

General Terms and Conditions of Business of the Affiliated Companies  
“Ortner Reinraumtechnik GmbH” and “Ortner Cleanroom Engineering GmbH”

**1. Scope of application**

- 1.1st These General Terms and Conditions of Business (hereinafter referred to as “Ts and Cs”) apply for all deliveries of goods and provision of services that are made by us as a result of orders, in their version valid at the time of the respective order (cf. “<http://www.ortner-group.at>”). The customer acknowledges these General Terms and Conditions of Business when placing an order.
- 1.2nd Amendments or side-agreements to these General Terms and Conditions of Business must be made in writing to be valid.
- 1.3rd The order confirmation and/or a contract concluded separately for this purpose, plus the respective specifications, regulate the conclusive performance content of the contract concluded between us and the customer. Terms and conditions of contract as well as General Terms and Conditions of Business of the customer are explicitly refuted in full.
- 1.4th If individual points of these General Terms and Conditions of Business should be invalid, this shall not affect the validity of the other provisions and the contracts concluded on their basis. Instead of the invalid provision, the parties will agree a valid provision that comes closest to its meaning and purpose. Contrary or additional clauses of the customer only apply if these have been explicitly acknowledged by us in writing.

**2. Offers**

- 2.1st Our offers are non-binding.
- 2.2. Illustrations, statements, descriptions and specifications in technical sheets, promotional documents and other depictions are non-binding; weight information is approximate. This information does not include the assurance of certain properties. This requires our explicit written declaration at all times.
- 2.3rd We reserve all rights to illustrations, drawings, calculations and other files or

documents. Forwarding to third parties is only permitted with our explicit prior written consent.

**3. Conclusion of contract**

- 3.1. Our offers are non-binding. Each order by the customer requires an order confirmation from us for the contract to be concluded. The sending or handover of the goods ordered by the customer also brings about the conclusion of the contract.
- 3.2. The customer is aware that the Internet is not a secure means of communication and that data that is sent via the Internet can firstly become known and secondly be modified by third parties. The customer bears the risk that data is not received by us, or not in the form sent by them. We must trust that the form in which the data is received is that which was sent by the customer.

**4. Prices**

- 4.1. Unless otherwise agreed, our prices are ex works (EXW), including loading at the plant without delivery costs and without any ancillary services.
- 4.2. In the case of deliveries outside of Austria, the respective valid export and import duties will also be incurred. Costs incurred for packaging, freight, insurance, customs or other ancillary services as well as VAT in the respectively valid amount will be invoiced additionally.
- 4.3. The EURO shall be the agreed currency.

**5. Terms and conditions of payment**

- 5.1. Unless otherwise agreed, the goods to be supplied by us or the services to be provided by us are to be paid as follows into the bank account named by us:
- a) 40% down payment within 14 days from the date of our order confirmation or of the supply contract;

- b) 60% within 14 days from when we report readiness for dispatch, at any rate before the items of delivery are loaded.

Cheques or bills of exchange are always accepted as conditional payment. They will be kept as security by us until they are encashed.

- 5.2. A cash discount will be granted if this is explicitly granted when the invoice is issued.
- 5.3. In the case of partial payments, if the customer is in arrears with at least two instalments, we are entitled to make the entire outstanding receivable from the customer current account due immediately and to claim arrears interest in the statutory amount pursuant to Section 456 of the Companies Code (UGB).
- 5.4. In the event of a fundamental deterioration in the customer's asset situation, in particular if settlement discussions have commenced, if there are enforcement measures by third parties, if a cheque or bill of exchange is protested or in the event of an application for insolvency, we can suspend our work on the order and refuse our service until the service in return is performed. This also applies from the moment of knowledge if such a situation of the customer existed when the contract was concluded but was not known to us. If the service in return is not performed despite setting a deadline, we have a right of withdrawal. We reserve the right to file claims for compensation.
- 5.5. In the event of the customer being in arrears with payment or its other services, irrespective of other rights, we are entitled to retain delivery until the provision of the agreed service in return, whilst upholding the still outstanding period of delivery or, after the expiry of an appropriate grace period to withdraw from the contract and/or to demand compensation due to non-fulfilment. In this case, the customer must return the delivered goods to us immediately at its costs. We reserve the right to file claims for compensation due to loss in value, wear and tear, compensation for own transport fees and other factors.

5.6. Arrears interest, dunning fees:

In the event of arrears in payment, we will charge arrears interest in the statuto-

ry amount pursuant to Section 456 of the Companies Code (UGB). Dunning fees and arrears interest in the statutory amount will be charged from the first reminder. If a second reminder becomes necessary, all future deliveries will only be made in return for payment in advance or cash on delivery. After an unsuccessful second reminder, the receivable will be handed over to a collection agency or a lawyer. If the customer is in breach of its contractual obligations, it undertakes to pay for all costs necessary for the expedient prosecution of its claims. The customer is to pay €5.00 per reminder and also €25.00 for the updating of the debt relationship in the dunning system. In addition, the costs of the collection agency are to be paid up to the maximum fees envisaged in the respectively valid ordinance for maximum fees in dunning and the costs of lawyers pursuant to the Austrian Law on Legal Tariffs (RATG).

5.7. Offsetting:

As a basic principle, the prohibition of offsetting applies. The customer can only offset in the event of our insolvency or with associated, undisputed or legally established receivables. A right of retention can only be filed with regard to such receivables.

- 5.8. In the event that the customer does not pay or does not pay in full by the agreed deadlines, we are entitled to not extend the software licence granted for a limited period of time until the customer has paid in full.

**6. Date of delivery, delay in delivery, delay in acceptance**

- 6.1. The period of delivery commences with the date of the unconditional crediting of the down payment (Clause 5.1 a) into our bank account. Partial deliveries are permissible if they can be reasonably expected.
- 6.2. The delivery period will be extended as a result of circumstances outside of the parties' will, such as cases of force majeure, unforeseeable disruptions to operations, governmental interventions, delays in transport and customs, transport damage, rejection of important production parts, labour disputes, natural

disasters and war by the duration of the event preventing delivery.

6.3. In the event that we are in arrears, the following applies:

- a) Our liability is limited to a maximum of 0.5% per day.
- b) In total, our liability is limited to 5% of the gross order sum.
- c) In the case of grossly negligent or wilful breach of contract, our liability is restricted to the foreseeable damage that typically occurs.

6.4. In the event that the customer is in arrears with acceptance, we are entitled to store the items of delivery at the customer's cost and risk. The same applies if the customer requests a delivery that is later than that agreed. The purchase price instalment to be paid when the readiness for dispatch is due is not affected by the storage.

## 7. Transfer of risk

Unless otherwise indicated in the order confirmation, the delivery and transfer of risk are deemed to be agreed "ex works" (EXW). In the cases named in Clause 6.4, risk is transferred to the customer upon readiness for dispatch.

## 8. Installation, commissioning, acceptance

8.1. We will only carry out the installation or commissioning of the items delivered by us if this has been agreed separately in writing. The scope, place and time of our services are to be determined by mutual agreement. For the staff sent by us, the customer will pay the rates valid in each case at our company for work required, board and lodging as well as the travel costs incurred. Travel times are deemed to be work times.

8.2. The items to be assembled or put into operation are to be provided at the place of installation in a timely manner and to be kept freely accessible at all times for the staff sent by us. The facilities must be prepared for the work to be carried out, taking into account the ambient conditions required for the items. The customer will provide the required tools (with the

exception of our special tools) and equipment, measuring devices, energies, materials and operating resources in sufficient quantity and quality in a timely manner and free of charge for us.

8.3. If an acceptance test is agreed, this will be done in the presence of representatives of both contractual partners according to terms and conditions to be agreed in advance. If no terms and conditions have been defined, we will determine them according to the standards usual in the industry. The start, duration and result of the acceptance test will be recorded by us. The record is to be signed by the representatives of both contractual partners. In the event of differences in opinion, the different opinions are to be recorded. If the customer puts the items into operation without an acceptance test, or if their acceptance is not carried out for reasons for which we are not responsible within six weeks from delivery, they are deemed to be accepted.

8.4. The software sold/licensed by us is initially granted for a defined period of time. The software will be issued for an indefinite period of time once the customer has met its payment obligations in full and on time.

## 9. Material Defects and Legal Deficiencies

### 9.1 Material Defects:

9.1.1 We offer a guarantee for material defects in that we will carry out subsequent performance for all parts (excluding wear parts) that prove to be defective as the result of a circumstance existing before transfer of risk, at our choice by eliminating the defect, reducing the price or supplying a part that is free of defects. The establishment of such defects and the anticipated effects are to be reported to us by the customer immediately in writing. Parts that are replaced become our property. After consultation with us, the customer has to give us the required time and opportunity for subsequent performance and give us unhindered access to the item of delivery. Only in urgent cases of risk to operational safety or to prevent disproportionately serious imminent damage is the customer itself entitled to eliminate the defect in consultation with

us or have it eliminated by third parties and to demand reimbursement of the costs required. The customer's warranty claims expire in other cases of intervention in the item of delivery by the customer or third parties. If the complaint proves to be justified, we will pay for the costs of the replacement part from the costs resulting from the subsequent performance, including the costs of shipment, and the appropriate costs of removal and installation. For the purpose of subsequent performance, the customer will provide us with available tools and lifting equipment as well as fitters and auxiliary personnel free of charge. We provide a guarantee for work done as part of the subsequent performance in the same way as for the item of delivery, but as a maximum until the expiry of six months after the expiry of the original warranty period.

9.1.2 The goods delivered are to be examined by the customer immediately after delivery. Any discernible defects are to be reported immediately in writing. Otherwise, these defects are deemed not to exist.

9.1.3 In the event of subsequent performance in the case of defects, we do not reimburse any costs such as transport, travel, work and material costs that are based on the item being moved to a location other than the registered office or the commercial branch of the customer where it was delivered to.

9.1.4 The customer's claims for defects including the claims for compensation become time-barred in one year from delivery. In deviation from this, the statutory deadlines apply for compensation claims arising from injury to life, body or health or due to grossly negligent or wilful breach of obligation by us or our vicarious agents.

## 9.2. Legal deficiencies

9.2.1 If the use of the item of delivery results in a breach of commercial property rights or copyrights in the home country, we will procure for the customer at our costs, under exclusion of further claims, subject to Clause 9, a right to use the item further, or change the object of delivery in a manner that is deemed acceptable for the customer so that the breach of rights no longer exists. If this is not possible at economically appropriate terms and con-

ditions or within an appropriate period of time, the customer is entitled to withdraw from the contract. Under the said conditions, we also have a right to withdraw from the contract. We will also indemnify the customer against undisputed or legally established compensation claims of the rights holder.

9.2.2 Our obligations set out in Clause 9.2.1 only exist if the breach of rights has not resulted from the customer changing the item of delivery or changing it in a non-contractual manner and if the legal deficiency is not based on an instruction from the customer, the customer informs us immediately about breaches of rights that become known to it and about the threat of claims by the rights holder, the customer supports us appropriately in defending against the claims filed or makes it possible for us to carry out amendment work, and all extrajudicial and judicial court and negotiation options are reserved for us.

9.3. Further claims due to material defects or legal deficiencies are excluded.

## 10. **Compensation**

10.1. We do not assume any liability for damage to property and financial damage, irrespective of the legal grounds for this, in particular due to delay or impossibility of performance, positive breach of obligation, culpability on conclusion of contract, consequential damage resulting from the defect, defects, or due to unlawful actions that are caused as the result of slight negligence by us or persons who have to vouch for us. The customer has to provide proof of the existence of gross negligence or wilful intent.

10.2. If we are obligated to pay compensation, the amount of the damage to be compensated for is limited in each individual case to 30% of the order value.

10.3. Claims for compensation become time-barred after the expiry of one year from handover or takeover of the goods.

## 11. **Withdrawal from the contract**

11.1. In addition to the general statutory provisions, we are also entitled to withdraw from the contract in the event of delay in

acceptance (Point 6) or other important grounds, such as the opening of bankruptcy proceedings over the assets of a contractual partner or rejection of an application for bankruptcy due to a lack of assets to cover costs. In the event of withdrawal and if the customer is at fault, we have the choice of demanding flat-rate compensation of 30% of the gross invoice amount or the reimbursement of the damage actually incurred.

- 11.2. In the event of arrears in payment on the part of the customer, we are released from all other performance and delivery obligations and entitled to retain outstanding deliveries or work and to demand payments in advance or guarantees or, if applicable after setting an appropriate grace period, to withdraw from the contract.
- 11.3. Unless a more specific regulation has been agreed, the prerequisite for the customer's withdrawal from the contract is a delay in delivery that is attributable to gross culpability on our part and the unsuccessful expiry of an appropriate grace period set. In all cases, the withdrawal is to be declared to us in writing.
- 11.4. If the customer withdraws from the contract without being entitled to do so, or if it requests the rescission of the contract without being entitled to do so, we have the choice to insist on fulfilment of the contract or to agree to the rescission of the contract; in the latter case, the customer is obligated to pay at our choice flat-rate compensation in the amount of 30% of the gross invoice amount or the damage actually incurred.

## **12. Retention of title, release of securities received**

- 12.1. All goods will be delivered by us subject to retention of title and remain our property until full payment. The customer has been informed of this and explicitly agrees to the retention of title when the contract is signed. In the event of only even partial arrears in payment, we are entitled to collect the goods even without the buyer's consent.
- 12.2. The customer is obligated to mark the goods subject to retention of title as our property, to handle them with care, in particular to store them professionally; it

is also obligated to sufficiently insure them at replacement value at its own costs against damage caused by fire, water or theft.

- 12.3. If the customer combines the goods delivered by us inseparably with other items before the fulfilment of all our receivables, it does not acquire ownership thereof. 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 when they were combined.
- 12.4. The customer may not pledge the goods subject to retention of title or transfer them by means of security. In the event of any attachments or other claims by third parties, the customer is obligated to file our right of ownership and to inform us immediately.
- 12.5. The customer is not entitled to sell goods under retention of title without our consent. It already assigns to us now the receivables to which it is entitled from a resale of the goods subject to a retention of title to its customers or third parties in the amount of the value of the goods subject to retention of title. The final invoice amount including VAT agreed with us is deemed to be the value of the goods subject to retention of title.
- 12.6. If the customer is in arrears, the retention of title also includes the right to inspect or collect the goods delivered subject to retention of title at any time in return for appropriate prior notice. The customer undertakes to notify the us in writing in each case if the location of the goods subject to retention of title changes.

## **13. Intellectual property rights**

All intellectual property rights associated with our products, developments, documents etc. such as inventions, know-how, etc. remain exclusively our property.

## **14. Non-disclosure**

Our contractual partners undertake not to disclose the know-how that they receive under this business relationship to third parties.

## **15. Data protection**

Personal data of the customers will only be handled pursuant to the statutory provisions regarding data protection. The customer gives its consent to the data disclosed during the order and the handling of the order being collected, processed, saved and used for the purposes of our accounting as well as for internal market research and marketing purposes. The data will be used by us to fulfil statutory regulations, to handle the payment transactions and for advertising purposes, but will not be forwarded to third parties.

## **16. Applicable law, place of performance, place of jurisdiction**

- 16.1. Austrian law applies under the exclusion of the provisions of international private law and the UN Convention on Contracts for the International Sale of Goods (CISG). The INCOTERMS in the version valid at the time when the respective contract is concluded are to be applied for the interpretation of the trade clauses.
- 16.2. The place of payment and performance for all obligations arising from this contract is Villach/Austria.
- 16.3. The sole place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship with us is the legally responsible court in Villach/Austria.