

## General Business Terms and Conditions of the firm of Aichinger GmbH (hereinafter referred to as "Aichinger")

### Article 1 – Scope of Validity

1. It is exclusively the following Business Terms and Conditions which shall be valid and governing for Aichinger's offers, sales and deliveries. Aichinger will not allow or accept any terms and conditions diverging therefrom, more particularly any of the Buyer's purchasing conditions, unless such terms and conditions are specifically agreed upon and were confirmed by Aichinger in writing. Aichinger's sales terms and conditions shall also be valid and governing in and for business-to-business transactions, if Aichinger implements and performs its delivery to the Customer without any reservations, knowing that the Customer's terms and conditions are contradictory to Aichinger's sales terms and conditions which are different therefrom.
2. All agreements and arrangements made between Aichinger and the Customer with a view to the execution and implementation of the contract are set forth in writing in this contract.  
Any and all additional or diverging covenants or agreements must be made in writing and shall not become an integral part of the contract unless they will have been made in writing. The written form requirement shall also be valid and applicable for any modification of this written form clause.
3. Aichinger's sales conditions and terms shall also be valid and governing for any and all future business transactions with the Customer.
4. If any one of the provisions or parts of individual provisions of these Business Terms and Conditions were to be invalid, this shall not affect the validity of the other remaining terms and conditions thereof.

### Article 2 – Conclusion of Contract, Prices, Payment Terms

1. No orders will be validly concluded unless and until the same will have been confirmed by Aichinger in writing or if and when the goods will have been delivered or the execution of the contract work and services will have been started or if Aichinger's intention to conclude the contract will have become otherwise apparent.
2. In so far as confirmations of orders given by Aichinger or other agreements or arrangements do not otherwise provide, Aichinger's prices shall be valid "ex works", exclusive of packaging and without costs for assembly and/or installation work.
3. The statutory value-added tax is not included in the price. The invoice will separately show the same at the statutory rate which is or will be applicable as of the date at which the invoice will be written.
4. The Customer shall not be entitled to proceed to any setoffs, unless the Customer's counter-claims were non-appealably and validly determined, are uncontested or were acknowledged and accepted by Aichinger. Apart from that the Customer shall only have a right to exercise any one right of retention in so far only as the Customer's counter-claim is based on the same contract.

### Article 3 – Passage of Risks

1. Unless it is or will be otherwise provided in and by the confirmation of any one order, it is understood and agreed that delivery will be made "ex works".
2. The passage of risks shall take place as per and with the receipt of the notice which states that the goods ordered are ready for shipment, at the latest, however, with the delivery of the merchandise to a forwarding agent or carrier, inclusive of Aichinger's own carriers.
3. When it comes to commercial business-to-consumer transactions any one sale which is made by shipment of the merchandise shall be subject to the statutory provisions of Sections 474 paragraph 2, 446 of the German Civil Code.

### Article 4 – Retention of Title

1. The merchandise which will have been delivered shall remain Aichinger's property until all of the liabilities resulting from the contractual relationship – and in business-to-business transactions all liabilities resulting from the entirety of the business done between Aichinger and the Customer – will have been met fully and completely. In case of breach of contract on the part of the Customer, more particularly in case of default in payment, Aichinger shall be entitled to take the object of the pertinent sale back. Following such taking back of the object sold Aichinger shall be entitled to realize or sell the same, with the proceeds from such realization or sale to be accounted against the Customer's liabilities or accounts payable, less reasonable costs incurred for such realization or sale. This shall not affect Aichinger's right to assert claims for damages.
2. In case of attachments or seizure of property or other interventions on the part of any third party or parties the Customer shall immediately advise Aichinger thereof in writing in order to enable Aichinger to bring an action and institute legal proceedings in accordance with the provisions of Section 771 of the German Code of Civil Procedure. In so far as such third party or parties is or are unable to refund the judicial and extrajudicial costs of an action filed against it or them under Section 771 of the German Code of Civil Procedure, the Customer shall be liable for the loss which will thus be occasioned for Aichinger.

3. The Customer shall be entitled to, in the course of its regular business operations, resell the object sold to it by Aichinger. It is already as of now that the Customer hereby transfers, cedes and assigns to Aichinger any and all claims to which the Customer is or will be entitled in relation to its respective customer on the grounds of such resale, in the amount of the sales price which was invoiced to the Customer, along with all ancillary rights, up to the point where all of Aichinger's claims resulting from Aichinger's business relationship with the Customer will have been fully paid for. The Customer shall be obliged to notify its customers of such transfer, cession and assignment, to provide Aichinger with all the information which is or will be required for Aichinger in order to enforce its rights against the respective customer, and to deliver the required covering documentation to Aichinger. In so far as the collection of the so assigned claims or receivables is concerned the ordering party shall revocably be entitled to proceed to such collection only as long as it will not be in default with the entirety of its obligations in relation to Aichinger, also in so far as the same are based on other business transactions. In case of stoppage of payments, petition for the commencement of insolvency proceedings or initiation of insolvency proceedings the ordering party shall no longer be entitled to proceed to any such collection without this requiring or being subject to Aichinger's specific express revocation.
4. This shall not affect Aichinger's right to itself proceed to the collection of such claims or receivables.

### Article 5 – Liability for Defects or Deficiencies

1. In commercial business-to-business transactions the rights to which the Customer is or will be entitled in case of defects or deficiencies of the purchased product or goods are and shall be subject to the Customer having duly complied with its obligatory duties of inspection and notification of complaint such as the same are stipulated and required under the provisions of Section 377 of the German Commercial Code. In the case of business-to-consumer transactions the Customer shall be required to send a written report stating obvious defects or deficiencies within a time period of two weeks following receipt of the goods.
2. The on-time dispatch of the complaint or notice of defects shall be deemed to be sufficient for the due observation of such time period and deadline.
3. The Customer shall have the full burden of proof for all of the conditions or prerequisites which will give rise to any such claim, more particularly the burden of proof for the defect or deficiency itself, for the time and date when such defect or deficiency will have been detected, and the timely submission of the notice containing the Customer's complaint for defects or deficiencies.
4. In case of formal delivery and acceptance all obvious defects or deficiencies must be listed in the Minutes of Delivery or must be reported to Aichinger within 48 hours following the drawing up of such Minutes, otherwise the assertion of any and all rights asserted or claimed on the grounds of defects or deficiencies shall be barred and precluded.
5. If the goods delivered are affected by any defects or deficiencies Aichinger shall, first of all and at Aichinger's option, provide warranty either by way of remedy by repair or by way of replacement (remedy of defect or deficiency by re-working and repair or by replacement of defective product). In the event where such remedy of a defect or deficiency by re-working and repair or by replacement of any one defective product will be unsuccessful twice, the Customer may, at its discretion, demand either a reduction of the remuneration (reduction of price) or cancellation of the contract (rescission of contract).

In the event, however, where any one lack of conformity with the contract is of minor significance or nature only, more particularly in the case of minor defects or deficiencies, the Customer shall not be entitled to any right to rescind the contract. If the Customer will, following an unsuccessful remedy of any one defect or deficiency by re-working and repair or by replacement of any one defective product and/or service, opt for claiming damages, the goods shall remain with the Customer, unless this were to be an unacceptable hardship for the Customer.

6. Aichinger shall be liable in accordance with statutory stipulations if and when the Customer asserts claims for damages which are due to intent or gross negligence, inclusive of intent or gross negligence on the part of Aichinger's representatives, agents or vicarious agents. In so far as Aichinger is blamed of gross negligence on the issue of a breach of or non-compliance with the contract, Aichinger's liability for damages shall be limited to the foreseeable typically occurring damage as far as commercial business-to-business transactions are concerned.
7. Aichinger shall be liable in accordance with and under legal provisions, if Aichinger were to wilfully or with gross negligence fail to comply with any one of its material contractual duties and obligations. In the latter case the liability for damages shall be limited to the foreseeable typically occurring damage.
8. Liability on the grounds of culpable injury or affection of the life, limb, body or health of any one person or persons shall remain unaffected; the same shall also apply for the mandatory liability which is stipulated under the German Product Liability Act.

9. Liability for slight negligence shall be barred and precluded.
10. When it comes to commercial business-to-business transactions the period of limitation for claims arising out of defects or deficiencies shall be 12 months, such period of limitation to begin as with the passage of risks.
11. In the case of commercial business-to-consumer transactions the time period of liability for defects or deficiencies shall also be 12 months beginning with the commencement of the statutory period of limitation, in so far as the goods concerned are second and goods.
12. Aichinger will not give any guarantees in the meaning of the German Civil Code.
13. As a matter of principle it will be only Aichinger's Product Specification which was current at the time when the order was passed, which shall be considered as having been agreed upon as far as the nature and quality of the goods is concerned. Other than this specification any other public statements, recommendations or any advertising or promotional information given shall not be deemed to be a description of the contractual nature and quality of the goods, if such information was, at the time of the conclusion of the contract, adequately rectified or adjusted by Aichinger. If and when the Customer will receive deficient or faulty Assembly Instructions, Aichinger shall be obliged to provide accurate and faultless Assembly Instructions, if such deficiency of the Assembly Instructions is interfering with or adverse to the proper assembly and/or installation.

#### Article 6 – General Liability Provisions

1. Any further going liability for damages, the scope of which is more extensive than it is provided in Article 5 above shall be barred and precluded irrespective of the legal nature of the claim which is being asserted. This shall, more particularly, apply for claims for damages which are or will be asserted on the grounds of culpa in contrahendo, on the grounds of any other neglect of duties or obligations or on the grounds of tort claims where claims for indemnification of material damage are asserted under the provisions of Section 823 of the German Civil Code.
2. The limitation provided under No. 1 hereof shall also apply in so far as the Customer were to claim reimbursement of or compensation for uselessly wasted expenditures rather than asserting claims for damage instead of insisting on performance.
3. In so far as Aichinger's liability for damages is either barred or limited this shall also apply as far as the personal liability of Aichinger's employees, workers, representatives, agents and vicarious agents for damages is concerned.

#### Article 7 – Work and Services Rendered under a Contract for Work

In so far as Aichinger shall render and perform work and services under a contract for work, the Ordering Party's right to terminate the contract shall be limited to the right of termination for cause.

#### Article 8 – Performance of Work on Buildings or Structures

1. In so far as Aichinger will render work or service performance on buildings or structures in line with the provisions stipulated in Section 631 of the German Civil Code, these General Business Terms and Conditions shall be substituted by the "Verdingungsordnung für Bauleistungen" (German Contracting Rules for the Award of Public Works Contracts) – Part B – in their version which is or will respectively be valid at the time of the conclusion of the contract. This version is available for inspection in all of Aichinger's offices or branch offices. It will, upon request, be handed over or sent to the Buyer by Aichinger's field staff.
2. In commercial business-to-consumer transactions the inclusion of the applicability of the German Contracting Rules for the Award of Public Works Contracts ("HOAI") – Part B shall be governed by applicable statutory provisions.

#### Article 9 – Breach of Contract by Customer

1. In case of non-fulfilment of and non-compliance with the contract by the Customer and, more particularly in case of failure to take delivery of the goods, Aichinger may, in so far as purchase contracts are concerned, assert damages on the grounds of non-performance instead of insisting on fulfilment of the contract. Such claims for damages shall amount to the lump sum rate of 25 % of the sales/purchase price or the agreed upon remuneration, subject to the assertion of further going damage for which evidence will have to be provided.
2. The Buyer's right to submit evidence to prove that the damage incurred by Aichinger amounted to a lesser amount only, is being reserved for the Buyer.

#### Article 10 – Additional Services, Performance of Planning Work, Copyrights

1. All leaflets prospectuses, photographs, price lists, specifications, drafts and designs, drawings and cost estimates – also in so far as they will have been prepared upon the Ordering Party's wish – shall remain Aichinger's property. Records and documents must not be copied nor be made accessible for any third party or parties. They shall immediately be returned to Aichinger, if no contract will be entered into and concluded.
2. If this obligation will not be complied with, Aichinger shall be entitled to demand and charge a reasonable remuneration for such work and services, which remuneration shall, in the case of drafting, design and planning work services rendered by Aichinger, be in line with the German

Schedule of Fees for Architects and Engineers (HOAI). The assertion of claims for further going damage shall not be barred or precluded thereby.

3. If the Customer will either in part or in whole take over and adopt Aichinger's consulting, planning, designing and drafting work or offer, to have the same executed and implemented by any third party or parties, without a specific planning order having previously been given to Aichinger, Aichinger shall so invoice its service and work performance to the Customer, as if the order for the services so adopted and made use of had been given to Aichinger. In so far as this concerns work or services for which fees are to be charged and invoiced in line with the provisions of the German Architects' and Engineers' Schedule of Fees (HOAI), accounting for and invoicing of the same will be made in accordance with this Schedule of Fees. This shall, however, not preclude the assertion of any further going claims.
4. In so far as the services rendered by Aichinger are copyrightable, the Customer will only be allowed to make use of the same, if Aichinger will execute the order and for one single use for such specific order only.
5. Planning work which is demanded or required upon the Customer's express wish before an order will be given, shall be paid for, if no supply contract order for delivery will be given. The remuneration which shall be paid therefor shall be subject to the provisions of the German Architects' and Engineers' Schedule of Fees.

If and when an order will be given, such work and services shall be included in the price, unless it will have been otherwise agreed upon; any and all changes to or modifications of the plans, which Aichinger will make and implement upon the Customer's explicit request shall not be included in the price.

#### Article 11 – Work and/or Services rendered under the Provisions of the German Architects' and Engineers' Schedule of Fees (HOAI)

In so far as Aichinger will render architects' or engineers' work and service performance in excess of the basic work and services specified in Section 15 – Performance phases 2 and 3 – of the German Architects' and Engineers' Schedule of Fees, such work performance and services shall be accounted for and invoiced according to the said Architects' and Engineers' Schedule of Fees (HOAI), unless it is or will be otherwise agreed upon.

#### Article 12 – Granting of Powers

In so far as the performance of Aichinger's work and services will require the intervention and work of certain specialized craftsmen or ancillary or subordinate craft and trade work (for instance for electrical connections, floor and wall tiling work, gas supply work and the like) the Customer shall give Aichinger appropriate powers of attorney to subcontract such work and services in the Customer's name and for the Customer's account up to an order value of € 500.00 for each individual case. This provision shall apply in commercial business-to-business transactions only.

#### Article 13 – Mandatorily Required Information

Ordering parties from countries outside Germany and within the European Union shall be obliged to immediately advise Aichinger of their turnover tax identification number(s).

#### Article 14 – Place of Performance, International Competence of Jurisdiction, Applicable Law

1. The place of performance for any and all obligations arising under or in connection with this contract shall be at Aichinger's principal place of business in Wendelstein. If the buyer or ordering party is a merchant doing business or trade under German commercial law, a legal entity under public law or a special revenue fund under public law, it is agreed that it shall exclusively be those Courts of Justice which shall have jurisdiction, which have competence of jurisdiction for Aichinger's principal place of business in Wendelstein. This competence of jurisdiction shall bar and preclude every other competence of jurisdiction – also on an international level. Over and above that Aichinger shall be entitled to alternatively assert its own claims to which it is entitled against the buyer or ordering party before the court of justice which has competence of jurisdiction for the buyer's or the ordering party's principal place of business or branch establishment.
2. If the Customer is a consumer and if the Customer will, following the conclusion of the contract, transfer his or her domicile or regular residence to a country outside the territory of validity of the laws of the Federal Republic of Germany, the place of jurisdiction shall be at Aichinger's principal place of business. This shall also apply if the Customer's domicile or regular residence will be unknown at the time when an action will be brought by Aichinger.
3. The laws of the Federal Republic of Germany shall be applicable and valid; the applicability of the UN Convention on the International Sale of Goods shall be barred and precluded.

# AICHINGER - General Conditions of Purchase

## § 1 General/Scope

1.1 These Conditions of Purchase of Aichinger GmbH (hereinafter referred to as: Client) shall have exclusive applicability. Any conditions of the Supplier contrary or supplementary to or deviating from these conditions shall only become part of the contract when expressly acknowledged in writing by the Client. This shall also apply to conditions stated in order acknowledgements or other confirmations from the Supplier or in the case of unconditional acceptance of the Supplier's supplies by the Client.

1.2 The Supplier agrees with the applicability of these General Conditions of Purchase also for any subsequent transactions.

1.3 These General Conditions of Purchase shall only apply to transactions with traders in the sense of § 310 (4) German Civil Code (BGB) and § 14 BGB.

## § 2 Subject of the Contract/Conclusion of the Contract

2.1 Orders and the acceptance of orders must be made in writing for their validity. This is assured in the case of transmission by means of electronic data processes (e.g. by e-mail, telefax, etc.) to the Supplier. All agreements concluded between Client and Supplier relating to the execution of this contract must be concluded in writing. Ancillary verbal agreements and the exclusion, amendment and/or supplementing of these General Conditions of Purchase shall require the express written confirmation of the Client for their validity.

2.2 The Supplier shall comply exactly with the specification laid down by the Client and thereby observe all the relevant standards with respect to technical safety, safety at work, health protection, fire prevention and other regulations. The Supplier shall draw the Client's attention to any deviations from the above-mentioned specifications. This shall not affect the Supplier's obligation to deliver in accordance with the contract unless the Client expressly approves the deviations in writing. The Supplier shall notify the Client without delay if there are any doubts or unclear points in an order from the Client. The Supplier shall orient the products to be supplied to the latest state of the art and shall draw the Client's attention to improvements and possible technical modifications and to less expensive, technically expedient or innovative alternatives.

2.3 The Supplier shall be obliged to accept the order from the Client within a period of five working days.

2.4 Documents provided to the Supplier may not be made accessible to third parties without the approval of the Client. They must be returned to the Client immediately on demand.

2.5 The Client may terminate the contract or withdraw from the contract for good reason, in particular if the Supplier has applied for the opening of bankruptcy proceedings, if the Supplier suspends payments not only temporarily or if bankruptcy proceedings have been initiated against the assets of the Supplier or if the initiation of bankruptcy proceedings has been refused due to a lack of assets.

## § 3 Prices/Payment

3.1 The price stated in the order shall be binding. The price – plus value-added tax at the current rate – shall include delivery "free house", including packaging, to the delivery address specified by the Client, unless otherwise agreed in writing.

3.2 Payments shall be made within 21 days with 5% discount, calculated from the date of delivery of the ordered services by the Supplier and receipt of the invoice. Otherwise the Supplier's invoices shall be payable 45 days after delivery and receipt of the invoice.

3.3 The Client shall have the rights of offsetting and retention to the extent provided for by law.

## § 4 Delivery/Bearing of Risk

4.1 The delivery time specified in the order shall be binding.

4.2 If the delivery date cannot be kept, the Supplier shall notify the Client immediately on discovery of the circumstances. This shall not affect the obligation to meet the agreed delivery date.

4.3 In the event of a delay in delivery, the Client shall have the unlimited statutory rights, in particular the Client shall be entitled – after unsuccessful expiry of an appropriate grace period – to have the delivery not yet performed by the Supplier carried out by a third party at the expense of the Supplier or to withdraw from the contract and, in the case of fault, to claim damages.

4.4 The Client shall be entitled to compensation for delay of 0.5% for each full week of the delay, but up to a maximum of 5% of the invoice value of the goods and services affected by the delay. This compensation for delay shall be offset against the total damages for delay claimed.

4.5 The acceptance of delayed deliveries shall not constitute a waiving of the right to claim compensation.

4.6 The Supplier shall be obliged to collect goods delivered wrongly or not in accordance with the contract from the Client at his own expense immediately on notification by the Client.

4.7 The risk shall pass to the Client with the handover of the goods to the Client. The Supplier shall register the Client as a German SLVS waiver

customer (Verzichtskunde, § 19 SLVS). The Client shall be entitled to deduct all contributions to the transport insurance invoiced by the Supplier.

#### § 5 Inspection for Defects/Liability for Defects

5.1 The Supplier guarantees that his supplies meet the acknowledged rules and the latest state of the art, exhibit the agreed characteristics and are otherwise also free from material defects and defects in title.

5.2 The Client shall examine the goods delivered by the Supplier for any quality or quantity deviations within a reasonable period. The notice of any defects shall be deemed to have been made in good time if it is received by the Supplier within 5 working days from the date of receipt of the goods in the case of obvious defects or from the date of discovery by the Client in the case of concealed defects.

5.3 The Client shall have the statutory claims for defects without limitation. This shall apply in particular to the right to claim damages. All costs associated with the remedying of the defect, in particular for dismantling, assembly, travels, etc. shall be borne by the Supplier.

5.4 The Client shall be entitled to remedy the defect himself at the expense of the Supplier if there is a risk of danger or in the event of particular urgency.

5.5 The period of limitation is 3 years from the date of the passage of risk.

#### § 6 Retention of Title/Copyrights/Assignment of Claims

6.1 If the Client provides the Supplier with parts or materials, the Client shall retain the title to these parts or materials. Processing or conversion shall be performed for the Client. If the goods provided by the Client are inseparably mixed with other items belonging to the Supplier or to other parties, then the Client shall acquire joint title pro ratio to the value of the goods supplied under retention of title. Insofar as processing is performed with goods belonging to the Supplier that are regarded as the main goods, then it shall be deemed to have been agreed that the Supplier shall transfer the joint title pro rata to the Client. The Supplier shall store the goods in trust for the Client.

6.2 The Supplier is obliged to treat all illustrations, calculations and other documents and information received from the Client with the strictest confidentiality.

This shall continue to apply even after completion of the contract.

6.3 The Supplier guarantees that no rights of third parties within the Federal Republic of Germany are infringed in conjunction with his supply. If claims are made against the Client by a third party in this context, the Supplier shall be obliged to indemnify the Client for these claims at his first written demand. The Supplier's indemnification obligation

shall extend to all expenses incurred directly in conjunction with the claim by a third party.

6.4 The Supplier is forbidden from assigning claims against the Client to third parties. This shall not affect § 354 a of the German Commercial Code (HGB).

#### § 7 Product Liability

7.1 Insofar as the Supplier is responsible for product damage, he shall be obliged to indemnify the Client for claims for damages from third parties at his first demand insofar as the cause of the damage lies within his sphere of control and organisation and he is directly liable vis-à-vis third parties.

7.2 Within the scope of his liability for damage in the sense of point 7.1, the Supplier shall also be obliged in accordance with §§ 683, 670 BGB and with §§ 830, 840, 426 BGB to refund any expenses resulting from or in conjunction with a recall campaign conducted by the Client. The Client shall inform the Supplier as far as possible and reasonable about the content and scope of the recall measures to be carried out and give him the opportunity to comment. This shall not affect the statutory rights.

7.3 The Supplier shall undertake to maintain a product third-party liability insurance with an appropriate insured amount sufficient to cover the risk of damage including any damage to property, but at least EUR 1 million per case of personal injury or material damage, up to the end of the period of limitation for defects and to provide evidence of this insurance to the Client on demand. If the Client has further claims for damages, these shall not be affected.

#### § 8 Legal venue/Place of Performance/Applicable Law

8.1 Legal venue shall be the place at which the Client has his registered offices.

8.2 Place of performance shall be the registered office of the Client.

8.3 These business terms and all legal relationships between Client and Supplier shall be subject to the law of the Federal Republic of Germany. The provisions of the UN Sales Convention shall not apply.