

# General conditions of sale, delivery and assembly of ING. SUMETZBERGER GMBH. (Valid as of the 1<sup>st</sup> January 2020)

## 1. General

1.1 The following general conditions of sale and delivery apply to all deliveries and other services, including counselling services of Ing. Sumetzberger GMBH, hereinafter referred to as the Contractor.

1.2 Differing conditions of the client that the Contractor has not expressly recognised in writing are non-binding for the Contractor, even if the Contractor does not expressly refuse them.

1.3 All agreements, ancillary agreements, warranties, subsequent contract changes and changes to these conditions are to be set in writing.

## 2. Offer

The offers are always non-binding. A contract is established only upon the confirmation of order by the Contractor.

## 3. Prices

3.1 All prices apply as of the work or storage plus the VAT applicable at the time of invoicing and other ancillary costs, such as packaging costs according to the determined packaging price with the corresponding item number, transport, assembly etc.

3.2 The prices indicated are binding until the end of the agreed delivery period. If delivery periods of over 4 months are agreed, the prices applicable at the time of delivery and ancillary costs shall be billed.

3.3 The minimum order value is determined at EUR 40.00.

3.4 Partial payments and advance payments are to apply with VAT.

## 4. Payment conditions

4.1 Unless special agreements are made, a payment period of 14 days net as of the invoicing date applies.

4.2 Exchanges are only accepted after express agreement and on account of payment. All related costs, particularly collection costs and discount charges are to be borne by the client and are due immediately. Exchanges are accepted without prejudice to proper submission and protest. The Contractor reserves the right to refuse exchanges.

4.3 The client is only entitled to offsetting and retention if the counterclaim is undisputed or legally confirmed. This also applies to retention due to defects, and only to the extent that the value of the goods is demonstrably reduced.

4.4 As of the due date, interest amounting to the cycle-weighted average yields for federal loans plus 8% shall be billed.

4.5 If the client is in default of a due payment or if the Contractor receives unfavourable information about the client's payment method, all existing claims of the Contractor – even to the extent exchanges or cheques are present for this – shall be due immediately.

4.6 A payment is always charged on the oldest open claim. A discount deduction is therefore only possible after payment of all open claims.

## 5. Delivery period and delivery time

5.1 Delivery times or delivery periods are to be indicated in writing.

5.2 In case of subsequent changes to the order, upon request of the client, the delivery period is lengthened accordingly.

5.3 In case of force majeure or other unforeseeable, extraordinary and involuntary events – for example in case of material procurement difficulties, lack of information required from the buyer, operation failures, strikes, lockouts, lack of means of transport, official interventions, energy supply difficulties etc. – even if they occur for suppliers of the Contractor – the delivery period shall be extended to a reasonable extent if the Contractor is prevented from fulfilling their obligations on time.

## 6. Transfer of risk and shipping

6.1 Packaging and transport are billed to the client at the cost price, the type of transport and the itinerary are determined by the Contractor. The Contractor is entitled, but not obliged, to insure deliveries on behalf of and at the expense of the client.

6.2 Use and risk are transferred to the client at the latest at the time the goods leave the workshop or warehouse of the Contractor, or if the client is informed of the shipment readiness. This also applies if the delivery is made freely at a home or residence, CIF, FOB or under other similar provisions or including assembly, if of the transport is performed by the Contractor.

## 7. Returns

Goods returns shall only be accepted if the goods remain in a re-sellable condition and after prior agreement. The returns are made at the expense and risk of the client. Reimbursements are made with 15% discount, however with at least EUR 40.00 for administrative overheads.

## 8. Guarantee

8.1 The client is to investigate the received goods regarding amounts, quality and guaranteed characteristics. Claims for obvious defects are to be made within 10 days through written notification to the Contractor.

8.2 Upon request of the Contractor, the goods that are the object of a complaint by the client are to be sent back to the Contractor, carriage paid. If the defect claim turns out to be justified in such a case, the Contractor shall bear the cost of the return.

8.3 For defects, including the lack of guaranteed characteristics, the Contractor is liable as follows, under exclusion of further claims:

a) All parts that become demonstrably unusable or are substantially limited in their usability as the consequence of circumstances occurring before the transfer of risk due to defective construction, material properties or construction manner, within 12 months calculated as of the transfer of risk, shall be repaired for free or replaced by new parts (replacement delivery) by the Contractor, at their own choice.

b) The Contractor bears the costs caused by the repairs or replacement delivery, up to the amount of the value of the order value of the part in question to be repaired or replaced.

c) The Contractor is to be granted an appropriate period of time and the opportunity for the performance all of the changes (repairs) deemed necessary by the Contractor or for the delivery of replacement parts. An inappropriately short period automatically triggers an appropriate period, if the client refuses this the Contractor is freed from the guarantee obligation.

d) The period for defect remedy is extended by the length of the operations interruption that is caused by the necessity of repairs, replacement delivery or replacement services. This applies to all parts that could not be appropriately used due to the interruption.

e) The guarantee does not apply to natural wear, or more generally to damage caused by incorrect or negligent handling or assembly, extraordinary loads, inappropriate means of operation, electronic influences and similar issues. The guarantee expires if the delivered object is processed or changed by the client or a third party.

## 9. General liability limitation

The liability of the Contractor is determined exclusively by the agreements concluded in the previous section. For damage of the client, of any type, the Contractor is only liable if this damage was caused deliberately or through gross negligence by the Contractor or the Contractor's vicarious agents. Any further liability is excluded. The Contractor bears no liability for consequential damage of any type and for any reason. The Contractor is prepared, upon written order, to participate in the commissioning by a service employee, for a charge. If such an order is not established, the purchaser thereby recognises that they possess sufficient expert knowledge for this and frees the Contractor from the counselling liability.

## 10. Additional provisions for assembly work:

a) The deployment of our technical staff, which we reserve the right to choose on the basis of the information about the work to be performed provided by the purchaser, is conducted upon the express request of the client.

b) The client is responsible for the observance of the local safety provisions and is to inform our staff of any particular local safety provisions to be applied or of risks upon the conclusion of the contract.

c) The client is to inform us immediately of any accidents concerning our staff.

d) The materials necessary to perform the work and the cost of their transport to the worksite are to be borne by the client.

e) The client is to take all preparations and measures that are necessary for the proper course of the work, its performance free of disturbances and its unrestricted ending, regarding staff and materials, at their own account and risk, in good time, before the agreed beginning of the assembly work and during its performance. Any scaffolding, ground, foundation or drilling work, etc., must be determined before the agreed beginning of the assembly work. Operating materials such as fuel, petrol, electricity, compressed air etc. are to be provided at the worksite in good time, including the necessary connections. Appropriate rooms are to be provided for the accommodation and stay of the workforce and materials, the client is to ensure their heating and lighting at their own cost.

f) The client is to accept custody of all the work utensils and vehicles of the assembly staff brought by us and is liable until the full termination of the assembly work or until the clearing and departure transport of the work utensils and movables, and, with regard to risk, up to force majeure for damage, destruction and loss.

## 11. Retention of property

11.1 The goods, including the packaging, remain the property of Ing. Sumetzberger GMBH, along with all claims due to the Contractor resulting from the business relationship with the client, until their full payment – in case of payment by cheque or exchange, until the redemption of such.

11.2 The client is obliged to give immediate access to the goods delivered under retention of property or transferred rights.

11.3 The Contractor is entitled, at any time, to request the release of the objects in the possession of the client if the fulfilment of the claims of the Contractor by the client is at risk or if the client does not fulfil their obligations.

11.4 The client is obliged to take the necessary precautions and provide all the legally required documents at the worksite, so that the retention of property is effective or so that other security to the benefit of the Contractor is established or maintained.

11.5 If the securities existing for the Contractor exceed the value of the claims to be secured by more than 20% in all, the Contractor is prepared to release securities, according to the choice of the client, upon request by the client or a third party disadvantaged by the over-insurance or the Contractor.

## 12. Refusal of acceptance

12.1 The Contractor reserves the right to request damage compensation due to non-acceptance, without prejudice to further claims, without particular proof, amounting to 30% of the agreed price.

12.2 For goods manufactured at the wish of the client, the Contractor is entitled to the compensation of the full contractual price in every case.

## 13. Copyright – technical information

13.1 The Contractor reserves the copyright for all representations, drawings and other documents provided by the Contractor.

13.2 Characteristics indications and other technical information are non-binding and do not represent a properties guarantee. The Contractor is entitled change the technical data of the delivery object, as long as this is reasonable for the client.

## 14. Partial nullity

If a provision of the general conditions of sale, delivery and assembly or a provision in the context of other agreements is or becomes invalid, this shall not affect the validity of all the other provisions or agreements.

## 15. Place of fulfilment and jurisdiction

15.1 For all legal disputes between the parties that result from or arise in the context of this contract, Austrian law applies to the exclusion of all others.

15.2 The sole place of jurisdiction for all legal disputes is Vienna. The Contractor is also entitled to file a suit against the client at the place of registration of the client.

## 16. General

For the remainder, the general conditions of delivery of the Austrian electrical industry apply, published by the electrical industry trade association of Austria, in its up-to-date version.