

GENERAL TERMS AND CONDITIONS

for businesspersons

Mosdorfer GmbH

1. Scope

- 1.1. All the deliveries and other services as well as offers and payments made by and to Mosdorfer GmbH (following also briefly referred to as “Mosdorfer”, “we” or “us”) are exclusively subject to the present General Terms and Conditions (GTC’s) unless the contracting parties have agreed upon something else explicitly in writing.
- 1.2. The customer’s General Terms and Conditions or other Conditions of Sale, which are, for example, stated on offers or different correspondence of the customers’, will not become part of the contract with Mosdorfer unless Mosdorfer has agreed to them in advance in writing. If written consent is given to the validity of deviating agreements in a single case in writing, the deviations will exclusively apply to this single business transaction (and not to any future projects).
- 1.3. These General Terms and Conditions can be found on the internet at <https://www.mosdorfer.com/agbs/>.

2. Offers

- 2.1. All the information Mosdorfer provides on goods, services and prices are non-committal and without engagement unless Mosdorfer declares something that deviates from the offer.
- 2.2. Binding offers made by Mosdorfer can exclusively be accepted by the customer in writing within the respective offer period.
- 2.3. Documentation relating to our product information, for example drawings, dimensional data and data about the weight and performance will be regarded as being characteristics that have not been agreed specifically unless agreed in writing. We reserve the right to make design related changes as well as other changes of technical data. If these changes are minor, they will be deemed approved.

- 2.4. If the contracting parties retrospectively agree upon additional deliveries or services that are related to an existing contract or other changes of existing contracts, these changes will need to be confirmed, and agreed service provision and/or delivery periods will be in accordance with revised timescale advised and agreed.
- 2.5. Errors in printing, computational, writing and calculation errors are not binding upon Mosdorfer. They will not give the customer the right to put forward any claims whatsoever.
- 2.6. Offers that may be made by Mosdorfer can only be accepted in terms of the entirety of the goods and/or services offered. If the declaration of acceptance made by the customer deviates from the offer made by Mosdorfer, this deviating declaration of acceptance made by the customer will be regarded as being a new offer that can be accepted by Mosdorfer.

3. Prices

- 3.1. The prices offered by Mosdorfer will generally be in Euro and net (exclusive of the sales tax) unless something else has been agreed in writing. Unless agreed explicitly, the prices stated shall not be understood as being a lump-sum, set or as fixed prices.
- 3.2. The prices are ex works Weiz/Austria, duty unpaid, including packaging. Fees, charges, customs, transport, travelling expenses and/or outlays, insurance policies, delivery and shipping expenditure are not included in the price unless agreed explicitly in writing. These costs and expenses will be charged to the customer's account by Mosdorfer separately.
- 3.3. Regarding travelling expenses and/or outlays, the actual costs will be charged with an administrative surcharge in the amount of 3 %.

3.4. Mosdorfer shall be entitled to increase the prices unless something else has been agreed in writing if the following occurs after the moment the offer has been made by Mosdorfer or accepted by Mosdorfer due to circumstances that cannot be influenced by Mosdorfer:

- a.** The suppliers increase their list and catalogue prices for material necessary for executing or delivery. These price increases can be passed on to the customer to a full extent.
- b.** Wages and salaries have increased due to adjustments in legal terms or in terms of collective agreements or energy costs, transport costs, or taxes accruing to Mosdorfer have increased. The augmentation will be done to the extent of the cost increase affecting Mosdorfer. However, this will only be done to the extent to which this augmentation has an impact leading to an increase of the costs for the order made by the customer.

3.5 Price increases will be communicated to the customer by Mosdorfer by means of a letter personally addressed to the customer, (which may, as the case may be, also be sent via e-mail), while stating the circumstances and reasons for the price increase, including the changes resulting from this.

4. Delivery, service provision and passing of the risk

4.1. Unless Mosdorfer has explicitly promised a delivery or service provision date to be binding in writing, information on the delivery or service provision date will be non-committal. However, the delivery or service provision date will be kept by Mosdorfer as far as is practically possible.

4.2. If Mosdorfer can foresee that the delivery item will not be delivered within the delivery period or the service cannot be provided within the service provision period, Mosdorfer will inform the customer of this immediately and in writing, communicate the reasons for this to the customer and state the expected new date of delivery or service provision as far as possible.

4.3. Mosdorfer reserves to carry out partial deliveries or provide partial services.

4.4. If the amount of delivery is slightly lower than the agreed amount, the customer can only demand a corresponding price reduction. The amount of delivery will be deemed slightly lower if the deviations are no more than the following: deliveries of up to 5,000 pieces: deviations up to 2.5 %; deliveries between 5,001 and 10,000 pieces: up to 2 %; deliveries of more than 10,000 pieces: up to 1 %.

- 4.5.** The goods will be delivered to the address stated by the customer when delivered incoterms are relevant. If no separate delivery address has been made known, the delivery will be made to the address stated in the order. Services will have to be provided at the place of performance agreed. If no special place of delivery has been stated or if no address has been stated, Mosdorfer's registered office will be regarded as being the place of performance. Mosdorfer will even be entitled to postpone or discontinue promised deliveries or services if the deliveries or services are made impossible or are made more difficult to an unreasonable extent by circumstances that cannot be influenced by Mosdorfer. This particularly refers to labour conflicts, fire, war, strike, pandemics, environmental disasters, etc. This will also apply if such unforeseen obstacles and circumstances occur at sub suppliers' or at locations of parties employed in performing obligations for Mosdorfer.
- 4.6.** Unless something that deviates (e.g. INCOTERMS) has been agreed in writing, the transport and distribution of the goods by a transporting company shall be deemed accepted by the customer. No matter what the type of shipment is, the customer shall bear the transport risk. The goods will only be insured against damage in transit, loss during transport at Mosdorfer's cost upon the written request of the customer.
- 4.7.** Unless agreed differently in writing, the risk of accidental ruin or accidental damage of the goods will pass to the customer upon dispatch of the goods or delivery at the forwarding agency or transporting company. The customer will immediately have to advise about damage in transit and/or shortages to the transporting company.
- 4.8.** As for goods that are to be delivered at a date other than the intended date or that cannot be delivered due to the customer's default and in case of any delay in acceptance, the risk of accidental ruin or accidental damage of the goods will already pass to the customer at the moment the goods are stored in our warehouse (Weiz) or in a delivery storage area.
- 4.9.** In case of delay in acceptance on the part of the customer, Mosdorfer shall be entitled to pass all the costs incurred due to the delay in acceptance, including all costs for storage and retention, on to the customer.
- 4.10.** In the event the customer fails to fulfil the customer's obligations, which have impacts on the delivery period (e.g. release and approval of drawings) or if the customer fulfils the customer's obligations belatedly, Mosdorfer will not be responsible for any delay in execution. In this case, the delivery period will be prolonged accordingly.

- 4.11. If circumstances for which Mosdorfer is not at fault make it impossible for Mosdorfer to fulfil orders in due time (objective delay), Mosdorfer will not be obliged to procure the goods that are the subject of the contract or order with external suppliers.
- 4.12. The delivery period will be deemed to be kept if Mosdorfer has shipped the merchandise on the last day of the agreed period or if the merchandise is ready for shipment.
- 4.13. If the delivery or service is not provided within the period agreed in writing for reasons for which Mosdorfer exclusively is at fault, the customer will have to set a reasonable grace period, which needs to amount to at least four weeks. The customer cannot repudiate the contract in writing until this grace period has expired without being used.
- 4.14. If the delivery item needs to be manufactured by Mosdorfer based on customer-supplied design data, drawings, models, etc., Mosdorfer will not be obliged to review if the part meets design criteria/requirements specification (i.e. the suitability or correctness of the customers design data, drawings, models etc.)

5. Due date, payment, reservation of title, delay in payment

- 5.1. The invoices issued by Mosdorfer will be payable immediately and without deduction unless something else has been agreed in writing. If payment is made within 14 days upon issuance of the invoice, we will grant a 2 % discount. The due date will not be affected by the fact that deficiencies that may exist or other legal remedies are asserted.
- 5.2. The goods delivered to the customer by Mosdorfer will remain the sole property of Mosdorfer (reservation of title) up to complete fulfilment of all the claims arising from the business relationship, in particular the purchasing price, interest, shipping costs and other parts of the invoice and any costs due to enforcing their collection.
- 5.3. The customer shall be obliged to comply with the applicable legal requirements relating to maintenance of the reservation of title. Any alienation, pledging, renting, transfer of ownership by way of security or other cession of the goods subject to reservation of title to third parties is prohibited. If the goods subject to reservation of title is pledged or claimed differently by third parties, the customer will be bound to assert Mosdorfer's title of ownership at the customer's costs and expenses and inform Mosdorfer by means of a demonstrable written communication within 24 hours.

- 5.4.** Even if the goods subject to Mosdorfer's reservation of title are treated or processed, Mosdorfer's ownership will not cease. In this case, it is agreed that Mosdorfer has the right to claim an aliquot share of co-ownership to the item resulting from treatment or processing. If the goods subject to Mosdorfer's reservation of title are intermingled with other goods and if the goods subject to Mosdorfer's reservation of title can no longer be individualized sufficiently, the first sentence of this clause will apply by analogy as far as treatment or processing is concerned.
- 5.5.** If Mosdorfer does not make an explicit written declaration to the contrary, the fact that Mosdorfer asserts the reservation of title will not be regarded as being repudiation of the contract. On the contrary: Mosdorfer will not only have the right to claim surrender of the goods but will also keep the rights arising from the purchasing contract, above all those relating to compensation of damage and loss of profit.
- 5.6.** Counterclaims put forward by the customer can only be offset against claims put forward by Mosdorfer if the relevant counterclaim has been recognized by Mosdorfer in writing or if there is a legally binding judgement against Mosdorfer. This will also be the case if these counterclaims originate from the same contract or its rescission.
- 5.7.** Mosdorfer reserves to ask for the securities deemed necessary for good fulfilment of the contract before and after delivery of the goods or parts thereof and/or before and after completion of the service or parts thereof if it becomes obvious after the contract has come into being but before the price has been paid completely that the customer's credit status deteriorates or the customer's credit worthiness is reduced. If the customer fails to meet the obligation to provide a security, Mosdorfer will have the right to repudiate the contract fully or partially.

Unless something that deviates explicitly is agreed in writing, disputes between Mosdorfer and the customer will not entitle the customer to retain goods or services arising from a contractual relationship with Mosdorfer (§ 1052 ABGB (Allgemeines Bürgerliches Gesetzbuch - General Civil Code) is excluded) or cancel the contract for an important reason.

5.8. Special rates granted by Mosdorfer (rebates, markdown price reductions, discounts) will be completely forfeited retrospectively if the customer is in default of a payment of an invoice, no matter whether it is a question of a partial invoice, final invoice or other invoice. For making it possible to avail of discounts, the following will be required: These discounts must have been agreed in writing explicitly, all the payable partial invoices have been paid in a timely manner and the discount has not already expired according to the previous statement. Price reductions made by the customer unlawfully will lead to the loss of the complete discount and all the other price reductions retrospectively.

6. Warranty:

6.1. Special and/or promised characteristics will only become contents of the contract if they have been agreed in writing.

6.2. For production and material related minor deviations, such as shades of colour, or minor deviations of patterns and dimensions, no warranty is made. Neither shall the customer be entitled to refuse the merchandise or demand a price reduction or cancellation of the contract because of an error or any other reason.

6.3. The assumption of defects at the moment of handing-over according to § 924 ABGB (Allgemeines Bürgerliches Gesetzbuch - General Civil Code) is explicitly excluded. The existence of defects at the moment of handing-over will always have to be demonstrated by the customer.

6.4. The customer will have to review and inspect the goods for defects upon delivery and/or the service that has been provided upon its completion and will have to notify Mosdorfer of defects of the merchandise and/or service provided immediately but no later than within 14 days upon delivery and/or completion in writing while exactly describing the defect. Hidden defects will have to be reported at the time that they are discovered.

6.5. If the customer fails to report the defect, the merchandise will be deemed approved, and the customer can no longer claim warranties or damages due to the defect itself or consecutive damage and can no longer assert an error relating to the freedom from defects of the item.

- 6.6.** Mosdorfer shall be entitled to check the deliveries and services complained about by the customer for the defects claimed within 14 days after the defects have been reported. If the customer refuses this cross-check, the customer will lose all the warranty claims and claims for damages related to this. The customer shall not be entitled to retain the remuneration or a proportionate share corresponding to the presumable costs for elimination, except for the fact that Mosdorfer recognizes the defect in writing.
- 6.7.** Defective deliveries and services, which also include the fact that characteristics promised according to the contract are missing, will be improved, newly delivered or newly provided within the warranty period at Mosdorfer's discretion. If Mosdorfer chooses improvement, at least two improvement attempts will have to be allowed. If elimination of defects cannot be achieved within a reasonable period, the customer will have the right to set a reasonable grace period, which, however, needs to amount to at least 14 days. If this grace period elapses without a successful outcome of two attempts of improvement helping to eliminate the defect, the customer will have the right to claim a price reduction.(should we say the right to source the good or service from an alternative source rather than say a price reduction?)
- 6.8.** The right of repudiation of contract is excluded.
- 6.9.** There are no further claims due to defective delivery, above all for compensation of damage that has not occurred on the contractual item itself.
- 6.10.** The warranty period will start upon delivery of the merchandise at the customer's or, in case of shipment of the goods, by handing over the goods to the transporting company or upon completion of the service. In all cases, it will amount to 12 months with the exclusion of other warranties. (Is our assertion of Ex Works in contradiction with this? When will we know the goods are delivered if the customer arranges transport?)
- 6.11.** Defects and malfunctions for which Mosdorfer is not at fault, such as natural wear and tear, force majeure, improper handling and assembly by the customer or third parties, interventions of the customer or third parties, excessive load and/or use of unsuitable means of use or installation by the customer or third parties or extreme ambient conditions, are excluded from warranty.

- 6.12.** Disassembly, assembly, transport, packaging, travelling and sojourn costs and expenses shall be borne by the customer. If the reported defect is not a warranty event, the customer will have to reimburse Mosdorfer for the resulting expenditure according to the respectively applicable hourly rates of Mosdorfer, including travelling expenses and outlays that accrue. If executing of warranty work leads to waiting times for which Mosdorfer is not at fault, additional expenditure resulting in this regard will be charged to the customer's account.
- 6.13.** Use of § 933b ABGB ("Allgemeines Bürgerliches Gesetzbuch" – General Civil Code) is excluded.

7. Compensation for damages / liability:

- 7.1.** Unless differently agreed in writing, Mosdorfer will only be liable to the customer for occurring damage if damage has been caused by Mosdorfer by intent or gross negligence. Liability for minor negligence is excluded, except for personal injury. By way of analogy, this also applies to liability for the conduct of third parties of whom Mosdorfer avails when fulfilling contractual obligations.
- 7.2.** Claims for damages for mere property losses or indirect damage (including loss of profit), interruptions of business, loss of information and data as well as consecutive damage due to defects are excluded, except for personal injury, unless damage/the defect can be traced back to clear gross negligence or intent.
- 7.3.** Notwithstanding the cause and legal basis of damage, Mosdorfer's liability will be limited to 50 % of the amount of the corresponding order.
- 7.4.** If Mosdorfer has produced the delivery item on the basis of the customer's engineering data, drawings or models, Mosdorfer's liability will not refer to the correctness of engineering but only to the fact production has followed the customer's data. If third parties make claims against Mosdorfer, in this case, the customer will hold Mosdorfer harmless.

- 7.5.** Claims for damages can only be asserted before the court within six months after damage has come to the customer's knowledge but no later than within one year upon occurrence of (primary) damage clearly substantiating the claim unless absolute legal requirements provide for different statutory periods of limitation.
- 7.6.** The burden of proof for the existence and the amount of damage as well as of Mosdorfer's fault devolves to the customer.
- 7.7.** The customer will immediately have to inform Mosdorfer of damaging events and hand the required documentation over to Mosdorfer so that Mosdorfer can review any liability that may exist.
- 7.8.** When using the goods delivered by Mosdorfer and/or the service provided, the customer shall be obliged to keep all the regulations, technical rules, installation procedures, operating and service instructions existing for protection from risks and hazards as well as all relevant health and safety rules and only to employ authorized experts.
- 7.9.** Mosdorfer's liability for damage due to faulty operation by the customer is excluded. In this respect, we would like to point out that goods and/or services provided by Mosdorfer can, in case of faulty operation, lead to damage despite the highest quality procedures. In this context, we would explicitly like to bring your attention to product information enclosed with the goods, which will, in any case, have to be read and retained. If no product information is enclosed with the goods, the customer will have to request this information from Mosdorfer or, if available, read this information in the homepage of Mosdorfer before commissioning.
- 7.10.** Mosdorfer will not be liable for the correctness of data about handling, operation or service of goods and finished products as far as the goods are included in folders and leaflets, technical descriptions or other instructions provided by the manufacturer or other third parties. Relevant responsibility devolves to the manufacturer and/or importer. Mosdorfer has no obligation of clarification for storage, maintenance, installation or other handling. Mosdorfer is not obliged to inspect merchandise provided by third parties before purchasing or resale. (is this enforceable if the customer is not aware it is from a 3rd party??)

8. Delay / repudiation of contract

- 8.1.** If the customer is in default of a payment, Mosdorfer can insist on fulfilment of the contract or repudiate the contract while granting a reasonable grace period of two weeks. If Mosdorfer insists on fulfilment of the contract, Mosdorfer shall be entitled to:
- a) charge interest on arrears at the due date;
 - b) postpone our own obligations as well as obligations of Mosdorfer arising from other contracts concluded with the customer up to the receipt of the outstanding payments and retain outstanding deliveries and/or services and request advance payment and/or securities;
 - c) avail of a reasonable prolongation of the delivery period;
 - d) declare the whole purchasing price that is still open as well as the costs for all the other services and partial services provided in the context of other contracts concluded with the customer to be payable.
- 8.2.** Interest on arrears to the amount of the respective entrepreneurial interest rates according to § 456 UGB (Unternehmensgesetzbuch - Corporate Code), 1st sentence, but, at least, 1 % a month as agreed shall be applicable.
- 8.3.** The customer will also have to reimburse Mosdorfer for the accruing administration and operating costs as a further damage due to delay.
- 8.4.** The customer's delay relating to acceptance of a partial service or an agreed activity of participation, which significantly makes it more difficult for Mosdorfer to carry out the order, will entitle Mosdorfer to repudiate the contract while granting a reasonable grace period. If Mosdorfer is entitled to repudiate the contract, Mosdorfer will keep the right to claim all the remuneration agreed. Still Mosdorfer will have to charge an appropriate amount taking into account what has been saved because the order was not totally fulfilled or due to use for a different purpose.
- 8.5.** If Mosdorfer's repudiation of the contract is justified, Mosdorfer shall, in all cases, be entitled to demand a conventional penalty to the amount of 15 % of the gross invoice amount without demonstrating actual damage and no matter which party is at fault. Mosdorfer reserves the right to claim damage going beyond this and to assert other claims.

- 8.6.** In case of delay on the part of Mosdorfer as far as (partial) services are concerned, (partial) repudiation of the customer will not be possible until a reasonable grace period has been set. Both the grace period and a possible repudiation will have to be declared in writing.
- 8.7.** If the customer declares repudiation of contract without justification or if the customer declares its dissolution without justification, Mosdorfer will have the right to choose to demand fulfilment of the contract or compensation for damages due to non fulfilment. In the latter case, the customer shall, at the discretion of Mosdorfer, be obliged to pay a conventional penalty to the amount of 15 % of the gross invoice amount or compensate Mosdorfer for damage actually accruing without actual damage being demonstrated, no matter which party is at fault. If Mosdorfer demands fulfilment of the contract, Mosdorfer shall be entitled to assert any claim relating to the unjustified repudiation of contract and/or unjustified dissolution of contract. In any case, Mosdorfer reserves the right to assert other legal and contractual claims towards the customer to which we are entitled.
- 8.8.** If the customer repudiates the contract for justified reasons and/or in case of still another justified dissolution of contract for an important reason, the goods or services already received from Mosdorfer will have to be paid by the customer according to the offer price unless something else arises from absolute legal provisions.

9. Use of know-how

- 9.1.** All the documentation includes design and development services, know-how and ideas provided by Mosdorfer.
- 9.2.** The customer shall be entitled to use the software handed over, the know-how, the data carriers and documentation to the intended extent autonomously. However, the customer is forbidden to pass them on to third parties.

10. Export

- 10.1.** The customer is responsible for keeping domestic and foreign export rules.

11. Exclusion of rescission:

The customer renounces rescission as well as adjustment of all the contracts concluded with Mosdorfer for reasons of an error and “laesio enormis” (enormous injury / damage) to the extent largest possible in legal terms. This also refers to the discontinuation or non-occurrence of the basis for business transactions. Moreover, the customer renounces raising of objections arising from these titles.

12. Applicable law, place of jurisdiction:

- 12.1.** The contractual relationships between Mosdorfer and the customer are subject to Austrian substantive law with the exclusion of its referenced standards. Usability of UN Purchasing Law is excluded.
- 12.2.** For all the disputes directly or indirectly resulting from contracts between Mosdorfer and the customer, including the question about the valid way of establishing the contractual relationships as well as their effects before and after the conclusion of contract, exclusive responsibility of the technically competent court for Graz, first district, is agreed.

13. Other clauses:

- 13.1.** The original contractual language is German.
- 13.2.** Mosdorfer shall be entitled to unilaterally make minor amendments to the General Terms and Conditions (GTC's) based on legal requirements. Upon publication of the amended GTC's, the customer will be bound to them. In this case, the customer won't have a right of objection. Substantial amendments to the GTC's will be made known to the customer and will be deemed agreed unless the customer objects to the amended GTC's within 14 days in writing. If the customer avails of the customer's right of objection, the GTC's agreed at the moment of the conclusion of contract will continue to apply.
- 13.3** The customer shall be obliged to communicate the changes of the customer's business and/or e-mail address. If not, declarations made by Mosdorfer will be deemed received once they have been sent to the business and e-mail addresses communicated last.
- 13.4.** Amendments or supplements to a contract between Mosdorfer and a customer must be in a written form to be valid.

13.5. If a clause of these GTC's or the other agreements between the customer and Mosdorfer is or becomes fully or partly void, ineffective or unenforceable, the effectiveness and enforceability of all the other remaining clauses will remain unaffected by this. As far as this is legally admissible, the clause that is void, ineffective or unenforceable will have to be regarded as being replaced by the effective and enforceable clause that comes next to the economic purpose pursued by the void, ineffective or unenforceable clause in terms of the degree, time, place or scope. The same applies to possible gaps in the contract. The same applies to gaps of these GTC's or the contracts concluded with Mosdorfer.