

General Terms and Conditions (GTC) of ACS Handels GmbH

January 2023 version

1. Definitions, Scope

"Purchaser" is every contractual or negotiating partner of ACS Handels GmbH, in particular every buyer (or customer) of a product; this is independent of whether a contract has already been concluded.

Our services are provided exclusively under the terms of these GTC. The scope of these GTC includes all our offers, orders, legal transactions and other services of any kind. These GTC also apply if no specific reference is made to them in individual cases. Deviating conditions of the purchaser are hereby expressly contradicted. In any case, the provision of a delivery or service by us does not constitute submission to deviating conditions of the purchaser, even if we are aware of conflicting or deviating conditions of the purchaser and do not express any reservations against them. They shall not be binding for us even if we do not object again when concluding the contract. Special deals and agreements only become binding after our written confirmation. The terms of payment printed on our invoices apply. In the event of contradictions in the contractual basis, the following order applies: any special agreements, insofar as these have been confirmed by us in writing; our GTC; legal standards.

These GTC do not apply to legal transactions with consumers within the meaning of Section 1 (1) of the Consumer Protection Act (KSchG).

2. Offer, order, conclusion of contract, assignment

All of our offers are subject to change, non-binding and merely to be understood as an invitation to place an order. Orders placed by the purchaser are binding offers to us for the conclusion of a contract. Orders are binding for the purchaser from the time that they are received by us; Access to our employees, in particular, sales staff (representatives), is sufficient for this. Orders are accepted in writing (by email or fax) or by telephone. The binding period is 7 working days (Monday to Friday).

We can accept the purchaser's offer at our own discretion by sending the goods directly or by sending a written order confirmation by email; this is how the order comes about. All other agreements, requests for changes or ancillary agreements, including those made later, only become effective with our written confirmation.

We expressly point out that we must reserve the right to accept or carry out the order – in particular, in accordance with the available delivery options.

3. Prices

The prices are subject to change (unless they are expressly marked as binding), apply in EURO ex works, plus packaging, in the case of export deliveries, customs, fees and other public charges, and are net without the applicable VAT at the statutory rate. The price calculation is based on our currently valid price list.

Below an order value of €100/delivery (excl. VAT and metal surcharges), we also charge a processing fee of €20 excl. VAT. For delivery on drums, see point 9.

Any changes in wage costs due to collective agreements or legal regulations or internal agreements, as well as changes to other cost centres relevant to the calculation or costs necessary for the provision of services, such as those for raw materials, energy, transport, external work, financing etc., entitle us to the purchaser increase prices accordingly at any time. For this reason, the purchaser has no legal claim, in particular, neither the right to withdraw nor the enforcement to cease the contract.

Metal calculation

The prices include a copper base of €130/100 kg, an aluminium base of €100/100 kg and a lead base of €50/100 kg (=base prices). The base prices increase by the calculated metal surcharge per product. The metal surcharge per product is then calculated from the product of the metal number of the product and the metal listing minus the metal basis (metal number x (metal listing - metal basis)). The final prices result from the base prices plus the metal surcharge. The metal surcharge is calculated taking into account the metal listing published on our website, www.acs.at/metallkurs

4. Terms of payment

Unless otherwise noted on the invoice or otherwise demonstrably agreed, each invoice is due for payment immediately upon receipt without deduction.

Metal surcharges and cable drum invoices cannot be discounted and are to be paid net. Granted discounts or bonuses are subject to the timely receipt of full payment. A granted discount presupposes that the purchaser is not in default with other services. Special agreements only apply if they have been expressly confirmed by us in writing. Exceeding the payment deadline will result in default even without a reminder. Offsetting, reduction and right of retention against us are excluded, unless the counterclaim has been legally established or expressly recognised. Failure to comply with our terms of payment and default in acceptance by the purchaser releases us from any further delivery obligation, including from other orders.

After the due date, the purchaser is obliged, regardless of fault, to pay default interest at a rate of 9.2 percentage points above the base interest rate. The base interest rate that applies on the first calendar day of a half-year is decisive for the respective half-year. In the event of a delay in payment, we are entitled, in accordance with Section 458 of the Austrian Commercial Code (UGB), to demand a lump sum of €40.00 from the purchaser in compensation for any operating costs. This flat rate requires neither actual damage nor fault on the part of the purchaser.

Furthermore, in the event of default, the purchaser undertakes to pay for the reasonable dunning and collection costs actually incurred, including the costs of legal representation. We reserve the right to claim further damages.

5. Delivery reservation

Partial deliveries are permitted. We reserve the right to make excess or short deliveries of up to 10% of the order quantity and these will be accepted by the purchaser. All information about the diameter and weight of the cables and lines are non-binding and are only approximate. Our illustrations and drawings are only approximately authoritative and are not procurement characteristics, but descriptions or identification of the delivery and service. We reserve the right to make deviations in the structure due to manufacturing and raw materials. Imprinted length markings are also only approximate and cannot be used as a basis for price calculation.

We would like to point out that the fulfilment of our delivery obligation depends or may depend on circumstances over which we have no influence. In particular, we have no influence whatsoever on the availability of raw materials on the procurement market, which is why we do not assume any procurement risk.

Accordingly, every delivery obligation is subject to the availability of the delivery item or the raw materials that may be required for this, and thus, our timely and proper delivery by our sub-suppliers. In particular, a delivery obligation is only assumed with the express reservation that the fulfilment of our obligations with regard to the availability of the delivery item or the raw materials may be required for this (i) neither due to their respective missing or limited general availability (ii) nor through other, events that we cannot avoid and which occur outside of our own business operations, are made permanently or temporarily impossible, made considerably more difficult, delayed or (also economically) unreasonable.

Accordingly, if the circumstances mentioned in the previous paragraph occur or exist, we expressly reserve the right to (i) unilaterally change deadlines and/or dates appropriately or to suspend them to an appropriate extent and/or (ii) notify the purchaser with binding effect of non-fulfilment or to indicate only partial fulfilment of delivery obligations (withdrawal, unilateral adjustment of the contract, unilateral termination of the contract).

Due to such a change or suspension of periods and/or deadlines or complete or partial non-fulfilment of delivery obligations, the purchaser cannot assert any claims against us of any kind (in particular, no claims for default, warranty, error avoidance or damage compensation claims).

6. Delivery time

Unless otherwise expressly agreed, we do not enter into fixed transactions. The delivery period stated in the offer is not binding. The delivery time stated in the order confirmation only runs from the day of the confirmation to the purchaser. Deliveries are made in accordance with our operating conditions. In the event of force majeure or unforeseen events, the delivery period set for us will be interrupted until the event has been rectified. Circumstances of force majeure are internal and external events that occur independently of the will of the contracting partner concerned, and thereby, make the fulfilment of the delivery contract completely or partially impossible, such as in particular statutory or official orders, natural disasters, war and war-like events, terrorist attacks, blockades, pandemics, epidemics etc., as well as strikes, regardless of whether these circumstances occur with us, a supplier or a sub-supplier. If the interruption lasts longer than 3 months, both parties to the contract are entitled to withdraw from the contract. If the delivery period is extended in the above-mentioned cases or if we are released from the delivery obligation, any claims derived from this, such as, in particular, default, warranty, error avoidance or damage compensation claims, of the purchaser shall lapse.

7. Retention of title

All delivered goods remain our possession until all of our claims have been settled in full, regardless of the legal reason, in particular, our balance claim, even if payments are made for specially designated claims. The purchaser may only sell or process the reserved goods as long as they are not in default. They are only entitled and authorised to resell or further process with the proviso that the claim from the resale or further processing or other use is transferred to us. They are not entitled to other disposals of the reserved goods. The purchaser's claims from the resale, processing or other use of the reserved goods are already assigned to us. All amounts received from cash sales of goods to which we have property rights are already assigned to us by the purchaser up to the amount of the claim that we have against them up to this point in time from the delivery of these goods. In the event that the reserved goods are sold by the purchaser together with other goods that do not belong to us, the assignment of the claim from the resale, processing or other use only applies to the amount of the invoice value of the reserved goods sold in each case. This claim belongs to us until all outstanding invoices, including those from previous deliveries, have been paid. The purchaser is entitled to collect claims from the resale up to our revocation, which is permissible at any time. At our request, they are obliged to inform their purchasers of the assignment and to provide us with the information and documents required for collection. We are entitled to inform the purchasers immediately of the assignment. The purchaser must inform us immediately of the attachment or other impairment by third parties. The purchaser is not entitled to transfer our assigned claim from resale, further processing and other utilisation of the reserved goods to a third party through global or individual assignment. The purchaser is obliged to inform us of any existing global or partial assignments, in particular, to a bank or factoring bank. If the purchaser does not meet their obligations or stops making payments, the entire remaining debt becomes due immediately. In this case, we are entitled to immediately demand the return of the purchased item to the exclusion of any right of retention.

8. The purchaser's handover obligation in the event of default

If the purchaser is in default according to these terms of sale, we are entitled to demand the return of the reserved goods without notice, as well as compensation for the interest in fulfilment and the damage caused by the default.

If the purchaser is in default of acceptance, we have the right to either store the goods with us – taking into account a storage fee of 1% of the gross invoice amount per day or part thereof – and to insist on the fulfilment of the contract, or at the purchaser's expense and risk to be stored by an authorised tradesman. At the same time, we are entitled, after setting a reasonable grace period, to withdraw from the contract and to resell the goods after the withdrawal has taken place. We expressly reserve the right to assert any further damage.

9. Cable drums

a) For cable drums from Kabeltrommel GmbH & Co KG (KTG), the currently valid conditions for the transfer of cable drums from Kabeltrommel GmbH & Co KG, D-51005 Cologne, PO Box 80 05 60 (www.kabeltrommel.de) apply.

b) Cable drums from ACS Handels GmbH

The conditions according to the ACS drum notifications apply to our own drums. A corresponding rent or fixed calculation is only made after the 6-month rent-free period has expired, in accordance with the conditions according to the ACS drum notification.

Drum invoices are to be paid net and are therefore not discountable.

10. Transfer of risk

All risk is transferred to the purchaser when the goods leave our warehouse or are ready for dispatch or collection, even if the place of dispatch is not the place of fulfilment. This also applies to partial deliveries or if the transport costs are included in the price, regardless of who carries out the transport.

11. Notice of defects and liability

After acceptance, the purchaser must inspect the delivered goods immediately. Defects or shortages found here must be reported in writing immediately, but no later than within three days of acceptance, stating the order and delivery note number.

Other defects that are not obvious must be reported in writing within 2 weeks of their first appearance. Otherwise, the provisions of the Austrian Commercial Code (UGB) apply.

If the purchaser fails to comply with the aforementioned regulations, the deliveries/services provided shall be deemed to have been approved and all warranty claims against us shall lapse. Such claims are generally excluded if more than 6 months have passed since delivery from our warehouse. The burden of proof that the defect already existed at the time of delivery always lies with the purchaser; the legal presumption of Section 924 of the Austrian Civil Code (ABGB) is expressly excluded, as is Section 1298 sentence 2 of the Austrian Civil Code (ABGB). All claims arising from notices of defects presuppose that the defect is reported to us in writing immediately after

it has been discovered and that a sample (specimen) of the defective goods is provided free of charge and is non-binding.

If tests are to be carried out on the goods delivered by us, they must be carried out before they get sent. The test must cover whether the properties required in the ÖVE regulations, which can be accessed at www.ove.at, or the otherwise agreed design, are available. We shall bear the costs of the inspection if the goods are found to be unsatisfactory; otherwise, the purchaser shall bear them. Replaced goods become our possession. In the case of power cables, an entire production length is only replaced if defects affecting the electrical functionality of the cable can be found along the entire length of a cable.

In the case of justified complaints, we will deliver a replacement free of charge within a reasonable period of time, which must be at least 6 weeks, amend it or refund a credit in the amount of the order value. Multiple subsequent deliveries are permitted. Instead of replacement delivery, we can also grant the purchaser a reasonable reduction in the purchase price to be paid by them. Warranty claims are only available directly to the purchaser – they are not transferable. If the delivered goods are resold by the purchaser, all claims arising from the title of warranty shall lapse, the right of recourse according to Section 933 b of the Austrian Civil Code (ABGB) is excluded. If the improvement or replacement delivery fails after a reasonable period of time, the purchaser is entitled to demand a reduction in the value invoiced by us or the order value or to withdraw from the contract.

In the case of the previous paragraph and claims for damages due to impossibility of performance, non-fulfilment, positive breach of contract, culpa in contrahendo and tort, claims of all kinds against us and against our employees or vicarious agents are excluded, unless that the damage was caused intentionally or through gross negligence. Accordingly, claims for damages in cases of slight negligence are excluded, unless personal injury is involved. Apart from personal injury, we are only liable if the injured party can prove gross negligence or intent. Claims for compensation become statute-barred 6 months after knowledge of the damage and the damaged party, at least 3 years after the service or delivery has been rendered. Compensation for consequential damage and (other) indirect damage is excluded to the legally permissible extent; moreover, liability for gross negligence is limited to the respective net order amount.

Should the purchaser themselves be held liable on the basis of the Austrian Product Liability Act or similar foreign provisions, they expressly waive any recourse against us, in particular, within the meaning of Section 12 of the Austrian Product Liability Act or similar foreign provisions.

12. Returns

Properly ordered and delivered goods cannot be returned. In exceptional cases, returns carried out as a gesture of goodwill are only possible for goods that are in their original packaging and have a high turnover rate, although a contribution to cover costs of 10% of the gross goods value including metal surcharges (but at least €100.00) must be charged for administrative work. Cut lengths cannot be returned under any circumstances. Returns are only made after prior agreement and must be sent to us free of charge. A return promised as a gesture of goodwill must be agreed in writing.

13. Applicable law, place of fulfilment and jurisdiction

Austrian substantive law shall apply exclusively to all legal transactions, in particular, those subject to these GTC, with the exception of its reference standards, insofar as they refer to foreign law. If Austrian law provides for the application of applicable international substantive laws that also apply in Austria in the case of foreign contact – such as the adopted UN sales law – these are not to be applied.

The place of fulfilment and jurisdiction for delivery and payment is the competent court in Linz.

14. Final provision

The invalidity of individual provisions of these GTC or other contractual agreements does not affect the effectiveness of the remaining provisions of these GTC or other contractual agreements. The contractual partners will agree on a new provision that comes as close as possible to the purpose of the invalid provision.

15. Data protection

You can find our data protection policy at www.acs.at/datenschutz

As of January 2023