

## **1. Scope of Application**

- 1.1. Our quotations, contracts, deliveries and services (the latter two hereinafter referred to jointly as "supplies") shall be governed exclusively by the present Standard Terms and Conditions of Sale and Delivery in relation to customers, unless otherwise expressly agreed in writing.
- 1.2. In addition to the present Standard Terms and Conditions of Sale and Delivery, the explicitly mutually agreed assembly conditions shall apply to assembly work carried out by the relevant company of Christof Industries GmbH (hereinafter referred to as "CI").
- 1.3. Any from the present Standard Terms and Conditions of Sale and Delivery deviating conditions shall only become binding to the contract parties if the respective CI company expressly agrees to these in writing within the context of each individual business transaction. If no express agreement in writing is concluded, suppletive legal provisions shall apply instead.
- 1.4. If any provision of these Standard Terms and Conditions of Sale and Delivery is or shall become invalid and/or unenforceable, this shall not affect the validity of the remaining provisions. The invalid provisions shall, without further agreement, be replaced by valid and enforceable provisions that best correspond to the function of the invalid and/or unenforceable provisions and the intentions of the contracting parties.
- 1.5. Any agreements, assurances or variations shall be executed in writing. This shall also apply to this written form requirement clause.

## **2. Quotations**

- 2.1. Quotations made by the relevant CI company shall be subject to change. Cost estimates shall be prepared by the relevant CI company to its best knowledge but no liability shall be assumed for their correctness. No separate notification shall be required for unavoidable cost increases of less than 15% (in words: fifteen percent), and such costs can be invoiced without further ado. Variations, Change orders or additional orders as well as all costs attributable to the customer's sphere shall be invoiced at a reasonable price.
- 2.2. Unless agreed otherwise, the preparation of quotations, plans, cost estimates and the like by the relevant CI company shall be reimbursed by the customer.

## **3. Conclusion of Contracts**

- 3.1. The contract shall be deemed to be closed when the relevant CI company confirms the customer's purchase order in writing.

3.2.

## **4. Terms of Delivery**

- 4.1. Liability regarding the agreed delivery times shall be subject to the fulfilment of all the obligations incumbent on the customer, in particular timely provision of documents, clarification and approval of all plans and drawings as well as compliance with the agreed payment terms.
- 4.2. The customer shall obtain any regulatory and third-party authorisations (e.g. licenses) or documents necessary for the execution of the contract before the agreed delivery date.
- 4.3. The relevant CI company shall be entitled to carry out preliminary and partial supplies and/or services and to submit partial invoices.
- 4.4. The involvement of subcontractors by the relevant CI company shall always be permitted.
- 4.5. Where not expressly agreed as binding, delivery dates shall be non-binding and shall always be deemed to be the probable dates of delivery and handover to the customer.
- 4.6. If compliance with the delivery date is prevented due to unforeseen or unavoidable circumstances, in particular events of "Force Majeure" affecting the relevant CI company or minimum one of its subcontractors or for reasons attributable to the customer's sphere of responsibility, the delivery period shall be extended at least for the duration of these circumstances. Should additional costs arise due to the extension of the delivery time as described above as a result of unforeseen or unavoidable circumstances, they shall be reimbursed to the relevant CI company by the customer.
- 4.7. Any supplies for which the premises of the relevant CI company are agreed as place of performance shall be called off immediately by the customer, otherwise the relevant CI company shall – at its sole discretion - be entitled to store the supplies at the customer's expense and risk after the expiry of 14 (in words: fourteen) calendar days counted from notification of readiness for dispatch.
- 4.8. The delivery time - whereof start and end shall be agreed upon among the parties - shall be deemed to be complied with if the supplies are available within the agreed delivery deadline at the place of performance and readiness for dispatch is notified respectively the services were executed at the place of performance.
- 4.9. Unless agreed otherwise, the customer shall assume responsibility for the costs of transportation and shall therefore be entitled to choose the method and route of transportation.
- 4.10. In case of delay of any supplies without default of the relevant CI company, the supplies shall be deemed to be delivered when notice of readiness for dispatch was sent.

**5. Place of Performance/ Transfer of Risk**

- 5.1. Unless agreed otherwise, the place of performance shall be the premises of the relevant CI company. In case of services provided at the customer's permanent establishment or site, the respective location shall be deemed to be the place of performance.
- 5.2. If the premises of the relevant CI company are the place of performance, the transfer of risk shall be deemed to take place upon handover to the (first) carrier or forwarder. In any other case the transfer of risk shall be deemed to take place at the agreed place of performance unless contractually agreed otherwise.

**6. Dimension, Weights, Quality**

- 6.1. Deviations in dimension, weight and quality shall be permitted in accordance with generally applicable practice. If calculated weights are decisive, the usual allowance shall be calculated in relation to rolling tolerance, rivets, screws, welding stock and the like.
- 6.2. The weights shall be determined on public scales and shall be decisive for the calculation. Proof of weight shall be executed by means of the presentation of a weighing slip.

**7. Acceptance**

- 7.1. Acceptance of the supplies shall be deemed to be the written confirmation of the customer about contract conform execution of the works.
- 7.2. The customer shall bear any costs arising in connection with the acceptance.
- 7.3. If services are not accepted within the agreed time limit, the transfer of risk shall be deemed to take place upon notification of readiness for acceptance by the relevant CI company.

**8. Reservation of Title**

- 8.1. The relevant CI company reserves title to all goods until full performance of the customer's contractual obligations, in particular until the full payment of the agreed price plus interest and costs.
- 8.2. In case of customer's payment default it shall be required, upon request by the relevant CI company, to immediately return goods already delivered.
- 8.3. If the item is taken abroad and if the reservation of title becomes invalid by virtue of provisions of property law, the customer shall be obliged to undertake all measures necessary to re-establish, maintain and enforce reservation of title.
- 8.4. The combining or mixing of the goods with other goods shall not be permitted until full payment of the agreed price plus interest and costs.
- 8.5. In case of seizure or other claim the customer shall be obliged to disclose the relevant CI company's reservation of title and to inform the relevant CI company immediately of the name of the pursuing party, the amount of the claim, the court and the case number.
- 8.6. In order to secure the claims of the relevant CI company, the customer hereby assigns to it its claims arising from the resale of the goods which are subject to reservation of title, even if they have been processed, transformed or mixed, and undertakes to make a corresponding entry in its books or invoices. In addition, the customer shall be obliged to notify the relevant CI company of any abnormal depreciation in the value of the goods.

**9. Price and Payment Terms**

- 9.1. The price agreed between the parties shall be net and shall not include any costs, taxes or duties which may arise in the course of the service that were not foreseeable at the time that the contract was awarded. These must be reimbursed separately by the customer.
- 9.2. If there is a delay in the performance of one of the obligations of the relevant CI company which is a precondition for a payment by the customer, the payment shall be made by the customer according to the actual progress. In case of default of payment or delay of other supplies resulting from this or other transactions the relevant CI company, irrespective of its other rights, may withhold or defer its own performances until the overdue payments have been made, and shall be entitled to withdraw from the contract without grace period and shall be entitled to reimbursement of the expenses and costs incurred until that time.

**10. Withdrawal from the Contract**

- 10.1. The relevant CI company shall be entitled at any time to withdraw in whole or in part from the contract - with or without grace period - for the following reasons:
  - a change in the customer's ownership structure;
  - the assignment of claims against the relevant CI company and the transfer of the collection of claims against the relevant CI company to third parties;
  - violations of statutory regulations or the provisions of these Standard Terms and Conditions of Sale and Delivery by the customer.

This shall also apply if

- the customer has - to the disadvantage of the relevant CI company - entered into immoral contracts or has entered into agreements that contravene the principles of competition;
- the customer has directly or indirectly promised or given benefits to employees of the relevant CI company who are involved in the conclusion or performance of the contract or has threatened them with or inflicted disadvantages upon them;
- the execution, respectively the commencement or the continuation of supplies became - for reasons attributable to the customer - impossible or further delayed despite a reasonable grace period;
- concerns have arisen about the customer's solvency and neither the requirement of the relevant CI company for an advance payment nor for a suitable security before delivery has been satisfied.

- 10.2. The customer shall be obliged to inform the relevant CI company immediately of such circumstances. In the event of withdrawal, performances or partial performances already provided shall be invoiced and paid for in accordance with the contract without prejudice to the relevant CI company's claim for indemnity, including pre-litigation expenses. This shall also apply in so far as the supplies have not yet been taken over by the customer and to preparatory activities provided by the relevant CI company. In lieu thereof the relevant CI company also reserves the right to require the return of goods already delivered.
- 10.3. Unless more specific regulations have been agreed, delay in delivery due to gross negligence attributable to the relevant CI company as well as an unfruitful expiry of a grace period shall be prerequisites for the customer's withdrawal from the contract. The withdrawal shall be asserted in writing by registered letter.

## **11. Warranty and Liability**

- 11.1. The customer shall be obliged to immediately assess the supplies provided by the relevant CI company, at the latest within 3 (in words: three) calendar days counted from the provision of these supplies, and claim possible defects according to Section 377 UGB (Austrian Commercial Code), on pain of the immediate forfeiture of all claims.
- 11.2. Section 924 of the ABGB (Austrian Civil Code) is excluded. The existence of defects shall be always be substantiated by the customer. The warranty period shall be 12 (in words: twelve) months counted from taking over. Rights of recourse according to Section 933b ABGB shall lapse after the expiry of 12 (in words: twelve) months.
- 11.3. The relevant CI company shall only be liable for hidden defects if these defects are reported within a period of 6 (in words: six) months counted from the date of the transfer of risk respectively counted from the completion of the assembly in case of delivery including installation,, however at the latest within 9 (in words: nine) months from notice of being ready for dispatch.
- 11.4. The warranty period shall not be extended by remedy of defects or any other remedial measure under warranty.
- 11.5. The relevant CI company shall only be liable for possible defects that occur when the prescribed operating conditions are complied with and during normal use of the supplies. No warranty shall be provided for wear and tear and minor damage to the paintwork.
- 11.6. The customer shall not be entitled to any claims for warranty and indemnity in the event of defects which are attributable to
- incomplete information of the customer;
  - unauthorised interventions, alterations and maintenance and repairs executed by the customer and/or third parties concerning supplies of the relevant CI company without written consent of the relevant CI company;
  - improper assembly, commissioning or use of the supplies of the relevant CI company by the customer and/or by third parties;
  - repair orders, alterations or conversions of already existing or third-party facilities or supplies.
- 11.7. The relevant CI company shall be entitled to choose the remedial measure at its own discretion. In the event of the remedying of defects, the relevant CI company can choose to either remedy the defect on site during normal working hours, have the defective goods or parts thereof sent to it for rectification or replace the defective goods or components. The relevant CI company must be granted the necessary time to analyse the defects and to execute rectification respectively to deliver spare parts or equipment, as the case may be.
- 11.8. All additional costs arising in connection with the remedying of the defects (such as for installation and dismantling, transportation, disposal, travel costs) shall be borne by the customer. For warranty work in the customer's premises, the necessary support personnel, lifting equipment, scaffolding and incidentals etc. shall be made available by the customer free of charge. Replaced parts shall become the property of the relevant CI company.
- 11.9. The cost of the remedying of defects by the customer itself or by third parties will only be accepted by the relevant CI company if prior written approval has been given for such remedy.
- 11.10. The relevant CI company does not assume any liability for indemnity or warranty for components which were purchased from subcontractors contrary to the advice of the relevant CI company and according to the customer's express request or instruction.
- 11.11. The relevant CI company shall only be liable in the event of wilful intent and gross negligence within the context of the statutory regulations.
- 11.12. It shall be deemed to be expressly agreed that the relevant CI company shall not be liable for damages with respect to goods which are not the subject to the contract, for other damage and loss of profit, unless gross negligence is imputed to the relevant CI company.

- 11.13. Liability for compensation of any consequential losses (resulting from the defect) and pecuniary loss, for profits not achieved, downtime, loss of production, loss of interest and of damages resulting from third-party claims and pre-contractual claims shall be excluded.
- 11.14. Liability shall be assumed only up to the contract value.
- 11.15. If supplies are manufactured or provided on the basis of design specifications, drawings, plans, models or other information supplied by the customer, the liability of the relevant CI company shall be assumed only to such extent as the supplies were executed in accordance with the information supplied by the customer.
- 11.16. If the relevant CI company is subject to a third-party claim based on default conduct of the customer, the customer shall be required to fully indemnify and hold harmless the relevant CI company.

## **12. Force Majeure**

- 12.1. "Force Majeure" shall mean external and unforeseeable events that cannot be prevented by reasonable measures. If one party is unable to provide its contractual supplies due to "Force Majeure", it shall inform the other party immediately in writing, and its obligation to perform shall be suspended until "Force Majeure" ceases unless it is possible to circumvent the impairment due to "Force Majeure". Neither the failure of upstream suppliers or haulage companies to adhere to deadlines nor the failure of a work-piece shall constitute "Force Majeure". In case of "Force Majeure" the agreed period of supplies shall be extended by the duration of the event of the "Force Majeure".

## **13. Intellectual Property Rights**

- 13.1. All intellectual property rights regarding the supplies of the relevant CI company shall remain with the latter.
- 13.2. In the event of an infringement of the relevant CI company's intellectual property rights, the customer shall be liable to pay to the relevant CI company a penalty regardless of negligence or fault amounting to EUR 50,000.- (in words: fifty thousand euro) per infringement and day.

## **14. Prohibition of Assignment**

Any non-assignment clause will be agreed by the parties in a separate contract.

## **15. Prohibition of Set-off / Prohibition of Withholding**

The offset of claims against claims of the relevant CI company and the withholding of the full payment or instalments by the customer shall be excluded.

## **16. Confidentiality**

- 16.1. The customer shall be obliged to treat all contractual documents and information, drawings, calculations and the like received from the relevant CI company or otherwise in connection with the preparation of quotations or the performance of the contract as strictly confidential and to use them only to fulfil the contractual obligations. The aforesaid shall not apply to such information and documents whereof disclosure by the customer is required by law or it can be demonstrated that it is subject to public knowledge or it is ascertainable or obtainable from public or published sources.
- 16.2. If the disclosure of information and documents to third parties is absolutely necessary to fulfil the contract, the customer shall impose the obligation to maintain confidentiality on them and assume liability for their compliance.
- 16.3. In the event of a violation of the confidentiality obligation, the customer shall for each violation pay the relevant CI company a penalty of EUR 100,000.- (in words: one hundred thousand Euro).
- 16.4. The customer shall in any event be liable for any violations by its employees and subcontractors and their employees for compliance with the obligation to maintain confidentiality and shall fully indemnify and hold harmless the relevant CI company in this respect.

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

- 17.1. Austrian substantive law shall apply, with the exception of its conflict-of-law provisions and the UN law on the sale of goods (CISG).
- 17.2. The place of jurisdiction shall be the court with local and material competence for the relevant CI company. The relevant CI company shall at its sole discretion also assert claims in front of the court with material jurisdiction at the customer's registered place of business.

## **18. Language**

In case of discrepancies or contradictions between the German and a foreign-language version of the present Standard Terms and Conditions of Sale and Delivery, the normative content of the German version shall apply exclusively between the customer and the contractor.