



ASTA – GENERAL TERMS AND CONDITIONS (GTC)

(January 2018)

1. Scope of application

- 1.1. All deliveries and performance of services by ASTA Elektrodraht GmbH, Oed 1, 2755 Oed, Austria (hereinafter referred to as **ASTA**) are carried out solely on the basis of these General Terms and Conditions (hereinafter referred to as **GTC**). The GTC also apply to future transactions between the parties without a need of explicit reference in every case.
- 1.2. ASTA rejects all contradicting, diverging or complementing terms and conditions, particularly terms and (purchase) conditions of ASTA's contracting partner (hereinafter referred to as the "**Customer**"). Such terms and conditions shall never apply between ASTA and the Customer, even if ASTA had knowledge of their content, did not raise any objections prior to contracting or unreservedly accepts or carries out an offer of the Customer.
- 1.3. The GTC become part of the contractual relationship between the parties as amended from time to time.
- 1.4. The provisions set out in the GTC only apply in the absence of a diverging agreement concerning the individual case.

2. Conclusion of contract / Orders from the Customer / Offers from ASTA

- 2.1. Offers by ASTA are non-binding.
- 2.2. By placing an order, the Customer bindingly offers to form an agreement.
- 2.3. An order placed by the Customer shall be binding for a period of two weeks.
- 2.4. An order confirmation of ASTA regarding the Customer's order shall be deemed a binding acceptance only if ASTA explicitly declares so.
- 2.5. The effective conclusion of a contract with ASTA in any case requires the prior written acceptance of the order from ASTA. If the content of this written acceptance diverges from the Customer's order, the contract shall be concluded in accordance with the content of ASTA's written acceptance unless the Customer objects in writing within two weeks.
- 2.6. An order includes only the services explicitly mentioned in the order as well as in ASTA's acceptance of the order. ASTA does not contractually owe ancillary and additional services and supplies unless explicitly otherwise agreed.
- 2.7. Specifications of ASTA set out in catalogues, brochures, etc. are only relevant if ASTA explicitly refers to them in the written acceptance of the Customer's order.
- 2.8. All documentation regarding a project or an offer may neither be copied nor made available to third parties. ASTA may reclaim them at any time. The Customer shall return them immediately if the order is placed otherwise.

3. Place of performance / Delivery / Default

- 3.1. Place of performance for all deliveries, services and payments is the business residence of ASTA in Oed 1, 2755 Oed, Austria. Unless agreed otherwise in writing, deliveries shall be carried out "ex works" (EWX Incoterms 2010) even if the handover takes place at another location. The risk of accidental loss or accidental deterioration of goods shall transfer from ASTA to the Customer the moment of handing them over to a forwarder or carrier but in any case no later than the moment goods leave ASTA's storage facility. Upon request of the Customer, deliveries shall be insured on the Customer's behalf and account.
- 3.2. ASTA may deviate from the stipulated delivery volume by $\pm 5\%$.
- 3.3. Partial deliveries as well as partial performances are permitted and may be invoiced separately by ASTA.
- 3.4. If a delivery or service is delayed due to circumstances that lie within the Customer's sphere or due to a third party or circumstance that is attributable to the Customer, the general transfer of risk takes place at the time the delivery or service is due.
- 3.5. If the Customer's delay in acceptance lasts longer than one month, ASTA may charge storage fees amounting to 5% of the purchase price per annum. Further claims of ASTA remain unaffected.
- 3.6. If a culpable delay in delivery arises on the part of ASTA and an appropriate grace period of at least 21 days set by the Customer has passed, the Customer is entitled to demand a lump-sum compensation in the amount of 0.5% of the value of the specific goods or services affected by the delay or default. This amount may be claimed once per completed week, in total limited to EUR 50.000 in accordance with section 8 of the GTC and only if the Customer actually and demonstrably suffered damage.
- 3.7. In cases of force majeure, the agreed delivery or service period shall be extended for the respective period of time. Force majeure includes, but is not limited to, armed conflicts, interventions and prohibitions by governmental agencies, delays of transport, delays of customs clearance, transport damages, shortages of raw materials/energy, labour disputes as well as the loss of a supplier, which is difficult to replace. The mentioned circumstances lead to an extension of the delivery or service period, even if they occur on the part of a supplier.

4. Retention of title

- 4.1. Until the purchase price has been fully paid along with all ancillary costs and expenses, ASTA reserves the title of ownership of the respective goods. The Customer shall take all measures that are legally and factually necessary to

ensure the validity and protection of the retention of title due to national legal requirements (e.g. book entry [*Buchvermerk*], registration in an official register).

- 4.2. Until further notice, the goods delivered under retention of title ("**Reserved Goods**") may be resold by the Customer in the ordinary course of business. All claims resulting from such a resale are assigned (*zediert*) to ASTA in advance until full payment has been made regarding all claims originating from the respective contract. ASTA hereby declares to accept this assignment of claims. The Customer shall take all measures that are legally and factually necessary to ensure the validity and protection of the (extended) retention of title due to national legal requirements (e.g. book entry [*Buchvermerk*], registration in an official register).
- 4.3. If the law of the country in which the goods are located does not recognize or permit a retention of title as outlined in this section 4., ASTA may make use of other security interests permitted by the respective legal system. The Customer shall, at its own cost, take all measures necessary for the retention of title or other security interests to take effect and be maintained.
- 4.4. Payments regarding claims from a resale in accordance with 4.2. may still be accepted by the Customer until further notice. At the same time, ASTA's rights to assert the assignation and consequently collect such payments itself, remain unaffected. ASTA is only going to collect such payments itself if the Customer does not fulfill its payment obligations, stops making payments generally, is in delay of payment or if a petition has been filed for commencement of insolvency proceedings over the Customer's assets. If one of the mentioned circumstances occurs, the Customer shall immediately inform ASTA. Upon request of ASTA, the Customer shall notify the assignment of claims to their own debtors and give ASTA the information and documents necessary for the assertion of the assigned claims and collection of the respective debts.
- 4.5. Processing or restructuring of Reserved Goods shall be carried out on behalf of ASTA. In case of an inseparable connection of the Reserved Goods and other goods, joint ownership of the new, mixed goods shall be established between ASTA and the other party in proportion to the value ratio of the connected goods. This new, mixed goods shall be subject to the same rules as are applicable to a Reserved Goods. If, within a connection of goods, the Customer's goods are regarded as the "main component", the Customer shall transfer joint ownership to ASTA proportionately.
- 4.6. The Customer may neither pledge or mortgage the Reserved Goods, nor may he transfer them by way of security.
- 4.7. In case the Reserved Goods are seized, the Customer shall point out ASTA's ownership of the goods and inform ASTA in writing about the seizure.
- 4.8. ASTA is entitled to reclaim the Reserved Goods under exclusion of any Customer's right of retention, if the Customer
 - i. fails to fulfill payment obligations,
 - ii. stops making payments generally,
 - iii. is in delay of payment and a two week-grace period set by ASTA has already passed, or
 - iv. a petition has been filed for commencement of insolvency proceedings over the Customer's assets.

Upon the occurrence of one of the aforementioned cases, the Customer shall inform ASTA immediately. In order to take back the Reserved Goods, ASTA is entitled to enter the Customer's business premises during ordinary business hours.

- 4.9. After Reserved Goods have been taken back, ASTA is entitled to realize them by appropriate means after ASTA announced to do so. The proceeds of this realization shall be credited to the Customer's debts towards ASTA after deducting the costs for realizing the Reserved Goods. The mentioned steps (reclaim of the Reserved Goods, taking them back, announcement and realization of the Reserved Goods) on their own do not constitute a withdrawal from the contract.

5. Intellectual property rights

- 5.1. In the course of deliveries or performance of services, ASTA does not transfer intellectual property rights of any kind to the Customer. All rights regarding works and documents like sketches, plans and samples of any kind, know-how, patents etc. that are capable of being protected, remain with ASTA. Without prior written permission from ASTA for each particular case, such works, documents, know-how, samples, patents etc. may not be passed to third parties, made accessible to third parties or be used for the Customer's own purposes. In cases of doubt, such permission from ASTA shall not be assumed granted.
- 5.2. The purchase price includes a non-exclusive right to use the goods throughout their entire lifespan and in accordance with the specific contract purpose. ASTA does not transfer any further rights.

6. Purchase price / Payment / Delay of payment

- 6.1. The parties agree on the prices according to the ASTA price list as amended from time to time.

- 6.2. Price calculations regarding copper and alloying metals shall be made on the basis of the value as of the day ASTA receives the Customer's order. In case of changes in metal prices compared to the ASTA price list, a corresponding price adjustment shall be made.
- 6.3. All prices are considered net prices "ex works" (EXW, Incoterms 2010).
- 6.4. Discounts and/or rebates are only granted on the basis of an individual agreement between the parties. In such cases, calculation basis shall be the selling price exclusive of metal costs.
- 6.5. Packaging (e.g. reels, coils, pallets, crates) are invoiced at cost price plus margin. They shall be paid simultaneously with the purchase price. Packaging will only be taken back by ASTA if a respective explicit agreement exists between the parties and only if packaging is not provided on loan together with the respective goods.
- 6.6. New Customers shall make an advance payment in the amount of 50% at conclusion of contract. The remaining 50% shall be paid before delivery. ASTA will invoice the respective partial amounts separately. If the parties do not agree on another payment method for following contracts, the mentioned process shall apply for following contracts as well.
- 6.7. The payment period shall be 14 days (payment received) as of (partial) invoicing, net without discounts.
- 6.8. In case of delay of payment, ASTA may charge interest for delay in accordance with section 456 of the Austrian Commercial Code (UGB). Interest calculation shall be made on the basis of a year with 360 days. In such cases, the Customer shall also pay all extrajudicial costs necessary for appropriate enforcement of claims. Moreover, in case of a delay of payment, ASTA may set an adequate grace period. After such a grace period has passed, ASTA may declare its withdrawal from the contract. Further rights of ASTA remain unaffected.
- 7. Warranty**
- 7.1. The warranty period amounts to 6 months from delivery.
- 7.2. Section 377 UGB is applicable. The Customer shall notify ASTA in writing about apparent defects (*offene Mängel*) regarding the goods/services within an appropriate period, , at the latest after 14 calendar days, from delivery and about hidden defects (*versteckte Mängel*) regarding the goods/services within an appropriate period, at the latest after 14 calendar days, from discovery of the defect (*Mängelrüge*). Defects shall be described in a detailed manner. The Customer shall provide ASTA with all documents and/or data in relation to such defects.
- 7.3. In a warranty case, ASTA may choose between the measures of rectification and replacement. If the chosen supplementary performance fails, the Customer may choose between a reduction in price and – in case of a defect that is not negligible – cancellation of the contract.
- 7.4. The burden of proof regarding the deficiency of the goods/services, the deficiency in the moment of transfer of risk and the punctuality of the notice of defects (*Mängelrüge*) in accordance with 7.2. lies with the Customer.
- 7.5. Regarding parts that have been rectified or replaced, the warranty period starts over again but ends in any case 6 months after the expiration of the initial warranty period.
- 7.6. Performance of rectification or replacement by the Customer or through a third party that has not been appointed by ASTA results in the loss of all rights derived from respective defect.
- 7.7. The Customer also loses all rights derived from the respective defect, if, without prior written approval by ASTA, the Customer or a third party not expressly appointed by ASTA takes measures to change or repair the delivered goods.
- 8. Liability**
- 8.1. Any liability for slight negligence of ASTA or of third parties acting on behalf of ASTA is excluded in any event. This does not apply to cases of personal injuries.
- 8.2. Any liability for simple gross negligence of ASTA or of third parties acting on behalf of ASTA is excluded in any event. This does not apply to cases of personal injuries.
- 8.3. ASTA's total liability for blatant gross negligence is limited to the selling price excluding metal costs or to EUR 50.000, whichever is the lower amount. This does not apply to cases of personal injuries.
- 8.4. ASTA's liability for damages that stem from force majeure is excluded.
- 8.5. Damage claims lapse within two years from the moment the claim has formed and Customer has obtained knowledge of the damage as well as of the circumstances that lead to the damage claim. Regardless of the moment the claim has formed and the moment the Customer obtained knowledge about said circumstances, the claim lapses no later than three years after the incident that caused the damage has occurred.
- 8.6. The aforementioned limitations of liability also apply to damage claims of the Customer against bodies, executives, employees or contractors of ASTA.
- 9. Set-off / Retention**
- The Customer may only exercise a set-off against ASTA's claims as well as a right of retention with counterclaims that have been judicially determined.
- 10. Withdrawal from contract / Insolvency**
- 10.1. ASTA may withdraw from the contract for material reasons. Such material reasons include but are not limited to:
- i. a judicial filing for insolvency regarding the Customer's assets.
 - ii. dismissal of a filing for insolvency regarding the Customer's assets.
- iii. the Customer generally stopping payments without pending insolvency proceedings.
- 10.2. The effectiveness of 10.1. (i) and (ii) shall be determined with regards to the legal system the Customer originates from.
- 10.3. The Customer shall immediately inform ASTA in writing about a planned insolvency filing or about an insolvency filing made by a third party.
- 10.4. The Customer shall under no circumstances have the right to terminate the contract if its main obligation includes deliveries or supplies manufactured specifically for the Customer.
- 10.5. The withdrawal from the contract shall also be possible regarding to pending partial deliveries or partial supplies if one of the conditions set out in 10.1. applies.
- 11. Limitation period**
- All claims originating from the contractual relationship between ASTA and the Customer shall be legally asserted with the court within one year as of the due date, otherwise such claims shall preclude. The pleading instituting the proceedings at court shall be decisive for determining the timely assertion of a claim.
- 12. Formal requirements / Notifications**
- 12.1. Orders, acceptances of orders, order confirmations, changes to these GTC and to individual contracts as well as other communication between the Customer and ASTA shall be submitted in writing unless otherwise agreed upon in these GTC or in the individual contract. Such communication shall be addressed to the address last given in writing. Such written messages may be submitted via electronic communication.
- 12.2. The requirement of submitting information in writing as set out in these GTC or in individual contracts may be modified by written agreement only.
- 12.3. The Customer shall inform ASTA immediately in writing about changes of address. If the Customer fails to do so, messages and notifications are regarded effectively delivered if they arrive at the Customer's address ASTA was last informed about in writing. The criterion for the timely receipt of messages and notifications shall be the postal stamp.
- 13. Place of jurisdiction / Applicable law**
- 13.1. All disputes arising from or in connection with contractual relations between ASTA and the Customer shall be resolved under the exclusive jurisdiction of the competent court in Wiener Neustadt. Nevertheless, ASTA reserves the right to file claims against the Customer also at the court of the Customer's place of general jurisdiction.
- 13.2. Austrian law applies exclusively. The application of Private International Law and the UN Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.
- 14. Data protection**
- 14.1. The Customer as well as ASTA shall treat personal data that is received during the contractual relationship according to the prevailing data protection rules. Unless explicitly agreed on otherwise, the parties will use received data solely for the purpose of fulfilling their contractual obligations and will neither pass said information to third parties nor will they give third parties access to such data in any other form. Further, the parties shall take appropriate measures in order to prevent third parties from obtaining such information. These obligations are binding even after termination of contract.
- 14.2. The obligations set out in 14.1 do not apply to ASTA regarding the necessary passing on of information to insurances, experts or suppliers etc. assigned by ASTA that are in need of information due to their assignments. However, ASTA shall pass on the obligation of confidential treatment as far as possible.
- 15. Compliance**
- The Customer acknowledges that ASTA commits itself to comprehensive compliance and has enacted a respective compliance guideline in that respect. The Customer confirms and guarantees that it acts in accordance with all applicable laws, regulations and codes and will do so during the existence of this contract, including, but not limited to, every anti-corruption-law as well as the ASTA Directive on Compliance and Corporate Integrity (accessible at <http://www.asta.at/en/company/corporate-governance/compliance.html>) The Customer has not and will not, neither directly nor indirectly, participate in any prohibited practices in connection with the subject of this contract or any other business relation with ASTA. Prohibited practices include but are not limited to the promising, offering or granting of improper advantages to another person or demanding or accepting improper advantages in order to improperly influence other behaviours.
- 16. Miscellaneous**
- 16.1. The assertion of claims resulting from *laesio normis*, error and frustration of contract (*Wegfall der Geschäftsgrundlage*) are excluded on the Customer's part.
- 16.2. If individual terms of these GTC turn out to be void, invalid, impracticable or unenforceable, the validity of the residual terms shall remain unaffected. In this case such valid and enforceable terms shall be regarded as applicable that come closest to the economical purpose of the void or invalid terms as well as to the intentions of the parties.