

**GENERAL SALES CONDITIONS  
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 sale done by Carbones Holding GmbH, (herein referred to as "Carbones").

The following terms and conditions apply insofar as the parties have made no other written agreement. Any deviation from the necessity of written agreements has to be in writing. Carbones herewith disagrees with possible terms and conditions of other parties. Any other general conditions shall only become part of this contract if expressly agreed upon by Carbones in writing.

**2. OFFER AND ACCEPTANCE**

Offers are non-binding. The purchaser is bound by his order 14 days from the date of receipt of the order. Orders are binding if accepted by Carbones in writing.

**3. CONTRACT VOLUME - WEIGHT**

For the purpose of this contract, one "ton" equals 1000 kilograms of goods, gross for net.

**4. CONTRACT VOLUME - GROSS MARGIN**

(a) In order to simplify delivery, a deviation of up to ten percent (10%) below or above the contract volume may be made by Carbones. If at least two shipments are made under the same order, the gross margin for the total contract volume may not exceed ten percent (10%) of the volume that is to be delivered with the last shipment necessary to fulfill the contract.

(b) Not called of quantities according to contract validity will be charged per month with 4,- Euro per 1000kg to compensate storage and financing costs. Alternative CARBONES has the right to cancel the contract.

**5. PRICES, PASSING OF RISK**

Prices are specified by individual agreement. Passing of risk is governed by the agreed Incoterms 2000.

**6. PAYMENT**

(a) Terms of payment are specified by individual agreement. Delay of payment with regard to previous contracts prevents Carbones from giving discounts for current payments.

(b) Unless otherwise stipulated in individual agreements, cheques and bills of exchange are not accepted by Carbones. In case of acceptance, payments by cheques and bills of exchange are deemed to be

made on the day Carbones is in funds. Purchaser shall bear any and all costs and charges arising from processing of cheques and bills of exchange.

## **7. DELAY OR DEFAULT OF PAYMENT AND TRANSFER OF OWNERSHIP**

- (a) In case of purchaser's delay or default of payment, Carbones may charge interests of up to fourteen (14) percent above the Austrian base rate. The base rate applicable is the base rate, which was effective on the last day of the previous half year.
- (b) In case of delay or default of payment the purchaser is obliged to reimburse Carbones for all costs and expenses, which were necessary for appropriate legal persecution.
- (c) If the delay or default in payment is not exclusively due to a mistake of the respective bank making the transfer, Carbones has the right to withdraw from the contract. The withdrawal becomes valid fourteen (14) days after its declaration, if the due payment has not been received by that time. In the case of a successive delivery contract, this right of withdrawal governs only the part of the contract which has not yet been fulfilled; whereby the delivery for which the purchaser is in arrears may be included.
- (d) The ownership of the delivered goods remains with Carbones until complete payment of the agreed purchase price. The full retention of title to ownership of the delivered goods also remains in force even if the goods have been processed or altered in any form. The purchaser is expressly obliged to pass on Carbones' retention of title to ownership to a third party, if the goods in question is resold, and Carbones has not yet been fully reimbursed. In addition, the purchaser transfers his claim to the purchase price from a third party to Carbones on account of payment, and confirms that no transfer of his claims has taken place (beforehand). In an individual case where the above described assignment is not possible for legal reasons, the retention of ownership expressly agreed upon also applies to purchase price claims which the purchaser is entitled to in the case of resale. In any case, the purchaser is obliged to inform Carbones of the resale of delivered but not yet fully paid goods within seven (7) days, whereupon the third party must be named. If the purchaser does not fulfill the above obligations, he is liable for any damage which thereby ensues.
- (e) If the purchaser delays or defaults contractual payment obligations, Carbones may hold back further shipments until payment of the former, upon informing the purchaser to this respect.
- (f) If insolvency proceedings are opened on the purchaser or Carbones, one of these companies is liquidated, put under compulsory administration or has such financial difficulties that the fulfillment of its obligations seems unlikely, both Carbones and the purchaser have the right to withdraw from the contract, if the other party has not come up with sufficient securities to fulfill its contractual obligations within a deadline of ten (10) days to be set by the former party.

## **8. SUBCONTRACTION AND TRANSFER OF RIGHTS**

- (a) Carbones is entitled to delegate any rights and obligations under a contract to other companies announced by Carbones in a written way. This includes the right to invoice, which shall also be subject to these general conditions.
- (b) Any rights and duties of the purchaser relating to this contract may only be transferred to third parties if agreed upon by Carbones in writing.
- (c) Any claims against Carbones may not be transferred without the latter's written consent.

## 9. WARRANTY AND LIMITATION OF LIABILITY

- (a) The purchaser shall inspect the delivered goods immediately after take-over of the goods. The purchaser shall give written notice of any defects without undue delay.
- (b) The purchaser is exclusively entitled to demand substitute delivery. Only in case substitute delivery cannot be affected, the purchaser is entitled to price reduction or cancellation of contract.

The warranty period is six months from take-over of the goods. The application of Sec. 933b of the Austrian Civil Code (Allgemeines Bürgerliches Gesetzbuch) is explicitly excluded.

- (c) In so far as the goods are defective, Carbones is obliged to its choice of either curing the defect or substitute delivery. Reimbursement for any further damage is explicitly ruled out.
- (d) In case Carbones delivers the goods, the purchaser must discharge, store and insure the delivered goods regardless whether the goods are defective or not.
- (e) Any contractual liability, especially for consequential damage ensuing from the above mentioned deliveries or services and for loss of profit, is explicitly excluded.
- (f) If the purchaser recognizes any breach of contract, he has to take all necessary steps and measures to limit the damage caused, provided that this is possible without unreasonable difficulties or costs ensuing. If he does not comply with this obligation (doctrine of avoidable consequences), Carbones may demand an adequate reduction in liability for such damages.

## 10. RELEASE FROM CONTRACTUAL OBLIGATIONS

- (a) In any event, which either hinders or delays the receipt of the goods on the part of the purchaser, or the production or delivery of the goods on the part of Carbones, Carbones shall not be liable in any way. Such events are especially: war; pending war; revolt; blockade; confiscation; embargo; drafting of the personnel in the army; foreign exchange restrictions; export or import prohibitions or restrictions; shortage of power supply; labor disputes; general shortage of personnel, transportation means, or raw materials; shortage of water; fire; flooding; storms; shutdown of railway transportation; obstruction of shipping due to ice in the port of departure or port of destination; loss or confiscation at sea; non-delivery, deficient or delayed delivery of raw materials or other production by means by Carbones' suppliers; as well as any further circumstances which are out of control of Carbones.
- (b) Carbones may delay fulfillment of any obligation under reference to any of the above mentioned circumstances. Carbones is not obliged to compensate the purchaser for damages caused by such suspension. Deliveries which are dispatched from Carbones' production sites must always be accepted by the purchaser.
- (c) If the suspension lasts for a period of less than twenty (20) consecutive days, the delivery of the total contract volume is to be made as soon as possible afterwards. If the suspension lasts at least for twenty (20) consecutive days or longer, the deliveries missed during the suspension may be canceled by the Carbones without being liable for any losses of the purchaser. Further deliveries are then to be resumed according to the contract.
- (d) If the purchaser requires an exemption from fulfilling his contractual obligations due to any of the above-mentioned circumstances, he must immediately inform Carbones in written form (telefax or telegraph) about the oncoming of the particular circumstance as well as the prospective period of it. He must furthermore keep Carbones informed about any extent of the suspension as soon as possible.

## 11. DELAY OF DELIVERY

Notwithstanding any other terms of these general sales conditions, the purchaser is only entitled to claim damages caused by delay of delivery, which arose after the end of 30 days from the original delivery date.

In case of transport by ship, this period is extended to twenty one (21) days.

## 12. FINAL WEIGHT

### (a) by deliveries on basis DAF, CPT and CIP:

Weights as per railway bills issued by Railway Authorities at dispatch point are to be final for invoicing.

The Buyer have the right to file a quantity claim in case re-weighing weight determined by the railways authorities at the border point / arrival point and certified in the official protocols differs more than 1,0% from the r/w bill weight. This claim must be supported by all necessary official documents ordered by Seller.

### (b) by deliveries on basis DDU and DDP:

Weights as per railway / roadway bills are to be final for invoicing.

The Buyer have the right to file a quantity claim in case re-weighing weight determined at the arrival point and certified in the official protocols differs more than 1,0% from railway / roadway bills weight. This claim must be supported by all necessary official documents ordered by Seller.

### (c) by deliveries on basis FAS, FOB, CFR, CIF, DES and DEQ:

Weights as per draft survey are to be final for invoicing.

The Buyer have the right to file a quantity claim in case re-weighing weight determined at the arrival point and certified in the official protocols issued by an independent inspection company differs more than 1,0% from draft survey weight. This claim must be supported by all necessary official documents ordered by Seller.

## 13. EXCLUSION OF RESPONSIBILITY

In case Carbones' suppliers do not deliver or delay delivery, Carbones cannot be made responsible for its delay or default of delivery by the purchaser. Carbones is entitled to cancel contracts governed by these general sales conditions if its suppliers do not fulfill their obligations within a reasonable period of time which Carbones may set at its own discretion.

## 14. COST INCREASES

If substantial increases of at least ten percent (10%) in the total production and transport costs for goods incur after the sales contract has been closed, Carbones has the right to demand a reassessment of the price for that share of the contract volume, which is set to be delivered thirty (30) days after the above information has been received by the purchaser, in order to cover its higher costs after the cost increase took place. If an agreement cannot be reached within the above-mentioned period of thirty (30) days, Carbones is entitled to withdraw from the contract with regard to that share of the contract volume which has not yet been delivered.

## **15. NOTIFICATION OF DEFECTS**

- (a) Any notification must be made in written form or by fax within thirty (30) days (with the exception of claims to payment of bills) after the delivery of the goods to the place of destination. Notifications made after this date will not be taken into consideration and the purchaser is not entitled any more to claim related damages.
- (b) Damage caused in the course of transport must be reported immediately to the respective freight conductor upon unloading it from the medium of transportation (ship, train, truck, etc.), and a corresponding note is to be made on the transport documents (bill of lading, railroad waybill, CMR, etc.). Furthermore, the freight conductor or his authorized representative must complete an exact protocol covering the extent of the damage. In case of transport by railroad, such a protocol shall only be completed by the responsible railroad authority.

## **16. DELIVERIES**

Each delivery which is made according to this contract will be regarded as a separate contractual relationship, and any delay of one or more deliveries will not affect the validity of the remaining contractual obligations, unless there is any term of these sales conditions which deviates from the above. However, these sales conditions do not affect the applicability of clauses 4 and 13.

## **17. WAIVER OF SET-OFF RIGHT**

The purchaser waives the right to set-off any claim he may have against Carbones based on whatever legal grounds against an obligation based on an agreement under these general conditions.

## **18. 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.

## **19. APPLICABLE LAW**

Contracts, which are governed by these general conditions and any legal relationship resulting thereof 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.