

# GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY of ALUKÖNIGSTAHL GmbH, Goldschlagstraße 87-89, A-1150 Vienna

## 1. Scope

1.1 These General Terms and Conditions of Sale and Delivery (hereinafter also referred to as the "Terms and Conditions") shall apply to all contracts (including future contracts) for deliveries of goods to be provided by us and for other services, even where such deliveries of goods/services are rendered without using or expressly referring to these Terms and Conditions. General terms and conditions of the contractual partner (hereinafter also referred to as the "Purchaser") are not accepted to the extent they do not contradict the present Terms and Conditions. The foregoing applies even where we do not expressly object to such terms and conditions of the Purchaser, for example in our order confirmation.

1.2 By placing an order (hereinafter also referred to as the "Offer") and/or at latest at the time of receiving the goods respectively making use of the service, the Purchaser is deemed to acknowledge that these Terms and Conditions are incorporated into the parties' contract. Amendments or ancillary agreements shall only apply in respect of the individual transaction in question respectively individual contract in question. To be valid, persons authorised to represent the Seller must expressly confirm any such amendments or ancillary agreements in writing.

1.3 If and to the extent that our services refer to the delivery of products from Schüco, Jansen, Warena and STG-Belkirch (hereinafter also referred to as "Division System") or to Surface Finishing, the technical specifications contained in the respective product catalogues, valid as amended, are deemed to have been agreed. The Purchaser must comply with the rules on processing, technical specification sheets, guidelines, rules for use and instructions on processing contained therein. In the event of failure to do so, the Purchaser shall forfeit any and all claims for warranty, damages and other claims. The Purchaser is deemed to have been made aware of the manufacturer's rules, guidelines and other documentation referred to above if the Purchaser does not object to the lack of such materials within 3 business days from the date the Purchaser receives the goods, and the Purchaser bears the risk and thus the burden of proof for demonstrating that such complaint has been timely communicated.

1.4 Where conflicts arise out of the contractual documents, the following order of priority shall apply:

- the individual agreement made between the parties ("Contract").
- the special Terms and Conditions of Sale and Delivery applicable to the particular contract (depending on whether our services relate to the Division System, Surface Finishing, Steel or Processing)
- the present Terms and Conditions,
- the Technical Conditions (regarding the delivery of products from Schüco, Jansen, Warena and STG-Belkirch, see section 1.3).

## 2. Prices

2.1 Unless expressly otherwise agreed, our prices are quoted on an ex works basis, net of VAT, and do not include shipping charges or any incidental services. All additional expenses such as packaging, loading, customs clearance, insurance charges, duties and taxes shall be borne by the Purchaser. The amount of packaging charges are listed in our respectively current price list, available at [www.alukoeningstahl.at/agb](http://www.alukoeningstahl.at/agb).

2.2 We only provide discounts on our list prices and cash discounts subject to the proviso that the Purchaser pays the purchase price in full and in a timely manner. **Where the purchase price is not paid in full, in particular in cases of any insolvency proceedings, we shall be entitled to claim our list prices.** In addition, deductions for cash discounts are only permissible to the extent that there are no open invoices which have already fallen due and/or are undisputed.

2.3 The prices stated in our price lists as well as our other offers are without obligation. In the event of changes of order-related costs, that we have to bear due to legal or regulatory rules, after the conclusion of the contract (e.g. taxes, customs fees, expenses, duties and other charges) and/or our other costs (e.g. exchange charges, the costs of wages and materials, remuneration to suppliers, other advance payments, etc.), which are included in the agreed price resp. are the basis for our calculation (whether disclosed or undisclosed) and over which we have no control, we shall be entitled to make an appropriate price adjustment.

2.4 For cuts of light metal profiles, we will apply a surcharge, the amount of this surcharge may be found in our respectively current price list.

## 3. Orders/minimum order value/delivery and delivery times/cancellations/returns/item search

3.1 Our offers are subject to change in their entirety. Unless a special agreement to the contrary has been made, contracts are deemed only to arise at such time as we provide a written, express Order Confirmation, and in the absence of any Order Confirmation, at such time as we deliver the goods/performance the service. We are also entitled to accept orders only in part or to reject orders without the need to indicate reasons for this. Orders placed by the Purchaser are deemed binding. Purchasers must explicitly indicate any additional wishes at the latest in the order, e.g. the provision of documents (such as works test certifications) in respect of EN 1090. Otherwise, additional wishes, e.g. documents in respect of EN 1090 execution classes, cannot be taken into account.

3.2 The minimum value per individual order is EUR 98,00, (this also applies if several individual Orders are placed combined as one total Order) which does not include value added tax, AFI, transport costs, supplementary services as well as additional expenses such as packaging, loading, customs clearance, etc. The basis of the order shall be the net material value. For orders below EUR 98,00, a surcharge for small quantities will be charged up to the minimum order value. The minimum order value does not apply to returns, subsequent debits and differential credit orders.

3.3 All details regarding the goods/services which are communicated to the Purchaser in the course of contract negotiations or which appear from catalogues which we transmit to the Purchaser in advance of contracting or provide to the Purchaser in some other way, such as images, drawings, weights and dimensions, are not deemed to constitute legally binding declarations regarding qualities of the goods or services. Such declarations regarding qualities of the goods shall only and exclusively be deemed legally binding if made expressly and in writing in accordance with section 3.1. With respect to consultations undertaken in advance of contracting, section 6 shall apply exclusively.

3.4 Dates of delivery or performance of services (hereinafter also referred to collectively as "Dates" or "Delivery Dates") are given on a non-binding basis. The failure to adhere to a Delivery Date that was advised on a non-binding basis shall, in any event, only entitle the Purchaser to assert his legal rights (in particular: rescission of contract) if, despite the written setting of a grace period of at least 20 business days, we fail to deliver the goods/provide the service. In cases of slight negligence claims for damages/penalties are excluded in all other cases, such claims shall be limited to a maximum of 5% of the net contract amount.

3.5 Where our failure to comply with a Delivery Date is due to *force majeure* or other events beyond our control, then that delivery period shall only begin to run at such time as the obstacle is eliminated, plus a reasonable time for preparation thereafter. The foregoing shall also apply where such events occur during the course of an existing delay. The following shall be deemed the equivalent of the events covered by the first sentence hereof: foreign exchange measures and other sovereign acts, strikes, lockouts, disruptions to operations for which we do not bear fault (e.g. fire, machine breakage, shortages of raw materials or energy), disruptions to transport routes, delays in import/customs clearance, and all other circumstances which substantially impede our ability to or make it impossible for us to render our supplies of goods and services. It is immaterial whether such circumstances arise within our sphere or that of an upstream supplier. We will communicate any delays that appear likely to the Purchaser as soon as possible.

3.6 In the case of special designs/prototypes etc., the delivery periods shall be deemed extended in the event of unforeseeable delivery default due to tool breakage/other technical obstacles, but at least by the same amount of time as the

unforeseen event continues, even where such events occur during the course of an existing delay.

3.7 If performance of the contract becomes unreasonable to one of the parties due to the above-referenced events, that party may rescind the contract.

3.8 The agreed delivery period shall not begin prior to our provision of an Order Confirmation and shall furthermore in any event be subject to the condition precedent that all of the commercial and technical questions between the parties have been resolved and the Purchaser has satisfied all obligations incumbent upon it, including, but not limited to, any regulatory certificates or approvals which may be required, any down payment which may have been agreed, the provision of letters of credit or guarantees or other security. Where the Purchaser is in default of providing any of these, the delivery period shall only begin to run after a reasonable time following the elimination of all obstacles. In the event of any delays arising in respect of satisfaction of the conditions precedent set forth above and deemed to fall within the Purchaser's sphere of responsibility, any agreed Delivery Dates are deemed extended by the duration of the occurrence of the delay up to the time at which the conditions precedent set forth above are satisfied.

3.9 In the event of any subsequent change to an order for goods/services to be rendered, we shall be entitled to unilaterally extend the Delivery Date by a reasonable time. Where only parts of an order of the services to be rendered are subsequently changed, our right to extend the Delivery Date is (in cases of doubt) deemed to cover the entire order/all of the services to be rendered.

3.10 The delivery date will be deemed met if the goods have been dispatched from our works/warehouse prior to expiry of the delivery date. Where formal acceptance is required, the agreed formal acceptance date will govern, except in cases of well-founded refusal to formally accept goods and services. In the absence of an agreement on any such date, the date on which we give notice of our readiness to have the Purchaser conduct the formal acceptance process/notice which we wish to perform the services ("Readiness for Formal Acceptance") shall be deemed decisive.

3.11 Where our shipment/the formal acceptance of the goods/the performance of the services is delayed for reasons attributable to the Purchaser, we will charge the Purchaser the costs arising as a result of the delay, beginning one month from the date on which the shipment/the formal acceptance/the performance of the services should have occurred (or the date on which notification of Readiness for Formal Acceptance was received). We shall, in any event, be entitled, without the need to prove any damages or actual expenditures, to demand reasonable compensation from the Purchaser for any storage of the goods which becomes necessary as a result of the delay and/or for keeping manpower available and/or other items of property available in order to perform the services.

3.12 The Purchaser is entitled to resile from the contract without setting a grace period if our overall performance/rendering of the goods and services by us as the Seller is permanently frustrated prior to the passage of the risk/prior to the performance of the services. In addition, the Purchaser may resile from the entire contract if the execution of a portion of the goods/a portion of the services is rendered impossible and the Purchaser has a well-founded interest, which is apparent to us, in refusing the remaining partial performance that can be completed. If the Purchaser does not have any such well-founded interest in refusing such partial goods/services, then the Purchaser shall be entitled to resile from the contract with respect to that portion, but the Purchaser's obligation to pay a share of the purchase price relating to that partial performance shall in any case remain unaffected by the Purchaser's rescission.

3.13 Where the impossibility of execution arises during default of acceptance, or if the Purchaser is solely or predominantly responsible for the circumstances giving rise to the impossibility of execution, then the Purchaser shall in any event remain obliged to effect payment.

3.14 The Purchaser is entitled to request cancellation of the order after the conclusion of the contract and before expiration of the deadline for order acceptance for the respective weekly tour (available at [www.alukoeningstahl.com](http://www.alukoeningstahl.com)). In all cases, cancellation shall be unavailable after the expiration of the deadline for order acceptance and in cases of goods produced to the Purchaser's requirements.

3.15 Returns (acceptance of defect-free goods previously delivered at the Purchaser's request) are only possible where we have expressly consented to this, and such returns are accepted only on a voluntary basis (i.e. we have no legal obligation to do so). As a basic rule, only warehouse goods (our stock programme is available at [www.alukoeningstahl.at/de/system/download-center](http://www.alukoeningstahl.at/de/system/download-center)) are capable of being returned, provided that the warranty period has not yet lapsed and provided that the goods are in their original packaging (undamaged packaging), in perfect condition, unused, unprocessed and not assembled. Goods which are delivered in packaging units (PUs) can only be accepted in whole PUs. Should returns not meet the above mentioned criteria, we shall be entitled to charge a fee of EUR 70,00 and to send these goods back at your expense. Where we voluntarily accept a return of goods in order with the above mentioned criteria, we shall be entitled to demand that the Purchaser pay a handling fee of 20% of the amount of the invoice. This fee covers our original commissioning and delivery respectively the return shipment, our acceptance and inspection of the goods and the storage thereof. In addition, we shall be entitled to demand compensation for any diminution in value of the goods which may have occurred in the interim. In any event, goods which are produced to a Purchaser's individual requirements are not eligible for any voluntary returns.

3.16 If, in the case of an order and/or a subsequent order (e.g. of spare parts), an item search to determine the article number is required due to a lack of Purchaser's disclosure of the corresponding item number, we are entitled to charge a fee of EUR 29,00 per article. This fee covers all our efforts for the item search and is therefore due even if the corresponding item number / item identification cannot be determined (i.e. in the case the item search could not be successfully completed, or the item can be found, but may no longer be available and also no alternative product is available).

## 4. Transport, passage of risk and default of acceptance

4.1 Where not otherwise agreed, we shall determine the route of shipping and the means of shipping as well as the shipper/freight forwarder. Transport is usually handled through our standard tours. In the absence of any special instructions by the Purchaser, our deliveries will be effected to the best of our judgment and knowledge and without any guarantee that we have selected the quickest and cheapest mode of shipment. Where the Purchaser demands shipping other than the shipping chosen by us (means of shipping and/or shipping route), the Purchaser shall bear the associated additional costs. In cases of vehicle shipment, irrespective of whether the shipment is performed with our own or a third party's vehicle, our delivery of the goods shall be made on an unloaded basis to the unloading point/kerbside. The unloading point must be accessible for all commonly traded HGVs, on a road which is passable irrespective of whether conditions.

4.2 At such time as the goods are handed over to a shipper/freight forwarder, but in any event no later than at such time as the goods leave our works or warehouse, the full scope of risk shall pass over to the Purchaser, irrespective of whether we have assumed responsibility to perform further services such as, for example, shipping costs or delivery to or setting up of the subject goods at the destination. The passage of the risk at such time as the goods are handed over to the shipper/freight forwarder shall also apply to each individual partial delivery. As Sellers, we undertake to procure insurance for the subject goods at the Purchaser's request and cost.

4.3 Where formal acceptance is to be performed, such formal acceptance shall be decisive for the passage of risk. In the alternative, the date of notification of Readiness for Formal Acceptance shall be decisive. Notwithstanding the provisions in sections 5 and 7 hereof, final acceptance may not be refused due to minor defects. Where shipping/formal acceptance is delayed or fails to be performed for reasons not attributable to us, then the risk of loss is deemed to have passed to the

Purchaser at the end of the day on which the Purchaser was informed of the Seller's readiness to hand over the goods/performance acceptance.

4.4 Where, without any fault on our part, shipping on the intended transit route or to the intended location within the intended time proves impossible, we shall be entitled to ship the goods by another route or to another location; any additional costs arising therefrom shall be borne by the Purchaser. The Purchaser shall be afforded a prior opportunity to comment thereon. We shall give reasonable consideration to such comment.

4.5 As a basic rule, the goods may be delivered in unpackaged condition and without any protection against rust or other adverse effects. To the extent expressly so agreed or if and to the extent it is customary in the trade to do so, supplies shall be effected on a packaged basis. We shall arrange for packaging, protective measures and/or transport equipment in accordance with our own experience and our own customary standard, at the cost and expense of the Purchaser.

4.6 The Purchaser bears an obligation to enquire with us regarding the customary packaging standard with respect to the goods to be delivered. Shipping and all other packaging costs shall be charged in line with the respectively current price list in effect as of the time in question (our currently applicable shipping and packaging costs regarding the Division System are downloadable from [www.alukoeningstahl.at/agb](http://www.alukoeningstahl.at/agb)) and shall be borne by the Purchaser. Reusable winds as well as other reusable containers and reusable packaging shall be initially charged to the Purchaser at our current packaging prices (in accordance with our current price list). If the goods are returned free from transportation charges in a reusable condition within 6 weeks after delivery, they will be credited with 100% of the initially charged prices. We shall not accept returns of disposable packaging material.

4.7 We are entitled to effect partial deliveries. Customary excess or short deliveries relative to the quantity contracted are permissible. In particular, excess or short deliveries of 10% are permitted on orders of light metal and plastic profiles which are premised on a certain minimum acceptance volume.

4.8 The Purchaser shall accept the goods/services immediately upon notification of our readiness to provide them. In cases of default of acceptance, the Purchaser shall be liable for warehouse charges, regardless of our other rights. Where partial deliveries are possible, they shall also be deemed legally permissible. Each partial delivery shall be deemed to constitute a separate transaction and may be invoiced by us separately.

## 5. Claims for defects and warranty

5.1 The Purchaser shall inspect the goods delivered/the services rendered with the greatest of care upon receipt and immediately for completeness, correctness and freedom from defects and shall give notice of any defects. We must receive complaints in writing (with the Purchaser otherwise to forfeit its rights) promptly, together with a verifiable description of any defects, but in any event no later than 5 business days following delivery/provision of the services. In respect of defects which could not have been ascertained within such period even upon the most careful examination, the same shall apply as from the date of their discovery or as from the date on which they could have been discovered; any treatment and/or processing of the goods/further use of the services must likewise be promptly discontinued. Upon expiry of twelve months from the date the goods were delivered/the services were rendered, we shall in any event no longer have any liability for defects, on whatever basis. If goods are shipped to third parties in line with the terms of the order, the periods for inspection and duty of notice shall begin to run at such time as the goods are received by the third party.

5.2 In addition to being obliged to give notice of any defects in a timely manner, wherever possible, the Purchaser shall bear a duty to provide us with a sample of the defective goods or the defective component promptly (but in any event no later than 7 business days from the notice of the defect) in order to enable us to carry out a (preliminary) examination of the defectiveness thereof. We may opt to require the Purchaser to send the sample to us or to collect it ourselves. In addition, the Purchaser must grant us and any sub-suppliers access to the location at which the goods are kept (building site, etc.) in order to facilitate a comprehensive examination of the defectiveness of the goods and any remediation measures which may be necessary. If the provision of a sample is possible and the Purchaser does not discharge this obligation in due time or if the Purchaser refuses to permit inspection of the goods, our liability for the defect which is the subject of the complaint is disclaimed.

5.3 In cases in which complaints are asserted on a justified basis and in due time, we shall have the option to either accept return of the defective goods and to replace them with non-defective goods or instead to eliminate the defect by subsequent performance. After a reasonable grace period for elimination of the defect has elapsed three times to no avail or after three failed attempts at eliminating the defect or where the defect cannot be eliminated, the Purchaser shall have the right to assert a claim for abatement of the price instead. In any event, the Purchaser shall have no right to rescind/set aside the contract.

5.4 The warranty period is twelve months. § 924 of the Austrian Civil Code (ABGB) shall not apply. The warranty period shall not begin to run anew when replacement goods are provided/remediation is undertaken. The Purchaser shall have no claim against the Seller pursuant to § 933b ABGB.

5.5 Where the Purchaser does not afford us the opportunity to inspect the defect ourselves or to perform a visual inspection for purposes of examining it or does not do so within a reasonable time or if the Purchaser does not return the goods complained of to us for this purpose upon our request, although it would be reasonable to expect it to do so, the Purchaser shall forfeit any warranty rights he may have.

5.6 In respect of the direct costs arising from remediation/replacement, if and to the extent that the Purchaser's complaint is revealed to be well-founded, we shall assume the costs of the remediation measure/of the replacement item, including shipment.

We shall also bear the costs for the assembly personnel and auxiliary staff required for purposes of remediation, including travel expenses ("Other Direct Costs") to the extent that this does not result in a disproportionate burden for us. A burden shall be deemed disproportionate in any event where the Other Direct Costs exceed the price of the subject goods. Any further costs, in particular indirect costs, e.g. assembly, disassembly, reassembly, scaffolding, security and safety measures and expenses which have been rendered futile/frustrated shall not be regarded as direct costs of the remediation/of the replacement goods and shall therefore be borne by the Purchaser.

5.7 In the event of our express agreement, the Purchaser may also itself have the defect remediated ("Substitute Performance"). We shall only assume the costs thereof to the extent provided in section 5.6 (direct costs to a maximum of the Purchaser's own costs, no reimbursement of indirect costs) and only to the extent we have agreed in writing to bear the costs, following submission to us of a cost estimate prior to the Purchaser's implementation of the Substitute Performance. Irrespective of the foregoing, the Purchaser shall only have the right to effect Substitute Performance if there is a risk to operational safety (and the potential risk is revealed to be well-founded) or where it is necessary to do so in order to avert disproportionate damage. In such case, we shall bear the costs of the Substitute Performance to the extent provided in section 5.6 (direct costs to a maximum of the Purchaser's own costs, no reimbursement of indirect costs) provided that they were necessary and the Purchaser has promptly notified us in writing of its intention to effect Substitute Performance.

Claims in connection with Substitute Performance pursuant to § 1042 (by analogy) or § 1155 and § 1168 (by analogy) of the Austrian Civil Code (ABGB).

5.8 In conformity with section 1.3, it is specifically noted that deviations in colour in the case of anodisations, powder coatings and other paint coatings shall not constitute a defect as far as they lie within tolerances for the applicable norms and standards. The same shall, in particular, apply to the interaction of the individual

parts and the technical specifications for products composed of multiple parts as contained in catalogues and drawings, if and to the extent we have not provided any express written warranty or representation regarding such qualities and/or we exclusively use original parts of the manufacturer in question.

**5.9** The Purchaser takes note of the fact that, in the case of steel products, it is impossible for us to rule out the existence of hairline fractures or other structural weaknesses which are not manifest. The Purchaser therefore undertakes to subject such products to testing (e.g. stress test, pressure test) prior to their use. If the products are to be fitted in pipelines or if vessels are to be made from them, the Purchaser must in any event examine them by conducting sufficient tests, in particular pressure tests, prior to using them. The Purchaser shall be liable for all disadvantages we incur due to the Purchaser's failure to discharge these obligations.

**5.10** For components/goods departing from the approved and permissible sizes set forth in our standard documentation (in particular for oversized items), warranty claims shall only apply if and to the extent that we have issued a written so-called Oversize Item Approval. For goods which deviate from standard sizes and for which no such Oversize Item Approval is present and/or has been submitted, we shall have no liability for any defects asserted or for the lack of particular qualities.

**5.11** In cases of custom construction/catalogue goods (i.e. custom goods produced to the Purchaser's requirements which depart from standard/catalogue goods) which are ordered and produced in (large-scale) series, the Purchaser undertakes that, after an approved construction proposal (e.g. drawings) has been provided by our partners (e.g. Schüco/Jansen) and prior to binding placement of an order for series, the Purchaser shall produce and conduct final and detailed testing and controls for a sample element. Such testing shall be performed and confirmed by an certified institute/testing authority. The Purchaser must submit a written complaint regarding any defects (of any kind whatsoever) prior to placing a binding order for series production, and shall do so promptly, providing a verifiable description of the defects. Otherwise, the Purchaser shall no longer be entitled to assert any claims for defects and damages at a later point in time where the Purchaser could and should have ascertained and asserted complaints regarding them in the course of the manufacturing and testing of the sample element, where necessary including by engaging external specialists. Except in cases of intentional acts and omissions and serious gross negligence, we disclaim our liability in such cases involving subsequent defects of series production. Consultations provided by our staff members shall not be classified as "engagement of external specialists"; in respect of such services, section 6.1 shall apply.

## **6. Consultations**

**6.1** If and to the extent the parties have not expressly otherwise agreed in writing, consultations held in advance of contracting (including preparation of sketches, drawings, construction and process proposals, etc.) are made on a gratuitous basis, as an accommodation and are non-binding. The Purchaser shall have no claim for performance in respect of consultations and shall not acquire any other claims and/or rights, irrespective of their legal nature, as a result of the performance of consultation work. We shall have no liability for any such consultations.

**6.2** The Purchaser shall ensure, by preparing prototypes or by undertaking other suitable measures, that the designs, structures, processes, etc. which we may propose are fit for its purposes. In particular, the Purchaser shall furthermore ensure that any use of the information, irrespective of whether the information is provided in corporeal or non-corporeal form, does not constitute an infringement on rights of protection or intellectual property rights belonging to us or to third parties or constitute any other legal violation of any kind whatsoever.

## **7. Damages**

**7.1** We shall be liable for damages that have not arisen to the subject goods themselves only (1) in the event of intentional acts or serious gross negligence, (2) in the event of culpable injury to life, limb and health, (3) in the event of damages arising from defects which we have fraudulently concealed or the absence of which we have warranted, and (4) in line with the mandatory stipulations of the Austrian Product Liability Act (PHG).

**7.2** We shall not be liable for any other damages (to the extent such a disclaimer is permitted by law) except where such damages are attributable to an intentional or serious grossly negligent breach of contract. Where we have not acted with intent, our liability shall in any event be limited to the damages that are typical for the contract and reasonably foreseeable, and shall exclude any liability for lost profits or indirect consequential damages (in particular losses based on production downtimes respectively business interruptions), savings that were not achieved, losses of interest and pure pecuniary damages. A presumption shall apply that such damages shall not be more than 5% of the net contract sum. However, the parties hereby agree that such losses shall in no case exceed 10% of the net contract sum.

**7.3** Claims for compensatory damages and additional costs of any and all kinds must be notified to us in writing immediately after they have come to light, stating the reasons therefor. The quantum of the damages/additional costs must be reported in writing and in verifiable and auditable form as soon as possible (but no later than three months after the reason for the damages/additional costs has come to light, where it would not have been possible to have ascertained the quantum for the damages/additional costs earlier even at the greatest reasonable expense and efforts), with such claims otherwise to be forfeited.

Where we do not acknowledge or where we refuse the Purchaser's claim as to quantum within 3 months of our receipt of the claim for damages/additional costs (in whole or in part), the claim must be asserted by court action within 6 months of the expiry of the 3-month period, with such claims otherwise to be forfeited. Where we reject claims which are asserted, the period within which the claim must be asserted shall begin on the business day following the date of the rejection.

**7.4** No services rendered by us are deemed to create protective effects for the benefit of third parties, nor do they give rise to rights of third parties to performance or other legal rights of third parties. The foregoing shall explicitly also apply to actions taken by us in advance of the conclusion of the contract. Our liability for culpable injury to life, limb and health shall remain unaffected hereby.

**7.5** To the extent permitted by law, we hereby exclude any application of § 1298 of the Austrian Civil Code (ABGB). This exclusion shall also extend to § 933a of the Austrian Civil Code (ABGB) where that section contains a rule on the reversal of the burden of proof corresponding to § 1298 of the Austrian Civil Code (ABGB).

**7.6** The Purchaser shall have no recourse claims within the meaning of § 12 of the Austrian Product Liability Act (PHG), except where the party entitled to assert a claim for recourse furnishes evidence that the defect arising within our sphere was created by an unlawful act and that we bear culpability for it based on an intentional act or a serious gross negligence.

**7.7** In particular, the Purchaser must in all cases comply with the instructions given by us in connection with the goods delivered respectively services rendered with respect to assembly, commissioning and use (operating instructions). In the event of a failure to comply with such instructions or in the event of non-compliance with regulatory approval requirements, we shall have no liability whatsoever.

## **8. Rolling**

**8.1** Notwithstanding the remaining provisions hereof, in the event that we are engaged to perform rolling in connection with the ordering party's provision of materials/substances, and/or in those cases in which third parties perform surface finishing of the profiles to be rolled, we shall have no liability for defects/damages to the materials supplied and to the resulting defects to the end product. We shall have no duty of inspection or warning in connection with any defects of the surface finishing and/or of the material supplied prior to rolling, with the exception of obvious defects. In particular, we shall have no duty to remove protective films or foils, etc. In obvious cases, we shall notify the ordering party promptly and request instructions as to whether the rolling work should be carried out. The ordering party must issue instructions regarding this within 5 business days. Where the ordering party fails to discharge this duty, we shall be entitled to withdraw from the contract and to charge the costs incurred. In addition, the ordering party shall bear the consequences of default arising therefrom.

**8.2.** The ordering party shall bear both the risk of non-serviceability/defectiveness of the materials supplied by it, as well as the risk of accidental destruction. If, at the time of destruction, services have already been rendered by us, we shall be entitled to charge the ordering party for them.

**8.3** In the event of cancellation of an order by the ordering party after we have commenced rendering the services and/or after notification of the defectiveness of the surface finishing, we shall be entitled, at our option, to charge the ordering party lump-sum damages of 40% of the gross contract amount (without the need to furnish evidence of our losses) or to require the ordering party to compensate us for our actual losses (including lost profits).

## **9. Terms of payment**

**9.1** Our invoices shall fall due for payment, without any deductions whatsoever, within 14 days from the date of the invoice, irrespective of when the goods were received or when the processing took place. In the event of delayed payment, we shall charge default interest at the statutory interest rate of 9.2% over the base interest rate, beginning on the 15<sup>th</sup> day from the date of the invoice, where we do not incur higher costs than this. In respect of this interest rate, the base interest rate applicable on the first calendar day of any 6-month period shall be deemed to govern the 6-month period in question. Where the Purchaser is not responsible for the delay, it shall only be required to pay interest at a rate of 4% per year. In addition, all other outstanding receivables, irrespective of any payment deadline granted, shall also then be promptly due for payment. In the event of a delay in the payment of monetary claims, we shall charge the Purchaser, as compensation for any costs of collection, a flat fee of EUR 40.00, § 1333 (3) of the Austrian Civil Code (ABGB) shall apply to the compensation for collection costs exceeding such flat fee.

**9.2** Notwithstanding any earmarking of payments which may have been made, payments by the Purchaser shall be applied first to compound interest, to interest and ancillary charges, to pre-litigation costs such as the fees of any solicitors and collection firms we may engage, to all outstanding liabilities and then to the outstanding principal, beginning with the oldest debt. We accept bills of exchange and cheques only pending full discharge of the debt.

**9.3** The Purchaser is not entitled to exercise any set-off of counterclaims it holds against our receivables. The Purchaser shall only be entitled to declare a claim for set-off if and to the extent its counterclaims and the exercise of set-off against them has been acknowledged by us.

**9.4** In the event of default on the part of the Purchaser in respect of payments or its other compensation, we shall be entitled (notwithstanding our other rights) to withhold our deliveries respectively our services until such time as the agreed compensation has been provided, whilst preserving that portion of the delivery period which is at that point still remaining, and shall be entitled to demand advance payment respectively securities or, upon expiry of a reasonable grace period, to withdraw from the contract and to claim damages for breach. In the latter case, we shall be entitled to claim retrospectively to retain the agreed down payment (but at least 15% of the price) as a minimum penalty.

## **10. Reservation of title**

**10.1** All goods delivered by us shall remain our property (goods subject to reservation of title), irrespective of the fact that the goods have been delivered and the risk may have passed to the Purchaser or any other provisions of these Terms and Conditions, until such time as the Purchaser has settled all of our claims, including, in particular, any payment balance demands to which we may be entitled within the scope of our business relations. The foregoing shall also apply to receivables arising in future and to contingent claims, e.g. acceptor's bills of exchange, and shall also apply where payments are made in respect of specially designated claims.

**10.2** In the event of a breach by the Purchaser, in particular in the event of default of payment, we shall be entitled to take back the subject goods after a reasonable grace period has elapsed to no avail and the Purchaser shall, in such case, be obliged to surrender such goods. The assertion of a claim for surrender shall not be deemed to constitute a withdrawal from the contract.

**10.3** For so long as our claims pursuant to section 10.1 hereof have not been fully settled, the Purchaser shall hold the goods in trust for us as the Seller and must keep the goods separately from its own property and from the property of third parties and must properly store, secure and insure the goods subject to reservation of title and label them as our property.

**10.4** The Purchaser is entitled to perform further processing of the goods delivered by us in the ordinary course of its business. In the event of processing, comingling, combination or mixing of the goods with third party goods, we shall be deemed in any event to acquire co-ownership thereof on a *pro rata* basis in the proportion of the invoice value of the goods subject to reservation of title relative to the value of the work performed respectively to the other goods processed. Any goods processed in this way shall constitute goods subject to reservation of title within the meaning of this contract and the Purchaser shall store them free of charge.

**10.5** Where our right of ownership lapses as a result of processing, comingling, combination or mixture, the Purchaser hereby agrees that such processing, comingling, combination or mixture is done for our benefit, such that we shall be owners of the new item of property. In the event that, despite this agreement, we fail to become the owner of the new item of property, irrespective of the legal grounds for this, the Purchaser hereby agrees that we shall be entitled to ownership of the new item of property without the need for any separate agreement to such effect. The transfer of physical possession shall be deemed to occur by way of anticipated possession. In the event that, irrespective of the legal grounds thereof, it should be impossible for ownership of the new item of property to pass completely to us, the Purchaser hereby agrees that we shall become equitable co-owners of the new item of property to the extent of the invoiced value of our goods subject to reservation of title, without the need for any separate agreement to such effect. With respect to the form by which possession is surrendered, the foregoing shall apply *mutatis mutandis*. Both the property itself and the equitable co-ownership shares to items of property shall be deemed goods subject to reservation of title within the meaning of this contract.

**10.6** Until such time as payment has been made in full, the Purchaser shall be authorised to resell the goods onwards to third parties pursuant to its standard terms and conditions of business, subject to section 10.7 hereof and only for so long as the Purchaser is not in default. Already at the time of contracting, the Purchaser is deemed to assign all receivables against its purchasers, together with all ancillary rights to which it is entitled (including any rights to insurance payments respectively insurance benefits) to us, but shall remain entitled to effect collections. We may at any time and without cause revoke the authority to effect collections. The Purchaser must keep any and all compensation (including any insurance payments) for us as the Seller and any such monies separate from its assets and those of third parties. The Purchaser is not entitled to make any other dispositions over the goods subject to reservation of title, even if only by way of security.

**10.7** The Purchaser may, in addition, only sell the goods subject to reservation of title if the Purchaser, in turn, makes a reservation of title agreement with its purchaser and if the Purchaser's own receivables from the re-sale are assigned to us. By entering into this contract, the Purchaser hereby offers to us, now and in advance, assignment of its receivables from any re-sale by it of goods subject to reservation of title. We hereby accept the assignment. Such receivables shall serve as security to the same extent as the goods subject to reservation of title themselves.

**10.8** The Purchaser hereby undertakes to take all such acts as are necessary to transfer and assign its receivables. In particular, the Purchaser hereby undertakes to note the passage of title on its business records and/or open items lists. If the goods that are subject to reservation of title are sold by the Purchaser together with other goods we have not sold to it, the Purchaser is deemed to assign its receivables from the resale thereof *pro rata* in proportion of the invoiced value to the other goods sold by way of security. In the event of a sale of goods in which we have a co-ownership share, the Purchaser is deemed to assign the portion corresponding to our co-ownership share to us by way of security.

**10.9** Upon our request, the Purchaser shall notify its purchasers immediately of the assignment to us. The Seller is also entitled to undertake such notification itself.

The Purchaser shall furthermore furnish to us all documents and information necessary to enable us to assert our rights. Any costs arising in connection with this shall be borne by the Purchaser. Where the amount of an invoice which has been assigned comes into the possession of a third party, the Purchaser shall be obliged to demand the return of such amount from the third party and surrender it to us.

**10.10** The Purchaser is not entitled to make any further assignment of receivables. In particular, the Purchaser is prohibited from reselling the receivables to third parties, for example to factoring companies. In the event of seizure or other interference by third parties with the goods subject to reservation of title, the Purchaser shall inform us promptly so that we are able to file an action pursuant to § 37 of the Austrian Judicial Execution Act (EO). Where the Purchaser fails to perform this obligation, it shall bear liability for the damages or losses incurred as a result.

**10.11** We hereby undertake to release the securities to which we are entitled upon request of the Purchaser to the extent that the liquid value of the securities exceeds the receivables to which we are entitled by a total of more than 20%. It shall be within our discretion to select the collateral to be released.

**10.12** For purposes of enabling us to inspect the goods subject to reservation of title, the Purchaser hereby warrants that we shall have a right of access to its business premises at any time. Where the Purchaser defaults in respect of its payment obligations, where insolvency proceedings are applied for or opened over its assets or where the Purchaser otherwise breaches contract obligations, we shall be entitled (at our option, and with the parties' contract remaining in force) to demand surrender of the goods subject to reservation of title, to collect them and/or to collect on receivables which have been assigned to us by way of security.

## **11. Applicable law, place of performance, jurisdiction and venue**

**11.1** The legal relations with the Purchaser shall be governed exclusively by Austrian law, but without application of its choice-of-law rules or of the United Nations CISG.

**11.2** The place of performance for all obligations and/or rights arising out of this contract respectively in connection therewith (whether indirect or direct) shall be Vienna.

**11.3.** Jurisdiction and venue for disputes shall lie with the court with subject-matter jurisdiction over our registered office as Seller. However, we shall also be entitled to bring suit in any other court which has jurisdiction over the Purchaser.

## **12. Partner Guideline/Marketing**

**12.1** Absent our express written consent, the Purchaser is prohibited from using logos, images, data, graphics, etc., and any other copyright and/or trademark-protected data beyond what is specified in our partner guideline (which may be downloaded at [www.aukoengstahl.at/de/unternehmen/partner-guideline](http://www.aukoengstahl.at/de/unternehmen/partner-guideline)).

## **13. Miscellaneous**

**13.1** Furthermore, the Purchaser shall comply with our supplemental Terms and Conditions of Sale and Delivery in respect of surface finishing and associated services as well as the steel trading sector. In respect of special customisations and implementation thereof in Schüco, our Technical Terms and Conditions for Customisations shall apply. All of these may be downloaded from [www.aukoengstahl.at/abg](http://www.aukoengstahl.at/abg)

**13.2.** No assignment of the rights arising out of the contract made with us to third parties is permitted without our express written consent; the assignment of monetary claims is freely permissible.

**13.3** In the event of any legal invalidity or unenforceability of individual items of these Terms and Conditions, the remaining terms and conditions and the contracts made on their basis shall remain valid respectively enforceable. In lieu of the invalid respectively unenforceable term, the parties shall reach agreement on a valid respectively enforceable term coming the closest to such term in meaning and purpose.

**13.3** The Purchaser hereby expressly waives the right to challenge contracts made with us on any grounds whatsoever, including *laesio enormis* and mistake. § 915 of the Austrian Civil Code (ABGB) shall not apply.