

## GENERAL TERMS AND CONDITIONS OF PURCHASE

for Heidenbauer Management GmbH, Heidenbauer Aluminium GmbH, Heidenbauer Metallkonstruktion GmbH, Heidenbauer Edelstahl GmbH, Heidenbauer Dach Wand GmbH and Heidenbauer Stahl und Tragwerk GmbH.

### Scope of Validity

**1.** The following terms and conditions apply for the contractual relationship between the contractor (hereinafter "Contractor") and a company of the Heidenbauer Group (hereinafter "Heidenbauer") if and to the extent that no deviating written agreements have been reached. General Terms and Conditions of Business of the Contractor and/or additional asserted delivery and payment conditions or any conditions of a professional association shall not become integral parts of the contract. This also applies if the Contractor's terms and conditions are not explicitly refuted.

**2.** The Heidenbauer Terms and Conditions of Purchase also apply for future transactions with the Contractor. Where references are made to the term "deliveries", sole material-, product and goods deliveries as well as work and services shall be meant.

### Conclusion of Contract

**1.** The contractual relationship is concluded either by the written order of Heidenbauer on the basis of a binding offer from the Contractor or by the written order of Heidenbauer and the acceptance of that order by the Contractor.

**2.** If the Contractor declares acceptance in modified form, the order is deemed to have been rejected.

**3.** Orders and their amendment which have been accepted by Heidenbauer, or supplements are only valid if they are made in writing. Verbal orders, including amendments, extensions or additional orders, are only valid if they are confirmed immediately in writing. Other verbal or telephone agreements also require written confirmation by Heidenbauer to be valid.

**4.** Unless otherwise agreed in writing, cost estimates are to be drawn up free of charge.

**5.** By accepting the order the Contractor expressly declares to have all the public-law permits necessary for the proper execution of the order.

### Scope and Content of the Service Obligation

**1.** The scope of the Contractor's service obligation results from the specifications and service descriptions on which the contract is based on and from the specifications of Heidenbauer's customer, as well as from the purpose discernibly pursued with the service, whereby in the event of contradictions the stricter requirements are to be met and subsidiarily from the information in offers and prospectuses of the Contractor. Top quality has to be supplied. The Contractor has to apply the due care of an expert and particular specialist knowledge and exceptional diligence as well as take any transmitted planning and execution documents into account (= increased testing and warning obligation)

**2.** Heidenbauer will only accept the ordered quantities or numbers of units. Larger, smaller or partial deliveries are only permissible with the prior written consent of Heidenbauer.

**3.** The standards and/or regulations according to the "Terms and Conditions of Delivery for Subcontracts according to EN1090" apply for the implementation of steel structures and/or locksmith work.

### Change in Service

**1.** Until the acceptance of service/delivery, Heidenbauer is entitled to request changes and/or extensions to the scope of service. The Contractor is obligated to execute this service. If no agreement can be reached on the additional costs resulting from a change in service or additional service prior to the rendering of service or delivery, the Contractor is obligated to provide the changed or additional service even if Heidenbauer instructs those changes and additional services/deliveries. In this case the Contractor is entitled to a compensation that is determined on the price basis of the main contract for any performance not covered by the contractually owed scope of service/delivery.

**2.** Heidenbauer is entitled to cancel the service or parts of it at any time. In the event of termination or cancellation of parts of the service or of the overall service, the Contractor is entitled to a fixed compensation of 3% of the contractually agreed wages of the cancelled service. Other claims, in particular claims in accordance with §§ 1155 ABGB, 1168 ABGB, on the basis of compensation or enrichment law, are excluded. The service that is provided by the Contractor until the termination or cancellation of the overall service shall be compensated according to the contract. In the event of termination or cancellation of deliveries of materials or other goods, the Contractor shall only be compensated for the actual incurred costs.

### Delivery Deadlines, Delay in Delivery

**1.** The dates and deadlines indicated in the contract are binding and penalised.

**2.** Deliveries and services are only deemed to be provided in full and in time if they have the agreed and assured features and qualities.

**3.** Delivery dates are only deemed to have been met if the necessary documentation (e.g. technical, dispatch, test documentation) has been supplied in full.

**4.** Heidenbauer is only obligated to agree to early deliveries and to accept the deliveries after special consent. In the case of early delivery, the payment deadlines start at any rate only with the originally agreed date. In the case of early delivery without consent, Heidenbauer reserves the right to charge the resulting costs (warehouse rent, etc.). The Contractor is obligated to inform Heidenbauer immediately in writing stating the reasons and the expected duration of the delay if it subsequently proves that the delivery date cannot be met.

**5.** In the event of delays in delivery, in particular if intermediate deadlines are exceeded, Heidenbauer is entitled, at the Contractor's cost and while upholding further claims, to perform a substitute service by setting a grace period.

**STAHL  
ALUMINIUM  
EDELSTAHL  
METALLKONSTRUKTION  
DACH WAND**

**6.** In the event of delay in delivery, Heidenbauer is entitled to all statutory claims without restriction, including the compensation for loss of profit.

**7.** If the agreed delivery date is exceeded due to the fault of the Contractor or for reasons for which he is responsible, Heidenbauer is entitled to claim a penalty in the amount of 1 % of the total contract sum for each commenced week of delay. The penalty and any further damages can be deducted directly from any invoice of the Contractor.

## **Shipping**

**1.** Unless otherwise agreed in writing or stated in the order, the delivery has to be shipped freight prepaid to the delivery address stated in the order. Risk will not be transferred until the goods are received by Heidenbauer.

**2.** A delivery note has to be attached to each delivery. Invoices have to be sent separately from the delivery.

**3.** In addition, for deliveries from abroad, a valid proof of preference (movement certificate, declaration of origin on the invoice) has to be enclosed or attached to the freight documents.

**4.** The complete order number and the stated point of unloading have to be indicated in clearly visible form on the consignment notes, the shipping documents intended for the recipient and on the trading units themselves (lettering, stickers).

**5.** The total weight (gross and net weight) must be stated on all dispatch documents, invoices, etc..

**6.** If a contract item number appears in the order, it has to be stated on every document and on all delivery documents.

**7.** Except for special provisions, the goods are to be packed in an expedient and faultless manner that is customary in the trade.

**8.** Loading devices and packaging will become the property of Heidenbauer.

**9.** Returns that become necessary due to inadequate performance or other breaches of contract by the Contractor will be at the risk and cost of the Contractor.

**10.** Heidenbauer will only pay for transport insurance costs if this is explicitly agreed.

**11.** Ancillary costs associated with the execution of the order that are not regulated in agreements or in the INCOTERMS 2010 shall be borne by the Contractor.

**12.** In the event of failure to comply with these dispatch, packaging, customs and/or documentation regulations, all resulting risks, damages and costs will be charged to the Contractor and the beginning of the payment periods are postponed until fulfilment and/or submission of the missing documentation.

## **Prices, Payment, Invoice**

**1.** The prices agreed are fixed prices that include all costs of the Contractor in connection with the fulfilment of the delivery and service. These include in particular all costs for transport, insurance, packaging, taxes and customs and levies associated with the deliveries and services of the Contractor. The Contractor ensured that the delivery represents the required type, completeness and scope of the service based on the

submitted documents and the local conditions and that all precautions, operations, services, deliveries, measures and complications, including all ancillary costs in his offer have been taken into account, which are necessary for a proper, complete, environmentally friendly and non-impairing performance of the owed service in the concrete project and are required for achieving the service's objective; even if those are not specified separately in the terms of the contract and the order, yet are required for providing the owed service according to the state of the art and for achieving the service's objective. The Contractor gives a guarantee of completeness. This guarantee of completeness has been included in the costing of the prices.

**2.** In general prices are to be stated as net prices.

**3.** Payment will be made after the acceptance of the goods and invoicing within 30 days with a 5% cash discount, or within 60 days net. In deviation from this, the "General Terms and Conditions for Professional Services" issued by the VIBÖ (Vereinigung industrieller Bauunternehmen Österreichs; Austrian Association of Industrial Construction Companies) apply for professional services.

**4.** Payment shall not be deemed as acknowledgement of proper delivery and thus not as a waiver by Heidenbauer of the claims from the title of warranty, compensation or any manufacturer's guarantee.

**5.** In the event of defective delivery or service, Heidenbauer is entitled to withhold payments until proper fulfilment without loss of discounts, cash discounts or similar payment benefits.

**6.** Cash-on-delivery shipments will not be accepted (except for written special agreements).

**7.** Heidenbauer is entitled to offset claims against the Contractor with liabilities with the effect of discharging the debt.

**8.** In the case of domestic transactions, the invoice must be submitted with the VAT percentage and the VAT amount shall be openly indicated.

**9.** Invoices without complete information (order and commission number) or incorrect invoices are deemed not to have been received until they are corrected by the Contractor.

**10.** Three copies of each invoice must be sent to Heidenbauer.

## **Withdrawal**

**1.** Irrespective of other rights and claims, Heidenbauer can withdraw from the contract if the Contractor exceeds the agreed binding delivery date after an appropriate grace period or if the Contractor is permanently unable to fulfil the contract, or if a substantial deterioration occurs in its financial circumstances, which puts the delivery at risk. The statutory rights to withdrawal remain unaffected by this regulation. In the event of a legitimate withdrawal, the Contractor shall only invoice Heidenbauer for contractually agreed and actually useable services, which shall be compensated by Heidenbauer. The withdrawal must be declared in writing.

**2.** If Heidenbauer is prompted to make covering purchases as a result of the withdrawal, the Contractor is liable for any additional costs. The Contractor has to compensate Heidenbauer for all damages caused by the withdrawal including profit loss.

## **Guarantee and Warranty**

**1.** The warranty period for all goods delivered by the Contractor is three years plus three months from the date of acceptance by Heidenbauer. Subsidiary to these provisions the statutory warranty provisions applies, with the exception of Sections 377 et seq. of the Austrian Commercial Code (UGB).

**2.** Heidenbauer only accepts deliveries and services in the contractually agreed quality. If no explicit agreement is reached, the Contractor guarantees that all deliveries and services comply with the relevant legal provisions and regulations, directives of authorities, professional associations and trade associations as well as the state of the art in the country of final destination,

**3.** The Contractor guarantees that the technical documentation is correct and complete.

**4.** In addition, the Contractor guarantees compliance with / attainment of the contractually defined, technical data and parameters, in particular of the performance data. This guarantee applies for a period of 24 months.

**5.** If defects occur during this guarantee period or if it emerges that the products supplied do not comply with the agreement or lose agreed features, it is assumed that these defects already existed at the time of acceptance (reversal of the burden of proof).

**6.** If the defects are corrected by mutual agreement by Heidenbauer or by Heidenbauer customers themselves, the Contractor is obligated to compensate Heidenbauer for the costs of the correction. Required spare parts deliveries will be carried out by the Contractor within one week and free of charge to Heidenbauer. All costs resulting from a warranty claim are borne by the Contractor. In particular the Contractor is obligated to compensate for indirect damage.

**7.** Heidenbauer is free to choose the warranty option, whereby the warranty remedy price reduction may also be chosen primarily. The priority of the warranty remedy improvement also does not apply with § 933a (compensation instead of warranty). In the event of a rescission, all costs shall be borne by the Contractor and the purchase price including the customary interests in banking at that time shall be refunded to Heidenbauer immediately

**8.** The earliest possible notification of defects (notice of defects) is no requirement for warranty claims. §§ 377, 378 UGB are therefore not applicable. In the case of goods that are usually left in their packaging until use, defects that do not become visible until the goods are removed from the packaging are deemed to be hidden defects.

**9.** The Contractor guarantees the availability and the delivery of spare parts for products delivered for a period of 10 years from the date of acceptance of these products.

## **Product Liability and Compensation**

**1.** In the event of a claim being filed against Heidenbauer according to product liability law, the Contractor undertakes to indemnify and hold

Heidenbauer harmless if the defective nature of the goods lies in the Contractor's area.

**2.** The Contractor undertakes to provide Heidenbauer with all information that is useful for the delivery of the error-free goods (warning information, approval regulations, etc.).

**3.** If the Contractor becomes aware of subsequent circumstances that could justify a product defect according to product liability law, the Contractor undertakes to inform Heidenbauer immediately of such perceptions. Further the Contractor undertakes to give Heidenbauer the data of the actual manufacturer immediately upon request.

**4.** Restrictions of any kind of the obligations for the Contractor resulting from product liability law, as well as restrictions of any kind in compensation claims to which Heidenbauer, the end customer or third parties are entitled in accordance to this law or other provisions, are not recognised. The Contractor is liable to Heidenbauer for the compensation of the lost profit even in case of slight negligence.

**5.** The Contractor bears the burden of proof that the causality between own behaviour and harm is lacking (reversal of the burden of proof). The statutory limitation periods apply.

## **Protective Rights**

**1.** The transfer of ownership also entails the free acquisition of the protective rights and licences required for the free and unrestricted usage of the delivery.

**2.** The Contractor guarantees and warrants that all deliveries are free from third-party protective rights and, in particular, that patents, licences or other protective rights of third parties are not infringed by the delivery and usage of the items of delivery.

**3.** The Contractor will indemnify and hold Heidenbauer and its customers harmless against claims of third parties for any infringements of protective rights and will also bear all costs that Heidenbauer incurs in this connection, whereby compensation of these costs includes costs of representation by lawyers, including out of court, costs of legal proceedings and any compensation to be paid to opposing parties.

## **Retention of Title**

**1.** Heidenbauer retains title to all parts provided to the Contractor. Processing or transformation at the Contractor's premises are carried out for Heidenbauer.

**2.** Heidenbauer retains title and all protective rights to samples, models, tools, product information, documents, etc. paid or provided by Heidenbauer.

**3.** Heidenbauer does not acknowledge a retention of title by the Contractor for goods delivered to Heidenbauer.

## Non-Disclosure

- 1.** The Contractor undertakes not to disclose any information from the collaboration under this contract and to use the information solely for the purposes of this contract.
- 2.** The use of the order for advertising purposes is not permitted. The Contractor may only make reference to the business relationships with Heidenbauer if Heidenbauer explicitly agrees to this in individual case.
- 3.** The Contractor will also obligate his employees and subcontractors to comply with the non-disclosure obligations above.

## Assignment

The Contractor may only transfer his rights from the contract in whole or in part to third parties or pledge them to third parties with the prior written consent of Heidenbauer.

## Final Provisions

- 1.** The Contractor may not transfer the order or parts of the order to third parties, in particular subcontractors, without the prior consent from Heidenbauer.
- 2.** Heidenbauer reserves the right towards the end user and/or their audit bodies to carry out deadline checks and technical interim and final inspections (also packaging checks) after prior announcement in the offices, production sites and warehouse facilities of the Contractor and its subcontractors at any time during the draft, planning, production and delivery preparation and to reject erroneous documentation and defective material. These checks and tests do not release the Contractor from its obligation
- 3.** As soon as a provisional insolvency administrator is appointed for the Contractor's affairs, insolvency proceedings are opened over the Contractor's assets or the opening of the insolvency proceeding is rejected due to a lack of cost-covering assets, Heidenbauer is entitled to withdraw from the contract in whole or in part.
- 4.** The place of fulfilment for all deliveries and services is the receiving point stated in the order letter.
- 5.** All amendments and supplements to these terms and conditions must be in writing to be valid. An amendment of this written form requirement also requires the written form.
- 6.** If individual provisions of these terms and conditions of purchase should be or become invalid, this will not affect the validity of the remaining provisions. These remain valid and enforceable. The invalid provisions shall be replaced by valid and enforceable provisions as close as possible to the economic result. The same applies to errors and omissions in the course of the establishment of this contract.

- 7.** The contract is subject exclusively to Austrian law. The application of the UN Convention on Contracts for the International Sale of Goods (CISG) and the conflict of law rules existing under Austrian law are expressly excluded
- 8.** The place of jurisdiction for all disputes arising from the contract and its implementation are the materially competent courts at the registered place of business of the Principal.