

GENERAL TERMS AND CONDITIONS (11/2015)

1. GENERAL

- 1.1 These General Terms and Conditions („GTC“) shall apply to the JAF Group entity that concludes the contract („JAF“).
- 1.2 JAF's GTC as applicable from time to time shall apply to all business transactions between JAF as the seller and JAF's purchasers, irrespective of whether JAF makes deliveries or renders services. If a purchaser uses his own general terms and conditions they shall not become part of the contract. This shall also apply if the purchaser transmits a confirmation of order which contains general terms and conditions. JAF's GTC shall apply to follow-up transactions even if no express reference is made thereto. Deviations from the GTC shall apply to only one transaction and shall be made in writing; otherwise they shall not be effective.
- 1.3 If legal transactions with purchasers are concluded under the Austrian Consumer Protection Act [KSchG], these GTC shall apply only insofar as no mandatory provisions of the KSchG apply.

2. OFFER | ACKNOWLEDGEMENT OF ORDER | CONCLUSION OF CONTRACT

- 2.1 JAF's offers shall be subject to change and non-binding. Information and statements on product properties in brochures, price lists, etc. shall be non-binding.
- 2.2 The contract shall be deemed concluded only after JAF has sent a written acknowledgement of order. If that acknowledgement of order deviates from the purchaser's offer, the purchaser may object thereto within 3 working days. Otherwise the contract shall be deemed concluded including the modifications made in the acknowledgement of order.
- 2.3 Agreements made orally or by phone shall require a written confirmation from JAF in order to be legally effective, for which purpose an email message shall suffice. Silence on the part of JAF shall not be considered as consent.

3. DELIVERY PERIODS

- 3.1 Delivery periods shall be non-binding unless expressly agreed as binding in writing.
- 3.2 If JAF is hindered from fulfilling its obligations due to the occurrence of unforeseeable circumstances or circumstances for which JAF is not responsible, such as disruption of operations, sovereign measures or interventions, energy supply difficulties, default of an upstream supplier who is difficult to replace, strike, obstruction of transport routes, delays caused by customs clearance or force majeure, the delivery period shall be extended by a reasonable period of time. In this regard it is irrelevant whether such circumstances occur with JAF or with any of JAF's subcontractors.
- 3.3 Unless otherwise agreed, the delivery period shall commence as of the latest of the dates listed below:
 - a) date of acknowledgement of order;
 - b) date of fulfilment of all prerequisites to be fulfilled by the purchaser;
 - c) date at which JAF receives a down payment to be made prior to delivery of the goods and/or at which a letter of credit is opened.

4. DELIVERY | ACCEPTANCE

- 4.1 Delivery shall be effected at the cost and risk of the purchaser, unless agreed otherwise in writing. Benefits and risks shall pass to the purchaser when the shipment leaves the works or warehouse, independent of the price agreed for the shipment. If the purchaser selects no specific form of transport, JAF is entitled to determine the route and mode of shipping and to select the forwarding agent and carrier at its equitable discretion. JAF is not obliged to choose the cheapest mode of shipping.
- 4.2 JAF is entitled to effect deliveries by instalments or early deliveries.
- 4.3 The purchaser shall notify any defects in writing and state the nature and scope of the same in detail immediately upon delivery of the goods and in any case at the earliest possible time at which such defects become obvious. In the case of packaged goods the period for complaints shall be three (3) days. If the purchaser notices defects nonetheless, he shall first take delivery of, properly unload and store the goods. If defects are not notified at all or not in time, the goods shall be deemed accepted. In that case any warranty claims or claims for damages as well as the right to avoid the contract on account of mistake shall be expressly excluded.
- 4.4 If the purchaser refuses to accept the shipment, JAF is entitled to rescind the contract after having granted a grace period and to assert additional claims.
- 4.5 The purchaser agrees and acknowledges that the seller is entitled to an immediate full or partial termination or suspension of the contract, if fulfillment of the Seller's obligation thereunder could violate Austrian or EU law or international sanctions binding on the Seller.

5. DELAY IN DELIVERY

- 5.1 The purchaser shall in any case accept minor delays in delivery without being entitled to any claims whatsoever.
- 5.2 In all other cases the purchaser may either continue to demand performance or rescind the contract after having granted a reasonable grace period of at least three (3) weeks. In the case of items made to order the grace period shall be fixed by taking into account that parts processing of which has already started may not be used anymore. Claims for damages, if any, shall be regulated in Clause 11.
- 5.3 JAF shall not be liable for delays in delivery of JAF's upstream suppliers for which JAF is not responsible, for delays in delivery caused by machine breakdown, non-availability of raw materials due to weather conditions, a general shortage of raw materials, force majeure, strike or the like. In such cases the purchaser shall waive his right to rescind the contract and to claim damages on whatsoever grounds. However, in such cases JAF is entitled to postpone performance for the duration of the event causing the delay or to rescind the contract in whole or in part.

6. PRICES AND PAYMENT

- 6.1 All prices shall be ex works and do not include packaging or loading. If delivery to the final destination has been agreed, the prices shall be exclusive of unloading and further transport.
- 6.2 The prices are based on the costs at the time of the quote. If the costs have changed by the time of delivery, those changes shall either be for the benefit of the purchaser or borne by the same.
- 6.3 If the contract is concluded with no fixed prices the selling price applicable at the date of delivery shall be charged.
- 6.4 Payments shall be made in accordance with the agreed terms of payment. Unless otherwise agreed in JAF's written acknowledgement of order, half of the purchase price shall be paid upon receipt of the acknowledgement of order, the rest upon notification of readiness for delivery or collection.
- 6.5 JAF is entitled to also render partial accounts if performance is rendered in instalments..

7. NO SET-OFF

- 7.1 The purchaser is not entitled to withhold payments on account of warranty claims or other counter-claims which are not recognised by JAF. Any set-off of counterclaims whatsoever against JAF's claims shall be excluded.
- 7.2 Payments must be effected without any deduction or retention.

8. LATE PAYMENT

- 8.1 In the case of late payment on the part of the purchaser JAF may either
 - a) demand performance of the contract and postpone fulfilment of JAF's obligations until payment of the arrears or rendering of other performance and/or call for immediate payment of the total purchase price outstanding (including instalment deliveries which may not have been effected yet); or

b) rescind the contract after having granted a reasonable grace period. At JAF's request the purchaser shall immediately return goods which have already been delivered, compensate JAF for the impairment in the value of the goods that has occurred and reimburse JAF all reasonable expenses incurred by JAF as a result thereof. With regard to goods which have not yet been delivered JAF is entitled to make available to the purchaser the finished parts or the parts processing of which has already started and claim the pro-rata portion of the selling price.

In the case of late payment for which JAF is not responsible JAF is entitled to demand default interest at a rate of 13 % p.a. from the original due date plus reimbursement of all court and/or out-of-court costs incurred in connection with collection of the payment from the purchaser (including but not limited to dunning and collection charges, if any, court fees and the costs of a lawyer retained by JAF for this purpose). JAF expressly reserves the right to claim higher damages on account of late payment.

9. RETENTION OF TITLE

- 9.1 JAF shall retain title to the goods until full settlement of all financial obligations of the purchaser. The purchaser is obliged to carefully transport and store the goods until such time and to sufficiently insure the goods against damage. If the goods are destroyed the purchaser shall assign the insurance benefit regarding the relevant insured event to JAF.
- 9.2 In the case of attachment or other seizure of the goods the purchaser is obliged to claim JAF's title and to notify JAF immediately. If registration of our title is to be made in accordance with any local law, the purchaser undertakes to register our rights and to bear all costs in connection therewith upon receipt of our first written demand to do so.
- 9.3 To the extent allowed by applicable law, the goods shall be resold subject to retention of title. No resale shall be permitted unless JAF is informed thereof in writing in advance and the name/company name and address of the purchaser and the amount of the account receivable from the same is stated and JAF agrees. Already at this point the purchaser assigns his account receivable under the resale to JAF. Upon conclusion of the resale contract, the purchaser is obliged to inform his purchasers about the fact that the account receivable has been assigned. JAF is entitled to make use of the assignment at any time. Such goods shall not be transferred by way of security or pledged.
- 9.4 Any legal transaction fees and costs incurred in connection with enforcing JAF's claims shall be reimbursed by the purchaser upon receipt of our first written demand.
- 9.5 JAF's title shall continue to exist also in the case of treatment or processing of the goods to which title is retained; the purchaser shall be a pro-rata co-owner.

10. WARRANTY

- 10.1 JAF warrants that JAF's deliveries will be in the agreed quality. JAF shall only be liable for special properties if they have been promised in writing. JAF shall assume no warranty for deviations that are due to manufacturing or material.
- 10.2 JAF reserves the right to fulfil any warranty claim at JAF's option either by improvement, replacement or price reduction, apart from those cases where the right to cancel the contract is provided for by law. The entitlement to replacement shall neither include removing of the defective item nor installation of the item which is free from defects.
- 10.3 The purchaser shall always have to prove that the defect existed already at the time of delivery.
- 10.4 JAF is only obliged to bear the costs of repair of defects carried out by the purchaser himself, in particular the costs of any covering purchases, if JAF has agreed thereto in writing in advance.
- 10.5 For those parts of the goods which JAF purchased from upstream suppliers JAF assumes warranty only to the extent of JAF's warranty claims vis-à-vis the upstream suppliers.
- 10.6 JAF is under no obligations arising from manufacturers' guarantees.
- 10.7 JAF is obliged to reimburse costs of disassembly or assembly of defective goods that have already been assembled, transport of the same or any other thinkable consequential damage caused by defects only in the case of wilful intent or gross negligence.
- 10.8 The right of recourse as laid down in Section 933b of the Austrian Civil Code [ABGB] shall be excluded.
- 10.9 Warranty claims, if any, shall be fulfilled at the registered office of the branch concluding the contract.

11. DAMAGES

- 11.1 Any liability of JAF shall be limited to damage caused by gross negligence or wilful intent and, in addition, to the value of the shipment. Compensation for consequential damage, indirect damage or lost profit shall be excluded. In addition, any liability for damage resulting from improper processing or inappropriate use of the delivered goods by the purchaser shall be excluded.
- 11.2 Damages shall be claimed in court not later than within three (3) years of acceptance; otherwise they will be excluded.
- 11.3 Any liability for accuracy of information about treatment or processing, laying or installation shall be excluded if such data originates from brochures of the original manufacturer or general importer. JAF is under no obligation to provide any information about storage, installation or other handling of the goods.
- 11.4 The purchaser waives all rights of recourse as defined in Section 12 of the Austrian Product Liability Act [PHG] in advance. If products which in whole or in part were produced by using JAF's goods are passed on, the purchaser is obliged to fully impose that waiver on his purchasers, namely also inclusive of this obligation as an obligation of all other purchasers, so that JAF is granted a direct right to assert this exclusion of recourse vis-à-vis parties entitled under Section 12 PHG, if any, itself. JAF does not guarantee that goods that are passed on to the purchaser by JAF will be free from defects as defined in the PHG also as parts of the products manufactured by the purchaser or his purchasers.

12. DATA PROTECTION

The purchaser agrees that his personal data will automatically be stored and processed by JAF and may be transmitted to other JAF Group entities (see www.jaf-group.com). The purchaser may revoke his consent at any time.

13. SETTLEMENT OF DISPUTES; PLACE OF JURISDICTION; APPLICABLE LAW

- 13.1 The place of jurisdiction for all disputes directly or indirectly arising out of the contractual relationship with the purchaser shall be the court in Austria having local jurisdiction over the branch concluding the contract. However, JAF is entitled to sue the purchaser also at his general place of jurisdiction.
- 13.2 Austrian law shall apply exclusively; UN Sales Law shall be excluded.
- 13.3 The place of performance for deliveries and payments shall be the registered office of the branch concluding the contract, even if delivery is effected at a different place agreed.

14. MISCELLANEOUS

If any provisions of these GTC are invalid or void, the validity of the remaining provisions shall not be affected. The void or ineffective provisions shall be replaced by a provision which comes as close as possible to the intentions of the void or ineffective provisions.