

ECOTHERM Austria GmbH Conditions of Purchase

1. General

Our „General Terms and Conditions of Business“ below apply to all deliveries and services. Verbal agreements shall only apply following written confirmation by the Recipient. Conditions of sale that contradict our „General Terms and Conditions of Business“ shall be ineffective unless they have been expressly approved by the Recipient.

2. Quotation

Your quotations shall be without obligation and free of charge. The order shall only be deemed to have been placed on dispatch of our written order confirmation.

Quotations or estimates addressed to us shall be binding and free of charge in the absence of express agreement to the contrary. In the event of a quotation made to us, the Tenderer is committed thereto for two weeks from receipt of this quotation by us.

3. Quotation validity and delivery deadlines

If quotations are addressed to us, the Tenderer is committed to them for 60 days from receipt of the quotation.

The advised delivery deadlines shall be binding upon the Supplier; the delivery deadline shall run from the date of order.

Force majeure, interruptions to operations of any kind and whatever the cause, and other unforeseen events, which significantly complicate acceptance for the Recipient, shall give the Recipient the right to extend the acceptance deadlines without the Supplier being due a claim to compensation and without the possibility of earmarked quantities being invoiced prior to acceptance.

4. Protection of plans and documentation, secrecy

Plans, sketches, cost estimates and other documentation such as prospectuses, catalogues, samples, presentations and the like shall remain our intellectual property. Any improper use, especially transmission or internal use, is expressly prohibited.

5. Transfer of risk

In the absence of a written agreement to the contrary, delivery of the goods shall take place at the Supplier's cost and risk. The goods are deemed to be sold free of charge to address of buyer. Transfer of risk shall be established when the goods arrive at the company or the agreed delivery destination.

6. Prices

In the absence of other express agreements, prices stated to us shall be understood to be inclusive of all taxes and incidental expenses, including carriage costs. Agreed prices or those based on the contract are deemed to be fixed prices. We do not accept escalation clauses and such like, unless they have been specially negotiated.

7. Payment terms (maturity, part payment, discount)

In the absence of express agreement to the contrary, our payment term is 45 days from receipt of invoice. In the case of payment within 14 days from receipt of invoice we are due deduction of a discount to the value of 3%.

8. Cancellation fees

The Purchaser shall have the right to cancel the contract, without stating reasons, within 14 days of placing the order, on payment of a cancellation fee of no more than 3% of the purchase price (§909 Austrian Civil Code of 1797 - ABGB).

9. Warranty

In accordance with the following provisions, the Supplier shall be obliged to remedy each defect impairing serviceability due to a construction fault, a fault in the material or execution fault. The Supplier shall also be liable for defects in expressly stipulated characteristics.

Exclusions of liability by our contracting parties, especially under the heading Warranty or Compensation, shall not be accepted unless these have been expressly negotiated with us in detail. In the event of defects emerging we may choose replacement, repair or a reduction in price at our discretion, if there is no entitlement to redhibition and we exercise this right. If we insist on repair or replacement, we are entitled to withhold payment in full until complete fulfilment of the performance or delivery owed.

Furthermore deviations from the statutory provisions concerning compensation or warranty, such as changing allocation of the burden of proof, shortening deadlines and such like, require our express, case-by-case consent in writing to be effective.

By way of derogation from the statutory regulation, during the entire warranty period the burden of proof for freedom from defects shall remain with the Supplier.

The obligation to investigate defective deliveries of goods according to §377 Austrian Uniform Commercial Code (UGB) is expressly eliminated by agreement. In the event of any defects being discovered, we are entitled to a period of six-weeks in which to complain about defects.

10. Liability / Compensation

The Supplier, whether manufacturer, importer or dealer, has the status of producer. The Supplier shall in each case be liable within the terms of the Austrian Product Liability Act (Produkthaftungsgesetz) for any personal injury or damage to property which we incur as a consequence of the defectiveness of the goods supplied. It undertakes to hold us harmless and indemnify us. In addition to personal injury and damage to property, the Supplier shall also be liable for all indirect and direct consequential loss or damage which we incur as a result of processing or using the defective goods supplied. Exclusions of claims for compensation within the terms of §12 PLA shall not be accepted.

We shall not accept exclusion of claims for compensation according to §933b ACC of 1797.

11. Set off

We shall not acknowledge a contractual exclusion of set-off; instead we are entitled to offset claims at any time, using all the claims due to us against the contracting party as the case arises.

12. Covenant against assignment

Any claims that have arisen against us cannot be assigned for lack of express consent in writing.

13. Formal requirements

All agreements, subsequent amendments, supplements, collateral agreements etc. must be effected in writing to be valid. This shall also include the original signature or secure electronic signature.

14. Choice of law / Jurisdiction

The law of Austria alone shall apply. The court materially competent for Wels shall be the exclusive place of performance and jurisdiction. Applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is excluded.

ECOTHERM Austria GmbH Conditions of Sale

1. General

Our „General Terms and Conditions of Business“ below apply to all deliveries and performances. Verbal agreements shall only apply following written confirmation by the Contractor (ECOTHERM). Conditions of purchase that contradict our „General Terms and Conditions of Business“ shall be ineffective unless they have been expressly approved by the Company.

2. Quotations

All quotations from the Contractor shall be non-binding unless these expressly and simultaneously warrant an obligation and a specific period of commitment.

3. Conclusion of contract

The contract shall be deemed to have been concluded if the Customer has dispatched a written order confirmation following receipt of the order and this has not been demonstrably opposed by the Contractor within 10 days.

Amendments and supplements to the contract must be approved in writing in order to be valid.

If import and/or export licences or foreign exchange authorisations or similar authorisations are required for execution of the order, the contracting party responsible for procurement thereof must make all reasonable efforts to obtain the necessary documents.

4. Protection of plans and documentation, secrecy

Plans, sketches, cost estimates and other documentation such as prospectuses, catalogues, samples, presentations and the like shall remain our intellectual property. Any improper use, especially transmission or internal use, is expressly prohibited.

5. Delivery / Delivery deadlines

Delivery deadlines shall apply with the date of written confirmation of order and/or fulfilment of all the technical, commercial and financial stipulations incumbent on the Customer by agreement. In the event of unforeseeable occurrences, such as natural disasters, official interruptions to operations, fire, no-fault delivery delays by suppliers etc., the delivery period shall be extended appropriately in consultation with the Customer.

6. Retention of title

The goods supplied shall remain the Contractor's property until they have been paid for in full. In the event of pledging or other recourse, the Customer shall be bound to assert the Contractor's title and to inform the latter immediately. If the goods are sold on before payment, in the event of expiry the Customer shall assign the resulting debt to the Contractor.

7. Prices

All prices are understood to be in euro exclusive of value added tax.

8. Payments

Payments must be made within the agreed terms. In the event of late payment we charge default interest to the value of 6% above the respective prevailing bank rate. We are furthermore only entitled to render services for payment in advance.

9. Rescission of contract

The Contractor is entitled to cancel the contract if, despite requests for payment and an appropriate period of grace being granted, the Customer defaults on its payment or does not fulfil, either in a timely manner or in full, other contractual obligations which it assumes. Institution of proceedings for insolvency or composition proceedings against the Customer's assets shall in any case constitute grounds for rescission.

10. Warranty / Guarantee

The Contractor shall guarantee the warranty for the goods supplied and services rendered within the scope of statutory provisions. The Contractor shall undertake to remedy each defect impairing serviceability due to a construction fault, a fault in the material or execution fault. This shall also apply to defects in expressly stipulated characteristics.

The Customer must assert warranty claims within the stated two-year period and assert other loss of rights judicially.

The warranty obligation shall only apply on compliance with the operating instructions provided for and in the event of stipulated use of the goods supplied.

11. Liability

The Contractor shall only be liable to the Customer for personal injury and damage to property caused negligently within the scope of existing liability insurance. The Contractor's liability is excluded in the event of slight negligence.

All claims for compensation arising from defective deliveries and services must be asserted judicially within three years.

Further claims, especially liability arising from indirect losses or damages such as interruptions to operations, production stoppage or loss, loss of profits, loss of interest, default, contractual penalties or any other consequential losses or damages whatsoever are expressly excluded.

12. Counterclaims

Offsetting our claims with counterclaims of any kind whatsoever is excluded.

13. Formal requirements

All agreements, subsequent amendments, supplements, collateral agreements etc. must be effected in writing to be valid. This shall also include the original signature or secure electronic signature.

14. Jurisdiction / Legal basis

The local court competent for the Contractor's head office shall be the sole jurisdiction for all disputes arising indirectly or directly from the contract. The law of Austria alone shall apply.

Applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11.4.1980, BGL 1988/96 is excluded.