

GENERAL CONDITIONS OF PURCHASE FOR METALS AND MINERALS

1. PREAMBLE

The following terms and conditions apply to both metals and minerals (herein referred to as "goods").

The following terms and conditions apply to each order placed by Carbones Holding GmbH, (herein referred to as "Carbones").

The following terms and conditions apply to each order, even in the event that the supplier does not refer to them in its confirmation of orders or only refers to its own terms and conditions of delivery and sales. Differing or additional terms and conditions shall only apply if expressly confirmed by Carbones in writing. Such differing terms are only applicable for the respective business transaction agreed to. Any deviation from the necessity of written agreements has to be in writing.

2. ORDER ACCEPTANCE

- (a) Orders shall be confirmed by the supplier within at least 8 days, from the date of order, using the enclosed form. After expiration of this period of time Carbones is not bound to its order any more.
- (b) Any deviation from the order shall be explicitly highlighted and require written acknowledgement by Carbones.
- (c) Verbal orders placed without a specific written confirmation are non-binding.

3. PRICES

- (a) Order prices are fixed prices. Any price change or price alignment by a supplier after order acceptance is non-binding, except Carbones agrees upon it in writing.
- (b) Prices are FCA according to Incoterms 2000, including packing according to custom and usage and suitable for delivery, unless otherwise stated in the delivery order.

4. DELIVERY

- (a) After acceptance of an order, changes to price and volume will only be accepted, if they have been explicitly confirmed by Carbones in writing. Orders placed by Carbones are to be considered as firm deals ("Fixgeschäft") according to the Austrian Commercial Act, provided that definite delivery deadlines have been agreed. If a supplier fails to comply with a delivery date Carbones is entitled to cancel the purchase without granting an extension.
- (b) Delivery dates are binding. Earlier deliveries have to be accepted by Carbones in writing.
- (c) Partial deliveries have to be explicitly agreed upon by Carbones. In case of default or partial default of delivery Carbones reserves the right, notwithstanding any other rights it may be entitled to, to cancel the deal without granting an extension for delivery. As soon as the supplier realizes that he will not be able to make a delivery on time, he has to inform Carbones immediately about the reasons and the presumable period for such delay of delivery.

- (d) The supplier undertakes to indemnify Carbones for any costs that might arise as a result of delay of delivery.
- (e) Each delivery shall comply with the relevant Austrian law, especially with accident prevention rules, any relevant regulations and directives, established rules of technology and also with documents, such as drawings and descriptions, which formed the basis of the relevant order.

5. DELIVERY INSTRUCTIONS

Place of delivery is specified by individual agreement. The risk of loss or damage to the goods is transferred from the seller to Carbones according to the agreed Incoterms 2000.

The seller is liable for any incorrect declarations and tariff instructions. Deliveries for which c.o.d. expenses, cash advances etc. are charged will not be accepted. Section 4 shall apply in these cases. Carbones explicitly reserves the right to give special shipping instructions.

The supplier is liable for costs which result from any non-compliance.

6. INTERNATIONAL CONSIGNMENTS

- (a) Any additional costs which derive from indirect dispatch in groupage traffic, such as transshipment costs, costs for accompanying documents clearance and fees for customs clearance at the delivery address, shall be borne by the supplier.
- (b) All documents required by law and a copy of the commercial invoice shall be enclosed in every consignment. Products from the EFTA (European Free-trade Area) and from Poland, the Czech Republic, Slovakia, Hungary, Croatia, Slovenia, Romania, and Bulgaria are to be accompanied by a valid EC certificate (EUR 1) and products from Turkey by an ATR certificate.

7. NOTIFICATION

Immediately at shipment the supplier shall prepare the dispatch note in duplicate and separated from the shipment itself. Such notes have to contain: order number, amount and/or number of items and weight, dimensions and exact description of items (drawing and specification numbers). Packaging slips exactly stating the consignment's contents are to be enclosed in the shipments.

8. PACKAGING

Packaging (in the meaning of 3.b) is not paid additionally by Carbones. The return of packaging materials has to be explicitly agreed upon.

9. ACCEPTANCE

Acceptance of any goods or settlement of invoices does not provide conclusive evidence of acknowledgement of a properly executed delivery.

10. NOTIFICATION OF DEFECTS AND WARRANTY

- (a) Carbones explicitly reserves the right to demand elimination of a deficiency within 4 weeks after discovery of the deficiency. In the event that covered deficiencies are only discovered after proper usage

of the products, the supplier shall be liable even after expiration of this deadline for any deficiency and damages resulting thereof. Beyond this, statutory warranty periods shall apply.

- (b) In case of any deficiency of the supplied goods, which includes also the lack of promised features, the supplier may at its own discretion opt for removal of deficiency or exchange of goods. All arising expenses have to be borne by the supplier.
- (c) In case of danger or urgency and if the supplier does not comply with its warranties within reasonable time given by Carbones, Carbones shall be entitled to remove the deficiency on its own and at the supplier's expense.
- (d) All claims for damages, especially damages for contractual non-fulfilment, are expressly reserved.
- (e) Carbones is entitled to claim cancellation or price reduction, if removal of deficiency or exchange of goods does not succeed, especially if the supplier was not able or willing to conduct removal of deficiency or exchange of goods within reasonable time as set out in writing.

11. GUARANTEE

Provided that nothing else has been agreed upon, the guarantee term is one (1) year. Such guarantee is not affected, by any payments of Carbones, whether partial or final. In particular, payments already made are not to be considered as confirmation of final acceptance of goods and the right of Carbones to make official complaints is not affected at all.

12. ASSIGNMENTS

Assignments of debts which are accredited to Carbones from trade account receivables require the previous approval by Carbones.

13. SUBCONTRACTION

Carbones shall be entitled to delegate any rights or obligations out of or under any contract also to other companies announced by Carbones. This includes the right to invoice, which shall also be subject to these general conditions.

14. FINAL PLANNING DOCUMENTS

Models, drawings, samples, stereotypes, or other documents remain Carbones' property and have to be immediately returned after an order has been delivered. Usage by or in behalf of third parties is not permitted.

15. PROTECTION RIGHTS

By acceptance of an order the supplier expressly declares that it will indemnify Carbones against any and all claims in connection with asserted violations of any intellectual property rights.

16. TITLE RETENTION

Any retention of title by the supplier will not be accepted by Carbones.

17. RENDERING OF ACCOUNTS

- (a) Invoices for the delivery of goods, which the supplier executes ahead of time, will only be made due for payment by the week of delivery agreed upon by Carbones.
- (b) Invoicing is to be done in duplicate immediately after execution of delivery. Carbones reserves the right to return invoices which have not been made out in accordance with its instructions unprocessed. Such invoices are considered not to be invoiced and undue until they have been received in a proper manner.
- (c) Invoices and order confirmations shall not accompany deliveries, but shall be delivered under separate cover. Commercial invoice copies for international deliveries are excepted.
- (d) If the supplier delegates any obligation to a third party, for instance by transferring the order to a subcontractor, the supplier accepts any payment to such third party.
- (e) The following details are to be contained in the supplier's invoice: name and address of the party to the contract, date and number of the order confirmation, description of items (type, amount), UID-number, etc.
- (f) The customs duty payments for the goods are only carried out if the delivery documents or the simultaneously forwarded invoices contain the details stated above.
- (g) Any expenses, expenditures and miscellaneous costs, which derive from a failure to comply with this provision are to be borne by the supplier.

18. GENERAL INFORMATION

Inquiries are to be exclusively directed to Carbones' business address in Vienna. Please state the complete order number on all of the corresponding order documents on hand such as dispatch notes, delivery notes, consignment notes, invoices, correspondence letters, etc.

19. COURT OF ARBITRATION

The jurisdiction of the court of law as regards the subject matter for the administrative district of the regional court in Vienna City Centre shall be agreed for any differences that have directly or indirectly arisen from the contract

20. PLACE OF FULFILMENT AND APPLICABLE LAW

Place of fulfilment is Vienna. The General Conditions and any order under these conditions are governed by Austrian law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods (Vienna 1980) ("CISG") and the rules of cross reference of the Austrian Code of International Civil Law (IPRG) is explicitly excluded.