

**1. General**

- 1.1** All deliveries and services of Sonderhoff Engineering are subject to these terms of sale and any other special contractual agreements. Deviating terms and conditions of purchase of the Purchaser shall not become part of the contract as a result of an order acceptance. Changes and/or supplements to these terms and conditions of sale require – without exception – the previous authorisation in writing of Sonderhoff Engineering. The placing of an order shall be deemed as the acceptance of the conditions of sale.
- 1.2** Unless a different agreement is explicitly concluded, orders are considered as accepted only if Sonderhoff Engineering has confirmed the order in writing.
- 1.3** Sonderhoff Engineering reserves the right of information, ownership and copyright for patterns, cost estimates, drawings and the like. They shall therefore not be transmitted to third parties.

**2. Price and Payment**

- 2.1** Unless explicit differing agreement is given, the prices are ex works, including loading in the works but excluding packaging and off-loading costs. The turnover tax of the corresponding legal amount shall also be added to the agreed prices. If no other particular agreement has been concluded, every payment shall be made to Sonderhoff Engineering with no deduction, post and charge free, as follows:  
- 30 % with placing of order;  
- 60 % after acceptance of the goods, before delivery;  
- 10 % within 14 days after the final acceptance.
- 2.2** The Purchaser shall bear the payment immediately. As long as Sonderhoff Engineering has not received the entire payment that shall be performed by the Purchaser according to clause 2.1 and which concerns the placing of an order or the goods acceptance, Sonderhoff Engineering is entitled to retain the whole service. If the events at the basis of the respective payment obligations according to clause 2.1 exceed more than 14 days, Sonderhoff Engineering is entitled to charge interest for delay, corresponding to a value of 8 % over the base interest rate of the Austrian National Bank. The payment is subsequently set off against unsecured demands.
- 2.3** The ordering party shall compensate Sonderhoff Engineering for the default interest as well as any costs arising from the appropriate collection or recovery of the claim of Sonderhoff Engineering against the ordering party together with any associated required collection and information charges as well as any possible representation and legal costs.
- 2.4** The Purchaser has the right to retain payments or to set off counterclaims. If insolvency proceedings have been instituted against him, this right is valid only insofar as his counterclaims are undisputed or legally recognised. Sonderhoff Engineering shall be immediately notified of Purchaser's counterclaims in writing.

**3. Period of Delivery and Delay in Delivery**

- 3.1** Delivery and service deadlines result from agreements of the contracting parties. Compliance therewith on the part of Sonderhoff Engineering presupposes that all the commercial and technical matters between the contracting parties have been completely clarified. It also requires that the Purchaser has accomplished all his obligations and duties, e.g. provision of required official certificates, authorisations or remittance of a down-payment. If this is not the case, the delivery period shall be prolonged adequately, to the extent that the Purchaser has not met his obligations and duties.
- 3.2** If the delivery deadline may not be respected because of force majeure, business disputes or for other reasons, that Sonderhoff Engineering can not avoid with adequate diligence (including e.g. strikes, lock-outs, delay, improper and incomplete suppliers' delivery, breakdowns, traffic blocks, energetic defects, shortage of raw materials, and regulatory measures), the delivery period shall be extended for the duration of the interference and shall include a reasonable start-up period. Sonderhoff Engineering shall inform the Purchaser of the beginning and the end of such circumstances. If impossibility or inability occurs during the delay of the order acceptance or if these circumstances belong – at least predominantly – to the Purchaser's sphere of responsibility, the latter shall be obligated to fulfil the entire counter-performance.

- 3.3** The delivery period shall be deemed to have been complied with if the delivery item has abandoned the Sonderhoff Engineering factory by the end of the aforesaid period or if readiness to supply has been notified. If formal acceptance is necessary, the acceptance deadline shall apply – with the exclusion of authorised acceptance refusals – or alternatively the notification of acceptance readiness. If delivery or acceptance of the item is delayed for reasons attributable to the purchaser, the latter shall bear the expenses resulting from this delay. Sonderhoff Engineering shall be entitled to provide the delivery item in partial deliveries.
- 3.4** The Purchaser shall be entitled to withdraw from the contract, if it can be demonstrated that Sonderhoff Engineering has not performed its service without a justifiable reason in spite of having set an extension of at least 4 weeks in writing or if it refuses the whole performance without justifiable reasons. The Purchaser shall be entitled to withdraw from the contract if for a certain order the execution of part of the delivery becomes impossible, provided the Purchaser has a legitimate interest in rejecting part-delivery. If this is not the case, the Purchaser shall pay the contract costs attributable to the part-delivery. The same shall apply in case of inability on the part of Sonderhoff Engineering.
- 3.5** If Sonderhoff Engineering retards the delivery for one of the reasons owing to Sonderhoff Engineering and if the Purchaser obtains resulting from this a demonstrable damage, the latter shall be entitled to demand a delay penalty. The amount of the compensation for damages caused by delay is limited to 0.2% for each full week delay with a maximum of 3% of the value of those parts of the total delivery that can demonstrably not be used in consequence of the delay in due time or not according to the contract. The Purchaser is not entitled to other rights on grounds of the Sonderhoff Engineering delivery delay, in particular claims for damages, also in the case of the withdrawal from the contract.

**4. Transfer of Risk and Acceptance**

- 4.1** All the risks shall pass to the Purchaser when the contract goods are transmitted to the Carrier or Haulage Contractor and not later than they have left the factory or the warehouse. All the risks shall pass to the Purchaser also in case of part-deliveries or in case Sonderhoff Engineering has assumed other performances such as despatch costs or delivery and installation.
- 4.2** If despatch or transmission to the Carrier or Haulage Contractor is delayed or not affected for reasons that are not attributable to Sonderhoff Engineering, the risk shall pass to the Purchaser on the date on which despatch or readiness for acceptance is notified. Sonderhoff Engineering undertakes to take out any transport insurances only if the Purchaser requires it explicitly. The Purchaser bears all resulting costs.

**5. Reservation of Ownership and Insurance**

- 5.1** Sonderhoff Engineering shall retain its ownership of all delivery goods until all Purchasers' payments have been received entirely by Sonderhoff Engineering.
- 5.2** Until all Purchasers' payments have been received entirely by Sonderhoff Engineering, the Purchaser may not sell the delivery goods unless Sonderhoff Engineering provides a previous authorisation in writing. He may not pledge nor assign the contract goods by way of security. If the contract goods are pledged or seized or otherwise possessed by third parties, the Purchaser shall notify Sonderhoff Engineering there of immediately in writing.
- 5.3** The ordering party shall ensure secure and proper storage of the items owned or jointly owned by Sonderhoff Engineering and shall ensure them at its own expense against theft, fire, water, breakage, water and any other property damages and shall be obliged to prove the existence of the insurance on request.
- 5.4** In the event of the Purchaser acting in contradiction to contractual obligations, especially in case of late payment, Sonderhoff Engineering is authorised to take back the delivery goods after having issued an appropriate reminder and the Purchaser shall be obliged to return the goods, if Sonderhoff Engineering does not withdraw from the contract. If the Purchaser violates a fundamental contractual obligation, Sonderhoff Engineering is authorised to withdraw from the contract without having issued an appropriate reminder and without previous notice. Sonderhoff Engineering is furthermore entitled to demand the return of the delivery goods.

A petition for the commencement of bankruptcy proceedings against the Purchaser, the commencement or the commencement refusal of such proceedings in absence of an adequate bankrupt estate shall entitle Sonderhoff Engineering to withdraw from the contract without previous notice and/or to demand an immediate return of the delivery goods.

## **6. Warranty**

**6.1** Sonderhoff Engineering shall be informed in writing of any defects according to §§ 377, 378 UGB immediately after delivery, but not later than within one week after delivery/performance, otherwise any warranty claims and claims for damages as well as any other remedies shall be lost.

**6.2** The elimination of defects shall primarily be limited to a claim for supplementary performance, i.e. improvement or replacement whereas Sonderhoff Engineering shall be entitled to choose the supplementary performance. Furthermore, Sonderhoff Engineering shall be entitled to credit a reasonable price reduction to ordering party.

**6.3** After previous consultation the Purchaser shall allow Sonderhoff Engineering the necessary time and opportunity to carry out all the rectifications and replacement deliveries which Sonderhoff Engineering considers necessary, Sonderhoff Engineering shall otherwise be exempt from the warranty liability for consequences resulting thereof. Out of the direct costs incurred as a result of the rectification or replacement delivery Sonderhoff Engineering shall bear the costs for the replacement, including despatch, insofar as the complaint proves to be justified.

**6.4** Only in urgent cases that prove to be justified, causing risks to operating security and in order to avert disproportionately large damages – whereby Sonderhoff Engineering is to be immediately informed of the aforesaid risks in writing – the Purchaser shall be entitled to rectify defects itself or to have them rectified by third parties and to demand reimbursement of the expenses involved from Sonderhoff Engineering.

**6.5** The Purchaser shall be entitled to cancel the contract only if Sonderhoff Engineering fails to comply within a deadline period of at least 4 weeks set for the rectification or replacement of a defect with no response on its part – insofar as the failing proves to be justified – or if the damage is irrecoverable and not just marginal. If the damage is irrelevant the Purchaser shall only be entitled to reduce the contract price. The right to reduce the contract price shall be excluded in all other respects.

**6.6** No warranty shall be assumed by Sonderhoff Engineering if delivered goods are damaged or defective or if they are limited in their functionality as in the following cases

- a) The Purchaser or third parties have used the goods delivered by Sonderhoff Engineering improperly or neglectfully. If they have not processed, varied or maintained them accordingly to the rules. In particular if the technical instructions provided by Sonderhoff Engineering are not respected. In cases of normal wear and tear, use of inappropriate equipment, defective construction works, unsuitable building ground, chemical, electrochemical or electric influences – insofar as they are not attributable to Sonderhoff Engineering.
- b) If the Purchaser or third parties make improper rectifications of the delivery goods and/or without prior consent by Sonderhoff Engineering, Sonderhoff Engineering shall assume no liability for the consequences arising therefrom.
- c) All the Purchase's warranty claims are subject to a limitation period that expires at the latest within one year after the transmission day.

## **7. Liability**

**7.1** For all claims resulting from the services that Sonderhoff Engineering shall perform according to the contract, Sonderhoff Engineering assumes liability only if the Purchaser proves that Sonderhoff Engineering or Sonderhoff Engineering auxiliary persons have caused this damage by gross negligence or by wilful misconduct. As far as no liability is applied according to the Product Liability Act, Sonderhoff Engineering assumes no liability for consequential claims, for collateral claims, for all financial or benefit losses unless the Purchaser proves that Sonderhoff Engineering has caused this damage by wilful misconduct. For damages to persons (injury of life, bodies, health) Sonderhoff Engineering is liable in any case.

**7.2** Any Sonderhoff Engineering liability shall be limited, except in case of wilful misconduct, to typical contractual damages which could have reasonably been foreseen and to the effective damages sustained by the Sonderhoff Engineering liability insurance. At present the liability limit amounts to 10 Mio. EURO. Except for damages to persons or wilful damages, Sonderhoff Engineering shall assume liability for all damages that result in connection with maintenance, service and start-up activities, with the Sonderhoff Engineering consulting or with Sonderhoff Engineering auxiliary persons. Furthermore, Sonderhoff Engineering shall assume liability only to the value amount but not exceeding the agreed payment of these maintenance, service and set-up activities or consulting services.

**7.3** Any Purchaser's claim for compensation that exceeds the terms according to clause 7 is excluded.

**7.4** Any Purchaser's claim for damages against Sonderhoff Engineering is subject to a limitation period that expires at the latest within one year after the damage notice.

## **8. Infringement of industrial property rights**

**8.1** The Purchaser shall immediately notify in writing Sonderhoff Engineering about every in court and out-of-court assertion of industrial property right and copyright violations by third parties who are involved in the use of the delivery item.

**8.2** If in-court and out-of-court proceedings are started against Sonderhoff Engineering on grounds of an infringement of industrial property right (especially of patents, brands, registered designs or utility patents) or an infringement of industrial property right by third parties, the Purchaser shall support Sonderhoff Engineering at own expenses in defending the asserted claims and shall provide all relevant information and documentation. The Purchaser shall furthermore carry out the required modifying measures by request of Sonderhoff Engineering in order to avoid or eliminate violations of industrial property right or copyright and to enable them at the request of Sonderhoff Engineering.

**8.3** The Purchaser shall hold Sonderhoff Engineering harmless in respect of all claims and costs concerning the infringement of industrial property rights and copyrights, if these violations – which are affirmed by the owner of the right or proven to be justified – trace back to the Purchaser's instruction, or if this infringement is caused by the fact that the Purchaser has modified the contract product on its own responsibility or he has used the contract product in a non-contractual manner or if the Purchaser is considered to be guilty of this violation.

## **9. Use of Software**

**9.1** If software is included within the scope of delivery, the Purchaser shall be granted a nonexclusive right to use the delivered software, including its documentation with the respective delivery item. Operation of the software on more than one system is prohibited. The Purchaser shall be obliged not to remove the manufacturer's specifications – especially the copyright references – or to change them without the express prior consent of Sonderhoff Engineering. All other rights to the software and documentation, including copies, shall remain with Sonderhoff Engineering or with the software supplier. Granting sub-licenses is not permitted.

## **10. Governing law, place of jurisdiction, use of data**

**10.1** For any disputes arising from or in connection with legal transactions or any other legal relations, which are based on these general terms of sale, Feldkirch shall be the agreed place of jurisdiction. However, Sonderhoff Engineering shall be entitled to file suit at the place of business of the ordering party. Such legal transactions or other legal relations shall be subject to Austrian law, excluding the rules of conflict of laws of the Austrian International Private Law and CISG.

**10.2.** Sonderhoff Engineering shall be entitled to electronically store and process any data on and from the contractual partner in connection with the business relationship for the purpose of the implementation of the contract, considering the provisions of the data protection act.