrorism, sabotage, nuclear/reactor accidents, operational disruptions, delays in deliveries by subcontractors, insufficient supply of materials or energy, lack of means of transport, disruptions caused by the Covid19 pandemic (e.g. travel restrictions, border closures, transport restrictions or delays, plant closures, etc.) as well as any event that causes the continuation of the contract. ) as well as any event that makes the continuation of production impossible or only possible at significantly higher costs. The Buyer shall be notified of the beginning and end of any force majeure as soon as possible.
7. If the buyer suffers damage due to a delay for which the seller is responsible, he may claim compensation for the delay to the exclusion of any further claims. This shall amount to 0.5% per completed week of delay, but not more than 5% of the value of that part of the total delivery which could not be used in time due to the said delay. Further claims arising from delay in delivery shall be determined exclusively in accordance with section X. subject to the provisions of section XI. of these terms and conditions. This shall settle all claims arising from delay.

## **VI. RISK TRANSFER**

1. The transfer of risk to the Buyer (transfer of risk of damage and accidental loss of the goods) shall take place in accordance with the agreed trade terms, in accordance with INCOTERMS 2020 in force at the time of conclusion of the contract. Unless otherwise agreed, delivery shall be EXW: the transfer of risk shall take place at the time agreed for

acceptance at the Seller's delivery works, even if partial deliveries are made or the Seller has assumed other services, e.g. installation and commissioning.

2. In the event of assistance within the scope of loading, the buyer shall indemnify and hold harmless the seller with regard to all claims resulting therefrom.
3. At the request of the buyer, the shipment will be insured at the buyer's expense.
4. Without prejudice to the rights under Section VII, the buyer may only refuse to accept delivered items if the goods have significant defects. Acceptance may not be refused in the case of minor defects.
5. Partial deliveries are permissible insofar as they are not unreasonable for the buyer.

#### **VII. ACCEPTANCE (TAKEOVER)**

1. In the case of delivery items which are assembled and commissioned by the seller, acceptance (takeover) shall take place after agreed, successful proof of performance by signing the acceptance/takeover protocol by both contracting parties. The delivery item is thereby deemed to have been accepted.
2. An agreed proof of performance shall be provided by the Seller during the test runs to be carried out. Once this proof has been provided, the buyer can no longer request further test runs.
3. If the Buyer has received a written notice of readiness for acceptance from the Seller and fails to comply with its obligations to provide the tools and labour required for the acceptance test or prevents the acceptance tests from being carried out, the tests shall be deemed to have been successfully carried out on the date specified as the date for the acceptance tests in the Seller's notice. The acceptance test shall further be deemed to have been successfully carried out if the Buyer does not immediately declare acceptance in writing after carrying out a joint acceptance test, although it was requested to do so by the Seller with a period of three working days, unless the Buyer specifies in writing within this period any actually existing defects on the basis of which it may justifiably refuse acceptance measured against the expressly warranted characteristics.
4. Defects which do not significantly impair the agreed performance shall not constitute grounds for refusing acceptance/acceptance. Defects shall be recorded in a defect protocol as part of the acceptance/acceptance protocol.
5. The buyer is not entitled to use the delivery item for production purposes before signing the acceptance/acceptance protocol. If the Purchaser uses the delivery item before signing the

acceptance/acceptance protocol, acceptance/acceptance shall be deemed to have been granted upon commencement of use.

### **VIII. RESERVATION OF TITLE**

1. The seller retains ownership of the delivery item until all claims of the seller against the buyer arising from the delivery contract have been received. In the event of conduct by the buyer in breach of the contract, in particular in the event of default in payment, the seller shall be entitled to repossess the delivery item after unsuccessful reminder and subsequent declaration of withdrawal and without prejudice to the assertion of further claims, and the buyer shall be obliged to surrender the delivery item. All costs of repossession shall be borne by the buyer. In the event of seizure or other interventions by third parties, the buyer shall immediately notify the seller in writing and provide all necessary clarifications. The buyer may not pledge the delivery item or assign it as security.
2. In the event of a deterioration in the financial situation of the buyer, in the event of an adverse change in the legal circumstances, in the event of a suspension of payments, in the event of unsuccessful execution, as well as the opening of composition or bankruptcy proceedings or the rejection of such proceedings for lack of cost coverage, the seller shall be entitled, at its own discretion, to take back the goods not yet paid for or to demand suitable security. In this case, the buyer shall pay damages, in particular reimburse all expenses.
3. The buyer shall notify the seller without delay of any measures that could affect the seller's property.
4. A resale of the goods subject to retention of title is only permitted with the written consent of the seller. If the goods subject to retention of title are sold against cash payment, the buyer shall keep the proceeds separately and transfer them immediately to the seller, insofar as this is necessary to cover the debt secured by the retention of title.
5. In the event of the sale of the goods subject to retention of title, the buyer hereby assigns to the seller the claims arising from the sale, including all ancillary rights, which accrue to him from the resale against the buyer or against third parties. In the event of a resale, the buyer shall be obliged to notify his purchaser of the assignment of claims. The seller is authorised to collect the claims himself; however, the seller undertakes not to collect the claim as long as the buyer duly meets his payment obligations. The seller may demand that the buyer inform him of the assigned claims and their debtors, provide all information necessary for collection, hand over the relevant documents and inform the debtors of the assignment. If the delivery item is resold together with other goods that do not belong to the supplier, the buyer's claim against the purchaser shall be deemed assigned in the amount of the delivery price agreed between the seller and the buyer.

6. If the goods are further processed or combined by the buyer, the resulting new goods shall also become the co-ownership of the seller on a pro rata basis until the purchase price has been paid in full.
7. The buyer is obliged to take all measures necessary to protect the seller's property at his own expense; in particular, the buyer is obliged to register or note the reservation of title in public registers, books or the like in accordance with the relevant national laws and to fulfil all formalities in this respect. The seller must be provided with evidence of these measures within 14 days of taking over the delivery item at the latest.

## **IX. WARRANTY**

1. The Seller warrants exclusively that the delivery item complies with the properties expressly warranted in the delivery contract at the time of delivery. Only such properties of the delivery item that are designated in writing in an express declaration in the delivery contract shall be deemed warranted. If an acceptance test has been agreed, the expressly warranted properties shall be deemed to have been fulfilled if proof of the relevant properties has been provided on the occasion of this acceptance test.
2. The warranty period is 12 months, unless special warranty periods have been expressly agreed for individual delivery items. This also applies to delivery items and services that are firmly connected to a building or land. The warranty period shall commence at the time of acceptance/transfer of the delivery item or, in the case of pure deliveries, at the time of transfer of risk.
3. To the exclusion of other claims - but subject to the provisions of sections X. and XI. - the buyer's warranty claim is limited to the rectification of defects, namely to the improvement or replacement of defective parts including freight, disassembly and assembly by the seller. It does not extend to disadvantages incurred by the buyer in the course of remedying the defect, for example in the case of decommissioning of a part of the plant. The seller is entitled, at his own discretion, either to repair the defective part or to deliver a new one. In the latter case, he shall take back the replaced part. A claim by the buyer for a reduction in the purchase price is excluded and the buyer always bears the burden of proof for proving the defect.
4. A warranty claim can only be made if the buyer complies with the terms of the contract - in particular the terms of payment - and keeps the plant (stove) book provided to him free of charge by the seller properly and completely during the entire warranty period.
5. For third-party products, the liability of the seller is limited to the assignment of the liability claims he has against the supplier.

6. The Seller does not assume any warranty for repair work as well as modifications and conversions of used equipment; the same applies to the delivery of drawings for such work.
7. Excluded from the warranty are the wearing parts specified in the delivery contract or in the offer, as well as those parts which are customary in the industry or which are to be designated as wearing parts according to the technical standard.
8. The warranty does not apply to defects resulting from poor maintenance and servicing, faulty operation, or intervention or use by the buyer that could not be foreseen under the contract. Furthermore, it does not apply to damage caused by the following reasons: Improper storage after delivery, faulty assembly or commissioning by the buyer or third parties, non-compliance with the seller's operating instructions, natural wear and tear, excessive stress, excessive or one-sided heating, incorrect burner settings, unsuitable operating materials or replacement materials, defective construction work, unsuitable building ground, chemical, electrochemical or electrical influences, etc., insofar as they are not the fault of the seller.
9. The buyer shall inspect the delivery item immediately upon receipt, at the latest within 14 days, and, if a defect subject to warranty is discovered within this period, shall notify the seller thereof in writing without delay - and in any case within 3 days of discovery. All claims of the buyer arising from the defectiveness of the delivery item shall expire if the buyer does not carry out this obligation to inspect in due time or does not notify the seller within the aforementioned 3-day period after the defect subject to warranty has been discovered, if the buyer carries out or attempts to carry out the rectification of the defect himself or does not give the seller the time and opportunity reasonably required for the repairs and replacement deliveries that appear necessary. Only in urgent cases of danger to operational safety and to prevent disproportionately large damage, in which case the seller must be notified immediately, or if the seller is in default with the rectification of the defect, shall the buyer have the right to rectify the defect himself or have it rectified by suitable third parties, choosing the most suitable and inexpensive option for the rectification of the defect, and to demand reimbursement of the costs necessary for this from the seller.
10. Any modifications and repair work carried out by the buyer or third parties improperly and without the prior consent of the seller shall invalidate any liability for consequential damage arising therefrom.
11. The warranty rights granted to Buyer are expressly and exclusively set forth in this Article IX. No other warranties or guarantees are given, whether statutory, oral, express or implied, and in particular there are no implied warranties or guarantees as to merchantability or fitness for a particular purpose.



12. Further claims of the purchaser arising from defects of the delivery item, in particular a claim for compensation for damages which have not occurred to the delivery item itself, are excluded subject to the provisions of sections X. and XI.

## **X. THE BUYER'S RIGHT TO WITHDRAW FROM THE CONTRACT**

1. The buyer may withdraw from the contract if the entire performance becomes definitively impossible for the seller before the transfer of risk. The same shall apply in the event of corresponding incapacity on the part of the seller.
2. If the impossibility occurs during the delay in acceptance or through the fault of the buyer, the buyer shall remain obliged to counter-performance.
3. If there is a delay in delivery within the meaning of Section V of the Terms and Conditions and the Buyer grants the Seller in default a reasonable period of grace with the express declaration that it will refuse to accept delivery after the expiry of this period, and if the period of grace is not complied with, the Buyer shall be entitled to rescind the contract.
4. The buyer shall also have a right of rescission if the seller allows a reasonable period of grace granted to him for the repair or replacement delivery with respect to a material defect for which he is responsible to expire fruitlessly through his fault. The buyer's right of withdrawal shall also exist in the event of impossibility or inability of the seller to repair such a defect or to make a replacement delivery.
5. Subject to the provisions of Section XI, all other further claims of the buyer, in particular for rescission in cases other than those mentioned above, for price reduction as well as for compensation for damages of any kind, including such damages that have not occurred to the delivery item itself, are excluded.

## **XI. DAMAGES AND LIMITATIONS OF LIABILITY**

### **1. Damages**

With the exception of personal injury, the Seller's liability for damages shall be limited to cases of intent and gross negligence. This also applies to damage caused by vicarious agents within the meaning of §1313a ABGB of the buyer. The burden of proof for the existence of such conduct shall be borne by the buyer. The seller's liability is generally limited to the typically foreseeable damage. For damage caused to the delivery item itself, the seller shall be liable exclusively in accordance with point IX (warranty). Claims for damages shall become statute-barred six months after knowledge of the damage and the damaging party, in any case two years after the transfer of risk. If an order is made on the basis of the buyer's

design specifications, drawings or models, the seller's liability shall not extend to the correctness of the design, but only to the fact that the execution is carried out in accordance with the buyer's specifications.

2. Disclaimer according to types of damage

In no event shall the Seller be liable for compensation for pure pecuniary loss, indirect damage and loss and consequential damage of any kind, nor shall the Seller be liable for any loss due to loss of production, loss of profit, loss of revenue or loss of business opportunity or for the inability to operate a plant at full capacity or for the cost of obtaining other means to carry out production or for any claims of the Buyer's customers or other third parties, whether or not such damage and loss were foreseeable.

3. Product liability

Any recourse claims made against the Seller by contractual partners or third parties under the title of "product liability" within the meaning of the Product Liability Act shall be excluded, unless the party entitled to recourse proves that the defect was caused within the sphere of the Seller and was at least due to gross negligence.

4. Limitations of liability according to the amount

To the extent permitted by law, the Seller's total liability on whatever legal grounds for all claims of any kind arising from or in connection with the delivery contract is limited to 50% of the agreed purchase price. The Seller's liability for all claims of any kind arising from or in connection with partial deliveries shall be limited in value to 50% of the purchase price agreed for the respective partial delivery.

## **XII. OPERATING AND MAINTENANCE INSTRUCTIONS**

The purchaser is obliged to observe the operating instructions and warnings provided exactly and not to make any changes to the equipment supplied. The buyer shall receive technical descriptions and operating instructions in sufficient quantity and undertakes not to make any changes whatsoever to them and to transfer the obligation to any further purchaser on his part.

## **XIII. INSTALLATION AND COMMISSIONING**

The Purchaser shall ensure the timely provision, free of charge, of the facilities, equipment and qualified personnel in accordance with the contractually agreed terms and conditions to ensure the smooth assembly and commissioning of the installation.

#### **XIV. INDUSTRIAL PROPERTY RIGHTS AND COPYRIGHT**

1. If goods are manufactured by the seller on the basis of design data, drawings, models or other specifications of the buyer, the buyer shall indemnify and hold the seller harmless in the event of any infringement of property rights.
2. Design documents, such as plans, sketches and other technical documents, as well as samples, catalogues, brochures, illustrations and the like, shall always remain the intellectual property of the Seller and shall be subject to the relevant statutory provisions regarding reproduction, imitation, competition, etc.

#### **XV. PARTIAL INEFFECTIVENESS**

A contract concluded on the basis of these terms and conditions shall remain binding in its remaining parts even if individual terms and conditions are invalid. The invalid provision shall be replaced by a valid provision which comes as close as possible to the intended objective. This shall not apply if adherence to the contract would mean unreasonable hardship for one of the contracting parties.

#### **XVI. PLACE OF PERFORMANCE, JURISDICTION AND APPLICABLE LAW**

1. The place of performance is the Seller's delivery plant.
2. In the event of any disputes arising from the contract - also for actions in proceedings concerning documents and bills of exchange - the court having jurisdiction for the seller's head office shall have exclusive jurisdiction, provided that the buyer has its registered office within the EU/EFTA area.
3. All disputes arising out of or in connection with contracts with Buyers located outside the European Union or an EFTA State shall be finally settled under the Rules of Arbitration of the International Chamber of Commerce (ICC) by one or more arbitrators appointed in accordance with these Rules. The place of arbitration shall be Vienna. The language of arbitration shall be German.
4. These General Terms and Conditions as well as all contracts referring to these General Terms and Conditions shall be governed exclusively by Austrian law, excluding its conflict of law and conflict of law rules, but including the possible applicability of the Vienna UN Convention on Contracts for the International Sale of Goods (CISG). Between the contracting parties, these General Terms and Conditions as well as the other provisions according to the contract shall apply with priority.

AICHELIN Ges.m.b.H.  
Fabriksgasse 3  
A-2340 Mödling  
Tel.: +43 2236 23 646 0 Email: [info.at@aichelin.com](mailto:info.at@aichelin.com)  
[www.aichelin.at](http://www.aichelin.at)