

1. General

For all our orders, dealings and delivery schedules, only the following terms of purchase apply. Changes or amendments to these terms of purchase and the stipulation of conditions of sale and delivery are not valid – without exception – unless previously agreed by us in writing. Sale and delivery terms and conditions of the Contractor shall not become a part of the contract even if they are not explicitly rejected by Sonderhoff Engineering. The acceptance of deliveries and services shall not imply an acceptance of the terms and conditions of sale and delivery. A deeper description of contract items and their features is respectively available in detached product specifications, drawings or requirement specifications. Unless other instructions are provided, the directions that shall apply are those included in the technical terms of purchase which rule and document the fundamental requirements of the delivery items. The transmission of orders to Sub-Contractors and the involvement of Sub-Contractors shall not be allowed unless previously agreed by Sonderhoff Engineering in writing. The completion of the order shall be deemed as the acceptance of these conditions of purchase.

2. Orders

Orders, dealings and delivery schedules are binding only if they are authorised by us in writing. Oral and telephonic agreements shall not be effective unless explicitly confirmed by us in writing. If the written order forwarded by the Contractor does not reach Sonderhoff Engineering within 2 weeks after the order admission, Sonderhoff Engineering has the right to revoke it at any time. Delivery schedules are binding if the Contractor/Supplier does not disagree with them in written form within 5 days. This is the deadline by which this objection must be received by Sonderhoff Engineering.

3. Delivery, Delay and Penalties

The order shall be forwarded to the delivery address indicated in the order. Each delivery shall dispose of a delivery receipt and, on demand, of a works certificate. Part shipments – possible only in consequence of a special agreement – shall be indicated as such. The punctual delivery depends on its date of receipt at Sonderhoff Engineering in Dornbirn or at another receiving centre indicated by us. The punctual delivery or installation depends on the acceptance date. If the delay of a service or a delivery is predictable and if its quality does not correspond to the contract requirements, it is necessary to inform us immediately in order to request our appropriate decision. The acceptance of delayed services shall not imply a relinquishment of indemnification claims. If a delay occurs, Sonderhoff Engineering has the right to charge a strict-liability penalty for each working day amounting to 0,5 % of the delayed delivery net value. The maximum penalty charge is 5 % of the delayed delivery net value. The claim for damages, which Sonderhoff Engineering is entitled to against the Contractor due to delayed deliveries or reasons of other nature, remains unaffected by this penalty. If a delay in the delivery occurs, Sonderhoff Engineering is also entitled to withdraw from the contract after setting a reasonable final deadline. This shall not be granted though if the Contractor is apparently unable or unready to fulfil his service or delivery within the respective deadline or if the existing transaction is a firm deal.

4. Force Majeure

Disputes and other force majeure cases entitle Sonderhoff Engineering to demand a reasonable contract adjustment or the exemption from the obligation to accept. The Contractor is obligated to inform Sonderhoff Engineering in writing without undue delay of any force majeure case having consequences on the content and the circumstances of those services that must be performed for Sonderhoff Engineering.

5. Price, Delivery and Transfer of Risk

Unless different agreements are reached, the prices are free our receiving centres, packaging included. As far as possible and allowed, Sonderhoff Engineering shall undertake the disposal of packaging material by charging the expenses to the Contractor/Supplier. Otherwise the Contractor/Supplier shall collect the packaging material at his own expense – regularly and, in any case, also on demand of Sonderhoff Engineering – and shall dispose of it according to the instructions. The transfer of risk is of the receiving centre indicated by Sonderhoff Engineering. If the delivery is connected to assembly work, corrective maintenance or a formal transmission, the transfer risk takes place at the respective delivery place. Returns are made at the risk and expense of the Contractor.

6. Payment

Payments occur, unless otherwise agreed, less 3 % discount after 10 days or net after 30 days. The time limit for the payment begins as soon as the delivery or the performance is entirely accomplished, including the complete documentation for this delivery or this performance, and as soon as Sonderhoff Engineering has received the duly issued invoice. Invoices containing incomplete information shall not be paid. Day of payment is the day of the correspondent credit transfer from the Sonderhoff Engineering bank account. Discount deduction is also permissible if Sonderhoff Engineering offsets or reserves a reasonable amount of payments owing to defects. Payments do not imply that the delivery or the performance is conformable to the contract and do not mean that Sonderhoff Engineering waives any claims. Invoice copies shall be specified as duplicates. The claim assignment of the Contractor/Supplier is authorised only if Sonderhoff Engineering confirms its agreement in writing. If Sonderhoff Engineering retards the payment, only the legal arrears on interest can be demanded, other claims are excluded. If the products are delivered before the agreed deadline, for which an explicit agreement of Sonderhoff Engineering is necessary, the time limit for the correspondent invoice payment begins not until the stipulated delivery date. Sonderhoff Engineering always has the right to set off counterclaims against the Contractor's claims. Delivery and performance complaints give Sonderhoff Engineering the right to retain the payment.

7. Warranty and Indemnification

The Contractor/Supplier warrants that the quality of the contract items is appropriate and that it conforms to the contract and to the technical specifications. He warrants that the quality of the contract items is applicable according to the contractual aims, and that it corresponds in particular to the specifications as they can be deduced from our Sonderhoff Engineering technical terms of purchase. This warranty ensures in particular the production and construction continuity of contractual items. The nature and scope of the liability for defects shall be based on the statutory provisions of the substantive Austrian law, including but not limited to ABGB [Austrian General Civil Code], UGB [Austrian Commercial Code] and the product liability act. Acceptance shall take place subject to the inspection for correctness and fitness within a reasonable period of time, the obligation to give notice of defects according to § 377 UGB shall be excluded; a notice of defects shall be deemed punctual in any case, as long as it is received by the supplier within a period of 3 weeks, calculated from the receipt of the goods or, in case of hidden defects, from their discovery. The supplier shall commence with the transfer of risk. The supplier shall be liable for defects during the warranty for a period of 24 months. The warranty period shall commence with the transfer of risk. The supplier shall be liable for defects during the warranty period in a way that we, without prejudice to our other legal rights, are entitled to claim replacement delivery, elimination of defects or a reasonable price reduction, at our option. Sonderhoff Engineering has also the right to cancel the contract if the defects are not of minor entity or if the contractor does not entirely meet within a reasonable deadline a claim required by Sonderhoff Engineering in order to repair the defects or to perform the substitute delivery.

In urgent cases (e.g. to avoid production discontinuities) Sonderhoff Engineering is authorised to remove the determined defects itself or to have them removed by third parties at contractor's expenses and without setting a deadline. The contractor is responsible for paying the expenses and for return shipment risk of defective items. Contractor's claims for damages, that are due to delayed or unsuccessful return shipment of faulty objects, are excluded in case of slight negligence of Sonderhoff Engineering takes over the service as indicated in the contract. Sonderhoff Engineering does not approve any liability exclusion or restriction of the contractor's obligatory indemnification.

8. Property Rights

The Contractor/Supplier warrants that the delivery items are free from claims of third parties and that the delivery and its use (in particular trademark rights, design patents, utility-model patents or copyright) do not violate patents and other property rights of third parties at home and abroad. The Contractor/Supplier shall hold Sonderhoff Engineering harmless in respect of all claims of third parties concerning the infringement of industrial property right. If Sonderhoff Engineering or its customers can not perform the production and/or the delivery because of the infringement of industrial property right, the Contractor shall reimburse Sonderhoff Engineering for the resulting damages and – at free choice of Sonderhoff Engineering – shall gain a licence from the property right owner or take back the delivered items. The Contractor shall hold Sonderhoff Engineering harmless especially in respect of all legal costs that need to be reimbursed in first person or by third parties and that charge Sonderhoff Engineering because of claims of third parties due to an infringement of industrial property right. The Contractor shall provide all the relevant information and/or information requested by Sonderhoff Engineering and dispense material if third parties set claims in court or out-of-court on grounds of an infringement of industrial property right.

9. Rights of use

Sonderhoff Engineering is entitled at no charge to the right of use in order to permit the production in first person or through third parties. As far as the sub-Contractor or other third parties are entitled to these rights, the Contractor shall transmit them to Sonderhoff Engineering without defect of title and shall hold Sonderhoff Engineering harmless in respect of all third parties claims. Final planning documents and their reproduction shall not be otherwise used nor published unless Sonderhoff Engineering explicitly agrees in writing. The same applies also to personal designs (drawings, charts and similar) of the Contractor for advertising purposes. Drawings, sketches and other documentation of the Contractor can be transmitted by Sonderhoff Engineering – even though the Contractor is the copyright owner – to third parties.

10. Product Liability

The Contractor shall bear the full product liability in relation to Sonderhoff Engineering. He shall assume all costs and expenses including the costs of a possible legal action or of a call-back. He shall provide appropriate product liability insurance.

11. Provision of materials

Materials or parts supplied by Sonderhoff Engineering remain property of Sonderhoff Engineering. They can only be used in accordance with regulations. The processing of materials and the assembling of parts are performed for Sonderhoff Engineering. It is agreed that Sonderhoff Engineering is co-owner of the goods produced using our materials and parts in relation of the order values to the value of total goods, that the Contractor holds in safe custody for Sonderhoff Engineering as far as it is concerned. In case of loss or lost usefulness the Contractor shall reimburse the expenses.

12. Tools, Forms, Samples and the like

Tools, forms, samples, patterns, profiles, drawings, test procedures, standard sheets, master patterns and devices that are ceded by Sonderhoff Engineering shall not be transmitted – as well as items accordingly produced – to third parties without our agreement in writing, and shall not be used for other aims differing from the instructions included in the contract. It is furthermore necessary to safeguard them against unauthorised inspection and utilisation. Under the reserve of other rights Sonderhoff Engineering can demand their publication if the Contractor violates these obligations.

13. Secrecy

The Contractor shall not transmit the information obtained from Sonderhoff Engineering to third parties, as far as this information is not well-known or lawfully known by him in other ways, also after the termination of the business relation. The Contractor shall use this information only in order to accomplish assigned orders. It is therefore necessary to put Sub-Contractors under the corresponding obligation.

14. Replacement Parts for Expired Serial Requirements

The Contractor shall assume responsibility to supply spare parts at reasonable prices for a period of 10 years also after the suspension of the serial delivery. Spare parts can be delivered with our agreement also from the current production. This agreement is granted only if Sonderhoff Engineering must not face additional expenses and if no quality deterioration occurs. Sonderhoff Engineering approves a premature termination of the delivery service after a lapse of 5 years if a final stocking-up is economically acceptable and if the demand can be foreseen.

15. Property

Once the payment is fully processed the property of the contract items passes to Sonderhoff Engineering. An expanded and extended retention of ownership is excluded. Sonderhoff Engineering has the right to handle or to sell the goods also before the payment.

16. Court of Jurisdiction and Applicable Law

Feldkirch is the only agreed place of jurisdiction for all disputes from or in conjunction with legal transactions, which these terms of purchase are at the basis of. The Austrian substantive law shall be applicable only; the application of the UN Convention of Contracts for the International Sale of Goods (CISG) shall be excluded.

17. Acceptance hours:

Sonderhoff Engineering acceptance hours are Monday to Thursday, 08:00 - 11:30, 13:15 - 16:30 and Friday, 08:00 - 11:30