

**GENERAL BUSINESS TERMS AND CONDITIONS**  
**FOR DELIVERIES AND SERVICES OF STURM GMBH**

**1.** General matters, applicability of these General Business Terms and Conditions only to entrepreneurs

**1.1.** These General Business Terms and Conditions apply to all contracts (purchase contracts, contracts to supply a work, contracts to produce a work, orders, other ordered services, such as commissionings), preliminary contracts, and quasi-contractual relationships that are initiated and concluded between, on the one hand, the orderer of the work, the buyer, or the principal (hereinafter, the "Customer") as entrepreneur and, on the other, Sturm GmbH, Niederland 155, A-5091 Unken with respect to all goods and all services of Sturm GmbH.

**1.2.** The inclusion of the Customer's general business terms and conditions or other contract terms and conditions that it attaches to its offer, order, or other documents or to which it makes reference is hereby objected to unless otherwise expressly agreed in writing.

**1.3.** If Sturm GmbH is in an ongoing business relationship with a Customer, these General Business Terms and Conditions of Sturm GmbH also apply even where special reference was not made to their applicability. Therefore, these General Business Terms and Conditions also apply to follow-on orders, including where they are not separately agreed upon verbally or in writing.

**1.4.** Verbal agreements in derogation from these General Business Terms and Conditions are ineffective. If written agreements derogate from provisions in these General Business Terms and Conditions in a given case, such agreements take precedence over the relevant provision in these General Business Terms and Conditions.

**2.** Offer, preliminary work, contract conclusion (order confirmation by Sturm GmbH), order changes

**2.1.** Offers prepared by Sturm GmbH in response to an enquiry or order by the Customer are in all cases non-binding and subject to change, including where they provide information about prices, dates, and other technical specifications.

**2.2.** Sturm GmbH is entitled to invoice the Customer for all preliminary work instigated by it up to the time of actual contract conclusion (e.g. for the creation of technical drawings) based on time and materials actually expended (e.g. material expenditure, calculation expenditure, work expenditure, personnel expenditure) if the Customer abandons the conclusion of a contract for any reason whatsoever or does not wish to conclude a contract.

It is agreed that the personnel expenditure for this preliminary work will be billed on the basis of a reasonable hourly rate of €90, net, plus taxes.

**2.3.** Offers or orders first become binding for Sturm GmbH when they are confirmed by Sturm GmbH to the Customer in writing (contract conclusion).

**2.4.** Subsequent contract amendments can be made or taken into consideration only with the express written consent of Sturm GmbH.

### **3. Pricing**

**3.1.** The applicable prices are those in the order confirmation of Sturm GmbH.

**3.2.** All prices are net, to which the applicable VAT (value-added tax) will be added.

**3.3.** The prices are ex works Sturm GmbH, Nederland 155, A-5091 Unken.

### **4. Payment terms**

**4.1.** Sturm GmbH is hereby expressly entitled to demand payments on account (full advance payment, partial down payment, instalment payments) for each contract conclusion, irrespective of whether the contract is to be performed in parts. This also applies where performance by Sturm GmbH is delayed beyond the agreed time period through no fault of its own.

**4.2.** When Sturm GmbH issues the order confirmation, the Customer must make a down payment in the amount of 40% of the total price, including VAT.

**4.3.** Every Customer is insured under the credit insurance of Sturm GmbH. If the insurance company cannot establish any insured sum, the Customer must post security in the form of an additional down payment specified by Sturm GmbH, up to full advance payment, or present a corresponding bank guaranty or bank surety.

**4.4.** If Sturm GmbH becomes aware after contract conclusion of facts that in its reasonably exercised commercial discretion indicate a material deterioration in the Customer's financial circumstances, particularly payment default with respect to earlier deliveries, Sturm GmbH is entitled to demand full advance payment or corresponding security within seven business days and, if the demand is refused, to terminate the contract and demand the immediate payment of all partial services rendered or partial deliveries made to that point.

**4.5.** Absent an agreement to the contrary, the remuneration invoiced by Sturm GmbH following delivery is payable within eight days of the invoice date, with a 2% discount for prompt payment, or within 30 days without deduction. This also applies to partial deliveries and partial invoices.

**4.6.** In the case of payment default, default interest pursuant to section 456 of the Austrian Commercial Code (UGB) is agreed upon in the amount of 9.2% p.a. over the base interest rate.

**5.** Non-performance for reasons for which the Customer is responsible, contractual penalty

**5.1.** If performance of the contractual service does not take place, either in full or part, for other reasons for which the Customer is responsible, the Customer is obligated to pay all services rendered by Sturm GmbH to that point (e.g. material expenditure, calculation expenditure, manufacturing expenditure, work expenditure, personnel expenditure, on the basis of a reasonable hourly rate agreed for this of €90, net, plus taxes, other expenses) as a portion of the remuneration claim of Sturm GmbH (compensation of time and materials expended).

**5.2.** In addition, the customer is obligated to pay Sturm GmbH a contractual penalty, which is independent of fault and is not to be considered a cancellation fee, in the amount of 30% of the net order value, plus VAT. The foregoing does not affect more extensive claims of Sturm GmbH.

**6.** Delivery periods and default

**6.1.** Unless Sturm GmbH has provided a written commitment that is expressly characterised as binding, delivery periods are as a rule considered non-binding.

A binding delivery period begins on the day on which all technical and other details of contract performance have been clarified, the required documents have been furnished, the Customer's obligations to cooperate have been satisfied, and any down payment has been made or any bank guaranty has been furnished.

It is extended by the period in which the Customer is in default with its contractual obligations, including, in an ongoing business relationship, under other contracts.

**6.2.** The lapsing of certain delivery periods and deadlines does not release the Customer from the obligation to set a reasonable grace period for provision of the service or from the obligation to declare that it will reject the service after the period expires.

**6.3.** In the case of force majeure, a period for performance or delivery is extended to the appropriate extent.

**6.4.** Partial services and partial deliveries are permissible to a reasonable extent.

**7.** Place of delivery, contract of carriage, transfer of risk, packaging suitable for transport, export

**7.1.** The place of delivery is the plant of Sturm GmbH at Niederland 155, in A-5091 Unken.

**7.2.** It is agreed that Sturm GmbH concludes a contract of carriage with the carrier or freight forwarder and that Sturm GmbH invoices the Customer a flat-rate transport fee for the transport of the contractual service, which the Customer is to pay, plus VAT. The Customer must notify Sturm GmbH of the place of destination not later than when the contract is concluded. The Customer is obligated to indemnify Sturm GmbH in this respect and hold it harmless.

**7.3.** Upon handover to the first freight forwarder or carrier at the place of delivery, all risk passes to the Customer. Sturm GmbH is not obligated to obtain transport insurance at its own expense for the benefit of the Customer. The Customer is in any case obligated to indemnify Sturm GmbH and hold it harmless in connection with any damages following handover to the carrier.

**7.4.** Sturm GmbH makes its contractual services available in proper packaging suitable for transport.

**7.5.** Sturm GmbH handles the export formalities. Customs declarations are made in the name of the Customer. The Customer owes the import VAT and must pay same itself. The Customer is obligated to comply with statutory provisions applicable in this respect. The Customer is obligated to indemnify Sturm GmbH in this respect and hold it harmless.

**8.** Special warranty provisions

**8.1.** Sturm GmbH and the Customer hereby agree that all warranty claims are definitively prescribed unless they are asserted by the Customer in court within six months of handover.

**8.2.** The Customer bears the burden of proof for showing the existence of a defect at the time of handover, and it is mutually agreed that the presumption in section 924 of the Austrian Civil Code (ABGB) is excluded.

**8.3.** Substitute deliveries or eliminations of defects do not suspend or interrupt the warranty period.

**8.4.** Recourse claims against Sturm GmbH under section 933b ABGB are excluded.

**8.5.** The assertion of defects does not entitle the Customer to raise the defence of unperformed contract or change the payment terms.

**8.6.** The customer is obligated to immediately inspect the contractual service for whether

it is complete, correct, and otherwise free of defects, failing which it loses warranty claims, the claim to compensation of damages in lieu of warranty, the right to refuse performance, the rights under avoidance by reason of mistake and under *laesio enormis* due to defectiveness, and the rights under non-performance. In this regard, the Customer is obligated to give Sturm GmbH detailed, written notice of ascertained overt defects not later than seven business days following receipt and of latent defects not later than seven business days following discovery.

**8.7.** Minor, technically unavoidable discrepancies in construction, dimensions, form, and colour that are inherent in the nature of the processed material do not entitle the Customer to assert warranty claims.

**8.8.** Transport damage for which Sturm GmbH is not responsible may not form the basis of a warranty claim.

## **9.** Retention of title

**9.1.** Sturm GmbH retains title to all contractual services provided or delivered by Sturm GmbH until payment in full of all liabilities, including under prior deliveries, together with all ancillary claims. In the event of incomplete or untimely payment, Sturm GmbH is entitled to take back the contractual service at any time, including without express notice of termination, to which the Customer hereby gives its consent. This also applies where the contractual service is passed on to third parties or installed or assembled at the destination of a third party.

**9.2.** The Customer of Sturm GmbH is not entitled to resell the contractual service prior to payment in full of the contractual remuneration. In the event of resale, the Customer is obligated to obtain the written consent of Sturm GmbH to the resale and to make reference to the retention of title in connection with the resale. In such case, the Customer assigns its purchase price claim against the third party in advance to Sturm GmbH, and it is obligated to hold the incoming resale proceeds separately and in the name of Sturm GmbH.

Sturm GmbH is entitled to notify the third party or the end purchaser about the claim assignment and to instruct it that it can pay the amount for the contractual services delivered under retention of title only to Sturm GmbH in order to discharge its debt. The Customer of Sturm GmbH is moreover obligated to notify Sturm GmbH of the name and address of the third party or end purchaser.

**9.3.** If the contractual service provided by Sturm GmbH under retention of title is combined by the Customer with other goods, Sturm GmbH is entitled to co-title to the item in the ratio that the invoice value of the service subject to retention of title bears to the invoice value of the other good(s) and the processing value. If the title of Sturm GmbH lapses due to combination, intermixture, or processing, then at the time of contract conclusion with a third

party, the Customer assigns to Sturm GmbH the ownership rights to which it is entitled in the new item to the extent of the invoice value of the service subject to retention of title and holds them for Sturm GmbH in safekeeping at no charge.

## **10. Sales documents**

All sales documents, such as catalogues, price lists, samples, etc., remain the property of Sturm GmbH. Plans, drafts, and drawings are protected by copyright. None of these documents may be passed on to third parties.

## **11. Place of performance, place of jurisdiction, contract language, applicable law**

**11.1.** The place of performance for both contract parties is the registered office of Sturm GmbH at Niederland 155, in A-5091 Unken, whereby for Sturm GmbH the provisions set forth in Section 7, above, are additionally taken into consideration.

**11.2.** The contracting parties hereby agree that the court in Salzburg, Austria, with subject-matter jurisdiction is the exclusive place of jurisdiction for all disputes and legal actions deriving from them under the contract concluded between Sturm GmbH and the Customer or the established legal relationship, as well as for all disputes about the existence of such a contractual or legal relationship.

However, Sturm GmbH has the right in the alternative also to bring suit against the Customer before the court with local and subject-matter jurisdiction over it.

**11.3.** The contract language is German.

**11.4.** As agreed, Austrian substantive and procedural law is exclusively applicable to all contractual relationships and other legal relationships between Sturm GmbH and the Customer, under express exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and the reference norms of the Austrian Act on International Private Law (IPRG).

## **12. Severability clause**

If provisions in these General Business Terms and Conditions should be invalid or inapplicable, either in whole or in part, this does not affect the validity of the other provisions of these General Business Terms and Conditions.

**13.** Data  
protection

The customer acknowledges that its data are processed by Sturm GmbH solely for the purpose of contract performance on the basis of the GDPR, and it gives its express consent to this.

Version: 22 July  
2020