

# GENERAL TERMS AND CONDITIONS

## FOR SALES AND DELIVERY

of

## Action Composite GmbH

(AC)

### **1. Application:**

Our deliveries and legal agreements exclusively apply the following conditions. Our general terms and conditions also apply to all future contracts in the context of our business relationship, even if a reference in a particular case should not be made expressly and shall apply in particular to the supply of spare parts and repair orders. Exceptions and additions will only be honoured if we confirm them in writing. The following provisions relating to supplies of goods shall equally apply to services. Purchase conditions of the contractual partner shall not bind us, even if we do not expressly contradict them.

### **2. Offers and Contracts :**

The contract shall be deemed concluded when we have sent a written order confirmation receipt of your order. Changes and amendments to the contract shall be invalid unless confirmed in writing. Purchase conditions of the contractor shall only be binding on us if we have agreed to them separately. Our offers are subject to change.

All agreements are binding for us upon our written confirmation. However, the contractor cannot refer to these even if we do deliver without written confirmation. If conflicting contract documents exist the contract formulated by us is deemed valid. The contractor is obliged to check our confirmations. If the contractor does not object within ten days from receipt of our confirmation it is acknowledged by him to be correct.

If a contract with us is not signed, we reserve the right to charge for the preparation of detailed cost estimates and extensive plans to a reasonable extent. If a contract is signed and in the absence of other written agreements, this work is included in the prices.

Our cost estimates are not binding if their liability was not expressly agreed in writing. Therefore, if a considerable excess of the cost estimate occurs it is inevitable that the extra cost have to be paid by the contractor in accordance with the unit prices of the estimate or the standard prices, even if it has not been mentioned by us in the cost estimate.

We reserve the right to make changes to designs, dimensions and weight, as well as any deviations from predefined requirements, specifications and design guidelines, to the extent they are necessary and useful.

If specific provisions under public law or other binding norms apply to the place, for which the contractor uses our deliveries and services, the contract partner is to make these known to us before ordering, if our services are or may be affected. If the contractual partner does not fulfil this duty, he shall be liable for any damage arising thereof, for example, for third party claims against us for the failure to comply with these rules or standards; the party themselves has no right to warranty or claims for damages with us.

If import and export licenses, foreign exchange or other regulatory approvals for the execution of the contract are required, it is the contractor who is responsible for the procurement, and who must make every effort to obtain the necessary licenses and permits in good time at his own expense.

### **3. Changes to our services:**

If, when carrying out the work or while providing the services or delivery of these services it should come to light that the work or the delivery of services cannot be provided in the form agreed for technical or other reasons, we will notify the contractors accordingly. If the contractor decides that the work, the service or delivery should be carried out in the newly recognized way by us, he shall be required to pay all associated costs.

Should the contracting party decide, however, not to allow the work, the supply or service to be carried out in this case, and he insists upon the form originally agreed, we are thus entitled to withdraw from the contract and the original remuneration agreed by the contractor is to be paid, less the work which has not yet been carried out or which has been acquired in another way or purchase.

Notwithstanding this, we are also entitled to perform our services in accordance with the wishes of the contracting party, but are exempt from all warranties and claims for damages that would not have occurred if the contracting party would have accepted the amendments proposed in this case.

A reduction of the scope of our deliveries and services is only permitted with our express written consent. If we do not agree, the contractor commits to pay us the agreed fee in the contract for those goods and services which by arrangement of the contractual partner no longer need to be delivered by us. However, we are obliged to deduct what we subsequently save in not rendering the services or acquired by redeploying the goods or services elsewhere.

An extension of the scope of goods and services to be provided by us is only permitted with our express written consent. We are not obliged to supply larger numbers or the same numbers in a shorter delivery time than was agreed in the original contract. If we refuse an agreement to increase the number of units or to deliver the same numbers in a shorter delivery period, the contractor is entitled to withdraw from the contract, however the fee originally agreed has to be paid to us less the work which has not yet been carried out or which has been acquired in another way or purchase.

### **4 Drawings and Documents:**

The information contained in catalogues, brochures, circulars, advertisements, illustrations, websites and price lists etc. regarding weight, dimensions, price, etc. shall only be binding if reference is contained expressly in a written confirmation by us.

The development of systems, components, technologies and software as well as drawings, plans, drawings and other technical documents, which may also be part of the offer, are the intellectual property of AC and may only be reproduced, distributed, transmitted to third parties, be published or presented with the express written consent.

Data handed over to us, such as drawings, etc., including those which have not led to an order, are available to the contracting partner. If they are not picked up within 6 weeks of the offer or of an order, we are entitled to destroy these.

As far as we are required to warn the contractor about important circumstances with regard to missing requirements for the proper conduct of our services or otherwise for the provision of our goods and, we will fulfil this duty completely so that appropriate requirements or instructions - even in abstract form - are given before placing the order, for example. In this case we are not obliged to notify to the contractor again of the occurrence of such circumstances or hindrances during the provision of our goods and services.

If circumstances or hindrances occur during our deliveries and services which may trigger such a duty to warn, it is sufficient if we communicate these circumstances and hindrances verbally to the contractor. In addition, our duty to warn is limited, in any case, to circumstances that are recognizable without further inspection measures or which catch the eye.

## 5. Delivery time:

Unless otherwise agreed, the delivery period begins with the latest of the following dates:

- a) the date of returning the undersigned order confirmation ;
- b) the date of fulfilment of all the technical, commercial and financial conditions agreed with the contractor;
- c) the date on which we receive a payment prior to delivery and / or the creation of a, or any other, payment guarantee has been carried out.

The delivery deadline is met if, before its expiration, the notice of delivery has been sent, or the delivery item has left the plant.

Delivery times are not binding on us unless expressly otherwise agreed in writing. This is due to the dependency on the delivery of our suppliers. We do, however, endeavour to meet promised deadlines, if possible.

The delivery period shall be extended accordingly in the case of labour disputes, strikes and lockouts, and circumstances out of the control of the parties, such as fire, mobilization, requisition, embargo, prohibition of currency transfers, rebellion, lack of transport, general shortage of supplies, limiting the energy consumption, delays in the delivery of materials, products by suppliers etc. This also applies if these circumstances occur at sub-suppliers. The delivery period shall be extended by the duration of such measures and hindrances. The circumstances described above are also not our responsibility if they occur during an already existing delay.

Penalties for late delivery are excluded.

If we have caused a delay in delivery, the other party may require fulfilled by us or set a reasonable deadline extension, for fulfilling all services which may include a threat of resignation. In particular with regard to custom-made goods the amount of extension to the time period must be considered that it is not possible for us to otherwise use already manufactured parts. If the time extension is not kept due to our fault, the other party may withdraw from the contract by written notice in respect of all parts not yet delivered. The same shall apply to delivered goods, which cannot be used in an appropriate manner without the outstanding goods. Compensation can only be paid in the case of intent and gross negligence. For partial deliveries not covered by the termination of contract we are entitled to the agreed remuneration. Delivered goods and not suitable goods shall be returned to us by the contractors.

Any other claims by the contractual partner against us, than the claims mentioned in this point regarding delay by us are excluded.

If the contractor does not accept the goods sent to the contractually agreed place and at the contractually agreed time, we can either demand the fulfilment or withdraw from the contract after a grace period.

In both cases we are entitled to full compensation.

The contractual partner is not entitled to change delivery periods and delivery dates for whatever reason, without our written permission. If the contractor states that they will receive a delivery or parts thereof at a later date than agreed, we have the right to either withdraw from the contract or to insist on fulfilment of the contract and obligation of payment by the contractor. In both cases, the contractor is required fully compensate for all costs arising from the delay, including replacement costs for materials and inventory costs.

If we agree to a delivery date or a change to a delivery date, we are entitled to adjust our production schedules and prices accordingly, even if a fixed price has been agreed.

If the delivery is delayed for more than three months, for reasons which lie with the contractor, the contractor has to pay for all our services rendered so and 80 % of our outstanding deliveries and services.

## **6. Prices:**

Prices are valid at the time of the agreement and are valid, unless agreed otherwise, exclusive of VAT. We have the right to increase our prices, if at the time of delivery, circumstances have occurred which cannot be influenced by us, which have affected the original calculation of the prices.

This applies in particular to price fluctuations, increases in material prices, salaries, wages, fees, subsequent introduction of or increases in taxes, duties, public duties, freight and other incidental fees, by which our supply is directly or indirectly affected or made more expensive. We are also entitled to add additional costs which have been thus incurred by us, such as overtime, for fulfilling the order and pass these on to the contractor.

Unless otherwise agreed,

a) the goods are packaged in the standard manner at the expense of the contractor in order to avoid damage to the goods under normal transport conditions, en route to the specified destination. This can only be taken back on agreement;

b) the published rates are from our factory without packing and without loading;

Part-specific reusable packaging is to be provided to us by the contractor in sufficient quantities, free of charge, otherwise we are entitled to use our own appropriate packaging and to charge the contractor.

We assume no liability for damage or loss of reusable packaging which was provided by the contractor, unless it can be expressly proven that the damage or loss was inflicted and caused by us. In any case, we are only liable for intent or gross negligence.

When signing a contract leaving prices open the prices will be calculated using the valid price lists on the day of delivery.

Unless otherwise agreed in writing, we will charge cost for an agreed assembly separately.

All prices quoted are based on the currently known dimensions (component without undercuts). First sample prices must be defined separately.

## **7. Order:**

Initial samples created by us should be immediately checked carefully upon receipt by the contractor.

At our request, we are entitled to participate in the examination. As soon as the contractor has given his approval in writing, it shall be deemed approved and accepted. We are not liable for delays and a possible overrun on an agreed schedule due to the contractor not carrying out an immediate review and approval.

Additional costs incurred by us due to a delayed examination and approval by the contractor shall be reimbursed to us by the contractor.

## **8. Transfer of risk:**

Unless otherwise agreed, the goods shall be "ex works" (collection).

Incidentally, the incoterms in force on the date of contract are valid.

The method of shipment is at our discretion. Should the contractor require a special mode of transport, or a particular transport, we will charge for this separately.

Transports are at the risk of the contractor. All transport risks are transferred in each case with delivery (ex works) to the contractual partner.

Delivery vehicles must move up to the unloading point unhindered and safely and be unloaded without delay.

All breaches of this obligation and any additional costs and damages incurred, including any claims by third parties are to be reimbursed to us. The discharge of transport is the responsibility of the contractor, even if we assign the transport company, in case that we are acting as a representative of the contractor. If our people carry out any activities in the course of discharging, so they are assumed to be workers handed over to us by the contractor.

The goods will be insured by us against damage only on specific written instructions from and on behalf of the contractor.

## 9. Payment:

Provided no other payment arrangements have been made in individual cases, our services are due for payment as follows :

- a) Construction costs for tools : 1/3 with order, 1/3 at completion of tool , 1/3 after release of the first sample , not later than 30 days after delivery of the initial sample to the contractor ;
- b) Development costs : 100 % with order ;
- c) First sample costs : 100% after release of the first sample , not later than 30 days after delivery of the initial sample to the contractor ;
- d) Components (series) : 100% after the respective deliveries.
- e) Unless a different agreement is made in individual cases, our invoices are payable within 30 days without any deductions.

The expenses must be paid by the contractor. Payments by bank transfer are valid on the day on which the amount is credited to our bank account.

If the contractor is behind with an agreed payment or other services, we can either insist on the fulfilment of the contract or

- a) postpone the fulfilment of our own obligations until the arrears in payments or other benefits have been paid,
- b) bill the entire outstanding purchase price,
- c) exercise a reasonable extension of the delivery period ,
- d) provided that on the part of the contractor no reason for credit is present, charge interest at the rate of 8 percentage points above the prevailing charge rate of the European Central Bank from the date of maturity,
- e) confirm the withdrawal from the contract whilst adhering to a reasonable grace period.

The contractor must at least compensate us for the resulting dunning and collection costs as well as any further contract damages.

If these payment terms are not met or circumstances are unknown to us at the time of the relevant agreement, which diminish the creditworthiness of the other party, we shall be entitled to all our demands immediately, even those from other outstanding orders. We have the right in this case, to only carry out outstanding deliveries after advance payments are made, including those from other orders, or withdraw from the contract altogether and demand full compensation in the amount of our services provided. The right to take back the goods delivered under retention of ownership remains unaffected.

In the case of default in payment the contractor is also obliged upon our request for to pay for all outstanding claims, including interest, fees, and dunning and collection costs, in the appropriate manner.

If instalment payments are agreed, the entire outstanding amount is due if even one instalment is not paid. Furthermore, interest in the amount of 8 percentage points is to be paid above the base rate of the European Central Bank for declining capital.

Payments received are used first for costs (expenses) , then interest and are finally deducted from capital. Differing dedication declarations can be given within four weeks of receipt of payment. We are entitled to expect first dedicated payments on unsecured or the oldest invoices.

## 10. Retention of ownership:

We reserve the right of ownership for all of the parts supplied by us up until the complete fulfilment of all financial obligations by the other party. We are entitled to enter premises at any time and to identify or collect our goods. The contractor shall comply with the formal conditions required to ensure the retention of ownership.

If our goods are processed or combined (blended or combined) with other items not belonging to us, we shall acquire co-ownership of the new item in proportion to the value of our goods (= invoice value) at the time of processing of the other processed or when combining the product. Our retention of ownership also extends to the newly created product.

We are entitled at any time to transfer the property rights to any third party, in particular credit institutions.

The receivables arising to third parties as a result of the resale of the reserved goods, whether raw, processed or combined, are hereby assigned to us by the contractor with all ancillary rights to the extent of our monies owed, plus interest and costs and irrespective of whether the reserved goods will be sold, with or without processing or combining, to one or several buyers. The contractual partner is obliged to record the assignment of the claim in his books and to make the assignment known to his customer at our request. If this notification is denied by the contractor, we are obliged to exercise the right to inform the recipient.

In the case of a levy to seizure or other claims, the contractual partner shall be notified without delay and to exercise our right of property. The costs of the related legal proceedings are borne by the contractor.

## **11. Warranty and Damages :**

Warranty Period: Six months starting with acquisition, but not later than eight weeks from delivery release in accordance with our General Conditions for Sale and Delivery.

Only properties that have been pledged by us in writing apply to the warranty. Material-related, technology - related or production-related variations in size, equipment and material do not justify a complaint.

If an article is manufactured based on design specifications, drawings or other specifications of the contractual partner, our liability does not extend to the correctness of the design, but that the workmanship complies with the instructions of the contractual partner. We are under no obligation to verify such information to its accuracy or suitability. The contractor has to inform us in these cases of any infringement of intellectual property rights and to indemnify us and release us from liability.

Plans, CAD data, etc. created by us must be checked by the contractor carefully immediately upon receipt.

Once the contractor issues approval, it shall be deemed approved. We are not liable for delays and a possible delay to an agreed schedule due to a delay of immediate approval by the contractor. Additional costs incurred to us due to delayed examination and approval by the contractor shall be reimbursed to us by the contractor.

If these documents have not been created by us, but by third parties, we are not liable for their negligence, but only for negligence in the selection of this third party. Selection negligence is excluded if the appointment of the third party is the request of the contractual partner.

We are only bound by our statements which have been made public regarding the object itself or the properties of samples and patterns provided by us, if we expressly stated this in our offer or in our order confirmation.

We are not bound by the statements of the manufacturer, importer in the EEA or a person who, in whatever form, is referred to as a manufacturer. Our merchandise only offers the guarantees that can be expected with regard to licensing regulations, operating instructions, our rules on the treatment of the contractual object - and other instructions given - particularly with regard to any prescribed examinations.

We are not liable for delivery mistakes, performance or for errors by our subcontractors, unless they have been instructed by us at the sole request or on behalf of the contractor.

The contract partner is obliged by their receipt of deliveries to check our delivery in the most careful manner and without delay. Any defects must be reported immediately upon receipt of the goods to us in writing; defects that cannot be discovered in such inspections should be reported immediately after they occur and also notified after the immediate stoppage of any production or processing, otherwise all claims do not apply.

On the plea of lack of approval, we can also invoke in the case of dispute, even if we have not demanded this out of court.

Our warranty applies only to defects which appear at times used properly and under normal use.

In particular, it is not accepted for defects that are based on incorrect operations by the contractor or his agent, lack of maintenance or servicing, higher or different kind of stress, faulty repairs or modifications by anyone other than us or our authorized representatives carried out without our written permission, as well as for normal wear.

We have the sole right to meet warranty claims by way of repair, replacement or price reduction. The contractor expressly waives the right to cancel the contract. Our obligation to provide a warranty for defective goods is omitted if the contractor's payment obligations towards us are not fulfilled or timely thereafter.

The replacement or improvement is done wherever possible by us on our premises, where the contractor is obliged to send our goods to us; in all other cases, we will carry out improvements on site. If it turns out that our merchandise is not defective or defects are not caused by us, the contract partner is obliged to reimburse all costs incurred.

For warranty work the contractor has to supply the necessary tools, such as lifting devices, electricity, etc. free of charge. Any replaced parts become our property.

The claim for defects shall not entitle the contractor to exercise a breach of contract or to amend the terms of payment, especially not for the total or partial retention of the fee.

An extension, suspension or interruption of the warranty period as a result of corrective action does not take place.

It is expressly understood and agreed that whenever we are obliged under these conditions, to pay compensation, we do not have to pay the contractor any compensation for damage to goods that are not subject of the contract, for production downtime, loss of profits , loss of use, loss of contracts or any other

economic or indirect consequential damage. For other damages, we are only liable if we are guilty of at least gross negligence.

In any case, compensation to be paid by us will cover the amount 10 percent of the value of the contract amount and be limited to a maximum of € 500,000.00.

All claims for damages from defects in deliveries and/or services must be made within one year after the expiry of the contractual warranty period - and the deficiency must be expressly recognized by us -, otherwise claims will expire.

All claims (improvement, price reduction, compensation, etc.) made by the contractor shall be excluded if we have not been asked beforehand in writing, setting a reasonable grace period to rectify the deficiencies.

Due to the unconditional conclusion of the contract the contractor relinquishes all pre-contractual policies on our part, such as the duty to warn or duty to investigate, unless we are guilty of wilful intent or gross negligence.

This is particularly true when the contracts based on a tender procedure is carried out, in which our services are planned and circumscribed by the contractor or a third party appointed by them.

If we have agreed to penal payments in the contract, a moderation law applies, which may be asserted by us under the guidelines of moderation laws.

## **12. Acts of nature:**

We are fully or partially exempt from fulfilling the contract if we are prevented doing so by acts of nature. Acts of nature are events that are unforeseeable and unavoidable for us and do not come from our sphere. Strikes and industrial disputes shall be regarded as events of acts of nature.

A contractor affected by an act of nature can only invoke acts of nature if it is confirmed to us without delay by the respective government agency or chamber of commerce in the delivery country within five calendar days of the expected beginning and anticipated end of disturbance and the duration of the delay.

If acts of nature occur the contractor shall make every effort to remove or reduce the hindrances and the anticipated damage as well as to keep us constantly informed, otherwise it will be liable for damages.

Dates and deadlines that cannot be met due to acts of nature can be extended by the duration of the effects of the acts of nature or any other period to be determined by mutual agreement.

If an act of nature continues for more than two weeks, we will look for a solution with our contractual partner within the negotiations for handling technical implications. If no amicable solution can be reached, we can withdraw from the contract in whole or in part. In such a case the contractor is obliged to compensate all services already provided by us.

## **13. Settlement and retention:**

The contractor may only settle our claims which have been legally established or recognized by us in writing. The contractual partner is not entitled to withhold payments for guarantee, warranty or claims for damages.

## **14. Product liability:**

Insofar as the provisions of the Product Liability Act are mandatory they are also apply the basis for the present contract. The contractor must be aware all instructions that have been published and warnings regarding the danger of the goods. They are considered a warning by us. The contractor further undertakes on his part to warn its contractors comprehensively and to impose a similar duty to warn further down the contractual chain. Otherwise the seller releases us from liability for all damages regarding which ever laws shall apply. The contractor waives recourse against us according to the German Product Liability Act. If the error is caused by several parties, this commits the contractor to first make claims with the other liable parties. Claims for property damage are excluded. The contractor shall to agree that this exclusion is also agreed upon by its contractors and further contracting parties in their obligation to pay damages.

The contractor shall take out an insurance policy on the lines of the German Product Liability Act and to use this before any insurance claim against us is made.

Our liability for defective products, provided that we have to supply the replacement, is limited to the amount of our liability insurance.

**15. Data non-disclosure:**

The data required for order processing and accounting procedures, such as name, address, and accounting information of the contractor are stored in our computer system.

The parties agree to maintain absolute secrecy of the information and knowledge received by them from the business with regard to third parties.

Any breach of this confidentiality obligation by the contractual partner incurs a penalty of € 50,000.00 for each case. The assertion of further damages and other claims is at our liberty. The penalty is subject to neither a statutory nor a judicial right.

**16. Repeat orders, tool scrapping, returns:**

The parts produced by us can be reordered up to 10 years after the series-order phase-out date by the contractor. An order is only possible with a minimum order of 50 pieces. To reorder, the general rule is that they cannot be delivered at the price of the original series - the prices are to be negotiated separately with us.

If no separate price agreement has been made, we are entitled to charge the cost plus a reasonable markup usual to the industry so that we are able to make a profit.

All manufacturing facilities specific for the parts are, irrespective of ownership, will be kept by us for 10 years. By written request of the contractor they can also be scrapped earlier.

The scrapping costs are not included in the goods and services offered by us. The actual costs of scrapping are to be paid by the contractor.

Up until scrapping the contractor shall pay for the costs of storage and insurance of the production facilities.

In case of damage or destruction of production facilities, we are only liable if cases of wilful misconduct or gross negligence apply.

The return of defective goods requires our prior written consent. If we agree, these must be returned at no cost to us to our factory in Ried. Returned goods which arrive here without our prior written consent shall not be accepted or returned back to and at the expense of the consignor.

**17. Jurisdiction, Applicable Law, Place of Jurisdiction:**

Jurisdiction for all disputes arising directly or indirectly from the contractual disputes is the legal court in Ried, Austria. We can, however, instruct another court of legal jurisdiction responsible for the contractor.

The parties may agree on the jurisdiction of an arbitral court.

The contract is subject to Austrian law excluding the UN sales law.

For deliveries and payments the place of jurisdiction is our registered office, even if the transfer is agreed to be a different place.

**18. Ineffectiveness, additional standards:**

We are also entitled to employ subcontractors who are not subject to certification (ISO, etc.), and also do not assume any liability that contractors employed by us are certified accordingly.

These General Conditions for Sale and Delivery shall remain binding even if individual points no longer take effect.

A point which is no longer valid and thus ineffective is to be replaced by another, which is legally effective and which fulfils the intended economic purpose of the invalid contract point as close as possible.

The contractor states that, with regard to the favourable pricing made for him and due to any shift in the legal situation, no disadvantage arises from these conditions.

As of September 2011