

Terms and Conditions and Delivery Specifications

I. General

These Terms and Conditions and Delivery Specifications are exclusively applicable and part of all present and future legal transactions between Austro Diesel GmbH (hereinafter short: Austro Diesel) and the customer, even if they are not expressly agreed again in any subsequent/future transactions. In particular, they are an integral part of the purchase order overleaf. Terms and conditions or the like of the customer shall not be applicable to the transaction.

If the customer is a consumer in accordance with the Consumer Protection Act, the mandatory legal provisions stipulated in the Consumer Protection Act remain unaffected.

Any legal commitment of Austro Diesel is only entered upon explicit acceptance of the purchase order or any other order. All offers of Austro Diesel shall be deemed without commitment.

For the event of any changes in the financial circumstances of the customer that appear suited, either abstractly or concretely, to jeopardise the settlement of our claims or make such settlement difficult, in particular in the event of the imminent commencement or the actual commencement of bankruptcy proceedings in respect of the assets of the customer or the non-commencement of bankruptcy proceedings for lack of assets, we shall have the right to demand furnishing of securities or advance payments for any deliveries. In addition, we shall be entitled to execute deliveries only against and versus payment of the respective accounts receivable and without any effect on any further claims on our part beyond this.

II. Prices

The prices are net prices from domestic distributing warehouse excluding packaging and shipment costs. Any price increases between the order and the delivery resulting from changes in our cost prices, in customs duties, freight costs or any other costs, such as for example due to an increase in levies or the introduction of new levies or due to escalation clauses shall be to the customer's account and shall entitle Austro Diesel to adjust the prices accordingly.

III. Payment terms

Unless where anything to the contrary has been agreed, all invoices shall be payable without deduction within 14 days. All payments shall be effected in cash, free of any charges and without deduction. In the individual case, cheques and drafts shall be accepted only subject to special agreement and only in lieu of payment, not in lieu of performance. Collection and discount charges shall be to the account of the customer. If the payment deadline is exceeded and in the event of a default of acceptance, Austro Diesel shall have the right to charge default interests of 8% points above the applicable base lending rate, at least, however, of 12%, and without prejudice to any claims beyond this. In addition, the customer shall in this case be obligated to pay for all costs incurred in and out of court as well as for costs of reminders and the costs of a lawyer or a debt collecting agency that Austro Diesel may contract.

If the contract is cancelled by the customer, Austro Diesel shall be entitled to either demand compensation for the loss and lost profit incurred or a 15% cancellation fee. In addition, the customer shall return the purchased item/s upon request immediately to Austro Diesel at the former's cost. In the event of default of payment or default of/delayed acceptance on the part of the customer in spite of a 8-day period of grace, Austro Diesel shall, without prejudice to any other rights, have the right to take the goods that are its property back, which shall not be equivalent to a cancellation of contract, or to cancel the contract in full or in part while maintaining its rights, in particular the right to claim damages for non-performance. Any retention of payments on the basis of any warranty claims or other potential claims of the customer shall be excluded unless where the validity of the claims of the customer (the orderer) has expressly been acknowledged by us.

IV. Reservation of title

All purchase items shall remain the property of Austro Diesel until full payment of all claims of Austro Diesel against the customer has been received, i. e. also those resulting from other deliveries, including costs, interests and default interests. The customer agrees that any payments made shall initially be set off against any repair costs, then against any claims relating to spare parts, after that

against interests and any other ancillary fees, and only then against the purchase item subject to reservation of title, i. e. the capital.

The reservation of title can be recorded in the certificate of conformity (individual approval notification) and on the purchase item. Austro Diesel has the right to retain the certificate of conformity (individual approval notification) until full settlement of all obligations of the customer resulting from the purchase contract.

In the event of any seizure by a third party of the purchase items delivered under reservation of title, the customer shall immediately notify Austro Diesel of this by registered letter. The customer shall refund any costs incurred in connection with the assertion of Austro Diesel's rights against third parties. In the event of the subsequent sale of the purchase item, the customer shall cede all claims including all ancillary rights and securities it is entitled to against its buyer based on the subsequent sale, until all claims Austro Diesel has against it have been complied with.

For the duration of the reservation of title, the customer shall insure the purchase item at Austro Diesel's request for the full value against all risks and shall draw up the insurance policies to the benefit of Austro Diesel. Unless where expressly agreed in writing, subsequent sale, pledging and transfer as security shall be prohibited.

For the duration of the reservation of title, the customer has the duty to maintain the purchase items in a proper condition and to have any necessary repairs performed immediately – except in emergencies – at a workshop of Austro Diesel or at a workshop approved by Austro Diesel.

In the event of default of payment or violation of any other contract clause, the payment deadline shall be deemed to have been missed. In the event of the customer's default of payment, Austro Diesel shall have the right to collect the purchase item/s under reservation of title even without cancellation of the contract. The reservation of title – with or without cancellation of contract – can be asserted in respect of the entire delivery or individual goods.

V. Delivery

The delivery dates are without commitment unless where these have been agreed as fixed, and shall be considered only an approximate delivery period.

Failure to comply with delivery times promised to Austro Diesel by supplier factories/suppliers – for whatsoever reason – shall in turn release Austro Diesel from the compliance with delivery times. Claims for damages for delayed deliveries or for non-performance shall in all cases be excluded in the event of slight and gross negligence. Any claims of the customer against Austro Diesel can in such case only be asserted to the extent as such claims are recognised by the supplier factory/the supplier towards Austro Diesel. All circumstances on which Austro Diesel has no influence shall be deemed cases of Force Majeure. These include in particular interruptions in operation, restrictions or delays in respect of the delivery at Austro Diesel and its suppliers. Any such circumstances shall entitle Austro Diesel to carry out the delivery at a later date or to discontinue delivery, and the customer cannot assert any claims against Austro Diesel based on this.

The term of delivery shall begin upon coming into effect of the contract, however, never before payment of the agreed deposit or first instalment.

If a modification of the order is agreed, Austro Diesel shall have the right to re-stipulate the delivery deadline.

Austro Diesel reserves the right to implement design and form changes during the delivery time.

The data included in the descriptions in respect of performances, weights, operating costs, speeds, etc. shall be regarded as approximate data. Austro Diesel does not be liable for the correctness of such data.

Unless where anything deviating from this has been agreed, any recyclables produced during repairs shall become the property of Austro Diesel without the need for any separate notification or compensation of the customer. However, the customer shall pay for any costs in connection with the disposal, if applicable.

Any claim for damages on the part of the customer for non-performance or for default shall be excluded.

VI. Conditions of performance and acceptance

Austro Diesel has the right to cancel the contract within 14 days from acceptance of the order. The delivery shall be deemed fulfilled:

For deliveries from domestic distributing warehouse:

Upon submission of notification of readiness for shipment. The customer has the duty to inspect and to accept the purchase item immediately upon receipt of the notice of completion at the agreed place of acceptance.

For deliveries with agreed place of delivery:

Upon transfer to the first carrier.

Should the customer waive the inspection at the distribution warehouse, either explicitly or implicitly, the purchase item shall be deemed correctly delivered, accepted and approved upon its leaving the domestic distributing warehouse.

All risks shall be transferred to the customer at the time of fulfilment. The customer shall arrange for the necessary insurance cover at its cost. Austro Diesel shall only take out insurance cover where this has been explicitly agreed. This shall also apply to any purchase items submitted for repair; namely from the time of acceptance of these until the time of fulfilment. Austro Diesel does not accept liability for the accidental loss of the item. Where Austro Diesel has stipulated a term for collection and such term is not kept by the customer, the latter can be charged with a storage fee.

Shipment shall always be effect uninsured to the account and at the risk of the customer.

VII. Warranty and liability

Insofar as the manufacturer guarantees that the purchase item is free of defects according to the state of the art, any liability and warranty on the part of Austro Diesel shall be excluded. Austro Diesel shall comply with any warranty claims of the customer to the extent as these are acknowledged and covered by the supplier factory.

If the manufacturer does not provide any warranty, Austro Diesel's warranty shall be in accordance with the legal provisions. The warranty period for movable items is six months, and the customer shall respectively have to prove that the defect already existed upon transfer. The customer shall inspect the goods immediately upon transfer (delivery/collection) and shall notify Austro Diesel immediately of any detected defects in detail in writing. Should the customer fail to provide the proper notification (or fail to do so in the agreed from), the goods shall be deemed approved unless the fault was not noticeable during inspection. If such fault is detected later, notification must be effected immediately after detection, failing which the purchase item shall be deemed approved also in respect of this fault.

Any work to be performed due to unjustified notices of defect shall be considered an order to be paid by the customer.

Any warranty and guarantee claim shall be forfeited if the customer fails to observe the specifications regarding the treatment of the purchase item (operating instructions) and in particular if the customer fails to arrange for the specified inspections (compulsory service) in the correct manner and within the specified intervals. The customer shall therefore prove both. Any damage caused by inadequate maintenance, operator faults or by Force Majeure shall not be included under the warranty.

Even in events of justified warranty, the customer legally waives its right of claiming reduction or (and) cancellation or (and) replacement of any direct or (and) indirect damage. Natural wear and tear and damage caused by negligence or incorrect treatment shall be excluded from any warranty and guarantee, where applicable.

The warranty or guarantee shall be forfeited if the purchase item was modified or repaired by any third parties or by installation of parts originating from third parties. The warranty or guarantee does not extend to tyres, hoses, filters, lubricants, gaskets, electrical lighting system(s) and other equipment(s).

The assertion of any warranty claims does not release the customer from the contractually agreed payment obligation. This also applies to services and electronic partial invoices. Any warranty claim shall be forfeited if the customer is in default of payment.

Cases in that no warranty is provided also exclude any compensation for damage. In addition, Austro Diesel's liability shall be restricted – insofar as permissible – to malicious intent and gross negligence.

Austro Diesel's obligation of replacement for material damage pursuant to the Product Liability Act shall be excluded. Any product liability claims that might be derived from other regulations shall also be excluded.

VIII. Prohibition to set off claims, applicable law, place of jurisdiction

The off-setting of any alleged counter-claims of the customer against outstanding claims of Austro Diesel – of whatsoever nature (in particular purchase price instalments, other claims from deliveries and services, restitution under laws of enrichment in the event of rescission of contract) shall not be permissible. Equally, the customer shall not be entitled to retain any amounts payable to Austro Diesel on the basis of alleged warranty, damage or other claims.

Austrian laws shall apply with the exclusion of any national and international reference provisions and with exclusion of the United Nations Convention on Contracts for the International Sale of Goods.

The contract language shall be German unless where anything to the contrary has been agreed in the individual case.

Place of fulfilment and jurisdiction is Vienna-Inner City.

IX. Data processing, data protection

The customer acknowledges and authorises that Austro Diesel processes the name, address and other data of the customer relating to the business relationship by automated processes, and approves storage of such data. In addition, the customer expressly approves that Austro Diesel is authorised to use personal data of the customer for marketing purposes and for advertising, in particular the sending of information on products or goods of Austro Diesel. The customer can revoke such approval at any time by sending an e-mail to verkauf@austrodiesel.at.

X. Miscellaneous

Should individual contract provisions not be applicable for whatsoever reason, this shall not affect the validity of the remaining provisions of the Terms and Conditions and Delivery Specifications. The individual provisions shall be reduced as far as possible while maintaining their validity, or respectively a provision that comes closes to the non-applicable provision shall be deemed agreed.

XI. Change of the Terms and Conditions and Delivery Specifications

Austro Diesel reserves the right to change and amend the Homepage and these Terms and Conditions at any time. Orders shall respectively be subject to the Conditions of Sale, contract terms and Terms and Conditions as applicable at the time of ordering unless any change to such terms and conditions is required by law or according to an official order (in which case they shall also apply to orders previously made). If any provision in these Terms and Conditions is invalid, void or unenforceable for any reason, such provision shall be deemed separable and shall not affect the validity and enforceability of the