

## 1. Scope

- 1.1 These General Terms and Conditions apply to all deliveries of goods and services („Products“) supplied by Austro Engine GmbH („AE“).
- 1.2 By accessing and using products provided by AE the buyer accept and agree to be bound by provisions of this Terms and Conditions.
- 1.3 Any modification of these General Terms and Conditions must be agreed to in writing.

## 2. Offer

Offers by AE are made without obligation, except if stated to the contrary.

Specifications and quotes in catalogues, brochures, etc. are only binding if expressly referred to in the offer or order confirmation.

The content of the offer is AE's intellectual property. Therefore, the offer must neither be reproduced nor disclosed to third parties without AE's consent.

Likewise, AE will not disclose the content and existence of the offer to third parties without the buyer's consent.

## 3. Contract

- 3.1 The contract is effective only upon the signature of the contract by both parties, or the buyer's receipt of AE's written confirmation of a purchase order, and, if agreed upon, AE's receipt of the buyer's down payment.
- 3.2 No contract may be cancelled or altered by the buyer except on terms and conditions acceptable to AE, as evidenced by AE's written consent.
- 3.3 Any costs of a modification requested by the buyer or caused by circumstances not known to AE at the time of the signing of the contract shall be priced separately and are the buyer's responsibility.
- 3.4 AE reserves the right to modify specifications of Products. AE is not obliged to carry out such modifications of Products already supplied earlier.

## 4. Prices

- 4.1 The prices quoted are ex works AE's factory (Incoterms 2000: EXW Wiener Neustadt, Austria), exclusive of packaging, shipping and VAT. Any fees, taxes, duties and other expenses are the buyer's responsibility.
- 4.2 In case the delivery of Products is delayed by more than 2 months for reasons outside AE's control the prices will be adjusted at the time of delivery of the Products according to any increases reflected in the latest Austrian Consumer Price Index published by the Central Office for Statistics in Vienna.
- 4.3 All prices quoted are payable in EURO, except if stated to the contrary.
- 4.3.1 The minimum order volume have to be no less than EUR 50. In case if the order volume is less than EUR 50.- (without transport and packing), the total invoice value will automatically be increased to EUR 50.
- 4.3.2 AE does not bear any responsibility if the delivery address is different to the invoice address. In case if delivery address is different to the invoice address and AE has already arranged a delivery, the buyer shall bear all expenses in relation to that and arrange a new delivery by itself. In case if delivery has not been arranged yet, and indicated addresses are different, AE has a right to charge EUR 10, as a fee.

## 5. Payments

- 5.1 Unless agreed otherwise, the contract price shall be paid as follows:
  - a) A down payment or production slot deposit, if agreed upon, shall be made within 7 days

after the effective date of the contract (as per Clause 3.1).

- b) The payment of the remainder of the contract price shall be made immediately upon delivery of Products.

5.2 Unless agreed otherwise, all payments for AE's Products supplied pursuant to the contract are due immediately upon receipt of AE's invoice. Interest will be charged on overdue accounts at the fixed rate of 12% p.a. In case of delayed payment AE is, in addition to the interest charge, entitled to postpone its own obligations until receipt of the payments due.

5.3 The buyer shall not be entitled to withhold or reduce any payments due because of alleged claims against AE.

5.4 Until the buyer has fulfilled all financial obligations, the Products supplied shall remain AE's property.

5.5 If AE agreed on partial payment before shipment, the buyer is not allowed to modify or resell the engine until completing payment in any case.

5.6 The buyer shall be obliged to meet all legal requirements in order to safeguard AE's property or security interest. In case of attachment or other kinds of seizure the buyer shall evidence AE's title and notify the latter immediately. The retention of title shall not affect the passing of risk under Clause 6.

5.7 With excess of the payment term AE is authorized to demand reminder fees of EUR 50,- starting with the second reminder.

5.8 If the payment is not received on AE's account after the third written notification (reminder) the account will be locked. At successful payment of the outstanding amount (including created reminder fees and interest) AE charges an unlocking fee of EUR 150,-.

## 6. Delivery and Passing of Risk

The handover of Products to the buyer or a carrier by AE shall constitute delivery to the buyer. All risk of loss or damage in transit or thereafter shall be borne by the buyer.

If delivery of Products ready for handover is not possible or not desired by the buyer, Products can be stored by AE at the buyer's cost and risk, and delivery shall then be considered as performed.

If a delay of more than 2 (two) months in partial or total delivery of Products is caused by any of the circumstances mentioned in Clause 12 or by an act or omission of the buyer, including the failure to procure any required permits for delivery in the buyer's country, the delivery shall be extended by a period which is reasonable considering all the circumstances or, at AE's discretion, AE shall have the right to cancel the contract or parts thereof.

If a delay of more than 2 (two) months in partial or total delivery of Products is caused by circumstances other than mentioned hereinor Clause 12 but for reasons within AE's control, the buyer is entitled to cancel the contract or parts thereof.

## 7. Intellectual Property Rights

Any information, including but not limited to drawings, technical documents, and software relating to Products in any manner, submitted by one party to the other, prior or subsequent to the conclusion of the contract, shall remain the exclusive property of the submitting party and shall be treated as confidential information by the receiving party, and may be utilised only in relation to the fulfilment of the contract.

## 8. Software Use

For any software relating to Products supplied, AE grants the buyer the non-exclusive and non-transferable right to use the software including its documentation only for the period of time defined by AE and only in relation with Products supplied together with the software.

The buyer shall not use the software in another context but may duplicate, translate, or modify it within the Austrian laws and regulations. The buyer shall not remove the manufacturer's data or instructions, including copyright notations, without AE's prior written consent.

**9. Warranty**

Products will be in compliance with Austrian laws, standards, and regulations as well as with those regulations in countries pertinent for buyer's purposes to the extent they have been communicated in writing to and accepted by AE. No warranty is made for the compliance with any law, standard, regulation or any condition imposed by a foreign authority not communicated in writing to AE and confirmed by AE prior to the formation of the contract.

The buyer shall examine Products provided under the contract upon receipt and shall notify AE in writing of any defect within 30 (thirty) days. Unless this duty of examination and immediate written notification is adhered to, warranty claims are forfeited.

The buyer shall arrange for the recording of all required operating conditions, characteristic data and results of analyses for the duration of the warranty period to be able to document any warranty claim. In case of deficiencies of Products (including incomplete or incorrect documentation) AE will either repair such deficiencies (complete or correct documentation) or replace deficient goods (parts) by new ones. Any warranty claims shall be forfeited if a Product is modified or repaired without AE's prior written consent.

THE WARRANTY CONTAINED IN THIS CLAUSE 9 IS EXCLUSIVE AND IN LIEU OF ALL OTHER REPRESENTATIONS AND WARRANTIES, EXPRESS OR IMPLIED. SPECIFICALLY EXCLUDED ARE DAMAGES CAUSED BY NON-OBSERVANCE OF INSTRUCTIONS FOR USE AND MAINTENANCE OF PRODUCTS, WARNING, SAFETY AND OTHER REGULATIONS PROVIDED BY AE, AND IMPROPER HANDLING OF PRODUCTS. AE SHALL NOT BE LIABLE FOR FURTHER (CONSEQUENTIAL) DAMAGES RESULTING FROM DEFICIENT PRODUCTS, UNLESS AE IS HELD RESPONSIBLE FOR INTENT OR GROSS NEGLIGENCE. FURTHER, AE DISCLAIMS ANY LIABILITY FOR DAMAGES OR MALFUNCTION THE CAUSE OF WHICH DOES NOT LIE WITHIN THE SCOPE OF USE OF PRODUCTS.

In general warranty only applies to certified and non-modified products except stated to the contrary.

**10. Buyer's Data**

The buyer's data provided will be electronically data processed by AE and, as provided in the scope of AE's business, forwarded to the respective business partners or public authorities in Austria and abroad. In case of any changes of the buyer's data, including but not limited to the buyer's name, address, registration number, or legal form, AE shall be informed thereof immediately.

**11. Liability**

AE, ITS REPRESENTATIVES, AND EMPLOYEES SHALL BE LIABLE FOR DAMAGES ONLY IF AE IS HELD RESPONSIBLE FOR INTENT OR GROSS NEGLIGENCE. ANY LIABILITY FOR INDIRECT

AND/OR CONSEQUENTIAL DAMAGES, INCLUDING LOSS OF PROPERTY OR PROFIT, COSTS OF PRODUCT RECALL, IS SPECIFICALLY DISCLAIMED. AE, ITS REPRESENTATIVES, AND EMPLOYEES SHALL NOT BE SUBJECT TO ANY OBLIGATIONS ARISING FROM STRICT LIABILITY CLAIMS AND SHALL BE INDEMNIFIED BY BUYER AGAINST ANY AND ALL LOSSES, LIABILITIES, DAMAGES AND EXPENSES THAT AE MAY INCUR AS A RESULT OF ANY PRODUCT LIABILITY CLAIM.

**12. Force Majeure**

In the event AE or one of its component or system suppliers is subject to an event of force majeure or an event beyond the control of AE or its component or system suppliers, such as war, acts of God, governmental interventions and bans, energy and raw-material shortages, strikes, civil unrest, transport damages or delay, AE shall be entitled to extend the time of delivery set forth in AE's offer, provided AE notifies buyer within 14 days in writing of such event.

**13. Premature Termination of Contract**

Either party may immediately terminate the contract by giving written notice to the other party if any of the following occurs:

- a) a bankruptcy proceeding is instituted against either party's assets, or such proceeding is not instituted because of insufficient assets;
- b) such other party materially breaches the contract and fails to remedy such breach within 2 (two) months after written notice is given.

In addition to the circumstances set forth in Clause 13.1 AE may immediately terminate the contract by giving written notice to the buyer, if

- a) delivery becomes impossible for reasons attributable to the buyer;
- b) the buyer's financial situation has worsened notably after signing of the contract and the buyer is unable or unwilling to provide adequate security for payment of its financial obligations under the contract;
- c) due payments are not received from the buyer despite AE's fulfilment of its obligations and buyer fails to pay within a reasonable period of grace established in writing; or
- d) a change of buyer's ownership or management control takes place which has a substantial impact on AE's interests.

**14. Severability**

The provisions contained herein are severable. If any provisions are held to be invalid or unenforceable by a court or governmental agency, the remaining provisions shall continue to be binding. In either case, the parties agree to use their reasonable best efforts to replace any such invalid or unenforceable provision with a valid and

**15. Applicable Law and Jurisdiction**

The contract shall be construed and interpreted according to Austrian law. It is mutually agreed that the United Nations Convention on Contracts for the International Sale of Goods does not apply.

In case of controversies or disputes between AE and the buyer the competent courts for AE's seat in Wiener Neustadt, Austria, shall have jurisdiction. AE shall, however, also have the right to bring a claim before another court which has jurisdiction for the buyer's seat.