

GTC – General Terms and Conditions of Business and Delivery

I. General

These GTC shall apply exclusively and shall form part of all present and future legal transactions concluded between Austro Diesel GmbH (hereinafter referred to, in short, as “**Austro Diesel**”) and the customer, even where not expressly agreed upon again in the event of subsequent/further transactions. In particular, these GTC shall be deemed elements of the purchase offer overleaf. General terms and conditions, or similar, of the customer shall not form part of the transaction.

Austro Diesel shall be obligated under law only after having expressly accepted an order or having entered into another agreement. All offers of Austro Diesel are nonobligatory.

In the event that the customer’s pecuniary circumstances are subject to any change that, either abstractly or concretely, appears to have the potential to jeopardise or impede satisfaction of our claims, particularly where initiation of insolvency proceedings over the customer’s assets is imminent, respectively has already occurred or been rejected for lack of assets, we shall have the right to request collateral, respectively advance, payment for supplies, if any. Moreover, we shall have the right to make deliveries exclusively against payment of respective underlying claims, conditional upon counterpayment, and any further claims on our part shall remain unaffected.

II. Prices

Prices are net prices ex domestic depot, not including packaging and shipping cost. Price increases due to changes in respective acquisition prices, tariffs, freight charges or other expenses, such as expenses incurred due to increase or new implementation of levies, respectively indexation clauses, that arise during the period between placement of order and delivery shall be borne by customer and Austro Diesel shall have the right to adjust prices accordingly.

III. Conditions of payment

Unless agreed otherwise, all invoices shall be due for payment within 14 days and without any deduction. All payments shall be made in cash and free of expense. Cheques and bills of exchange shall be accepted on a case by case basis and subject to specific agreement and exclusively pending full discharge of the debt, but not in lieu of performance. Collection expenses and discount charges shall be borne by customer.

In case of default in payment, respectively acceptance, Austro Diesel shall have the right, notwithstanding further claims, to charge default interest at the rate of 8 percentage points in excess of the respective base rate, however, no less than 12 %. Moreover, in this event, customer shall be obligated to pay all costs incurred in and out of court as well as attorney’s fees, if any, or collection costs, if any, incurred by Austro Diesel, as the case may. In case of cancellation of contract on the part of customer, Austro Diesel shall have the right to request either compensation for suffered damage and lost profit, or payment of a cancellation fee equivalent to 15 %. Moreover, customer shall return the object(s) of purchase to Austro Diesel upon request and at customer’s own expense.

In the event that, despite a grace period of 8 days having been granted, customer is in default of payment, respectively taking/accepting delivery, Austro Diesel shall have the right, notwithstanding other rights, to take back the goods, which

are its property, without this being equivalent to rescission of contract, respectively to rescind the contract, either in full or in part, preserving its rights, particularly the right to assert claims for damages.

Retention of payment on the grounds of warranty claims, if any, or other potential claims on the part of customer shall be ruled out, unless we have expressly acknowledged such claims of the customer (orderer) as being justified.

IV. Reservation of title

The object of purchase shall remain the property of Austro Diesel until payment in full of the claim on the part of Austro Diesel against customer, i.e., including claims from other deliveries, including costs and default interest. Customer consents that all payments made by customer shall first be allocated to repair costs, if any, then to amounts due for spare parts, then to interest and other ancillary fees and finally to the purchase objects subject to reservation of title, i.e., the capital.

Reservation of title may be endorsed on the car type certificate/registration certificate (*Typenschein*) (vehicle inspection rating (*Einzelgenehmigungsbescheid*)) and on the purchase object. Austro Diesel shall have the right to retain the car type certificate/registration certificate (*Typenschein*) (vehicle inspection rating (*Einzelgenehmigungsbescheid*)) until all obligations on the part of customer under the purchase contract have been settled in full.

As far as any third party lays claim to the purchase objects delivered subject to reservation of title, customer shall notify Austro Diesel thereof by means of registered letter and without delay. Costs, if any, incurred by Austro Diesel in the context of asserting its right against third parties shall be reimbursed by customer.

In the event that the purchase object is resold customer shall assign to Austro Diesel all of customer's claims, including all ancillary rights and collateral, to which customer is entitled vis-à-vis the third-party purchaser as a result of such resale, until all claims against customer on the part of Austro Diesel have been settled.

During the period when reservation of title remains in effect, customer shall obtain insurance cover for the purchase object for the full value and against all risks; such insurance policies shall be vinculated for the benefit of Austro Diesel. Resale, pledging and assignment as security shall be prohibited unless expressly agreed upon in writing.

Customer shall be obligated during the period when reservation of title remains in effect to maintain the purchase objects in appropriate condition and arrange for necessary repairs to be carried out immediately –except for cases of emergency– at the repair workshops of Austro Diesel or at a workshop approved by Austro Diesel.

In case of default in payment or breach of any other provision of the contract, payment target shall be deemed to have been missed.

Austro Diesel shall have the right in case of default in payment on the part of customer to seize the purchase object(s) subject to reservation of title, even without rescinding the contract. Reservation of title may be claimed –with or without rescission of contract– for the entire consignment or for specific goods.

V. Delivery

Delivery terms represent merely approximate delivery periods and shall be subject to change, unless these are expressly agreed upon as being fixed.

Default, for whatever reason, of delivery terms promised to Austro Diesel by supplying factories / suppliers shall release Austro Diesel, on its part, from meeting agreed delivery periods. Damage claims for delayed delivery, respectively non-performance, shall be ruled out at any rate in cases of ordinary or gross negligence. In this event, claims, if any, on the part of customer against Austro Diesel may be asserted only insofar as such claims are admitted vis-à-vis Austro Diesel by the supplying factory / supplier. All circumstances beyond the sphere of influence of Austro Diesel shall be deemed instances of force majeure. These include particularly operational disruption, restrictions or delays with regard to delivery to Austro Diesel and its suppliers. Such circumstances shall confer upon Austro Diesel the right to discontinue, respectively effect delivery at a later point in time, without customer being able to assert against Austro Diesel any claim based thereon.

The delivery term shall commence upon the contract taking effect; however, never prior to payment of the agreed down payment, respectively first instalment.

In the event that a modification of the contract is agreed upon, Austro Diesel shall have the right to set the delivery target anew.

Austro Diesel reserves the right to make engineering, respectively shape, changes during the delivery term.

Specifications included in descriptions of services, weights, operating costs, speeds, etc. shall be non-committal vis-à-vis Austro Diesel. Similarly, Austro Diesel shall not be liable for the accuracy of such specifications.

Unless agreed otherwise, scrap material accrued on occasion of repair works shall be conveyed to the ownership of Austro Diesel, without any separate notification, respectively compensation, to customer being required. However, disposal costs, if any, shall be borne by customer at any rate.

Damage claims on the part of customer for non-performance or default shall be ruled out.

VI. Conditions of performance and acceptance

Austro Diesel shall have the right to rescind the contract within 14 days after acceptance of order. Delivery shall be deemed made:

For delivery ex domestic depot:

Upon issuance of the notification about readiness for dispatch. Customer shall examine and accept the purchase object at the agreed place of acceptance.

For delivery to an agreed place of delivery:

Upon hand-over to the first carrier.

In the event that customer expressly or implicitly waives examination at the depot, the purchase object shall be deemed appropriately delivered, accepted and approved upon leaving the domestic depot.

All risks shall transfer to customer at the time of performance. Customer shall arrange for necessary insurance cover independently and at its own cost. Austro Diesel shall arrange for insurance cover only as far as expressly agreed upon in detail. The same shall likewise apply to purchase objects that are handed over for repair; namely, from the point in time of acceptance until the point in time of performance. During this period, Austro Diesel similarly shall not be liable for accidental destruction of the item. If Austro Diesel sets a time limit for collection and customer fails to meet such time limit for collection, a storage fee may be charged.

Dispatch is always effected without insurance cover and at the cost and risk of customer.

VII. Warranty and liability

As far as the manufacturer furnishes a guarantee for the purchase object being free from defects according to the respective state of the art, any liability or warranty on the part of Austro Diesel shall be deemed ruled out. Austro Diesel

shall satisfy warranty claims on the part of customer as far as these are accepted and borne by the supplying factory. If no guarantee is furnished by the manufacturer, Austro Diesel shall assume warranty in accordance with statutory provisions. The warranty period for chattels is 6 months, with the burden of proof as to the defect already existing upon handover invariably resting on the customer. Customer shall examine the commodity immediately upon handover (delivery / collection) and shall notify Austro Diesel of detected defects, if any, likewise without delay and in detail and in writing. If customer omits such appropriate notification (even if it were only in the agreed manner), then the commodity shall be deemed approved, unless the defect was not discernible upon examination. If such a defect becomes apparent later on, notification must be made immediately upon detection, or else the purchase object shall be deemed approved even in view of such defect.

Services that are provided based on unjustified notices of defect shall be considered as orders, hence payable by customer.

Any warranty claim shall expire in the event that customer fails to heed instructions about handling the purchase object (operating manual) and particularly if customer fails to arrange for mandatory checks (mandatory servicing) to be performed in an appropriate and timely manner. Thus, customer shall be required to demonstrate compliance in either instance. No warranty shall apply at any rate for any damage caused by insufficient maintenance, faulty operation or force majeure.

Even in instances of justified warranty [claims] customer shall waive in a legally binding manner assertion of claims for price reduction or (and) rescission or (and) compensation for indirect or (and) direct damage.

Normal wear as well as damage caused through negligence or improper handling shall be excluded from warranty and from guarantee, if any.

The warranty, respectively guarantee, shall expire if the purchase object is modified, respectively repaired, by a third party or through assembly of third-party parts. The warranty or guarantee shall not apply to tyres, tubes, filters, lubricants, seals, electrical lighting unit(s) or other equipment(s).

Assertion of warranty claims shall not release customer from the contractually agreed duty to pay. The same applies likewise to services and electronic progress billing (*E-Teilfakturen*). All warranty claims shall expire in the event of default in payment on the part of customer.

In those instances where no warranty applies, claims for damages of any kind shall be ruled out as well. Apart from that, Austro Diesel shall be liable – as far as admissible – exclusively in instances of malice or gross negligence.

The liability of Austro Diesel to pay damages for material damage under the Austrian Product Liability Act shall be ruled out. Similarly, such product liability claims that may be derived from other provisions shall be ruled out.

VIII. Prohibition of set-off; choice of law; Jurisdiction

Any set-off with alleged counterclaims of customer against receivables of Austro Diesel – of any kind whatsoever (particularly purchase price instalments, other receivables from goods or services, claims based on unjust enrichment in the event of rescission of contract) – shall be inadmissible. Similarly, customer shall not have the right to retain on the grounds of alleged warranty claims, damage claims or other claims payments to be made to Austro Diesel.

Austrian law shall apply to the exclusion of national and supranational conflict of law rules and to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

Contract language shall be German, unless agreed otherwise on a case-by-case basis.

Place of performance and exclusive venue shall be Vienna-Inner City (*Innere Stadt*).

IX. Data processing, data privacy

Austro Diesel processes name address and other customer data relating to the business relationship for business purposes. Moreover, Austro Diesel processes personal data of customer for marketing purposes in order to transmit by e-mail and surface mail information about products and goods of Austro Diesel. Customer may notify Austro Diesel at any time by e-mail addressed to privacy@austrodiesel.at that customer no longer wishes to receive any advertisement.

For further information about data protection, see the data privacy statement of Austro Diesel on our website at www.austrodiesel.at/metanavigation/datenschutzerklaerung/, which forms part of these General Terms and Conditions of Business and Delivery.

X. Miscellaneous

As far as specific provisions of contract should be found to be or become invalid for any reason whatsoever, the other provisions set forth in these General Terms and Conditions of Business and Delivery shall remain unaffected. As far as possible, the specific [invalid] provisions shall be reduced in order to preserve validity thereof, respectively a provision shall be deemed agreed that most closely reflects the invalid provision.

XI. Amendments of General Terms and Conditions of Business and Delivery

Austro Diesel reserves the right to effect amendments of, respectively supplements to, the website and to these General Terms and Conditions of Business and Delivery at any time. Orders shall be governed, in each instance, by the sales conditions, the contractual terms and the General Terms and Conditions, as applicable at the time of placement of order, unless amendment of such conditions, terms, or GTC is required by law or by regulatory action (in this event, such amendment shall also apply to previously placed orders). In the event that a provision set forth in these GTC should be invalid, void or unenforceable for any reason whatsoever, the validity and enforceability of the remaining provisions shall be unaffected.