

IDEAL Kältetechnik GmbH and AKE Ausseer Kälte- und Edelstahltechnik GmbH shall retain their legal independence after 1 April 2012, but the General Standard Terms and Conditions as set out below shall apply to both companies. As regards to place of performance, place of payment and jurisdiction, note should be taken of the different domiciles.

The legal allocation of business transactions in the wider sense of the word shall depend on the company which has issued the order acknowledgement.

## GENERAL STANDARD TERMS AND CONDITIONS

### 1. SCOPE

- 1.1. The following General Standard Terms and Conditions shall apply to all our goods and services. The version as amended at the time of signing the contract shall be authoritative.
- 1.2. Individual arrangements shall require our written acknowledgement in order to be valid.
- 1.3. The applicable General Standard Terms and Conditions may be obtained on our homepage [www.ideal-ake.at](http://www.ideal-ake.at).
- 1.4. Any counter-confirmation on the part of the buyer and/or any reference to the buyer's own purchasing terms or general standard terms and conditions is herewith rejected.

### 2. QUOTATION AND ACCEPTANCE

- 2.1. Our quotations shall be subject to confirmation and not binding.
- 2.2. Any orders by the buyer shall be made in writing and shall be deemed to be accepted only upon receipt of the written order acknowledgement.
- 2.3. Any addition to, change of or supplement to any agreement shall require our written confirmation in order to be effective.

### 3. SCOPE AND TIME OF DELIVERY

- 3.1. Any dates and terms named shall be non-binding except when otherwise expressly agreed in writing. The delivery time shall, as a rule, commence on the date specified in the order acknowledgement, with the following two exceptions:
  - point in time when all technical, commercial and other requirements incumbent upon the buyer are complied with;
  - point in time when the requested collateral security or downpayment has been furnished.
- 3.2. We shall be entitled at all times to make and charge for partial deliveries.
- 3.3. Any general delay in performance shall entitle the buyer to the right to rescind the contract only after we have been granted a respite of four weeks in writing.
- 3.4. Any delay in the performance due to force majeure or any event that substantially aggravates or makes it impossible for us to perform (including, without limitations, subsequent problems in obtaining materials, operational failure, strike, official instructions, etc.) when it occurs at our company or at any of our suppliers shall be beyond our control even when binding delivery times have been agreed. The

performance may be postponed for the duration of the obstruction and a reasonable relaunch period; we are also entitled to rescind the contract in whole or in part.

- 3.5. To the legally permissible extent no claims for any delay in performance shall be accepted except if otherwise specifically agreed in writing.
- 3.6. Packaging and mode of delivery shall be chosen by us and shall be deemed to be approved by the customer. Any extra delivery cost caused by specific requests on the part of the customer shall be charged to such customer.

### 4. PERFORMANCE AND PASSING OF RISK

Delivery shall be ex works (EXW; Incoterms 2010); the place of performance shall be Gmunden or Pichl/Kainisch, depending on the wording of the order acknowledgement. In a secondary capacity, the place of performance shall be the place where the performance has actually been rendered.

### 5. PRICES AND PAYMENT TERMS

- 5.1. The prices stated in the order acknowledgement plus the statutory value-added tax shall be authoritative. Prices shall be ex works and they do not include any transport, disposal, customs duties or similar costs. Any surcharges which depend on the delivery date and which are beyond our control shall, as a rule, be charged in accordance with circumstances prevailing at the date of delivery.
- 5.2. We shall be entitled to credit any payment made by the buyer to any prior unsettled invoices, regardless of any instructions to the contrary. If any costs and interests have already accrued, we shall be entitled to credit such payment first to the costs, then to the interest and, lastly, to the principal claim.
- 5.3. Payments shall be made within eight days at a discount of 2% or within 30 days net, except if otherwise agreed in writing. Any cheque or bill of exchange shall be accepted only on account of payment; any cost of its payment shall be borne by the other party.
- 5.4. In the event that the buyer defaults in payment we shall be entitled to charge default interest at a rate of 8% over the basic interest rate.

5.5. If the buyer fails to comply with payment terms, including but not limited to the failure to pay any bill of exchange or cheque or the buyer ceasing to make payments, or if any circumstances become known which raise doubts as to the buyer's credit standing we shall be entitled to make the entire remaining debt due and payable even if partial payments should have been agreed before, and also to request downpayments or a collateral security.

## **6. RESERVATION OF TITLE**

6.1. All goods delivered by us shall remain our property until we have received complete payment for them, even when such goods have been passed on in whatever manner to a third party. Any processing or joining of any goods under reservation of title shall be always made for us as the manufacturer, without any obligations arising to us. Any impairment of value shall be at the buyer's expense. The buyer shall not take out any pledge or chattel mortgage on such goods.

6.2. Except when in default with payment, the buyer shall be entitled to sell any goods under reservation of title in the proper course of business, by which the buyer assigns to us via the third party by way of security the full scope of any claims against third parties arising from such sale or under another cause in law with regard to the goods under reservation of title. Such assignment shall be noted in the business accounts, which obligation shall include duties of information in the event of an attachment by a third party.

## **7. LEGAL AND COMMERCIAL WARRANTY**

7.1. The legal warranty shall extend for six months, commencing on the date of delivery to the buyer (handing-over). The buyer shall be obliged to examine the goods upon their receipt and report in writing any damage found within ten days, stating the specific fault. If the buyer fails to make such notification the shipment shall be deemed to be approved. Any faulty part shall be set aside in the state in which it was at the time the fault was found, for inspection by us or one of our representatives. No return of goods may be made except with our written confirmation. In the event of any hidden flaw, a written notification shall be sent within seven days of the flaw becoming visible, but not later than six months after delivery of the goods, failing which no warranty claims shall be accepted. Failure to observe any of the above provisions shall cause the rejection of all claims.

7.2. It shall be incumbent upon the buyer to furnish proof of a fault; the assumption of defectiveness as set forth in Section 924 of the Austrian Civil Code shall not apply.

7.3. With the exception of glass, all materials delivered by us shall carry a commercial warranty of one year. Charges for transport and work periods shall not be covered by the commercial warranty. No commercial warranty shall be granted in the event of improper handling.

## **8. LIABILITY**

No claims for damages shall be accepted by us or any of our vicarious agents except when the damage has been caused intentionally or by gross negligence. We herewith exclude any liability for any loss of profit.

## **9. OFFSETTING**

The buyer shall be entitled to make offsets only when its claim is undisputed or has been found final and absolute. A right of retention may be asserted only if it is based on claims under the contract.

## **10. JURISDICTION, APPLICABLE LAW**

10.1. Any disputes arising directly or indirectly from the contract shall be settled by the court that has subject matter jurisdiction at the domicile of IDEAL Kältetechnik GmbH or AKE Ausseer Kälte- und Edelstahltechnik, depending on which of the two companies has issued the order acknowledgement.

10.2. The contract shall be governed exclusively by Austrian law. Application of the provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

10.3. The "Allgemeine Lieferbedingungen der Elektro- und Elektronikindustrie" (General Standard Terms and Conditions of the Electric and Electronic Industry) and the "Allgemeine Lieferbedingungen des Fachverbandes der Maschinen- und Stahlbauindustrie Österreichs" (General Standard Terms and Conditions of the Association of Machinery and Structural Steel Engineering) as amended shall apply in a supplementary capacity.

10.4. In the event that one or more of the provisions of these General Standard Terms and Conditions should be or become ineffective or that the wording of the contract should include any regulatory gap the contracting parties shall replace or add to such ineffective or incomplete provision by suitable provisions which reflect the economic purpose of the desired provision to the fullest possible extent. The validity of the other provisions shall remain unaffected.