

General Terms and Conditions of Purchase
(Version dated 11 October 2017)

of

AustroCel Hallein GmbH
with their registered office in A-5400 Hallein, Salzachtalstraße 88

1. General provisions:

The following Terms and Conditions of Purchase are an integral part of every legal transaction with the supplier or contractor. The order or contract is an offer submitted to the supplier or contractor by us, which can be accepted pursuant to Clause 2. The applicability of the general terms and conditions of the supplier or contractor is excluded, even if we did not explicitly object to such terms. Offers submitted to us – irrespective of which preliminary work was required in this connection – are free of charge, unless otherwise agreed upon.

These Terms and Conditions of Purchase equally apply for deliveries and services. The following use of the terms supplier, order, delivery, goods etc. correspondingly includes contractor, contract, service, etc.

2. Orders:

Only written orders and contracts of our Purchasing department are binding to us, whereas they remain subject to errors, printing, writing and calculation errors. Oral order, contracts, amendments and side agreements as well as orders, contracts, amendments and side agreements by phone or telex require the written confirmation of our Purchasing department. Correspondence by fax or email meets the written form requirement if a transmission confirmation is available.

Orders and any written supplements shall be confirmed by the supplier immediately. If we do not receive this confirmation within eight days from the order date, we are entitled to refuse the late confirmation or the fulfillment without confirmation.

The contract is also considered concluded based on our order and these Terms and Conditions of Purchase without confirmation or with a confirmation subject to other conditions, if the supplier initiates the performance of the contract and we accept such performance.

Offers of the supplier bind the supplier for the duration of four weeks, unless otherwise indicated or agreed upon.

3. Prices:

The prices indicated in our order are invariable fixed prices. Unless explicitly indicated otherwise, all prices are free to destination (Hallein works, unless otherwise indicated), including all incidental expenses such as transport, customs, customs clearance, packaging, packaging recycling, insurance, free delivery to station of destination at the expense and risk of the seller, including all taxes and other duties.

If no prices were specified in the order, the prices of the price list available to us at the order date apply, minus the discount agreed upon or usually granted to us or to third parties. If no price lists are available, the most favourable price which the supplier grants or offers to third parties for the same type of goods and quality shall be considered to be agreed, yet a price no

higher than that of the last delivery of comparable goods made to us. If the order indicates price adjustments without further explanation, the prices are increased or decreased by the percentage by which the prices indicated in the price list are increased or decreased. If a down-payment was made, only the residual amount is increased by this percentage.

Price cuts and price reductions due to changes in the market shall be forwarded to us to the full extent, even if no price adjustments were agreed upon. In any case, however, our explicit written consent to the price increases is required.

If the exchange rate increases by more than 3% compared to the time of the order in case of prices not denominated in Euro, we are entitled to withdraw from the contract, if the supplier does not consent to a corresponding price reduction.

4. Transfer of risk/Transfer of ownership:

The supplier shall bear the risk of material damage until the goods are accepted by us or by an agent of ours at the location to which the goods are to be delivered as per the contract, which is the Hallein works in case of doubt, unless otherwise agreed upon.

By accepting the goods, we assume ownership of the goods as well as the unlimited authorisation to use or process and sell the goods.

5. Delivery times - Delivery dates:

The delivery dates indicated in order or otherwise agreed upon with us must be complied with. Delivery or performance dates are calculated from the date of our written contract (order), unless otherwise indicated in the order. Deliveries or performances are only deemed timely, if the goods or performances were delivered ready for operation or in the agreed condition within the delivery or performance period or at the agreed-on delivery date at the indicated destination, i.e. in case of a full performance of the contract, including assembly, provision of the documentation, etc.

Deliveries prior to the agreed time are only permitted subject to our explicit approval. In this case, the maturity and the discount periods only begin on the dates agreed in the contract. Partial deliveries are only permitted if explicitly agreed upon.

If a delivery period or delivery date (also interim delivery periods or interim delivery dates) are likely not to be met by the supplier, we shall be notified thereof immediately, indicating the reasons and expected duration of the delay. In case of non-compliance with delivery periods and delivery dates, we are entitled to either withdraw from the contract without setting a grace period or to insist on delivery, irrespective of the reason of the delay. If we set a grace period or a fixed delivery date in the order, we are entitled to demand a contractual penalty in the amount of 1% of the value of the delivery or performance for each day of delay, yet no more than 15% of the value of the delivery. The right to assert any additional damage in excess of this amount, including unrealised profits for us or our end customer, remains unaffected thereof.

6. Packaging and shipping:

The goods are sent at the risk of the supplier, even if we paid for shipping. The goods shall be packaged in accordance with commercial practice, appropriately and in flawless packing. The packaging shall adequately protect the goods for the duration of delivery to our works or the de-

terminated destination. If we paid for packaging, we will only assume the cost price of the packaging material. Borrowed packaging will be made available for retrieval. If such packaging is not retrieved by the supplier within eight days from our indicating the readiness for retrieval, we are entitled to sell such packaging or destroy it at the expense of the supplier. We are entitled, yet not required, to store packaging at the expense and at the risk of the contractual partner.

If ordered goods are sent to us and if we did not prescribe a specific means of transport, the supplier shall choose the most inexpensive means of transport. Goods dispatched to us shall include the corresponding shipping documents, particularly the order number. If this requirement is not met, we are entitled to refuse acceptance or to store the goods at the expense of the supplier until the goods are successfully associated with the corresponding order. The delivery is in this case only deemed fulfilled when the goods were actually associated with the order.

7. Quality:

The supplier shall provide the goods in accordance with the agreed specifications and quality guidelines. Timber deliveries shall be subject to our timber acceptance guidelines.

The supplier shall ensure that the quality of the product they deliver to us always correspond to the current state of the art and shall indicate possible improvements or technical changes to us. Changes to the delivery item may in any case only be performed subject to our explicit prior written consent.

The supplier shall undertake to retrieve any and all information required for a proper delivery or performance from us and confirm having received such information. This also applies to the quality of the material to be worked, processed, stored or transported, if required for the proper functionality of the product.

The supplier shall guarantee the agreed upon properties of the goods, if no agreement is in place, they shall guarantee the properties customary in the trade which the supplier knows are required or can be expected based on the provisions for use for the delivery or performance.

8. Acceptance, guarantee and warranty:

We are released from the obligation to inspect and notify defects pursuant to Sections 377 and 378 *Unternehmensgesetzbuch* (UGB) [Austrian Commercial Code]. Obvious defects are also not considered approved despite of acceptance.

The supplier shall ensure that no defects occur within the warranty period, irrespective of whether the supplier is at fault; this applies irrespective of whether defect already existed upon acceptance or not.

We reserve the right to assert any statutory (in particular warranty) claims (and claims for damages) against the supplier beyond the provisions of this clause, particularly pursuant to Sections 922 to 933b *Allgemeines Bürgerliches Gesetzbuch* (ABGB) [Civil Code of Austria] and the provisions of the Product Liability Act.

The supplier bears the burden of proof that a defect asserted by us is not a goods-related or work-related defect.

The supplier shall guarantee that the delivered goods and rendered services are free of any defects; this particularly includes that the delivery item complies with the relevant statutory provi-

sions and the rules of engineering, and furthermore a design in line with the current state of the art, use of the best suited material, the right and proper execution, flawless assembly and moreover the details indicated in prospects or other documents with regard to properties, power requirements, performance and efficiency of the delivery item.

The guarantee period is 24 months from the transfer. In case freedom from defects can only be established after the delivery item was put into use, the guarantee or warranty period shall only start upon using the delivery item, whereas we will use the delivery item in accordance with our operational requirements. For work produced by the supplier in the sense of Section 1165 ABGB, the guarantee or warranty period only starts after the transferred ready-to-use work was in operation or was used for at least one month without any faults. If a defect occurred during the trial month, another trial month shall begin upon the defect being rectified.

The guarantee period for immovable deliveries and services and for such deliveries and services which are intended for connection or use with immovable items is five years.

The supplier shall be notified of any detected defects; such notification is deemed timely if it was given within the guarantee or warranty period. If a defect is reported outside this period, the notification is deemed timely if it refers to a defect which occurred during the guarantee or warranty period and which we determined to be a defect and if it was reported within an appropriate period from becoming aware of the defect, whereby a period of 14 days is deemed appropriate in any case.

In case of any defects of any kind, we are entitled to either request a replacement delivery free of charge or to fully or partially withdraw from the contract – also without setting a grace period – or to request a rectification free of charge or to request a corresponding price reduction. In case of any defects, we are also entitled to have the required rectification of defects and/or repair work carried out by a third party at the expense of the supplier or to procure a replacement at the expense of the supplier. Upon receiving any deliveries which cannot be handled without specific knowhow, the supplier shall provide us with separate assembly and/or operational instructions without special request, indicating the associated order.

The supplier shall also assume the liability for any and all damage occurring due to delayed deliveries or due to delivering defective goods or due to work performed poorly or occurring as a result of the assembly and/or operational instructions not being submitted or of faulty instructions being submitted, even if the supplier is not at fault.

By transferring the delivery item, the supplier confirms that the delivery item is not subject to any own or third-party rights, particularly third-party property rights, which impede us or our legal successors from processing, altering and selling the delivery item.

The supplier guarantees the performance of training, servicing, repair and maintenance services relating to the delivered products against customary compensation, as well as subsequent, replacement and spare part deliveries for a period of 10 years from the time of the fulfillment of the contract.

In case we are held liable for any defects relating to the delivery item, the supplier shall undertake to indemnify us against any and all third-party claims and compensate us for any payments we were required to make out to third parties due to this title. They shall also undertake to support us in any legal disputes with third parties to their best of their ability. If the supplier claims that no defect of the delivered product or service rendered occurred within the meaning of the product liability provisions, they shall also provide us with proof thereof. These obliga-

tions of the supplier also apply if their product or service is merely part of a service rendered by us to a third party. In this case, the supplier shall undertake to reimburse us all expenses arising from this title, also towards third parties, in full.

If the supplier subsequently becomes aware of any circumstances which might establish a product defect within the meaning of the Product Liability Act, the supplier shall immediately notify us thereof and reimburse us for all expenses for any retrieval of defective products.

The supplier shall also indemnify and hold us harmless against any disadvantages arising from the defectiveness of the product without provision of a of proof.

The supplier shall also reimburse us the damage arising from any material damage, if the item in question was primarily used by us in our company.

In case we are held liable by a customer or other third party based on product liability, the supplier shall undertake to release us from any such claims, provided a case of damage is asserted due to a defect relating to the product delivered by the supplier.

In this case, the supplier shall assume all costs and expenses, including any costs associated with legal action or a recall.

The supplier shall undertake to provide us with proof of sufficient liability insurance cover on request at any time.

9. Invoicing:

Invoices shall comply with the corresponding statutory tax regulations and indicate our order number. In addition, the shipping method shall be indicated in the case of material invoices, and in case of service invoices, a copy of the specifications and/or individual items of the invoice shall be attached.

If invoices do not meet these requirements, they shall be returned to the supplier for rectification. The agreed payment period only starts upon receiving the corrected invoices; payment dates shall be postponed to the date 14 days subsequent to our receiving the corrected invoice.

Performances and material not confirmed by the responsible authority with our company shall not be compensated.

10. Payment:

The proper acceptance of the goods by us and the receipt of the invoice by us is decisive for the maturity and for cash discount terms. Invoices shall become payable at our discretion within 14 days with a 3% cash discount, or within 45 days with a 2% cash discount, or within 90 days net, always from receipt of the invoice, yet not before accepting the defect-free goods or upon acceptance of the defect-free operation of created work.

In case of a default on our part, we shall pay default interest in the amount of two percentage points above the base rate.

Payment can be effected by check or by bill of exchange subject to a 90-day term. In this case, the discount periods are also complied with, if the bill of exchange or check were sent within the discount period. In case of payment by bill of exchange, we shall reimburse the supplier the confirmed bill of exchange fees.

Effecting payment does not constitute acknowledgement of the correctness of the deliveries or services and therefore no waiver of any claims we may be entitled to.

We reserve a right to offset counterclaims, even from and against group companies.

11. Force majeure, withdrawal:

Any events not exclusively in our sphere of influence occurring after submitting the order, such as force majeure, disruptions of operations, operational downtime or machine breakage, which materially impair the use or the resale of ordered goods, shall entitle us to withdraw from issued orders or revoke submitted orders and/or to delay acceptance without any detrimental legal consequences for us. The supplier does not have any claims for compensation in this connection.

If the supplier defaults on fulfilling their obligations, or if we become aware of any circumstances which may pose a danger to the timely and proper fulfillment of the contract by the contractual partner, we shall be entitled to immediately withdraw from the contract either in full or in part without setting a grace period and to assert full damages to the extent of the withdrawal. In case of orders of serial products, we also shall also be entitled to withdraw without giving any reasons up until acceptance; if the order was already dispatched, we shall replace any confirmed expenses incurred, particularly for transport and return transport and packaging costs, yet not for unrealised profits.

In case of orders of custom-made products, we may also withdraw without indicating any reasons up to the transfer of the ready-for-operation work and in this case shall replace the expenses incurred by the services rendered so far.

In case the economic situation of the supplier deteriorates significantly (negative equity, need for reorganisation) or in case of a change to the ownership structure of the supplier, we are entitled to make the further performance conditional on the provision of adequate collateral, to fully or partially withdraw from the contract and to recall any benefits and discounts granted thus far, irrespective of any procedural consequences. The supplier shall immediately notify us of such circumstances.

12. Assignment of claims and offsetting:

Assigning claims of the suppliers against us to third parties shall require our explicit written approval and shall be deemed ineffective without such approval.

Payment defaults relating to a contract shall not affect the mutual rights and obligations arising from other contracts. The supplier shall in particular not have any right of lien, retention or withdrawal due to such circumstances. The supplier may only offset claims we have against the supplier with outstanding claims on part of the supplier, provided we do not object to such offsetting.

We are entitled to fully or partially assign the rights and duties arising from the business relationship with the customer with discharging effect to another legal entity and shall notify the supplier thereof. The contractual partner may not assign their contractual rights and obligations to a third party without our explicit approval.

13. Drawings:

Drawings, models, sample pieces and other tools we have provided to the contractor for the execution of our orders or which are produced by the contractor for the purpose of executing our order, may not be used for other purposes. They are our property, shall be kept confidential from third parties and shall neither be reproduced nor made available to any third parties without our consent. They may be processed, used and altered by us, even if they were created by the contractor.

They shall be returned to us immediately after order completion or in case of a non-performance of the order without special request, unless otherwise agreed upon. In case of service contracts, the contractor shall consider the related work and all documents available in this connection confidential and handle them accordingly. They shall assume the liability for any and all damage arising for us due to a violation of one of these obligations.

If the supplier violates one of the aforementioned obligations, even through no fault of their own, they shall pay a contractual penalty in the amount of 10% of the underlying order value, irrespective of whether we incurred any damage. We reserve the right to assert higher damage in any case.

Unless explicitly agreed otherwise, no compensation shall be paid for any order documents (plans, cost estimates, specifications) prepared by the contractor. This also applies in case the order is not executed for any reason.

Using the order for advertising purposes is only permitted subject to our explicit written approval.

Except for standard parts, the supplier shall indicate their subcontractors and upstream suppliers involved in the execution of the order for approval promptly after submitting the order. This does, however, not establish any legal relationship between us and the subcontractors and upstream suppliers. The contractual partner shall assume the unlimited liability for their subcontractors and upstream suppliers.

14. Returns:

We are entitled to request that the supplier take back proper, fault-free goods which we did not use. If the goods are already older than 1 year, they are returned at a value 10% below the then applicable price of the goods to be returned. Another 10% will be deducted for every additional year.

15. Place of performance, property:

The place of performance is our Hallein plant, unless otherwise provided for by the delivery address indicated in the order.

Components or materials provided by us shall remain our property. The supplier shall undertake to inspect these components or materials upon receipt, immediately report any transport damage to the forwarder and any deviations to us, and subsequently attach a clear label to the components and materials in question and to store them separately and carefully at their own risk.

16. Third-party property rights, other rights:

The supplier shall ensure that the use of the delivered goods or services as per the contract does not violate any third-party property rights (copyrights, patent, trademark, design rights, territorial protection, etc.). They shall indemnify us from any and all claims arising from the violation of such property rights and shall undertake to procure for us the required authorisations (licences) at their own expense.

If a third party asserts the violation of a patent or a commercial property right, the supplier shall undertake to

- a) immediately notify us of the claims in writing or by telex;
- b) immediately join ongoing proceedings and assume any and all legal expenses incurred;
- c) indemnify us and hold us harmless against any and all claims asserted by third parties on the basis of a violation of such rights.

The supplier shall also release our customers from such claims that are asserted by third parties due to a violation of such rights and shall also indemnify and hold harmless our customers in this regard.

The supplier waives any rights obstructing the unlimited processing, altering and selling by us or our legal successors. We are entitled to forward technical documentation to end customers as required.

17. Performance of work:

Individuals performing work for the purpose of executing the order on the factory premises, shall comply with the provisions of the applicable work regulations; the provisions in place for entering and leaving the factories shall be adhered to. Any liability for accidents happening to the individuals on the premises is excluded, provided they were not caused by us intentionally or due to gross negligence.

The supplier shall bear the sole responsibility for complying with all administrative/statutory provisions, if they perform work on our premises.

In case of work with mutual endangerment, such work shall be coordinated by the supplier and us without special request.

The technical regulations of AustroCel Hallein GmbH shall be complied with.

18. Governing law, place of jurisdiction:

The contract concluded on the basis of our order is exclusively governed by Austrian material law, even if a service was rendered abroad or from abroad or if a delivery is shipped abroad. The applicability of the United Nations Convention on Contracts for the International Sales of Goods (UNCITRAL), the Hague Uniform Law on the International Sale of Goods or of other conventions concerning the right of the purchase of goods is hereby fully excluded.

Any and all disputes arising from or in connection with the business relationship with the supplier, including their violation, dissolution or voidness, shall be finally decided upon pursuant to the rules of arbitration and mediation of the Vienna International Arbitral Centre of the Austrian

Federal Economic Chamber (Vienna Rules) in Vienna by one or by several arbitrators designated pursuant to these rules.

We shall also be entitled to institute legal proceedings at the competent court for the City of Salzburg or the Inner City of Vienna or at another competent court, i.e. at our domicile or at the domicile of our supplier.

19. Reservations, written form, severability clause:

Any explicit contractual arrangements made with the supplier, which deviate from these Terms and Conditions of Purchase, shall prevail over the Terms and Conditions of Purchase.

Any amendments to contractual arrangements and amendments to the Terms and Conditions of Purchase as well as any other declarations to be made due to or in connection with the contractual relationship are only valid in writing; declarations made by fax or email (in each case with a transmission confirmation) meet the written form requirement.

Should any clause of this contract be or become ineffective, or should the contract have any gaps, the remainder of the contract shall remain unaffected therefrom. The ineffective provision shall be replaced by a legally valid provision which most closely resembles the economic purpose of the ineffective provision. Any contractual gaps shall be rectified in the same manner.