

# General Terms of Delivery

## for Cable Car Construction Companies

### at the Austrian Association of the Machine-Building and Steel-Construction Industry

#### of 01 December 2003

(drawn up in consideration of the general terms of delivery issued and recommended by the Economic Commission for Europe of the United Nations, documents No. 188A and 730)

The present General Terms of Delivery have primarily been drawn up for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in § 1 (1) item 2 of the Austrian Consumer Protection Act, Federal Law Gazette No. 49/1979, they shall only apply to the extent that they do not conflict with the provisions of the first main section of the aforementioned law.

The UN Convention on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1998/96, is expressly excluded.

#### 1 Introduction

- 1.1 Unless the contracting parties have expressly agreed otherwise in writing, the present General Terms of Delivery shall apply.
- 1.2 The below provisions on the delivery of and performances regarding goods shall apply *mutatis mutandis* to contracts for work. The contracting parties are hereinafter consistently referred to as Buyer and Seller.
- 1.3 The Terms of Assembly of the Austrian Association for the Machine-Building and Steel Construction Industry shall additionally apply to assembly projects.

#### 2 Making of a Contract

- 2.1 A contract shall be deemed to have been made upon receipt of the statement of acceptance associated with the offer.
- 2.2 Any modification and amendment of the contract shall be confirmed in writing in order to become effective.  
Buyer's purchase conditions shall only be binding upon Seller if Seller has accepted them separately.
- 2.3 Any offer by Seller shall be without engagement, unless the offer as such indicates differently. Seller reserves the right to intermediate selling.
- 2.4 In the event that import and/or export licenses or foreign-currency permits or similar authorizations are required for the performance of the contract, the party responsible for obtaining such documents shall make every reasonable effort in order to obtain the necessary licenses or permits in due time.

#### 3 Drawings and Documents

- 3.1 The data on weights, measures, content, price, or performance, as contained in catalogues, brochures, circular letters, advertisements, graphic presentations, price lists or alike, shall only be definitive if the contract expressly refers to them.
- 3.2 Drawings, design drafts, cost estimates and other technical documents, as well as samples, catalogues, brochures, graphic presentations or alike shall remain the intellectual property of Seller at all times. Any use, copying, reproduction and dissemination and transfer to third parties, as well as any publication and presentation thereof may only be made with the express approval of the owner.

#### 4 Packaging

- 4.1 Unless other arrangements have been agreed upon
  - a) the listed prices are without packaging;
  - b) the goods are packaged according to normal trade practice in order to avoid, under normal transport conditions, any damage to the goods on their way to the agreed destination. The goods are packaged at Buyer's expense, and the packaging material will only be taken back if so agreed by the parties.

#### 5 Passage of Risk

- 5.1 Unless otherwise agreed by means of contract, the goods shall be deemed to have been sold "ex works" (EXW) (ready for collection)<sup>1</sup>
- 5.2 Furthermore, the INCOTERMS shall apply in the version valid on the date when the contract is signed.

#### 6 Period of Delivery

- 6.1 In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates:
  - a) the date when the contract is signed;
  - b) the date on which Buyer has complied with all technical, commercial and financial preconditions;
  - c) the date on which Seller has received a payment on account that is due prior to the delivery of the goods, or a commercial letter of credit has been issued.
- 6.2 Seller shall have the right to make partial or advance deliveries.
- 6.3 If a delivery is delayed on account of a circumstance on Seller's part that constitutes a reason for relief according to Article 11, a reasonable extension of the period of delivery shall be granted, without default being incurred.
- 6.4 If Seller has caused a delay in delivery, Buyer may either demand the performance of the contract or withdraw from the contract, granting a reasonable respite. In case of goods made to order, due account shall be taken, when setting a respite, that Seller may possibly not be in a position to use commenced parts for another purpose.
- 6.5 If Buyer does not accept the goods supplied under the contract in the contractually agreed place or at the contractually agreed time, and if no reason for relief according to Article 11 applies, Seller may either demand the performance of the contract or withdraw from the contract, granting a respite.

In the event that the goods have been segregated, Seller may store the goods at Buyer's cost and risk. Seller shall also be entitled to claim a refund for any justified expenses that Seller had to incur in connection with performing the contract and that are not covered by the payments received. This precludes any and all other claims against Buyer due to Buyer's delay.

- 6.6 In any event, Seller shall refund to Buyer any dunning and collection costs arising as further damage due to the delay.
- 6.7 Any other claim of Buyer against Seller, due to Seller's delay, than those listed in Article 6 shall be precluded.

#### 7 Price

- 7.1 Unless otherwise agreed, all prices shall be *ex works* of Seller, exclusive of packaging and loading. If the contractual agreement on delivery provides for the actual transport to Buyer, the prices shall be without unloading or carrying.
- 7.2 For a period of three months, prices shall be based on the costs at the time of quotation, unless otherwise agreed. In the event that costs change after the aforementioned commitment period has expired, these changes shall be for the benefit or to the account of Buyer.
- 7.3 When a contract is made with the prices being left open, the price shall be calculated on the basis of the sales price valid on the day of delivery.

#### 8 Payment

- 8.1 The payments shall be made in keeping with the agreed conditions of payment. Unless specific conditions of payment have been agreed upon, one third of the price shall be due immediately after entering into the contract, one third after half of the delivery period has lapsed, and the rest upon delivery. Irrespective of the foregoing, the value-added tax included in the invoice shall be paid within 30 days after the invoice date, at the latest, in all events.

<sup>1</sup> "ex works" means that Seller delivers when making available the goods to Buyer on the premises of Seller or at another indicated location (i.e. works, factory site, warehouse, etc.) without the goods having been cleared for export and loaded on to a means of transport for pick-up. The present clause therefore constitutes the minimum obligation of Seller, with Buyer having to bear all costs and risks connected to the transport of the goods from the premises of Seller.

- 8.2 Buyer shall not have the right to withhold payments due to warranty claims or any other counter-claims that Seller has not accepted.
- 8.3 If Buyer defaults on one of the agreed payments or any other performance, Seller may either insist on the performance of the contract and
- postpone compliance with Seller's own obligations until Buyer has paid the arrears in payment or provided any other performance,
  - use a reasonable extension of the period of delivery,
  - call for the payment of the full remaining purchase price,
  - charge interest on arrears, as of the due date, in the amount of 7.5% above the respective base rate of the European Central Bank (see EU Directive on combating delays in payment of 29 June 2000), unless Buyer can claim a reason for relief under Article 11,
- or announce his withdrawal from the contract, granting a reasonable respite.
- 8.4 Buyer shall reserve the ownership in the object sold until Buyer has met all financial obligations. Buyer shall comply with all required measures to safeguard the reservation of ownership. Seller is entitled to document Seller's ownership on the outside of the delivery item. In case of attachment or another form of recourse, Buyer shall have to claim Seller's ownership and to inform the latter without delay.
- 8.5 In any event, Buyer shall refund to Seller all dunning and collection costs arising as a further damage to Seller on account of the delay.
- 8.6 Any other claims of Seller against Buyer, due to Buyer's delay, than those listed in Article 8 shall be precluded.

## **9 Warranty**

- 9.1 Seller shall warrant for any defects in the design, the workmanship and the material provided and fitted by him, which appear within two years, as a maximum, though, within 3000 operating hours, as of the date at which the operating permit is granted, at the latest, though, six months as of the delivery, in case of agreed assembly by Seller three months as of the end of the assembly work. Warranty is due independent as to whether the defect already existed at the time when the goods were handed over.
- If only parts or components are the object of the contract, the warranty period shall be 12 months as of the delivery, in case of assembly by Seller as of the end of the assembly work. The rule on presumption in accordance with § 924 of the Austrian General Civil Law Code is precluded.
- 9.2 The warranty obligation does not apply to defects that are due to non-compliance with applicable operating conditions, service and maintenance conditions, improper treatment, inappropriate maintenance, inappropriate use or normal wear. Warranty does not extend to defects due to force majeure, excessive soiling, fire and other external impact.
- The warranty obligation shall cease if a person not expressly authorized by Seller makes any changes and/or repairs on the delivered system.
- If the repair was performed by a qualified person, and customer is able to prove that the repair is not the reason for the subsequent defect, the aforementioned stipulations shall not apply.
- 9.3 If a system is produced according to design data, surveying reports, drawings or other information provided by Buyer, Seller shall not be obliged to warrant for the correctness of this information, but only for the workmanship on the basis of this information. Nor shall Seller be obliged to check instructions by Buyer, or documents provided by Buyer, for their correctness. However, Seller's duty to warn regarding obviously incorrect instructions/documents shall continue to apply.
- 9.4 If Seller has fitted components provided by Buyer, Seller's warranty obligation shall only extend to the fitting work but not to the components/the material. Seller shall not be obliged to examine the component provided by Buyer/the material provided by Buyer for its fitness. However, Seller's duty to warn regarding obviously unfit components/materials shall continue to apply.
- 9.5 When delivering used components and used systems, Seller shall not provide any warranty.

- 9.6 Buyer must inform Seller immediately and in writing of any defects that have appeared in order to preserve his warranty claim. Defects that appear within the time frames indicated in Item 9.1 and of which Seller is informed without delay, may still be claimed in court by Buyer one year after expiry of the period indicated in Item 9.1.

- 9.7 If Seller has to warrant for defects in accordance with the aforementioned provisions, he shall comply with his warranty obligation at his choice by repairing or replacing the defect. Other means of warranty for remediable defects shall be precluded. Cancellation of the contract for non-remediable defects shall be precluded.

The replaced components or systems shall become Seller's property.

- 9.8 If components must be disassembled and assembled for improvements pursuant to Item 9.7, customer shall bear the costs thereof, if the assembly was not part of the contract.
- 9.9 An improvement pursuant to Item 9.7 does not extend the warranty period for the entire system. The warranty period for repaired or replaced components or for improvement work shall be six months, in any event, as of the making of the improvement or the replacement, without the foregoing restricting Item 9.1. Items 9.2, 9.4 and 9.5 shall apply in analogy. The rule on presumption according to § 924 of the Austrian General Civil Law Code shall be precluded.

## **10 Damages**

- 10.1 The mere appearance of a defect within the period indicated in Item 9.1 does not give rise to a breach of contract.
- 10.2 Defectiveness  
Seller shall not have any obligation to damages, in addition to the warranty obligation, for any defects of the deliveries or performances.
- 10.3 Consequential Damage of Defects  
Seller shall not be liable for any damage which it was impossible to anticipate as a possible consequence of a breach of contract at the time of entering into the contract. Seller's obligation to damages for other consequential damage of defects, e.g. loss of profit, is ruled out as being a minor negligence. For gross negligence, damages are limited to EUR 7,500.00 for a net order sum of EUR 150,000, and for higher net order sums to 5% of the respective value, the maximum, however, being EUR 360,000.00.
- 10.4 Product Liability  
The delivered item provides only the safety that may expected on the basis of the respectively valid admission regulations, acceptance tests and operating regulations.

## **11 Reasons for Relief**

- 11.1 The following circumstances shall be deemed to be reasons for relief, if they appear after the contract has been made and obstruct contract performance: labor disputes and all circumstances separate from the parties' will such as, for example, fire, mobilization, confiscation, embargo, prohibition of foreign-currency transfers, riot, absence of means of transport, general dearth of supply goods, restrictions of energy consumption.
- 11.2 The consequences of such circumstances regarding the obligations of the parties are determined by Items 6 and 8.

## **12 Place of Jurisdiction, Applicable Law, Place of Performance**

- 12.1 The place of jurisdiction for all disputes arising directly or indirectly from a contract shall be the relevant Austrian court with competences for Seller's principal place of business.
- Seller may, however, also resort to another court with jurisdiction for Buyer.
- 12.2 The Contracting Parties may also agree that an arbitral tribunal has jurisdiction.
- 12.3 Contracts shall be subject to the law applicable to Seller.
- 12.4 The Convention of the United Nations on Contracts for the International Sale of Goods of 11 April 1980, Federal Law Gazette 1998/96, shall expressly be precluded.
- 12.5 Seller's principal place of business shall be the place of performance for deliveries and payments, also in the event that the transfer is agreed to be in a different place.
- 12.6 In the event of disputes arising from the present certified translation of the contract, the German text shall prevail.

**ATTACHMENT SHEET**  
**TO THE**  
**GENERAL TERMS AND CONDITIONS OF DELIVERY**  
FOR CABLE CAR CONSTRUCTION COMPANIES  
AT THE AUSTRIAN ASSOCIATION OF THE MACHINE-BUILDING AND STEEL-CONSTRUCTION INDUSTRY  
OF DECEMBER 1, 2003

**Ad Art. 1.3 (to be replaced by):**

Assembly work shall be additionally governed by the General Terms and Conditions of Assembly of Doppelmayr Seilbahnen GmbH (available at [www.doppelmayr.com](http://www.doppelmayr.com)).

**Art. 3.3 (supplement):**

Unless otherwise agreed, the Seller shall retain possession and ownership of the tools, equipment, molds, auxiliary tools, etc., required or manufactured for the performance of the contract. To the extent such tools or equipment can be specifically used solely for the respective products manufactured for the Buyer, such tools and equipment shall be solely used within that scope.

**Art. 6a Acceptance Testing (supplement):**

- 6a.1 Unless otherwise agreed, the goods delivered, with the exception of spare parts and service work, shall, as a matter of principle, be accepted after completion of assembly and testing at the installation site. The Buyer undertakes to participate in the acceptance testing of the delivered goods performed during normal working hours. In the event of inspection by the public authorities, such inspection will be deemed to be equivalent to acceptance by the customer.
- 6a.2 The Seller shall notify the Buyer of the date of acceptance testing in good time to enable the Buyer or a person authorized by the Buyer, who shall be notified in advance to the Seller, to attend the acceptance test.
- 6a.3 An acceptance report on the acceptance test shall be prepared.
- 6a.4 In the event of the Buyer or its authorized representative not attending the acceptance test in spite of having been notified in due time, the Seller shall prepare the acceptance report by itself and sign it. The Buyer shall receive a copy of the acceptance report. In such cases, the Buyer shall not be entitled to object to the accuracy of the acceptance report.
- 6a.5 Unless otherwise agreed, the Seller shall bear its own costs incurred in connection with the acceptance test performed.
- 6a.6 At all events, the Buyer shall bear its own costs incurred by the Buyer and/or by its authorized representative in connection with the acceptance test, e.g., travel expenses, cost of living, expense allowance.
- 6a.7 If only immaterial defects (defects that do not significantly impair the function and/or purpose of the goods delivered) are detected during the pre-acceptance test, the goods delivered will, at all events, be deemed accepted.
- 6a.8 If material defects are detected, the Seller shall remedy such defects without delay. After remedying, the Buyer shall receive a notice of remedying.
- 6a.9 In the event of the Buyer failing to accept the goods delivered at the agreed place and/or at the agreed time, the Seller shall be entitled either to insist on performance of the contract and performance of the obligation to pay according to contract or to withdraw from the contract. In either case the Buyer shall be obligated to pay damages in full.
- 6a.10 By completion and confirmation of acceptance, the Buyer declares to have fully and adequately informed itself and its employees about the handling, operating and product-related use of the goods delivered.

**Ad Art. 8.3 subpara. d) (to be replaced by):**

pursuant to sec. 456 of the Austrian Commercial Code (*UGB*) charge the legal rate of interest in the amount of 9.2 percentage points above the base rate, provided that the base rate applicable on the first calendar day of a six-month period shall be relevant for the respective six-month period; however, if the Buyer is not responsible for delay, the Buyer shall only pay interest in the amount of 4 percent p.a. as provided in sec. 1000, para. 1 of the Austrian General Civil Code (*ABGB*);

**Art. 8.3a Withdrawal from the Contract (supplement):**

- 8.3a.1 Moreover, the Seller shall be entitled to withdraw from the contract
- if delivery and/or commencement or continuation of performance is delayed for reasons within the control of the Buyer or continues to be delayed in spite of the Buyer having been granted an additional period of time;
  - if there is any doubt about the solvency of the Buyer and the Buyer neither makes advance payments nor furnishes adequate security prior to delivery in spite of having been requested to do so;
  - if the extension of the period of delivery due to the aforementioned circumstances in the aggregate amounts to more than half of the originally agreed period of delivery;
  - if any industrial property rights to which the Seller is entitled and/or the obligation of secrecy as set forth in Art. 3.2 is/are directly or indirectly infringed by the Buyer.

Additionally, the Seller shall be entitled to rescind the contract on the above grounds with respect to any goods not yet delivered and services not yet provided.

- 8.3a.2 If reorganization proceedings (insolvency proceedings) are instituted against either party to the contract or a petition in insolvency is dismissed for lack of sufficient assets to cover the costs of the proceedings, the other party to the contract shall be entitled to withdraw from the contract without granting an additional period of time.
- 8.3a.3 Without prejudice to any claims for damages, the following shall apply in the event of withdrawal from the contract: any performance already effected in whole or in part shall be invoiced and shall become due for payment immediately; this shall also apply to any goods delivered and services provided, including any advance performance already effected, but not yet accepted by the customer. However, the Seller shall also be entitled to demand that products and/or parts thereof already delivered be returned.

**Ad Art. 10.3 Consequential Damage Caused by a Defect (to be replaced by):**

- 10.3.1 The Seller shall not be liable for any damage that was impossible to anticipate as a possible consequence of a breach of contract at the time of entering into the contract.
- 10.3.2 Outside the scope of the Austrian Product Liability Act (*Produkthaftungsgesetz*), the Seller be liable only where intention or gross negligence of the Seller can be proven and only in accordance with legal provisions
- The Seller's total liability in cases of gross negligence shall be limited to the net contract value or to an amount of EUR 500,000, whichever is lower. For each claim, the Seller's liability shall be limited to 25% of the net contract value or to an amount not to exceed EUR 125,000, whichever is lower.
- 10.3.3 Liability for slight negligence and compensation for consequential damage, damage for purely pecuniary damage, indirect damage, loss of production, financing expenses, cost of replacement energy, loss of energy, data or information, lost profit, savings not made, loss of interest and damage arising from third-party claims against the Buyer shall be excluded.
- 10.3.4 All claims for damages shall be excluded in the event of any conditions for assembly, commissioning and use (as may be contained, e.g., in operating instructions) or requirements for admission or approval by the authorities not being met.
- 10.3.5 If penalties are stipulated, any claims in excess thereof which are based on the same grounds as such penalties shall be excluded.
- 10.3.6 Any and all claims of the Buyer against the Seller, on whatever legal grounds and under whatever title, shall be governed by the provisions of Art. 10 with final effect, and such provisions shall also apply to all of the Seller's employees, subcontractors and sub-suppliers.

**Art. 13 Compliance (supplement):**

These General Terms and Conditions of Delivery shall be governed by the code of conduct, laws, guidelines and corporate values summarized in the Code of Conduct of the Doppelmayr Garaventa Group. The current version of the Code of Conduct is permanently available on the web at <http://www.doppelmayr.com>. The Code of Conduct is binding upon all employees of the Doppelmayr Garaventa Group. The Buyer agrees to comply with the provisions contained therein.

**Art. 14 Data Storage (supplement):**

- 14.1 The Buyer declares its express consent to the storage of all data relevant to the business relationship and processing of the orders placed and/or to the delivery commitments.
- 14.2 Any personal data transmitted shall be solely stored and used for the purposes of the contractual relationship and, to the extent that this is necessary for the performance of the contract, shall also be passed on to any cooperation partners/vicarious agents involved during the course of the performance of the contract. The Buyer declares its consent thereto. Thus, transfer of personal data shall be on a voluntary basis. The Buyer shall have the right to have personal data erased at any time (right to revoke).
- 14.3 The data shall not be made available to any uninvolved third parties.
- 14.4 To the extent that personal data are stored or otherwise processed, such storage or processing shall be performed in compliance with the relevant data protection laws.

**Art. 15 Final Provisions (supplement):**

- 15.1 There are no oral side agreements. Modifications of or amendments to these Terms and Conditions and/or to the contract and/or the annexes hereto or to the contract shall be effective only if made in writing; this shall also apply to any waiver of this requirement of writing.
- 15.2 If any of the provisions of these General Terms and Conditions is or becomes invalid, the validity of the remaining provisions hereof shall not be affected thereby.
- 15.3 The invalid provision shall be replaced by a valid provision that comes as close as possible to the intended purpose of the invalid provision in economic and commercial terms.
- 15.4 Our contractual partner declares that in view of the pricing being advantageous for our contractual partner even a possible shift in the legal situation on account of these General Terms and Conditions does not put our contractual partner at a disadvantage.
- 15.5 In the event of any contracts or the General Terms and Conditions being drawn up by us in German and in a different language, the German version shall prevail.

**Doppelmayr, February 2014**