

Michael-Walz-Gasse 20
5020 Salzburg, Austria
T: +43 664 150 78 78
office@cubes-gmbh.com
cubes-gmbh.com

Salzburg, 01.03.2018

■ **General terms and conditions CUBES GmbH**

1. SCOPE, EXCLUSION OF EXTERNAL TERMS AND CONDITIONS, REQUIREMENT OF WRITTEN FORM

1.1 Terms and conditions. Between Cubes GmbH (the "**supplier**") and the contracting party (the "**purchaser**") these general terms and conditions ("**GTC**") shall apply exclusively; they are downloadable at: www.cubes-gmbh.com. The GTC of the supplier will also apply to all future transactions with the purchaser even if not mentioned explicitly. The applicable version goes by the time of the respective order.

1.2 External GTC. Solely the GTC of the supplier apply. Conflicting GTC of the purchaser will not apply even where not disagreed explicitly in every single case even if delivery was made without reservation.

1.3 Written form. Changes/Amendments to the GTC require written acceptance of the supplier. This also applies to cancellation or changes of this written form requirement clause.

2. REGISTRATION, ORDERING PROCESS, SCOPE OF SERVICE

2.1 Registration. The supplier must register online by filling out the registration mask with the required data. The purchaser must provide the required data completely and accurately; changes of data must be announced immediately, in default whereof the purchaser is liable of adverse consequences. The supplier is not obliged to verify the data nor to update it without being asked. The purchaser can only complete the registration process by accepting these GTC.

2.2 Offers, Order. Offers of the supplier are non-binding. They are solely an invitation to the purchaser to issue an order. The ordering process takes place online on the internet platform of the supplier. By clicking the button "Order Now" the purchaser submits a binding offer to buy the selected product. The automatically issued confirmation of receipt (via email) demonstrates that the binding offer has reached the supplier and is being processed, it does not represent an acceptance of the offer yet. If the purchaser does not receive a confirmation notice within 30 minutes, the purchaser is required to inquire the status of the confirmation notice in default whereof they are liable of any adverse consequence deriving of the omission of inquiry.

2.3 Conclusion of contract. The order only becomes valid for both sides when the supplier sends an order confirmation via email or with delivery of the product at the latest. The receipt of the order confirmation through the purchaser is not mandatory for the validity of the contract conclusion, actual delivery through the supplier is sufficient. In case the purchaser does not receive an order confirmation within 24 hrs after order submission, it is his duty to verify the the status of delivery with the supplier, in default whereof he will be liable for any adverse consequences. Email-requests will generally be processed within 7 days, phone calls according to availability.

CUBES GmbH

UID: ATU69695939 ■ Firmenbuchnummer: FN436083z

Bankverbindung: Hypo Salzburg ■ IBAN: AT72 3400 0481 0444 3545 ■ BIC: RZOOAT2

- **2.4 Inspection and Warning duties, Right of withdrawal.** The supplier is never obliged to examine the submitted 3D-model neither is the supplier subject to any warning duties. As soon as the 3D-model has been transmitted through the internet platform of the supplier and the contract is concluded, the production is automatically initiated. A withdrawal of the contract (for what reason ever) through the purchaser is excluded if nothing contrary is stated in these GTC.
- 2.5 Product.** The product is manufactured according to the submitted 3D-model and the order confirmation of the supplier pursuant to the confirmed data and security data sheets. Regarding other analogue or digital (product) information material no warranty is granted unless the purchaser receives an explicit written confirmation from the supplier. Thus, the purchaser is explicitly informed to verify in detail all pertinent data sheets (esp. regarding tolerance values and suitability of the product). Oral information and advice as well as other information are non-binding if not in written form or via email (e.g. Information received in client chats).
- 2.6 Written form.** Changes and amendments to a submitted order as well as side agreements to an order require the written form in order to be effective.

3. PRICES, TERMS OF DELIVERY

- 3.1 Price.** Legal VAT (incl. any other transfer taxes) are added to all prices. In absence of any special agreement issuance of invoice is made in EURO and costs for delivery/transport/toll/insurance and the like are not included in the price.
- 3.2 Delivery period.** The notified delivery period is a non-binding estimation according to previous experiences. In case the date of delivery is confirmed in writing or on the order confirmation, the supplier is in delay only if the purchaser sends a written notice with an explicit grace period of at least two weeks and declares to withdraw from the contract in default of delivery within the grace period. The period of delivery starts with contract conclusion as soon as all technical and commercial questions between supplier and purchaser are settled, all necessary documents and approvals are provided and all due prepayments have been placed. An agreed period of delivery is complied with if the product is provided for collection by the supplier or carrier through the purchaser within this period and the notice of deployment (*Bereitstellungsanzeige*) has been sent to the purchaser. In case of changes or amendments of the order for what reason ever the period of delivery/service is enlarged to a reasonable extent. Additional costs deriving from these changes have to be carried by the purchaser. The supplier only needs to make them plausible.
- 3.3 Partial delivery.** Delivery of parts is – in so far as tolerable – acceptable, especially when ordered quantities at the component suppliers are not available at once.
- 3.4 Transfer of risk.** The danger of risk of accidental destruction or accidental deterioration passes on the purchaser as soon as the supplier has provided the product for deployment from the factory/store and the respective notice has been sent to the purchaser or delivered to the carrier. Especially delivery, up- and un-loading as well as transport are made upon the risk of the purchaser. This will also apply if transport takes place through the supplier himself, is organized by the supplier (upon his own or in the purchaser's name) or paid by the supplier.
- 3.5 Shipment, Insurance, Packaging.** If transport is made by the supplier himself, liability restrictions applicable to carriers/freight forwarding agencies apply subsidiarily (incl. liability restrictions as contained in General Austrian Freight Forwarding Terms and Conditions, i.e. *Österreichische Spediteurbedingungen*). The purchaser has to care for sufficient transport insurance, if needed. Unless nothing contrary is agreed, shipment takes place in the own name of the supplier or in the name of the purchaser, but in any case at the purchaser's expense. The purchaser agrees to any form of shipment known in normal business practice through any carrier/freight forwarder at the supplier's choice at market conditions. Upon request the purchaser shall make an advance payment or pays the costs directly to the carrier/freight forwarder. Packaging is arranged in a way that the product is put on a euro pallet and fixed with packaging foil. In case the purchaser requires special, shock-resistant packaging, this has to be negotiated with the supplier in advance. The supplier shall not be liable for the correct choice of packaging. The costs for packaging will be invoiced to the purchaser.

- **3.6 Default of acceptance.** In case of default of acceptance the supplier is entitled to invoice the costs occurred for storage, from the first day of the second month after the time of transfer of risk according to clause 3.3 a minimum storage fee of 5 % of the invoice amount for every commenced month. The supplier has to inform the purchaser about this claim in the last request for acceptance/collection of the product the latest. Since every product is individually customized, the supplier is not obliged to try to sell the product to a third party, but is entitled to dispose of the product after a lapse of 6 months after transfer of risk and additional grace period of two weeks. He is entitled to the agreed remuneration as contractual penalty, whereby compliance with the procedure described is sufficient as proof.

4. PAYMENT CONDITIONS, DELAY OF PAYMENT

- 4.1 Dedication of payment.** Legal repayment regulations (*Tilgungsregeln*) apply even if the purchaser dedicates payments differently, except the supplier accepts the payment dedication through explicit declaration or respective booking in his accounting. Further declarations or reservations in the text box of the bank transfer are legally irrelevant.
- 4.2 Maturity, Delay of payment.** The supplier is entitled to issue the invoice before production start or delivery. Unless otherwise agreed invoices are due within 10 days after invoicing without deductions. Default interest rate will be 10%p.a. above the interest level of the Austrian National Bank, regardless of negligence. The basic interest rate of the respective half-year is applicable.
- 4.3 Reimbursement of costs.** In case of delay the purchaser is obliged, if he is liable, to pay the necessary costs for the prosecution of reminder fees, debt collection and/or attorney fees (according to Lawyer's Fees Act, *Rechtsanwaltstarifgesetz*).
- 4.4 Discontinuation of service.** In case the purchaser is in delay with only one payment (even if only partial) for at least 14 days, the supplier is entitled to discontinue all his duties of all orders until payment through the purchaser and to reclaim any discounts or the like (insofar as issued on the invoice or agreed upon through correspondence) offered with the invoice that triggered the default.
- 4.5 Periods, Acceleration of maturity date.** Any delivery periods or dates are extended by the period of delay of payment. In case the purchaser fails to pay one of several payments due of more than 20 % (related to the invoice) within 30 days after the payment is due, the maturity date of all remaining claims accelerates so that all claims become due immediately (*Terminsverlust*).
- 4.6 Deterioration of solvency.** If the purchaser's solvency deteriorates after conclusion of contract in a way that it becomes doubtful that the purchaser will comply with his payment duties, or doubts arise on the side of the supplier, he is entitled to ask prepayment of the full remuneration independent from what was negotiated at first in that single case. In so far as the purchaser does not comply with the requested prepayment, the supplier is entitled to withdraw from the contract and to claim a contractual penalty of 30 % of the gross order as well as a claim for exceeding damages.
- 4.7 Exclusion of set-off.** The purchaser can only set-off with claims that are explicitly acknowledged in writing by the supplier or have been established as final and absolute.

5. WARRANTY, LIABILITY

- 5.1 Warranty, Liability.** The supplier solely warrants that the product is manufactured according the product description in clause 2.5 and is suitable for use according the technical data sheet. In so far as nothing contrary is agreed in writing, the supplier is liable neither for any special nor any other conditions usually assumed.
- 5.2 Period.** The period of warranty is of 12 months from the time of delivery. The product is considered delivered to the purchaser from the transfer of risk according to clause 3.4; from this time the period of warranty is triggered. The period of limitation for claims for damages is also reduced to 12 months; the start complies with § 1489 ABGB.

- **5.3 Notice of defects.** The purchaser is obliged to inspect the product within a period of 7 days after delivery. The purchaser has to notify the supplier of any defects they noticed or should have noticed within an additional period of 5 days. In case of omission of this notification, the product is considered approved, and further warranty claims (§§ 922 ff ABGB), claims for damages because of the defect itself (§§ 933a par. 2 ABGB) as well as claims arising from an error about the freedom of defects (§§ 871 f ABGB) or any comparable claims because of the defect cannot be brought forward any more. In case a defect is shown later and it was not identifiable at the beginning, it has to be notified within the same period mentioned above; otherwise the supplier cannot bring forward any claims mentioned above for this defect. In so far as the product is suitable only for a single time use as agreed, any defect has to be reported latest before a second usage (in order to avoid conflicts of proof), otherwise claims for this possible defect cannot be brought forward anymore. To preserve his rights it is sufficient for the purchaser to prove that the report was sent in due time to the correct address or email-address of the supplier; this also applies if the supplier does not receive the notification.
- 5.4 Inspection of defects.** Upon request the purchaser has to submit relevant pictures/videos of the defect in question. If the supplier recognizes the defect and the product is located at the purchaser's place, however the purchaser has to pay for disposal of the product. If a reliable estimation on the basis of the pictures/videos seems impossible, the purchaser has to send the product at his own costs and risk to the supplier for approval and – in their own interest – to comprehensively document everything by pictures/videos. The shipping costs (maximum, however, from the destination of the order to the registered office of the supplier) are refunded to the purchaser if the defect was present or the supplier had accepted the defect in writing. In case the purchaser claims a defect of the product, the supplier (even if he is of adverse opinion) is obliged to keep the product for an eventual legal dispute if this is initiated at court within 3 months after the final rejection of liability. The supplier is also free to inspect the product at the purchaser's place. The supplier is entitled to make any examination deemed necessary or to have this carried out even if the product becomes unusable. Before the latter happens the supplier has to give the purchaser the possibility to initiate a procedure for the safeguarding of means of proof at court within 3 weeks. If it turns out that the defect asserted by the purchaser is not present, the purchaser is obliged to indemnify the supplier for the damage caused or respectively, for the expenses incurred for the assessment of the freedom of defects (this also includes credibly calculated working time of the supplier).
- 5.5 Burden of proof.** The purchaser has to prove that the defect was present at time of delivery. Thus, the assumption of defectiveness according to § 924 ABGB is waived.
- 5.6 Warranty claim.** It is in the sole discretion of the supplier if he rectifies warranty through improvement (*Verbesserung*) or exchange of the product (*Austausch*). Corrections of defects claimed by the purchaser do not constitute an acknowledgement; this requires the written form in order to become effective. The supplier is entitled to refuse supplementary performance if this means disproportionate efforts for the supplier compared to the other remedies (reduction of price, termination of contract), or if it is impossible. If correction or exchange of the product fails a second time and a further attempt of fulfilment is not reasonable, the purchaser is entitled to reduce the payment. A claim for termination only exists for the purchaser if the defect is irreparable, the supplier denies the exchange of the product illicitly or fails to comply within a reasonable time limit given in written form.
- 5.7 Exclusion.** A claim for warranty especially doesn't exist:
 - (i) for defects that do not reduce suitability according the contractual purpose;
 - (ii) for defects that can be traced to an unsuitable or improper use of the product;
 - (iii) when the purchaser has carried out interventions in the product without written consent;
 - (iv) respectively only, if the purchaser has fulfilled his own contractual duties irrespective of his claim for warranties.

In so far as nothing contrary is stated in these GTC all further claims of the purchaser deriving from warranty, regress claims of the purchaser according to § 933b ABGB or claims for damages (excl. claims for bodily injury, death or health injuries) are excluded, the latter only in so far as they rest upon slight negligence. Furthermore, the supplier is only liable for damages arising out of delayed delivery if the delay is caused directly by an organ or an employee of the supplier (e.g. grossly negligent damage to the product during production or packaging through an employee so that a new production becomes necessary and this causes the delay).

- **5.8 Force majeure.** If force majeure prevents the supplier from delivering and the supplier cannot deliver in time nor within a period of grace, the supplier is entitled to withdraw from the contract, without this leading to claims for damages for the purchaser. Same applies to a withdrawal from the contract through the purchaser to which they are entitled only – even in the case of force majeure – after a period of grace (at least 6 weeks). All of this especially also applies to delays of delivery by component suppliers (for whatever reason they may occur), to strikes, machine breakdown, administrative measurements or other, reasonably not foreseeable obstacles to production or delivery.
- 5.9 Consequential damages.** For consequential damages (*Folgeschäden*), damages caused by delay, lost profit or any other loss of earnings, liability is generally excluded. In case this exclusion of liability is void, liability is only excluded for slight negligence. Liability for consequential damages is also limited (with respect to the amount) to € 10.000,- or, if the damage is higher, to the agreed remuneration.
- 5.10 Period for legal prosecution.** Furthermore, it is agreed that any claim of the purchaser precludes if there is no legal prosecution after a lapse of 6 months from the receipt of a final refusal.
- 5.11 Error, Basis of the transaction, Reduction by half.** The purchaser waives all claims for error (*Irrtum*), unless the supplier has caused the error with gross negligence or willful intent. A rescission for the basis of the transaction ceasing to exist (*Wegfall der Geschäftsgrundlage*) is excluded mutually. The purchaser declares explicitly to appreciate the true value of the product and to buy the product for the agreed price even if the values are disproportionate. Thus, the legal provisions concerning reduction by half (*laesio enormis* according to § 934 ABGB) are not applicable.
- 5.12 Refusal of service.** The purchaser waives all rights for retention or refusal of service. In case this waiver is void, the claim is limited to the amount necessary for a correction of a defect and only applies in relation with the order affected by the defect.
- 5.13 Fraudulent intent.** As far as claims arising out of fraudulent intent (*Arglist*) are concerned, limitations in this contract only apply as far as permitted by law.

6. COMMERCIAL PROTECTIVE RIGHTS, CONFIDENTIALITY, DATA PROTECTION

- 6.1 Protective rights.** The purchaser assures that the submitted 3D-model and all other submitted documents and the use of them do not infringe any patents pending or other commercial protective rights of third parties. The purchaser has to indemnify the supplier for claims and to compensate the supplier for necessary and reasonable expenses in this regard. If protective rights of third parties are brought forward, the supplier is entitled to discontinue manufacturing of the ordered product until clarification of the third party rights and to demand reasonable prepayments for defending the claim, unless these claims were obviously unjustified from the perspective of the supplier.
- 6.2 Intellectual property.** The product that shall be manufactured is calculated on the basis of the 3D-model submitted by the purchaser, using the software of the supplier which is available on his homepage . The rights to this calculated model are part of the product. In case the purchaser calculates the model through the provided software but decides, for what reason ever, not to order the product, the rights to the calculated model remain exclusive intellectual property of the supplier. A transmission to third parties, reproduction, publication, processing or any other exploitation or use of this model by the purchaser is not permitted in this case. In case of breach of this provision the purchaser is liable to pay a contractual penalty of 30 % of the gross product order that would have been due (applying the cheapest possibility of product design).
- 6.3 Confidentiality.** Documents, computer data and any other information submitted by the supplier or to the purchaser must not be disclosed to third parties, unless the (i) production process requires it and (ii) the third party ascertains confidentiality for himself and his employees/contract partners.
- 6.4 Data protection.** Data of the purchaser according to data protection law (esp. date of birth, phone number, address, email etc.) are only used or saved for processing orders and own marketing purposes. In so far as processing of the order requires it, these data may be passed on to other suppliers or contract partners. The transmission to connected enterprises of the supplier according to § 189a Z8 UGB for order processing and marketing purposes is granted explicitly. The use for marketing purposes may be revoked at any time in writing or via email.

■ **7. GENERAL PROVISIONS**

7.1 Assignment of claims. The purchaser is not allowed to assign claims and other rights out of this contract.

7.2 Receipt of declarations. Declarations are considered as received when they are submitted to the last known address or email address.

7.3 Place of performance. Place of performance for both, the supplier and the purchaser, is the registered office of the supplier.

7.4 Law, Place of jurisdiction. Exclusively Austrian law applies, excluding collision norms (*Kollisionsrecht*) and the provisions of UNCITRAL Sales Law (*UN-Kaufrecht*). Place of jurisdiction for all litigation arising out of this contractual relationship or future contracts or other claims between the supplier and the purchaser is the competent court at the registered office of the supplier.

7.5 Severability Clause. If any of these provisions of this contract including above-mentioned GTC or parts thereof is void or becomes void, or should there be contractual gaps, this will not affect the effectiveness of the other provisions. In place of the void provision, the parties will agree a provision coming closest to sense and intention of the void provision, in case of gaps, a provision will be agreed that corresponds to sense and intention of this contract including the GTC if the parties had known the situation from the beginning.

7.6 Consumer transactions. These GTC do not apply to transactions with consumers according to Consumer Protection Act (KSchG, *Konsumentenschutzgesetz*).