



INTIRIO GmbH
Peter-Mitterhofer-Str. 4
A-3300 Amstetten

General Terms and Conditions of Purchase

Version October 2019

Agreement of General Terms and Conditions of Purchase

The following Terms and Conditions of Purchase shall apply to any orders by the Buyer. Confirmation or execution of orders shall constitute acceptance of these Terms and Conditions of Purchase by the Seller. Any divergent or supplementary terms and conditions shall not be binding on the Buyer, even if he does not expressly object to them. This shall also apply in case the Seller indicates his intention to perform orders exclusively under his own terms and conditions. Any different terms and conditions or any divergence from these Terms and Conditions of Purchase shall therefore be invalid unless agreed upon in writing by the Buyer. Acceptance of the goods or services or the Buyer's payment without reservation shall not constitute the acceptance of deviating terms and conditions. Furthermore, the reference in the Buyer's order to the Seller's offer or documents accompanying an offer shall not be construed as the Buyer accepting any deviating terms and conditions of the Seller. The express terms of the Buyer's order take precedence over the corresponding provisions in these Terms and Conditions of Purchase.

Order and Order Confirmation

Any orders must be placed in writing. Verbal agreements shall not be binding, unless confirmed in writing. Unless confirmation of an order is waived, the Seller is required to confirm orders by the Buyer in writing. In the event that the Buyer has not received such confirmation within 5 days after placing an order, the Seller shall be deemed to have accepted, unconditionally, the Buyer's terms of the order, including but not limited to prices, delivery dates and these Terms and Conditions of Purchase.

If the Seller wishes to propose alternative terms in his order confirmation, he shall explicitly and in detail describe the proposed changes from the order terms and justify his change requests. Any variation from the order shall not be binding for the Buyer unless the Buyer agrees to such variation explicitly and in writing. The acceptance of goods or services or the Buyer's payment without reservation shall not be construed as an acceptance of a divergence of the goods delivered or the terms for the provision of service..

General terms and conditions of the Seller shall not apply, even if the Buyer has not explicitly objected to them.

Intellectual Property Rights to Plans and Documents / Non-disclosure

The intellectual property rights to any plans, drafts and any other documents such as brochures, catalogues, samples, presentations etc. as well as to any provided products, fabrics and materials shall remain completely with the Buyer. Any exploitation or use, in particular any transfer, copying, publication and making available, including partial copying, is to be omitted unless the express prior permission of the Buyer is given.

The Buyer may reclaim any of the documents mentioned above at any time. In addition, the documents must be returned immediately in case no contract has been concluded or the contract has been terminated.

The Seller undertakes not to disclose any information arising from the business relationship to third parties.

The Buyer shall have the exclusive intellectual property rights (excluding also the Seller) in respect of all results and work products developed by the Seller in the course of the performance of its contractual obligations, including (but not limited to) the right use and further exploit the results and/or work products or any goods or services resulting therefrom, at no additional cost for the Buyer. The Seller shall hand over to the Buyer all information and documents in respect of such results or work products, irrespective whether such information is available on paper, in electronic or in any other format.

Delivery Periods and Performance Dates

The agreed delivery periods and performance dates are binding. The delivery periods or the periods for providing the services, as the case may be, shall be calculated from the date of the Buyer's order. If the parties have not explicitly determined a delivery period or a delivery date, the Seller shall affect the delivery or the provision of services, as the case may be, promptly. The Seller shall deliver / provide his services on time, which means (i) in case of deliveries the Buyer shall have received the goods, and (ii) in case of deliveries which require further set up or assembly or in case of services to be provided the Buyer shall have formally accepted the goods or services free from defects, on the delivery date. If the Seller becomes aware that he is unable to perform or deliver on time, he is obliged to inform the Buyer promptly but no less than 10 days prior to the agreed delivery/performance date. The extension of the delivery period requires the explicit written consent of the Buyer to such extension. If delivery is not made or services are not provided when due, the Buyer is entitled, without granting a grace period, terminate the contract on the grounds of default. Furthermore, in the event that the Seller does not affect delivery or provide its service when due as originally agreed, the Buyer, irrespective whether he has agreed to an extension of the delivery period or not, shall be entitled to impose a contractual penalty amounting to at least 5 % of the order value per day of late delivery/performance. The Buyer may impose such contractual penalty at any time before the last payment, even if he has accepted the goods or performance unconditionally. None of the foregoing provisions shall limit or otherwise adversely affect the Buyer's right to exercise any additional remedies he may have under applicable statutory law or this contract.



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Suspension and Termination for Convenience

The Buyer shall have the right, to require the suspension of the further performance of the contract at any time. If such suspension exceeds a continuous period of six months, the Buyer shall reimburse the Seller for such costs the Seller has actually incurred and that are resulting from the suspension exceeding the six months' period; the Seller shall not be entitled to be compensated for loss of profit. The Seller shall only be entitled to a reimbursement of costs, if the suspension does exceed six months. If the suspension exceeds six months, the Seller shall not be reimbursed for costs resulting from the first six months of suspension.

In the event of force majeure, a strike, or lockout, the Buyer shall be entitled to defer receipt of the goods without being in acceptance default. For the reimbursement of any additional costs of the Seller resulting therefrom, if any, the provisions in the preceding paragraph shall apply analogously.

The Buyer shall have the right to terminate this contract as a whole or partially, at any time at its discretion (Termination for Convenience). In the event the Buyer exercises his right to terminate the contract for convenience the Seller shall be entitled to a compensation of all deliveries made / services provided to the Buyer up to the date the termination becomes effective, but not further compensation or reimbursement.

Delivery Terms, Passing of Risk

Unless the Buyer has not determined otherwise in the order, the risk of damage or loss shall pass (i) if the order requires delivery only and no set up or assembly, with the Buyer or the recipient nominated by the Buyer taking over the goods, and (ii) if the order requires delivery and set up or assembly or the providing of services, with the formal acceptance of the goods/services without defects by the Buyer. Deliveries shall be made DDP place of delivery (INCOTERMS 2010); the Seller shall bear the costs and the risk of unloading. If the Buyer's order does not specify otherwise, the place of delivery shall be the Buyer's plant in A-3300 Amstetten. The Seller shall not deliver prior to the delivery date, deliver in portions or deliver lower or higher quantities than agreed (each a "Nonconforming Delivery") without prior explicit written consent by the Buyer. The Buyer shall have the right to reject any Nonconforming Deliveries, or at his discretion to send back to the Seller any exceeding quantities at the Seller's cost and risk.

Prices

All prices are fixed and not subject to any increase for the entire contractual period up to the acceptance of the goods/services by the Buyer.

Payment

Payment must be made without deduction within 60 days after the later of the receipt of a properly issued invoice and receipt of the goods. The invoice shall be considered received on the date of the receipt stamp of the Buyer at the premises in Amstetten. If the Seller is obligated to provide material tests, test protocols, quality documents or other documents, no payment shall be due, unless in addition of the goods and the invoice, all such documents have been received by the Buyer. The period of payment shall, however, not commence before the agreed delivery date. Down payments or interim payments shall not constitute an acknowledgement of the conformity of the performance with contractual obligations. Any assignment requires the prior written consent of the Buyer.

Warranty

The Seller warrants that all goods delivered and/or services performed comply with the contractual specifications, all relevant technical standards and specifications of the end customer, are in good working order, have all qualities and characteristics which can be reasonably expected of such goods and/or services and are fit for purpose, in particular but not exclusively for the use in rail vehicles and busses. The Seller particularly warrants (without limiting the generality of the foregoing) the use of new adequate material of prime quality, skilful manufacturing in conformity with all plans, drawings and samples, skilful construction, proper packaging and flawless set up and assembly. Furthermore, the Seller warrants that his goods and/or services do not infringe third party Intellectual Property Rights. Nothing of the foregoing shall, in any way, limit the Buyer's statutory remedies in warranty and/or damages; the Buyer shall have the right, at its own discretion, to require repair or the replacement of nonconforming goods. The Buyer shall have the right to remedy a defect or have a defect remedied by third parties, both at the Seller's risk and costs, in the event of urgency or if the Seller fails to remedy a defect when due. Defective goods will be returned to the Seller from the place of delivery (including, but not limited, the production plant of the Buyer's customer) at the Seller's risk and the costs therefor shall be borne by the Seller. Corrected goods and replaced parts shall be redelivered to the Buyer or the production plant of a Buyer's customer nominated by the Buyer. The agreed warranty period for corrected and replaced parts shall recommence from the date of removal of the defects Unless otherwise agreed, the warranty period shall be 36 months from acceptance of the goods by the Buyer or the production plant of his customer; in the event of hidden defects the warranty period shall be calculated from the date when such defect is detected by the Buyer.



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Inspection for Defects – Liability for Defects

The Seller acknowledges the fact that the Buyer shall not perform any incoming goods inspections. The Seller waives any right to bind the Buyer to such inspections and in particular waives any objection to the Buyer's breach of the duty to inspect incoming goods. Paragraph 377 (Austrian) Commercial Code (*Unternehmensgesetzbuch*) and its notice obligation shall not apply.

Packaging

Unless otherwise agreed, the Seller shall be required to pack the goods for sea or airfreight. Where the packaging material contains wood, the Seller shall treat the relevant packaging components (in accordance with ISPM No. 15). This requirement shall also apply to shipments which are sent to the Seller's branch in Austria. Glass and similar materials must be packed and labelled in such a manner as to ensure safe transportation by air or sea. The Buyer reserves the right to charge the Seller for any damage and consequential costs resulting from inadequate packaging.

Documents

The Seller is required to submit any fire certifications in order of the Buyer by E-mail, fax or otherwise (if necessary). If additional documents or notes are required (for example 3.1 Certificate) the Buyer will inform the Seller and on the Purchasing will also be a note.

Product Liability

The Seller shall indemnify the Buyer against any claims (in Austria or any other jurisdiction worldwide) arising from defects in the products supplied. This clause shall not be construed to replace or limit any contractual liability of the Seller.

Binding Force of the Contract

Should any provision of the contract be invalid, the remaining provisions shall remain unaffected. This shall not apply if adherence to the contract would impose unreasonable hardship on the Buyer.

Assignment of Rights

Any assignment of rights arising from this order to third parties requires the permission of the Buyer.

Vicarious Agents

Apart from his own deliveries and services the Seller shall also be liable for deliveries and services performed by his subcontractors. The subcontractors of the Seller shall be deemed to act as vicarious agents. The Seller shall indemnify the Buyer against any claims from third parties arising directly or indirectly from deliveries and/or services performed by the Seller.

References

Any reference to the Buyer on the part of the Seller requires the former written permission by the Buyer.

Correspondence

The Buyer's order number must be stated in all correspondence (order confirmation, delivery note, invoice etc).

Place of Performance, Applicable Law and Place of Jurisdiction, Legal Costs

The place of performance of the delivery shall be the destination of the goods; the place of payment shall be the registered office of the Buyer. These Terms and Conditions of Purchase shall be governed by the laws of the Republic of Austria, excluding the conflict of law's provisions. The United Nations Convention on the International Sale of Goods (CISG) shall not apply. The exclusive place of jurisdiction for any disputes arising directly or indirectly from the contractual relationship (including actions on bills of exchange) is the competent Court at the registered seat of the Buyer.

The Seller shall be obligated to reimburse the Buyer all legal costs reasonably incurred, including costs for retaining legal advice and representation. In the event of a dispute the Seller shall not have the right to withhold or cease performance under this contract.