

# General Conditions of Purchase of Austria Card

## Plastikkarten und Ausweissysteme Gesellschaft m.b.H.

### I. Validity

These conditions shall be valid for all transactions in which Austria Card Plastikkarten und Ausweissysteme Gesellschaft m.b.H. (hereinafter called the Buyer) acts as a recipient of goods and services (hereinafter called order). Any differing or additional conditions of the supplier (hereinafter called Seller) shall only be binding if accepted in writing by the Buyer, even if no expressed objection to them was made. All modifications, supplementary performances, and extra work shall also require a written confirmation and are only binding for the individual agreement.

### II. Offer

Offers, preliminary estimates, consultations, certifications, etc. of the Seller shall be free of charge for the Buyer.

Before making an offer, the Seller shall obtain sufficient information about all details that could influence the completion of the order and adapt the quantity as well as the properties to the enquiry. By making the offer, the Seller declares that it has examined all the data and documents delivered to it on its own responsibility. Offers and preliminary estimates shall be deemed binding within the meaning of Section 1170a para. 1 ABGB (Austrian Civil Code).

The Seller shall be bound by its offer until the beginning of the performance period intended or evident from the circumstances, but at least 6 months from the end of the offer period, or from

the receipt of the offer by the Buyer if there is no offer period.

### III. Placing of order

Delivery agreements and delivery schedules as well as their amendments must be in writing and are only binding for the Buyer if they come from the Buyer's purchase department concerned. Oral or telephone orders, changes or supplements to an order must be confirmed in writing by the Buyer to be valid. Irrespective of offers made, only the content of the order made in writing is binding.

The day of the placing of the order is the date on which the order is sent.

### IV. Confirmation of order

The Seller shall promptly confirm or refuse the order in writing to the Buyer's purchase department concerned.

If the Seller does not confirm the order within one week (receipt by the Buyer) or begins with the implementation of the goods/services, the agreement shall be concluded with the content of the order. As long as the Seller has not confirmed the order, the Buyer shall be entitled to rescind the order made without indicating grounds. Rescission shall be timely if sent before receipt of the confirmation of order.

Divergences from the order must be clearly highlighted and shall require the express written consent of the Buyer's purchase department concerned to be valid. The acceptance of

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goods/services without reservation shall not be deemed consent.

## V. Prices/Payment

The prices stipulated are fixed prices according to the stipulated delivery and are understood to include all taxes (without VAT) and charges as well as all costs connected with the completion of the order such as packing, documentations, training, etc. All additional charges, in particular for the installation and commissioning of machines, required official and proprietary permissions as well as charges of all kinds shall be deemed included.

Invoices must contain the order number, the order item, designation of goods, defects, unit price as well as number and date of the delivery note. VAT shall be shown separately.

Unless otherwise stipulated, the Buyer shall effect payments within 45 days minus 3 % discount or net within 90 days according to its choice. The payment period shall start after the billing has been duly effected and the order entirely completed; for machines and other technical equipment after trial operation as well as successful acceptance by the Buyer. Until defects are remedied, the Buyer shall be entitled to withhold payment in full, the claim to discount remaining without restriction.

If the scope of delivery of an order or the invoice value of a machine or piece of equipment supplied exceeds 30 000.00 EUR, the Buyer shall be entitled to withhold a financial retention in the amount of 10 % of the gross invoice sum until the warranty period has expired. The supplier can supply the financial retention in the form of a suitable bank guarantee by a recognised Austrian banking establishment in order to bring about payment.

Unless otherwise stipulated, payment shall be in Euro only.

## VI. Delivery period, cancellation

Compliance with terms for delivery shall be decided by the rendering of the service and/or the receipt of the delivery item by the Buyer or at a place of performance separately stipulated. Unless otherwise stipulated, partial deliveries are not permissible. Force majeure shall be made known by the Seller immediately after it occurs and proven if need be.

In the event of impending delay in delivery or service, the Seller shall immediately notify the Buyer in writing indicating the reasons and the expected duration of the delay. The obligation to comply with the date of delivery or service shall not be affected thereby and terms for delivery and service shall only be extended if this is expressly acknowledged in writing by the Buyer's purchase department concerned. The timeliness of a delivery/service shall be decided by the complete performance of the agreement at the prescribed place of delivery or service.

Deliveries or services before the stipulated date are only permitted with the Buyer's written consent. All legal consequences, in particular the passing of the risk, the beginning of the guarantee, and billing, shall, however, depend on the stipulated date, and the Buyer shall be entitled to claim costs resulting therefrom, such as storage and insurance costs.

The Buyer reserves the right to withdraw from the agreement wholly or in part, even if the Seller is not at fault. In this case the Seller shall only be entitled to charge the goods/services demonstrably rendered and delivered up to the date of the withdrawal from the agreement. The Seller cannot assert further claims irrespective of their legal basis, and it is obliged to make every effort to minimise costs.

## VII. Delivery, packing, dispatch

Delivery and dispatch shall always be effected free of all costs at the expense and risk of the

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Seller to the place of delivery or performance determined by the Buyer (in Austria "CPT with passing of the risk at the point of destination", and if the border is crossed "DDP according to INCOTERMS 2000"). In this connection, the Seller shall in particular be responsible for proper loading, stowage, safeguarding and protection taking into account the cargo, the means of transport, and the route of transport. Delivery shall be effected during the Buyer's usual business hours.

All deliveries shall be accompanied by a delivery note with all the data of the order such as order number, part number, exact designation of goods, order item and in the case of border crossings customs and goods number etc., and in the event of cross-border deliveries, all necessary data and evidence must be attached. In the event of missing or incomplete delivery and dispatch documents, the Buyer reserves the right to refuse acceptance at the Buyer's expense and risk.

### **VIII. Passing of the risk, place of performance**

The Seller's title and risk shall pass to the Buyer upon acceptance at the place of installation/place of performance for deliveries with installation and assembly, and upon receipt of the delivery at the place of receipt indicated by the Buyer, this being the Buyer's principal office in case of doubt, for pure deliveries.

### **IX. Guarantee**

The mere acceptance of deliveries or services, their temporary use, or payments made do not effect acceptance. Accordingly confirmations of receipt of deliveries or services are not deemed declarations of acceptance. Acceptance is only effected when the order is fully completed and the Buyer has inspected the deliveries and services at the place of performance. Acceptance can be refused if deliveries or services have any defects or if the documentation is not available

without defects. The Buyer is not obliged to inspect the object of the order and to give notice of defects within a reasonable period after delivery. The obligation to give notice of defects pursuant to Section 377 et seq. UGB (Austrian Commercial Code) thus does not exist.

The Buyer's acquisition of ownership occurs upon the passing of the risk. Reservations of title by the Seller, no matter of which kind, shall be ineffective even if the Buyer does not expressly object.

The Seller's deliveries and services shall be in accordance with the stipulated specifications, the relevant European and Austrian legal provisions, the technical standards such as electro-technical safety regulations, ÖVE and/or VDE regulations, Ö standards, DIN standards, and European standards (EN) as well as the state of the art at the time of delivery and/or the time the service is rendered. The plant (components), systems, or products erected and/or delivered by the Seller shall in particular comply with the safety regulations in force at the site of operation and have the prescribed safety devices.

The Seller shall assume a full and unrestricted guarantee as to execution in accordance with the order and freedom of defects for all goods and services for a duration of at least three years – subject to any longer statutory or contractual periods. It guarantees that the usually presumed and assured properties as well as all statutory standards and provisions have been complied with. It furthermore guarantees that the execution, construction, usefulness, and product engineering of the object of the order are in keeping with the state of the art, that only materials of first-class and suitable quality were used, and that the object of the order is suitable for its purpose of use. The Buyer's consent to drawings, plans, calculations, or other technical documents shall not affect the Seller's sole responsibility for execution in accordance with the order and freedom of defects. The obligation to give notice of defects pursuant to Sections 377

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et seqq. HGB (Austrian Commercial Code) is expressly excluded.

The guarantee period shall commence upon acceptance without reservation of the entire performance for which the goods and services of the Seller are intended. After defects that were the subject of complaint are remedied, the guarantee period shall commence anew for the object of the order. The demonstrable assertion of guarantee claims by the Buyer during the guarantee period shall suffice to observe the period of guarantee. The claim under guarantee shall not be time-barred earlier than 1 year after its assertion.

In the event of engineering, consulting, software or documentation services as well as in the event of the dispatch of personnel, the Seller shall assume an unrestricted guarantee for the correctness and completeness of the written and oral indications and instructions.

In the event of excess or short deliveries or variations in quality, the Seller shall refund all expenses arising to the Buyer through additional checking, packing, return consignments, or storage. Returns of deliveries not ordered or that are defective and/or excess quantities shall in any case be at the expense and risk of the Seller.

The Seller furthermore guarantees the carrying out of training, maintenance, repair, and reconditioning services with respect to the object of the order as well as the delivery of spare and wear parts for a period of 10 years from acceptance at prices and with delivery times usual in the market.

## X. Compensation for damages

In the event of an impairment of performance of any kind for which it is answerable, the Seller shall be liable without restriction for all damages and consequential damages, lost profits, and third-party damages for which claims are made against the Buyer.

## XI. Product liability

In the event that the object of the order has faults within the meaning of the product liability act and claims are made against the Buyer for this reason, the Seller shall hold the Buyer entirely harmless in this respect. The Seller shall in any case reimburse the Buyer for all expenses incurred by the Buyer in defending against claims or for indemnification.

The Seller shall store all necessary documents such as in particular manufacturing documentation concerning the production batch or the production time and observe the product carefully. If necessary, the Seller shall immediately recall defective products at its expense, hand over the manufacturing documentation, and render every conceivable aid to defend against claims as well as name the manufacturer and/or importer within 7 days after a request. The Seller is additionally obliged to rework the product unbidden if it becomes aware of problems that could cause liability.

## XII. Contractual penalty

In the event of default, the Buyer shall be entitled to demand the following contractual penalties in parallel in addition to the delayed performance, regardless of whether the Seller is at fault and irrespective of proof of actual damages:

- in case of default in delivery or performance and/or a part thereof 1 % of the total value of the order per calendar day of default or fraction thereof, but no more than 10 % of the total value of the order
- in case of default in the documentation 0.5 % of the total value of the order per calendar day of default or fraction thereof, but no more than 5 % of the total value of the order.

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In the event of withdrawal because of default, the Buyer shall be entitled to demand a contractual penalty in the amount of 10 % of the total value of the order.

The contractual penalties are not subject to reduction by judgement. The Buyer shall always be entitled to claim the contractual penalties as well as damages exceeding the contractual penalties, even if it accepts the delayed delivery or performance without reservation.

### **XIII. Reservation of title**

The supplier's reservations of title require express written consent to be valid, the Buyer in any case being entitled to use, process, and deliver the delivery to third parties.

### **XIV. Industrial property rights**

With the conclusion of the delivery agreement, the Seller acknowledges its obligation to hold the Buyer harmless with respect to all claims concerning the infringement of intellectual property rights, patent rights, industrial property rights, and similar rights as may be asserted by third parties in connection with the alienation, the delivery, or the use of the object of performance and delivery. This also includes the costs of litigation. If the Seller receives drawings, models, tools, samples or anything similar for the completion of the order, these objects shall remain the property of the Buyer. They must only be used for the purpose of handling the order and shall be returned after delivery is complete.

### **XV. Implementation documents, operational facilities, provision of material**

Implementation documents, e.g. drawings, plans, and calculations, and operational facilities that are provided and/or financed by the Buyer for the implementation of the order shall remain the property of the buyer or shall become the property of the Buyer upon manufacture and shall be suitably marked as the property of the

Buyer. The use of these implementation documents and operational facilities is only permissible within the framework of the order placed and they may only be passed on to third parties with written consent. The storage and maintenance of the operational facilities shall be carried out by the Seller at its own expense and risk. The implementation documents and operational facilities shall be returned to the Buyer immediately at any time on request, but in any case when the order is completed or in the case of withdrawal from the agreement. The Seller shall not have a right of retention.

If the Buyer has provided materials, these shall remain the property of the Buyer and shall be stored separately, marked, and managed by the Seller free of charge. Stipulated provisions of material shall be called by the Seller in good time, and acceptance shall be confirmed at the Buyer's request. The use of the materials provided is only permissible within the framework of the order placed and the Seller shall render indemnification in case of loss or reduction in value. Claims for indemnification by the Seller because of delayed provision as well as a right of retention by the Seller are excluded.

### **XVI. Confidentiality**

The Seller shall keep all information or documents (also in electronic form) made accessible to it directly or indirectly by the Buyer or of which it has acquired knowledge in any other manner confidential. The Seller furthermore undertakes to keep all results confidential it may have achieved based thereupon and to use them exclusively for making the offer and/or completing the order.

Any passing on of information or documents to third parties as well as the production of copies of documents relating to the order (also in electronic form) shall require the express written consent of the Buyer's purchase department concerned. The Seller shall oblige its staff as well as third parties it has commissioned to observe confidentiality.

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If this provision is infringed, the Buyer shall be entitled to withdraw from the agreement wholly or in part immediately. The Seller shall be liable to pay compensation for all damages resulting to the Buyer from an infringement of confidentiality.

## **XVII. General provisions**

The Buyer reserves the right to inspect the offices, production facilities, and storage rooms of the Seller and its sub-suppliers giving advance notice, to inform itself about the status and the quality of the implementation of the order, and to carry out schedule reviews or technical intermediate and final testing. These inspections and tests shall not relieve the Seller of its sole responsibility and shall not be deemed approval or acceptance of the goods/services.

Should any provisions of these Conditions of Purchase or of the order be invalid and/or impracticable, this shall not affect the validity of the other provisions of these Conditions of Purchase or of the order. The invalid and/or impracticable provision will be replaced by a provision that comes closest in economic terms to the purpose pursued in a legally permissible manner.

The Buyer is entitled to assign its rights and obligations under the contractual relationship with the Seller to another enterprise, in particular of the Lykos Group. The Seller shall not have a right of termination because of such an assignment.

## **XVIII. Final provisions**

The place of jurisdiction and performance is Vienna. Only Austrian law shall apply with the exclusion of legal norms such as IPRG (Austrian Act on Private International Law) and EVÜ (agreement on the law to be applied to contractual obligations) that refer to the law of other countries, and of the Uniform Law on the International Sale of Goods.

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