

# SAG's general terms and conditions of Sale and Supply

**1. Conclusion of the contract:** The following conditions shall apply exclusively to all our deliveries and services. We shall only be bound by the purchaser's conditions of purchase, be they of a general or a specific nature, if we expressly acknowledge them in writing in each individual case. Our quotations shall always be non-binding. Orders placed with us and any changes to such orders shall be binding upon the purchaser under all circumstances. Orders placed or changes made shall only become binding on us upon our written confirmation of the order.

**2a. Prices:** All prices shall apply ex-works and are, without exception, subject to value-added tax, unpacked and are daily prices, unless a term price or deviating conditions (packaging, transport, or similar) has/have been expressly established in writing. The prices prevailing on the date of delivery shall apply to orders without an explicit price agreement.

A fixed price agreement for metal is subject to the conditions specified below. If margin call receivables arise on the part of our broker due to the hedging of this fixed price on the LME, they must be borne by the customer. We shall be entitled to invoice the purchaser for this at any time. In the event of changes to the order made by the ordering party (delivery volume in relation to the delivery date), we shall reserve the right to invoice the purchaser for any costs arising. This shall also include any expenditure that we incur as a result of decreases in the value of the LME market price in relation to the agreed price (mark-to-market loss).

We shall be entitled to increase our prices to a reasonable extent if changes to raw material or auxiliary material prices, wages, salaries, freight costs or other public charges occur after the quotation is submitted. By contributing towards the cost of tools, the purchaser shall not acquire a title to the tools. These shall remain our property. Early payment discounts, discounts and the term of payment with regard to the tools require a special agreement. We shall be entitled to scrap the tools three years after final delivery. The ordering party shall bear the costs of modification, maintenance and replacement of the tools.

**2b. Purchase quantity:** A contractually defined total quantity shall count as a fixed purchase quantity. The purchaser shall thereby guarantee us an unvarying obligation to purchase goods on the contractually agreed delivery date and at the contractually agreed price. If the contractually agreed total quantity (purchase quantity) is not accepted by the purchaser at all, on schedule or in full, resulting in changes to the provision on delivery quantity or to the delivery dates for some or all of the quantity of goods, which are to be delivered monthly, any resulting additional expenditure shall be borne by the purchaser. In this case, we shall be entitled to charge the purchaser for any such costs, including outside any agreed settlement arrangements.

If the monthly delivery quantity is put back to a later delivery date at the request of the purchaser, all costs and expenditure which we incur through this postponement shall be borne exclusively by the purchaser.

Changes to monthly delivery quantities (total quantity agreement) or changes to delivery dates shall be made known not later than the third working day prior to the end of the month preceding the delivery month or not later than the third day prior to commencement of the pricing period in the case of average agreements.

**3. Delivery and delivery period:** Our delivery shall be considered complete upon handover to the purchaser, shipping agent or carrier or after notification of readiness for dispatch. Our deliveries are subject to timely and correct delivery by our suppliers. The delivery obligation shall commence on the day of acceptance of the order by us, but not before full clarification of all the particulars of execution. If the purchaser is required to procure documentation, details, consents or approvals or to make an initial payment, the delivery period shall not commence before fulfilment of those requirements. Impediments to execution and delivery of an order which we cannot rectify at all or within reason economically (e.g. strikes, operational breakdowns, lockouts, delayed receipt of raw materials, traffic disruption, etc.) and their consequences are considered to be force majeure and shall release us from the obligation to deliver without the purchaser being entitled to assert a claim for damages. We are entitled to proceed with the ordered deliveries once the impediment has been removed. However, the right to damages as a result of delayed delivery is also excluded if this delay occurred

as a result of damage to the machines and tools used in the production of the material ordered and we are neither guilty of wilful intent nor of gross negligence in this regard. Depending on the nature of the products, deviations in weight, quantity, running metres, etc. of up to +/- 10 per cent are permitted both with regard to the entire final quantity and also with regard to agreed partial deliveries, unless specified otherwise in our applicable technical delivery conditions. The quantity we specify (depending on the factory, normally weights, in special cases also quantities, running metres, etc.) shall serve as the basis for the calculation of the invoice value.

**4. Acceptance:** Material supplied by us shall only be subjected to an acceptance procedure if the relevant material standards stipulate such an acceptance procedure or if this is explicitly agreed when the order is placed. Acceptance must take place within an appropriate period of time, albeit no later than within two weeks of notified readiness for acceptance, at the expense of the ordering party. Otherwise, the goods are considered accepted. In this case, we are entitled to dispatch the material or to store it at the purchaser's expense and risk. Any required export documentation must be procured by the purchaser.

**5. Packaging:** If packaging is necessary in the opinion of the seller, standard packaging shall be used, as a general rule at the expense of the purchaser.

**6a. Freight and insurance:** The freight costs and the costs of insurance of the consignment, if such insurance is requested by the purchaser, must be borne by the purchaser. If the purchaser provides us with special loading and dispatch provisions, such provisions shall be executed at the purchaser's risk and expense. The mode and route of shipment, as well as the choice of forwarding agent and carrier, shall be at our discretion.

**6b. Transfer of risk and acceptance:** The latest version of the Incoterms, as stated in the order confirmation, shall apply to our business transactions. Items that have been delivered shall be received by the ordering party without prejudice to the rights in the section "Warranty" below, even if they display minor defects. Partial deliveries are permitted.

**7. Shipping and default of acceptance:** Failure to supply any necessary shipping instructions on time or to pick up the shipment on time shall place the purchaser in default of acceptance. Without prejudice to the other rights accruing to us in such cases (compensation), we may undertake shipment to the purchaser at our discretion. The purchaser shall bear or reimburse to us any additional costs or damages. If the purchaser does not accept our correct shipment or required shipping documents, our order shall be deemed to have been fulfilled and the purchaser shall be required to pay the full price. In this case, we are entitled to store the material at the purchaser's expense and risk.

**8. Analyses and measurement tolerances:** In general, our analyses and analytical methods shall be conclusive. If their accuracy is disputed, an arbitral analysis shall be made by a body which is to be determined jointly. The purchaser shall bear the costs for this. Unless otherwise expressly agreed in writing, the existing EN (DIN) standards shall apply to the agreed specifications. Otherwise, our technical delivery terms shall apply.

**9. Warranty:** The warranty period shall begin on the day of notification of readiness to dispatch or the day of delivery, and shall end after 12 months (or after 6 months for multi-shift operation). Warranty claims shall require written notification of defects, immediately after receipt of the goods in the case of obvious defects, and immediately upon discovery in the case of hidden defects. In cases of agreed acceptance, warranty for defects is excluded, where such defects should have been discovered during the agreed form of acceptance. Where we receive parts of the goods from our suppliers, we shall be liable for warranty only to the extent that we receive warranty from our supplier. Warranty shall only be granted when the goods have been used in accordance with their quality conditions. Where goods are provided to us for processing, we shall only carry out an identity inspection upon their arrival (i.e. quantity and packaging). If defects are found during the course of processing, the ordering party/customer shall undertake to hold us harmless despite non-notification of defects.

Responsibility for the design shall rest with the ordering party/customer. Dry runs performed by us shall only apply to the actual product, but not to their connection with other components. The ordering party/customer shall undertake to conduct appropriate dry runs at its end.

If we acknowledge a defect, we retain the right to determine whether to take back the item against reimbursement of the price charged, to rectify the defect or to make a substitute delivery against return. Claims exceeding that scope, in particular those for damages, shall not be accepted. The purchaser may not rescind the contract due to delivery of a defective item.



**10. Force majeure:** Incidents of force majeure and other circumstances which are beyond our control, for example, operational breakdowns, traffic disruptions, difficulties encountered in the supply of power, raw materials, fuels and ancillary materials for operations and other impediments to production and delivery shall not give rise to claims for compensation on the part of the customer and shall entitle us either to extend the delivery period or to rescind the contract in whole or in part.

Strikes, lockouts and other circumstances (bans on import and export imposed after conclusion of the contract, embargoes) that substantially hinder delivery or make it impossible, shall be equivalent to force majeure, regardless of whether such circumstances arise for us or one of our subcontractors. We undertake to inform the customer of the occurrence and cessation of such factors affecting delivery without delay.

In the event that the customer justifiably rescinds the contract due to force majeure or similar impediments to delivery, any costs and expenses that we have accrued shall be borne exclusively by the customer. In the event that the circumstances under which the conclusion of the contract took place have changed to such an extent that it may be rightly assumed that, under these changed circumstances, the conclusion of the contract would not have taken place or different conditions would have been agreed, we shall be entitled to rescind the contract or to make a change to the agreed contractual provisions that takes into account the changed circumstances, for example payment in a different currency, change to delivery methods etc. The change of circumstances may also be justified by considerable changes to the personal circumstance or ownership of the customer.

**11a. Warranty limitation:** Where items are delivered on the basis of drawings or other information from the purchaser, as a result of which third-party rights, and more especially intellectual property rights, are infringed, the purchaser shall hold us completely harmless against any claims. Other claims shall be ruled out unless we assume liability in cases of intent or gross negligence. We shall assume no liability for loss of or damage to drawings, samples and such like provided to us where accidental loss and minor negligence apply. The burden of proof for the existence of gross negligence shall rest with the ordering party. We shall only arrange insurance for this if expressly instructed to do so and at the expense of the ordering party. The ordering party may not assert claims for compensation for minor negligence on the part of the supplier for whatever legal reason, in particular due to liability under tort, product liability, incorrect advice or failure to inform, positive violation of a contractual duty, fault upon the conclusion of the contract, or impossibility.

**11b. Copyright of the supplier:** Documents and drawings made available to the ordering party, as well as design work provided by us may only be used by the ordering party for the purpose intended; they may not be used for any other purpose or be disclosed to third parties without our permission. The ordering party shall assume liability for the full extent of the damage or loss for any infringement of this provision and at any degree of culpability.

**12. Rescinding the contract:** In the event of failure to comply with payment terms or if circumstances come to light which cast doubt upon the creditworthiness of the purchaser according to banking and credit insurance criteria, we shall reserve the right to make outstanding deliveries and performance contingent upon payment in advance or upon the provision of securities or to rescind the contract and to request compensation due to non-performance, without regard for previous agreements to the contrary.

If an ordering party rescinds its contract after receipt of the purchase order, it shall be required to make payment in full for all work and services which have already been commenced, in particular any project expenditure, costs, material expenditure and other investments undertaken. In this case, we shall be entitled to raise invoices for 100% of any such expenditure and costs (cancellation costs).

The same applies in cases where a defined project has been commenced after a purchase order is placed; in that event, the ordering party shall be required to pay for all services provided up to that time, in particular stocks of materials consumed over the period of time, investments which are not refinanced by the parts price / hourly rate, as well as any further project-related costs (project cancellation costs).

**13. Payment:** The amount invoiced is payable in accordance with the agreed conditions of payment. Payment is to be made in the agreed currency by way of transfer to one of our bank accounts. Cash discounts may only be availed of if there are no payments overdue. Cheques or bills of exchange shall be subject to special agreement and shall only be accepted in lieu of payment. Interest and fees are chargeable to the purchaser. If payments are made by bill of exchange, the purchaser may not apply a discount. The purchaser shall not be entitled to withhold payment for any reason. Set-offs against counterclaims shall be subject to explicit agreement. In the event of payment arrears or if we find out that the purchaser is experiencing payment difficulties, we reserve the right to demand immediate payment of all outstanding amounts and shall cease the provision for the deliveries (immediate maturity), withdraw from all contracts which have not yet been performed and withhold payments in advance which have been received until any compensation payments



have been set or shall offset claim against our receivables. Without prejudice thereto, we reserve the right to make the provision of outstanding deliveries contingent upon payment in advance or the provision of a security.

Not later than the time of shipment of the delivery parts to the ordering party, risk shall pass to the ordering party, including with partial deliveries or if the supplier has agreed to render other services, such as shipping costs or carriage and setup. Items that have been delivered shall be received by the ordering party without prejudice to the rights in the section "Warranty" below, even if they display minor defects. Partial deliveries are permitted.

In the event of delays in payment, we shall be entitled to charge default interest at a rate of 7% above the prevailing 3-month EURIBOR rate. In the event that this reference interest rate falls below 0.5%, it is hereby agreed that a value of 0.5% shall be set as the basis for interest. In that case, the purchaser shall be required to pay all reminder and collection fees.

Payments shall be applied at all times to the oldest unsettled invoice or receivable. Fees which arise in connection with bank transfers or on the basis of documentary collections and letters of credit for our deliveries in the purchaser's country or in the country of destination shall be borne by the purchaser.

Assignment prohibitions contained in "General Business and Purchasing Conditions" issued by our customers and all other contractual conditions pertaining to the assignment of claims shall be considered ineffective.

**14. Reservation of title:** All goods supplied shall remain our property until all liabilities have been fulfilled completely (reserved goods). In the event of seizure or other use of the goods by third parties, the purchaser shall be obliged to inform any such third parties of the reservation of title and to advise us accordingly forthwith.

If the purchaser acts in breach of contract, in particular in case of payment default, the supplier shall be entitled to take the goods back, and the ordering party shall be obliged to surrender them. Taking back or seizing the goods shall only constitute rescinding the contract if this is explicitly declared as such in writing by the supplier. If the ordering party processes our reserved goods with other goods, we shall be entitled to co-ownership of the new product on an appropriately proportionate basis. Upon the sale of the product which is our property, we shall become entitled to the claim against the third-party purchaser, whereas the purchaser shall be obliged to inform the seller and assign the seller all claims arising from resale. At our request, the purchaser shall be obliged to advise its customer of the assignment. Should the purchaser process, amalgamate or combine the product with other products which do not belong to us, the purchaser shall transfer title to the new stock or to the item to us within the scope of the invoice value of the reserved goods.

The purchaser shall store the new stock or item free of charge for us. However, we shall be entitled to inspect the purchaser's warehouse at any time in order to reclaim the products belonging to us against deduction of the utilisation amount and to prohibit any further sale of reserved goods.

**14a. Reservation of title in the case of deliveries to customers outside Austria:** We shall reserve title to the goods supplied until all receivables have been settled in full (including any balance claims arising from a current account) owing to us by the customer for any legal reason whatsoever now or in the future. We shall be entitled to take back the purchase item if the purchaser acts in breach of contract.

The purchaser shall undertake to treat the purchase item with care until such time as ownership has been transferred to it. In particular, it shall undertake to insure the item adequately at new value at the purchaser's own cost against theft, fire and water damage.

The purchaser shall be entitled to resell the reserved goods in the normal course of its business transactions. The purchaser shall hereby assign claims of the customer arising from the resale of the reserved goods to us in the total amount of the final invoice (including value-added tax). This assignment shall apply regardless of whether the objective of sale has been resold without or after being processed. The purchaser shall retain its right to collect the receivable, even after the assignment. Our authority to collect the receivable ourselves shall remain thereby unaffected. However, we shall not collect the receivable provided the purchaser fulfils its payment obligations arising from revenue received, is not in arrears with payment and, in particular, is not the subject of any application to initiate insolvency proceedings, or payments have not been suspended.

The treatment, processing or conversion of the object of sale by the purchaser shall be done in our name and on our behalf at all times. In this case, the purchaser's expectant right to the object of sale shall be carried over to the converted object. To the extent that the object of sale is processed with other objects which do not belong to us, we shall require the right of co-ownership to the new object in the ratio of the objective value of our object of sale to the other objects processed at the time of processing. The same shall apply in case of amalgamation. To the extent that amalgamation occurs in such a way that the purchaser's object is



viewed as the main object, it shall be agreed that the purchaser shall transfer proportionate co-ownership to us and preserve the sole ownership or co-ownership which arises from this for us. In order to secure our claims against the purchaser, the purchaser shall also transfer to us any such claims that it has against a third party as a result of the reserved goods being affixed to real estate; we shall hereby accept any such transfer.

We shall undertake to release the securities which we are entitled to at the request of the purchaser if their value exceeds the claims being secured by more than 20%.

**15. Applicable law, place of jurisdiction:** All contractual relationships shall be governed by Austrian law. German law shall only be agreed in respect of the provision on the reservation of title in accordance with section 14.a. of these conditions. The place of jurisdiction for disputes arising from the contractual relationship shall be the court with actual and local jurisdiction over the place where the supplier has its headquarters in the case of contracting parties with a registered office in a member state of the European Convention on Jurisdiction and the Enforcement of Judgments (EuGVV).

**16. Effectiveness:** Should any of these provisions become ineffective, the seller shall be entitled to substitute the effective provisions with an effective provision which is most in keeping with the economic outcome of the ineffective provision. The legal invalidity of individual provisions of these business conditions and of the other contractual conditions shall not affect the effectiveness of the other conditions. In deviation from section 14., we shall only deliver to customers outside Austria on the basis of the reservation of title described in further detail below. This shall also apply to all future deliveries, even if we do not make explicit reference thereto at all times. If maintenance and inspection work has to be carried out, the purchaser must do so in good time and at its own expense. While ownership is yet to be transferred, the purchaser must inform us in writing without delay if the supplied item is seized or subject to other intervention by third parties. Should the third party be unable to reimburse us for the judicial and extra-judicial costs of legal action, the purchaser shall be liable for any financial loss that we incur.

Our locations

- México
- Netherlands
- Austria
- Slovakia
- Spain
- USA

