

1. Validity

These general terms of business are valid for all supplies, services and offers by AGRU to its customers for which the business is part of the operation of the company. Unless expressly otherwise agreed in writing, these general terms of business apply exclusively. In any case with the acceptance of the delivery by the contract partner the contract partner accepts these general terms of business of AGRU. The contract partner (customer) agrees that – in case of using other general terms and conditions of purchase or other general terms of business by himself - the following terms apply in case of doubt, even if the terms of the contract partner stand uncontradicted. Contract fulfillment acts from AGRU are not valid as consent to contract conditions differing from these terms. Any changes and amendments of these general terms of business shall be made in writing to be legally binding. The same is valid for the abandonment of the requirement regarding written form.

2. Offers

Offers are not binding in every respect. The goods are subject to prior sale. The contract is considered to be concluded only with the dispatch of a written order confirmation by AGRU.

3. Prices

All prices are subject to change and do not include Value Added Tax. AGRU-prices comply with the currently valid price lists and their supplementary pages. Unless otherwise agreed, the prices are quoted FCA Bad Hall, including standard packaging. The pallets for sheet consignments are separately invoiced. All extra costs – for examples freight, insurance, export- import- or other approvals as well as certifications – are payable by the customer. The customer also bears the costs for all types of taxes, bank charges, imposts, fees and customs duties.

4. Delivery

Delivery period: Delivery periods and dates are initially non-binding. Any agreement for a binding delivery date requires an express written (also per e-mail) confirmation by AGRU. For compliance with an expressly agreed delivery period or date the goods shall be reported as ready for dispatch to the customer or handed over to a transport company within the delivery period or latest at the date by AGRU. Objectively justified and reasonable changes of service and delivery liabilities, especially reasonable exceeding delivery periods by AGRU on the basis of force majeure such as fire, flood, earthquake and other acts of god, embargo on export and import, difficulties of energy or raw-materials supply etc. are considered to be accepted in advance where such circumstances directly affect the obligations of AGRU. AGRU is not obligated to make delivery if the customer is in default with any payment from other deliveries of AGRU.

Performance: Sales prices do not include the costs for delivery, assembly or installation. On request AGRU do these services for additional charge. If the contract partner is in default of acceptance, AGRU is entitled either to put the goods in their storage, for which AGRU invoice a charge of 0,25% of the invoice amount per each started calendar week and to insist on fulfillment of contract at the same, or to withdraw from the contract after fixing an adequate extension and to use the goods elsewhere; in this case a contract penalty in the amount of 10% of the invoice amount is considered to be valid too. For the production as per order the full purchase price has to be paid.

Mode and route of shipment: Depending on the agreed terms of delivery AGRU selects the most favorable transit route. Additional costs incurred due to special transport requests of the customer, for example for expedited shipments, express deliveries or another special method of delivery, are at the customers expense. Specific requests with regard to mode and route of shipment have to be made in time. AGRU is entitled to make partial deliveries.

Transfer of liability: The transfer of liability takes place according to the agreed Incoterm. Unless otherwise agreed, the only valid Incoterm is "FCA Bad Hall". The reference to common Incoterms is only for an easier communication; the exclusion of the UN Sales Convention from this contract isn't concerned by that.

5. Technical information and documents:

Technical documents such as drawings, descriptions, illustrations, as well as any data as to dimension, weight or other characteristics, are for information purposes and imply no characteristics or warranty promises. Where technical advance seems apparent, AGRU reserves the right to make suitable modifications. The product properties are those as shown in the AGRU technical documents res. in the AGRU factory standards unless otherwise confirmed by AGRU in written form. Plans, sketches and other technical information as well as folders, catalogues, samples or something like that remain the intellectual property of AGRU.

6. Regulations at place of destination.

The customer has to call AGRUs attention to any local, legal or other regulations, especially standards, which relate to the execution of delivery as well as the compliance with security and registration regulations.

7. Terms of payment

The customer is obligated to pay the purchase price according to the agreed payment term. Provided no separate payment conditions have been agreed, the purchase price has to be paid within 30 days from the date of invoice, whereas cheques cannot be accepted as means of payment. Even for default of payment for which the customer is not responsible, AGRU is entitled to invoice default interest with the amount of the legal interest and compensation for any other damages. Demands for compensation of higher interest are not affected. Any kind of offsetting against claims of AGRU with counter demands is excluded, unless AGRU expressly accepts these counter demands in the amount and in written form. Bill of exchange are only accepted after prior written consent of AGRU. Any and all fees are to be borne by the customer. Bill of exchange are only accepted by way of payment. Should the customer not fulfill any payment obligation to AGRU, also from other orders, AGRU is entitled to declare all its outstanding accounts due and payable, even if other payment terms have been agreed upon. This is also effective for liability on bills of exchange. When the payment date has lapsed, payments are always charged as of the oldest due invoice.

8. Place of fulfillment, Place of jurisdiction, Applicable law

Place of fulfillment for payment as well as deliveries is the place of business of the company AGRU Kunststofftechnik GmbH in A-4540 Bad Hall, Ing.-Pesendorfer-Strasse 31. For decision of all disputes arising out of or in connection with this general terms of business, a delivery or another business relationship with AGRU the court of competent jurisdiction at the headquarters of AGRU is responsible. AGRU is also entitled to bring a lawsuit before the court of competent jurisdiction of the customer. Austrian law applies exclusively with the exclusion of the Conflict of Laws provisions thereof and the United Nations Convention on Contracts for the International Sale of Goods. The contractual language is German.

9. Retention of Title

The goods remain the property of AGRU until payments are completed. The retention of title remains valid in processing, mixing or combination with other goods. In assertion of the proprietary rights, a withdrawal from the contract is only given if it's explained expressly. Should a third party attempt attachment of delivered article belonging to AGRU, the customer has to call attention to the fact of AGRU's ownership res. co-ownership and immediately notify AGRU in writing giving exact details such as a case number, attachment date, petitioning creditor, his attorney and demanded amount. All expenses incurred in connection with protecting AGRU's property are to be reimbursed completely by the customer.

10. Warranty

The warranty obligations of AGRU are limited to such defects which already exist at the time of transfer to the customer. After delivery, the goods must be inspected immediately. Identified defects and identifiable defects must be announced to AGRU in writing immediately, but within 14 days after delivery at the latest by mentioning the kind and extent of the defect. Claims made later cannot be acknowledged. In every case, returns of goods to AGRU can only be made with the prior written approval of AGRU. Modifications or repairs by the customer without the approval of AGRU lead to loss of warranty. Later transpired defects must be denounced immediately after their discovery. If a notice of defects isn't filed res. not in time, the goods are considered to be accepted. The assertion of claims for warranty or compensation as well as the right to appeal against misunderstanding, because of defects, is excluded in these cases. The availability of a defect does not entitle the customer to repair it himself or by a third party, but AGRU has to be given the possibility for improvement, replacement, price reduction or rescission within an adequate period of time. The period of warranty is 2 years, for welding machines 6 months. The reversal of the burden of proof according to § 924 ABGB at the expense of AGRU is excluded. The existence of a defect at the time of delivery, the time when the defect is determined and the timeliness of the notification of a defect has to be proved by the customer. The correction of a defect can be done by improvement or replacement of the defective goods by the choice of AGRU. A recourse claim by the customer against AGRU according to § 933b ABGB is excluded. Excluded from the warranty are: damages as a result of natural attrition, inadequate storage, disregard of working instructions, excessive stressing, as well as improper handling by the customer or by a third party.

11. Limitation of liability

Damages arising from the violation of life, body or health AGRU shall be liable according to the legal requirements. For other damages AGRU is only liable in cases of intent or extreme gross negligence. Claims for compensation of damages are limited to the amount of the order value without tax. Replacement of the escaped profit and damages only in assets/property of the customer by AGRU are excluded in any case. Liability for consequential damages (business interruption or loss of production and any other indirect or consequential damages) is expressly excluded. Claims for compensation expire 2 years after delivery or performance of the service.

12. Miscellaneous

If any provision of these general terms of business is held to be illegal, invalid or unenforceable, in whole or in part under any applicable enactment or rule of law, such illegality, invalidity or unenforceability shall not affect the remainder of this agreement, and AGRU and the customer shall in good faith attempt to substitute a legal, valid and enforceable provision which achieves to the nearest extent possible the same effect as would have been achieved by the illegal, invalid or unenforceable provision. In case of any inconsistency between the German and the English version of these general terms of business the German version shall apply.