

# **GENERAL TERMS AND CONDITIONS OF SALES AND DELIVERY**

## **Franz Achleitner Fahrzeugbau und Reifenzentrum GmbH (hereinafter referred to as "Achleitner")**

### **I. General Information**

- (1) These Terms and Conditions of Sale and Delivery are an integral part of every offer and every contract.
- (2) Only offers and contracts which have been signed on behalf of the supplier company are legally effective and binding. The Seller shall be bound to this written offer for a full two weeks. If the Purchaser does not accept this in writing before the expiry of this period, all agreements shall be deemed invalid.

### **II. Prices**

- (1) The prices are, unless explicitly agreed otherwise, net prices ex works from the supplier, without packaging and excluding VAT. Price increases that occur independently of the intentions of the supplier company (increases in material costs and changes within trades as a result of new legal regulations) may be passed on to the ordering party.
- (2) All costs associated with the performance of this legal transaction or arising therefrom (e.g. shipping costs, insurance, finance costs, the cost of any land registry security or impounding of the vehicle), and any fees or taxes shall be borne in full by the Purchaser alone, without entitlement to reimbursement.

### **III. Terms of Payment**

- (1) A separately negotiable down payment should be made concurrently with the order. Unless agreed otherwise, the remaining purchase price shall become due for payment immediately upon delivery and acceptance. All payments should be made free of charges and deductions. In the event of a default in payment or acceptance, default interest equivalent at least to the rate charged for current account overdrafts shall be payable. Furthermore, in the event of a delay in acceptance, storage fees will be charged at the standard rate. If the Purchaser fails to fulfil the contract, the supplier company is entitled to claim full compensation for delay or a contractual

penalty equal to 15 % of the purchase price. The contractual penalty cannot be reduced by court order. Any right of withdrawal shall remain unaffected by this.

#### **(2) Reservation of Title**

All purchase objects shall remain under the ownership of the supplier company until all Purchaser obligations are met. Until then, any disposal, pledging, transfer of ownership by way of security, leasing or other surrender of the purchase object shall require the prior written approval of the supplier company. All payments on the part of the Purchaser shall, irrespective of any allocation by the Purchaser, first be used to cover any receivables of the supplier company for repair or the delivery of goods and spare parts, then interest and other extra charges and, only thereafter, to cover the purchase price claim for the main item. Offsetting is always carried out against the oldest claim in each case.

#### **(3) The company Achleitner is entitled to reserve the type-approval certificate (vehicle inspection rating) until all obligations of the Purchaser arising from the purchase agreement have been met.**

#### **(4) If third-party access to goods supplied by us under reservation of title is required, the Purchaser must verifiably inform the company Achleitner of this in writing.**

#### **(5) As long as title is retained, the Purchaser shall insure the full value of the purchase object against all risks, including fire, and restrict the transferability of the insurance policy in favour of the company Achleitner. The company Achleitner is also entitled, as long as title is reserved, to demand that a comprehensive insurance policy be taken out for the purchased item. All claims arising from such comprehensive insurance policy are pledged to the company Achleitner and transferability should be restricted in favour of the company Achleitner when concluding the policy. If the Purchaser refuses to take out such an insurance policy, the company Achleitner is entitled to take out insurance at the expense of the Purchaser itself. In the event of a claim, any compensatory payments from a comprehensive insurance policy must first be used to pay the necessary repair costs to rectify the damage**

incurred. In the event of the purchase object being written-off, the company Achleitner shall be entitled to the insurance compensation as a means of offsetting of any purchase price still outstanding.

- (6) The Purchaser is under obligation to keep the purchase object in orderly condition for the duration of the reservation of title and to have any necessary repairs carried out immediately – except in emergencies – in the company Achleitner's workshop or in a workshop approved by the latter. In any case, while the reservation of title applies, the Purchaser must inform the company Achleitner of any damage to the vehicle within 24 hours.
- (7) The offsetting of existing or alleged counter-claims of the Purchaser against the claim of the supply company is excluded.
- (8) The transfer of any claims against the Seller is excluded.

#### **IV. In the event of default in payment**

- (1) In the event of default in payment and violation of any other material contractual provision, specifically in the event of insolvency on the part of the Purchaser, the supplier company is entitled to withdraw from the contract and claim compensation for damages due to non-performance. The provision of Art. 8 No. 21 of the Regulation on the Introduction of Regulations under Commercial Law in the State of Austria (EVHGB) shall be excluded by mutual agreement. Reference is made here to the final sentence of provision 3.1.
- (2) The supplier company is entitled to declare all claims against the Purchaser due ahead of time if the latter is in default of payment by more than 14 days or if circumstances are known which make the Purchaser's ability to fulfil the obligation appear uncertain. Where payment in instalments has been arranged, a payment target shall be considered to have been missed if the Purchaser is in default of an instalment by more than four weeks, despite a reminder and the setting of a grace period of more than two weeks on pain of default. If a payment target has been missed, the supplier company is entitled to seize the purchased object and to redeem it according to commercial principles (Section 373 Commercial Code (HGB)). In this case, the Purchaser must surrender the purchased object to the supplier company on request within three days. In the case of refusal, the supplier company is entitled to seize the purchase item, wherever it is, without resorting to the help of the authorities.

- (3) It is generally agreed that insolvency on the part of the Purchaser as defined under the legislation should be irrefutably presumed if the latter defaults on payments to such an extent that a payment target is missed.

#### **V. Delivery**

- (1) The delivery times specified to the Purchaser are non-binding. Requests for changes must be accepted by the Seller in writing and, in this case, the delivery period shall extend by half the arranged delivery time. If the delivery time is delayed by more than three months for reasons the supplier company is answerable for, the ordering party may withdraw from the contract in accordance with the provisions of the Austrian Civil Code (ABGB). The term begins upon receipt of the down payment at the earliest. The delivery date should be reset in the event of order changes.
- (2) The prospectus information relating to dimensions, weights, speeds, running costs and performance should be regarded only as approximate values.
- (3) The supplier company shall take any used parts accumulated during repairs into its possession at no cost upon removal.
- (4) The supplier company determines the tyres to be fitted to the vehicle.
- (5) The manufacturing company reserves the right to make design, shape and configuration changes which are necessary on technical grounds.
- (6) The Purchaser is not entitled to claim damages for non-performance or default unless this can be attributed to intent.

#### **VI. Fulfilment and Terms of Acceptance**

- (1) The contract is fulfilled by the supplier company:
  - a) For deliveries ex works: on the date that a verifiable notice of readiness for shipment is issued. The Purchaser must check and accept the purchased object at the agreed acceptance location – at the Seller's works unless agreed otherwise, within eight days of receiving the notice of readiness. If this acceptance does not take place within eight days, then the purchased object shall be deemed as properly accepted and approved. In the event of a default on acceptance, the Purchaser undertakes to pay the customary daily storage fee at the plant.

- b) For delivery with an agreed shipment location: upon shipment from the supplier's works. In this case, shipment shall always take place at the expense and risk of the Purchaser.
- (2) All risks, including those associated with accidental loss, are transferred to the Purchaser at the point of fulfilment, who shall be responsible for taking out the necessary insurance cover at its own cost. This also applies to vehicles handed over for repair, from the point of acceptance to the point of fulfilment.

### **VII. Collateral and Joint Liability**

- (1) All securities granted to the Seller under this purchase contract, such as guarantees, cessions and reservation of title also serve simultaneously to secure all other receivables already due to the Seller from the Purchaser from other transactions and credits or any receivables which may be due from the Purchaser in future, including legal and enforcement costs. It is agreed that, all securities granted or to be granted to the Seller as part of other transactions concluded with the Purchaser, specifically cessions and ownership rights and lines at the disposal of the Seller, shall equally serve as a means of securing all claims of the Seller arising from the current contract. This also applies to receivables which the Seller acquired before or after the conclusion of this transaction by way of assignment or purchase.

### **VIII. Warranty**

- (1) The Supplier only warrants the defect-free condition of the vehicle in terms of material and workmanship in line with the current "state of the art" to the original purchaser, subject to fulfilment of the payment obligations and for the legally specified duration. The warranty is excluded if the total weight, axle pressure, payload underlying the purchase contract or the chassis payload capacity are exceeded, or, if the payload distribution on the vehicle is performed incorrectly by the operating personnel. The warranty obligations will be fulfilled, at the choice of the supplier's works, either by repairing parts sent without freight or packaging charges or through replacement of the same. In any case, only parts exhibiting a defect in material or workmanship shall be replaced. The wages and costs for installation and removal shall be borne by the Purchaser. Whether the supplier's works opts to have the defective parts or vehicles sent back for the purpose of rectification or replacement, the Purchaser shall bear all costs and risks of transportation. Defect rectification shall not result in an extension to the warranty period, nor shall it cause the same to start from the beginning again.

- (2) Warranty claims are only taken into consideration if they are raised with the Seller immediately after discovery of the defect. The warranty is void if the Purchaser does not follow the instructions of the supplier's works in relation to the use of vehicle (operating manual), and does arrange for proper performance of the prescribed checks. The supplier company is also entitled, in the case of suspected improper use or usage against the operating instructions, to seek the advice of an expert of its choice at the cost of the Purchaser for the purpose of claims assessment.
- (3) The right to a change or reduction shall only apply where rectification is not possible.
- (4) Replacements will not be granted for indirect or direct damage.
- (5) Natural wear or damage attributable to negligence, improper use or accidents are not covered by the warranty.
- (6) This warranty is void if the purchase item has been subject to alteration by a third party or due to the installation of third-party components.
- (7) If the Purchaser is not a consumer as defined by the Consumer Protection Act, the warranty does not cover used vehicles.

### **IX. Damage**

- (1) The supplier company shall not be held liable for damage, irrespective of nature. This does not apply to damage which has occurred as a result of intent or gross negligence, nor does it apply to personal injury. Provided the provisions of the Consumer Protection Act are not applicable to the contractual relationship, the Purchaser shall waive the contestation of this contract based on a defect, unless this was caused by the deliberate or grossly negligent actions of the Seller.

### **X. Place of Jurisdiction / Applicable Law**

- (1) The competent court in Innsbruck is agreed as the place of jurisdiction for all disputes arising from this contract (Section 104 JN – Law on Jurisdiction). The place of performance for both parties, with particular regard to Art. 5 (1) of the Lugano Convention (LGVÜ), is Wörgl. The application of the United Nations Convention on the International Sale of Goods (CISG) is excluded. It is taken as agreed that Austrian law shall apply.

### **XI. Exchange of Vehicles**

- (1) If the Seller accepts a vehicle as payment based on a separate agreement, then this exchange vehicle shall be transferred to the Seller upon the hand-over of the purchase item at the latest. The exchange of such vehicle shall take place on the basis of a separate purchase agreement which is based on an estimation log kept by the Seller or one of its staff. Where value-reducing changes in relation to the Seller's estimation log occur before the exchange vehicle hand-over date, the costs of rectifying such defects shall be deducted from the purchase price of the exchange vehicle. Equally, price reductions based on the provisions of the purchase agreement for the exchange vehicle shall be deducted from the agreed purchase price. The down payment of the agreed purchase price for the exchange vehicle will therefore decrease accordingly. The Purchaser should then pay the difference to the Seller in cash. If there is a delay in the hand-over of the exchange vehicle to the Seller, the latter is entitled to deduct 10 % of the agreed exchange purchase price for every month or part thereof by which the hand-over of the exchange vehicle is delayed. The purchase price claim of the Purchaser for their exchange vehicle there-fore reduces accordingly.

### **XII. Specification**

- (1) In the case of a sale by Purchaser's specification, the Purchaser shall make the specifications reserved to it within a period of 14 days from the conclusion of the contract. If it fails to do so, the manufacturer is entitled to make the specifications instead of the Purchaser. Alternatively, the manufacturer is also entitled to withdraw from the contract. If the manufacturer suffers damages due to a delay on the part of the Purchaser in providing specifications, it may assert this against the Purchaser.

### **XIII. Severability Clause**

- (1) If one of the provisions of this contract becomes invalid, the validity of the remaining contract other than affected part shall remain unaffected. This ineffective part of the contract shall be replaced by a corresponding new, legally effective passage. All remaining contractual provisions shall remain effective in full.

### **XIV. Anti-Corruption Clause**

- (1) "Achleitner is entitled to conduct on-site audits of its partners to determine whether agreements on integrity and corruption prevention are being adhered to. Achleitner shall be permitted to examine all relevant documents and records in connection therewith."

### **XV. Data Protection Act**

- (1) Achleitner strictly adheres to the provisions of the Data Protection Act when using and processing data. The use of personal data is regulated in the data protection regulations, which are available in the current version on the Achleitner website