

A. General - Scope

These General Terms and Conditions of Sales and Delivery constitute an integral part of all our offers, agreements, deliveries and all other activities. These General Terms and Conditions of Sales and Delivery shall apply for the entire duration of the business relationship, including subsequent transactions. These General Terms and Conditions of Sales and Delivery need only be provided once to our (potential) contracting partner. Sale and delivery is made and services are carried out by **semket** only on the basis of the following General Terms and Conditions of Sales and Delivery, if the parties do not agree otherwise in writing. Any and all terms and conditions – including those of the contract partner –, if not explicitly accepted by **semket** in writing, are not binding for **semket**, even if **semket** does not expressly reject them. In the event any provision of the General Terms and Conditions of Sales and Delivery shall be held to be entirely or partly invalid, the validity of the remaining provisions of the General Terms and Conditions of Sales and Delivery and the General Terms and Conditions of Sales and Delivery as such shall remain unaltered in force.

It is noted that there is also a German version of the General Terms and Conditions of Sale and Delivery. The German version constitutes the original and in case of doubt its wording applies.

B. Offers and Contracts

Our offers are only binding when they are explicitly specified as binding in writing. Catalogues, illustrations, drawings, specifications of dimensions and weight, which form the basis of the offer or order confirmation, are to be seen as approximate values, insofar as they are not binding, but constitute informative, approximate indications. The conclusion of the contract becomes effective upon our written confirmation of an order or upon otherwise expressly confirmed in writing. In case of in-stock and standard products, the final invoice automatically constitutes our written order confirmation. In case of in-stock product delivery, an objection has to be made no longer than three days upon receipt of the delivery. For the purpose of these General Terms and Conditions of Sales and Delivery the term "in writing" includes also all communication between the parties by means of email or telefax.

C. Delivery and Delivery Times

Our products and services have to comply with all the customary standards, unless a different standard is expressly agreed in writing. If different quality standards have expressly been agreed by us in writing, the mandatory detailed information provided by our contracting partner including the intended use of the product constitutes the basis of such quality agreement. Marginal deviations in colour, size, quality and other performances do not constitute a reason for claims/notice of defects by the contract partner. Excess delivery and minor supply of a maximum of 10 percent of the agreed quantity are permissible.

Partial delivery by **semket** is permitted if it has not expressly been excluded in writing. Delivery dates given in our order confirmation and/or written correspondence are estimated delivery dates and non-binding unless a confirmation is made by us in writing. In the absence of an agreement to the contrary, the period of delivery begins at the earliest with the submission of our written order confirmation, yet not before all technical, commercial and financial requirements concerning the delivery have been cleared. The period of delivery is further dependent on the fulfilment of all technical, commercial and financial requirements on the part of the buyer including necessary administrative and regulatory requirements, import requirements etc.

The delivery deadline is met when the articles are declared to be ready for delivery or when the delivery item has left the factory before the delivery period ends. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.

In the event that we or our suppliers are hindered by force majeure we are entitled to extend the delivery date by an appropriate period or to partially or fully rescind the contract. The same shall apply in the event of government intervention, shortages of energy or raw materials, delays in delivery of components supplied by or on behalf of the buyer, strikes, lockouts, lack of means of transportation and other unforeseen supply problems, insofar as they are beyond our control. The buyer is entitled to request a declaration by us whether we will extend the delivery date or rescind (fully or partially). The buyer is entitled to rescind the contract should we fail to respond to such requests within a period of three weeks.

In case **semket** fails to deliver approximately within the estimated delivery time, the buyer is entitled to rescind the contract upon granting **semket** an additional appropriate period of time in writing within which delivery has to be made. If **semket** fails to deliver within this granted additional period, it is in default.

In case of special orders (special/customised equipment, special machinery, specially produced industrial labels) the buyer is only entitled to claim for performances. In case of partial delivery, the buyer is not entitled to rescind the whole contract, even if services/goods by **semket** cannot be divided. Claims for damages based on late delivery are - to the extent permissible - excluded.

D. Dispatch and Passage of Risk

All the risk of delivery, even in case of delivery free a place of final destination or in case of delivery by **semket** personnel shall be borne by our contracting partner. At such time as the goods are handed over to a shipper/freight forwarder/carrier or any other person entitled by **semket**, but in any event no later than at such time as the goods leave our premises, such as storage facilities or warehouse, the full scope of risk shall pass over to the contracting partner irrespective of whether we have assumed responsibility to perform further services such as, for example, shipping costs or delivery or setting up of the subject goods at the destination. This passage of the risk at such time as the goods are handed over to the shipper/freight forwarder shall also apply to each individual partial delivery.

semket only undertakes to procure insurance for the subject goods if required so by the contracting partner in writing at the time of concluding the contract. Costs for the insurance have to be borne by the contracting partner.

Complaints in relation to the delivery have to be communicated immediately to **semket** in writing.

In case special quality requirements for goods have been agreed or a delivery abroad

has been requested, the contracting partner is entitled to receive the goods upon notification of readiness for dispatch in our storage facilities. Should the contracting partner fail to do so, goods are deemed delivered in due form the moment they leave our storage facilities/warehouse. In case of default of acceptance and in case that goods ready to dispatch do not leave our premises (storage facilities, warehouse), any risk is borne by our contracting partner the moment goods have been notified to be ready to dispatch.

E. Prices and Conditions of Payment

Unless expressly otherwise agreed in writing, our prices are quoted on an ex works basis, net of VAT, and do not include shipping charges or any incidental services. All additional expenses such as packaging, loading, customs clearance, insurance charges, duties and taxes shall be borne by the contracting partner. Assembly costs at buyer's works also have to be borne by our contracting partner. Our standard hourly rates apply, as well as costs for travel and waiting time, including costs for overnight stay and the standard kilometre allowance.

In case of delivery of special machinery, other equipment and delivery of labels, each at a value of minimum EUR 15.000 net of VAT following special conditions apply, unless a different solution has been agreed upon in writing:

50 % to be paid upon receipt of order confirmation

50% to be paid upon notification that goods are ready for dispatch

Cheques or bills of exchange are accepted pending full discharge of the debt, yet without any obligation. Payment by bill of exchange does not entitle to claim cash discount for prompt payment. Any charges related to payment methods are to be borne by our contracting partner.

In the event of delayed payment, all undue invoices become immediately due. We shall further charge default interest at the statutory interest rate, yet at least a minimum of 2,5 % over the base interest rate of the Austrian National bank. Further all dunning costs and charges for debt recovery are to be paid by our contracting partner.

In the event of default on the part of our contracting partner in respect of payments or its other compensation, we shall be entitled (notwithstanding our other rights) to withhold our deliveries respectively our services until such time as the agreed compensation has been provided, whilst preserving that portion of the delivery period which is at that point still remaining, and shall be entitled to demand advance payment respectively securities or, upon expiry of a reasonable grace period, to withdraw from the contract and to claim damages for breach. Should we learn after conclusion of the contract of circumstances that raise severe concerns as to the solvency of our contracting partner, we are entitled to demand securities or advance payment and are entitled to rescind the contract if the requested securities/payments have not been given.

Our contracting partner is not entitled to exercise any set-off of counterclaims it holds against our receivables. Our contracting partner shall only be entitled to declare a claim for set-off if and to the extent its counterclaims and the exercise of set-off claims have been acknowledged by us. Our contracting partner is not entitled to exercise any other rights of detention against us.

F. Reservation of Ownership

Until the full discharge of all financial obligations including interest and costs of the contracting partner towards us, we reserve the right of ownership to the goods we supply. The contracting partner may further process or re-sell the goods, which are subject to retention of title by us, in the normal course of business; provided, however, that pledging or protective conveyance of the goods may only be made upon prior written approval from us. Our retention of title shall also extend to such products as may result from further processing of the goods. By processing, mixing or reconstructing the joint product with other products, not our property, we gain shared ownership of the resultant product in proportion of the monetary value of the joint product and other component products at the time of processing. It is the duty of the contracting partner to store and control the resultant product with appropriate care. If machines or special facilities are delivered by us with reservation of ownership and shall be connected to immovable property, our contracting partner is obliged to register our property over these goods in public registry/cadastre pursuant to Art 297a Austrian Civil Code (ABGB).

Our contracting partner is entitled to sell on goods that we have delivered with reservation of ownership (in unprocessed, processed, complete or mixed status) yet only under the following conditions:

The contracting partner hereby assigns to us now, in the event of resale, all debts including all ancillary rights and collateral security, accruing to him in respect of his buyers from the resale of the purchased goods, and we hereby accept the assignment upon the condition that the contracting partner publicises the assignment in all his public registries. Such receivables shall serve as security to the same extent as the goods subject to reservation of title themselves. The contracting partner, upon demand, shall disclose to us the names and addresses of his buyers as well as the accounts receivable and amounts due resulting from such sales. Unless revoked by us and without prejudice to our sole title in the assigned receivables, the contracting partner may collect the receivables assigned to us in his own name, but for our account. Monies have to be kept separable and have to be transferred to our account without further ado. In case of attachment of property of the subject goods, the contracting partner has to immediately inform us thereof and immediately transmit a respective transcript to us. The contracting partner shall furthermore furnish to us all documents and information necessary to enable us to assert our rights. Any costs arising in connection with this shall be borne by our contracting partner.

semket shall be entitled to take back the subject goods after a reasonable grace period has elapsed to no avail and the contracting partner shall, in such case, be obliged to surrender such goods. The assertion of a claim for surrender shall not be deemed to constitute a withdrawal from the contract.

The contracting partner is obliged to take all required measures to ensure that the goods are returned to us and to ensure the enforceability of our right to retain ownership, even in case of export business including notification of administrative bodies and other third parties. All related costs are to be borne by our contracting partner. Should the country where the subject goods are located not allow for a retention of ownership to be exercised, our contracting partner hereby grants us to exercise all other respective rights which allow us to protect our right of ownership.

General Terms and Conditions of Sale and Delivery

G. Warranty

In reference to point C of these terms and conditions we state again that our products and services have to comply with all the customary standards, unless a different standard is expressly agreed in writing. We do not guarantee that our products and services are fit for the specific purposes envisioned by our contracting partner.

If a sample has been provided by us to our contracting partner and has been confirmed by the contracting partner, no warranty and damage claims can be claimed towards us in case of delivery according to the sample. If goods are shipped to us is conditional upon handling the goods with great care and in compliance with all the respective industry standards as well as guidelines provided by us.

Upon expiry of six months from the date the goods were delivered/the services were rendered, we shall in any event no longer have any liability for defects, on whatever basis except for an express written agreement to the contrary. If goods are shipped to third parties in line with the terms of the order, the periods for inspection and duty of notice shall begin to run at such time as the goods are received by the third party.

The contracting partner shall inspect the goods delivered/the services rendered with the greatest of care upon receipt and immediately for completeness, correctness and freedom from defects and shall give notice of any defects. We must receive complaints in writing (with the contracting partner otherwise to forfeit its rights) promptly, together with a verifiable description of any defects, but in any event no later than 3 business days following delivery/provision of the services. In respect of defects which could not have been ascertained within such period even upon the most careful examination, the same shall apply as from the date of their discovery or as from the date on which they could have been discovered. Any treatment and/or processing of the goods/further use of the services must likewise be promptly discontinued. Defects occurred during delivery have to be notified immediately to the respective carrier/delivery service as well as to us.

Partial defects of goods do not permit the contractual partner to refuse acceptance of the entire delivery of goods. Minor deviations to no effect do not constitute a defect.

In case of detection of a defect, the contracting partner is no longer allowed to sell or use our goods. The same applies to software defects. If *semket* is obliged to remedy, it is upon *semket* to choose in which way remedy is granted to our contracting partner. The contracting partner has no right to conversion.

Costs incurred by an unjustified notification of the contracting partner have to be borne by our contracting partner.

Any consultation service by us which exceeds an introduction to the machinery/equipment is non-binding and thus the contracting partner is required to consult an expert opinion.

H. Product Liability

We shall be liable for damages based on product liability on the basis of mandatory stipulations of the Austrian Product Liability Act (PHG). The duty of replacement for property damages based on the Austrian Product Liability Act as well as any other product liability claims based on other legal provision is excluded for our contracting partner as entrepreneurs. Our contracting partner is responsible to ensure that our disclaiming for liability is passed on to its contracting partners and that these contracting partners further ensure that this stated disclaiming for liability is passed on to their contracting partners, or else we are indemnified and held harmless.

Should we be obliged by the Austrian Product Liability Act to name our contracting partner the manufacturer, importer or that person/company which imported the product or parts thereof, we will comply with this request within a period of six weeks. Our contracting partners are also bound by this deadline for such requests and are obliged to bind their contracting partners accordingly.

Our contracting partners are obliged to observe our advice, descriptions, technical guidelines, standards for maintenance including other publications concerning our products and services, whilst we point out that we keep all our material up-to-date. Our contracting partners are obliged to inspect the goods at arrival for any flaws.

I. Damages (excluding product liability)

Except for special agreement made under these terms and conditions, we shall be liable for damages that have not arisen to the subject goods themselves only (1) in the event of intentional acts or serious gross negligence, and (2) in line with the mandatory stipulations of the Austrian Product Liability Act (PHG).

We shall not be liable for any other damages (to the extent such a disclaimer is permitted by law) except where such damages are attributable to an intentional or serious grossly negligent breach of contract. Where we have not acted with intent, our liability shall in any event be limited to the damages that are typical for the contract and reasonably foreseeable, and shall exclude any liability for lost profits or indirect consequential damages (in particular losses based on production downtimes respectively business interruptions), savings that were not achieved, losses of interest, legal costs and pure pecuniary damages.

Any orders for remedy in terms of these stipulations will be placed exclusively by *semket*. Unless no shorter period of limitation is applicable, damage claims not filed within three years of delivery (completion of assembly work for machinery, special regulations) or order confirmation are forfeited.

Our liability for damages or warranty is excluded if the fault or damage has been caused by a material instructed for use by our contracting partner or caused by sub-contractor instructed to cooperate with by our contracting partner. The same applies if our contracting partner, especially in case of construction of special machinery or special facilities as well as industrial labels, has not provided the necessary detailed information about use and application of our products in his works and together with the products of our contracting partner and the damage/fault has been caused therefore.

Furthermore our liability for damages or warranty is excluded if our contracting partner has not complied with the essential, detailed instruction and information regarding use of our products and the damage/fault has been caused by this disregard.

The exclusion for liability is independent of obligations of our contractual duties.

In case we produce according to special orders and/or instructions by our contracting partner (e.g. industrial labels), we cannot be held liable for any potential infringement of copyrights, trademark laws, patent laws and the like. Instead, our contracting partner has to indemnify and keep us harmless of all third party claims.

J. Protected Rights

All ideas, drafts, inventions, designs and samples, pictures, films, works, software programs, procedures, design right, trade secrets, all know-how (including any guidelines and problem solutions) or any other intellectual property made by us, as well as all techniques applied by us to manufacture and design of the goods, preliminary to or upon processing of an order shall always remain sole intellectual property of us, even if these are only contained in proposals. Irrespective of any contractual agreement, third parties are only entitled to access/receive any of the above on the basis of our express written permission, even after fulfilment of the contract. Any ideas/drafts e.g. contained in proposals cannot be used also in case no contract is concluded with us. The infringement of any industrial property right or licensing rights or any other know-how will be pursued by us according to applicable laws, both on the basis of civil as well as criminal law. All rights, including any industrial property rights concerning films, photography, printing tools and the like remain with us, except an express written agreement to the contrary.

In case no contract has been concluded, the contracting partner will be charged for all drafts, sketches and invention made by us in this regard, irrespective of the fact that these works may not be used by the contracting partner unless expressly agreed in writing. In case of special machinery or industrial labels our contracting partner is obliged to provide us with the necessary materials for trials (objects to be labeled) and other necessary material free of charge. Material provided by us is charged for separately. Proof sheets for industrial labels will only be handed to our contracting partner upon request. If corrections of proof sheets become necessary because of subsequent changes to the original drafts, extra costs have to be borne by our contracting partner. Once we have received permission to print, we are not liable for any overlooked fault or error.

K. Applicable Law, Jurisdiction, Miscellaneous

All legal relationships between *semket* and its contracting partner shall be subject to Austrian law under the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). Exclusive jurisdiction and legal venue for all disputes resulting from or in connection with a delivery shall be St.Pölten, Austria.

For all exporting business or business with contracting partners residing abroad, German shall be the official language.

Should individual provisions of these General Conditions be or become null and void, the validity of the remaining provisions shall remain unaffected.