

GENERAL TERMS AND CONDITIONS

TERMS AND CONDITIONS OF SALE AND DELIVERY

These General Terms and Conditions apply to all contracts concluded between Gaulhofer Industrie-Holding GmbH, A-8124 Übelbach or Gaulhofer Deutschland GmbH & Co KG, D-85646 Anzing (hereinafter Gaulhofer) and its clients (hereinafter referred to as customers), unless otherwise agreed. By placing an order, the customer explicitly acknowledges the validity of these General Terms and Conditions as well as the fact that it has received or at least been given the opportunity to view these T&C. These General Terms and Conditions are regarded as the framework agreement for all further legal transactions with the customer (e.g. additional orders), even if their validity has not been explicitly agreed upon in each respective case. Deviations from these General Terms and Conditions shall only apply insofar as they have been agreed by the contractual parties in writing. Any own General Terms and Conditions of the customer do not apply, even if Gaulhofer has not explicitly objected to these.

1. OFFER AND CONCLUSION OF CONTRACT

1.1. All offers by Gaulhofer are non-binding. They are valid for a period of one month and only in the event of undivided orders. Gaulhofer is not obliged to accept orders.

1.2. Contracts shall be concluded by the subsequent written order confirmation on behalf of Gaulhofer or by delivery in accordance with the order. We reserve the right to slight, material-related deviations from images or descriptions in catalogues, samples and showpieces on which the order is based, in particular deviations of colour and grain.

1.3. Unless otherwise agreed in writing, offers are created without guarantee for their accuracy.

2. PRICES

2.1. Our prices are based on the price lists that are valid on the respective day of delivery (in printed or electronic form). All prices are excluding the legally applicable VAT.

2.2. Announcements of price increases are made in writing at least 4 weeks in advance, with inclusion of a reference to the first date of applicability of the new prices. Gaulhofer is entitled at any time to correct individual errors in price lists, offer and order programmes as well as obvious typing and arithmetic errors in tender documents and offer overviews.

3. DELIVERY AND TRANSFER OF RISK

3.1. In the event of ex-works delivery, the Gaulhofer factory providing the goods shall be the place of delivery and of transfer of risk. Gaulhofer must notify the customer when the goods are ready for pickup.

3.2. If delivery "free domicile" has been agreed, the delivery address stated by the customer shall be the place of delivery and of transfer of risk. If shipment has been agreed, the place of handover to the carrier shall be the place of delivery and of transfer of risk, provided that this represents a commercially customary type of shipment or shipment agreed between Gaulhofer and the customer.

3.3. The customer is obliged to inspect the goods immediately after delivery/handover. If a defect is present, Gaulhofer must be notified immediately; otherwise, any warranty claims and/or claims for damages shall be excluded.

3.4. If immediate inspection of the goods is not possible upon receipt of the goods in accordance with the proper course of business, e.g. pallet delivery, Gaulhofer must be notified of such circumstances immediately in writing and any potential defect identified during subsequent inspection must be reported in writing within five workdays after delivery and with images, by providing photographic evidence of the rejected goods on a pallet or container. This also applies to incorrect and erroneous deliveries. Broken glass can only be accepted if such circumstances were noted on the delivery slip at the time of delivery. If defects only become apparent later on, they must also be reported immediately; otherwise, the goods are also deemed to be accepted with regard to such defects. The customer shall be required to prove that the defect already existed before transfer of perils. When performing negotiations on notices of defects, Gaulhofer expressly shall not forswear the objection that the notice of defect has been made too late or only insufficiently.

3.5. With the handover of the goods to the customer or its representative, any liability for the completeness and integrity of the entire scope of the delivery is transferred to the customer. The customer or its representative confirms this fact by signing the delivery slip. For goods delivered by Gaulhofer or on its behalf to the delivery address stated by the customer on the customer's instruction, for the receipt of which neither the customer nor a representative appointed by him is present, the risk and liability are transferred to the customer after unloading from the delivery vehicle. Properly rendered services may neither be exchanged nor withdrawn.

3.6. Delivery periods and dates of Gaulhofer are based on the order confirmation. These delivery deadlines and dates are approximative; delivery deadlines shall only be applicable after order confirmation by Gaulhofer; Gaulhofer shall be entitled to reasonably extend and/or postpone delivery deadlines and delivery dates for reasons in accordance with section 3.8 as well as in case of any other obstacles that have not been caused by at least grossly negligent behaviour on behalf of Gaulhofer. Gaulhofer shall notify the customer of any such delay of delivery at least one week prior to the original delivery date. This does not apply to delays occurring in connection with insulating glass (broken glass, defects, delay on the part of the supplier) within the week before scheduled delivery. The customer is not entitled to any claim resulting from such delays.

3.7. Gaulhofer is entitled to perform partial and advance deliveries and to separately invoice such deliveries.

3.8. Gaulhofer is not liable for delay or impossibility of delivery due to force majeure, pandemics, statutory provisions or reasons outside of Gaulhofer's sphere of influence (this includes delayed deliveries of material in particular). In the event of impossibility of delivery, Gaulhofer is entitled to cancel the outstanding delivery commitments. This also applies if prevented delivery has been caused by delay or non-performance on behalf of a pre-supplier.

3.9. The impossibility of performance also entitles the customer to withdraw from the contract. If the service is divisible, however, then the customer shall only be entitled to respective partial withdrawal.

3.10. If the delivery is delayed due to reasons caused by the customer, the transfer of risks becomes effective at the time of notification of delivery readiness to the customer. Special regulation in case of pickup by the customer: if the customer has been notified that goods are ready for pickup, the goods shall be stored on account and at the risk of the customer after expiry of three workdays.

3.11. In the event of necessary anchorages to walls and ceilings, the customer must ensure that the subsurfaces are suitable for drilling or mounting, otherwise Gaulhofer cannot be held liable for any damages occurring as a result.

4. PAYMENT

4.1. Payment must be made without deduction within 14 days after the date of invoice, unless other payment terms have been agreed in writing.

4.2. In the event of a default on payment – regardless of fault – the statutory default interest amongst companies according to the Austrian Commercial Code (German Commercial Code for Germany) is deemed to be agreed.

4.3. Gaulhofer is entitled to use payments, regardless of their dedication, to settle the oldest due invoice item plus the accrued default interest and costs, namely in the following order: costs, interest, principal claim.

4.4. If the customer claims defects, this does not release the customer from its payment obligations with regard to the non-defective part of delivery.

4.5. The offsetting with counterclaims of the customer against claims by Gaulhofer from this contractual relationship is excluded, unless the claim has been determined by a court or acknowledged by Gaulhofer in writing.

4.6. The customer may not assign its claims against Gaulhofer to third parties, unless Gaulhofer explicitly provides its consent to this.

4.7. If the customer is subject to the worsening of its financial circumstances and/or if Gaulhofer, only after conclusion of contract, becomes aware of the fact that the customer, at the time of conclusion of contract, had been subject to such bad financial circumstances that fulfilment of the contractual obligations on behalf of the customer is jeopardised, Gaulhofer is entitled to refuse performance of its services until the performance or assurance of the respective service in return. Such financial circumstances of the customer are deemed to be proven by means of information provided by a reputable credit agency or bank.

4.8. In the event of default on payment by the customer, Gaulhofer is released from all further obligations of performance and delivery, and is entitled to withhold any outstanding deliveries or performances or to demand advance payments or assurances.

4.9. Furthermore, in the event of non-fulfilment of payment agreements, Gaulhofer is entitled to withdraw from the contract by giving or granting an appropriate grace period. In the event of insolvency of the customer, which in any case occurs at the latest upon initiation of insolvency proceedings or the rejection of such proceedings due to a lack of assets to cover the costs, Gaulhofer may withdraw from the contract without giving a grace period. In these events, Gaulhofer is entitled to reclaim products that have already been delivered but not paid for.

4.10. Gaulhofer reserves the right to invoice the customer for any possible claims for damages due to non-observance of payment agreements.

5. RETENTION OF TITLE

5.1. Any objects of purchase shall remain the property of Gaulhofer until complete payment of the purchase price, including additional costs. In any case, even after installation of the goods into unmoveable objects, the retention of title remains valid at least for easily removable parts (e.g. window sashes or doors).

5.2. Transportation and delivery aids, such as transport racks for the delivery of glass, remain the property of Gaulhofer or the subcontractor commissioned by Gaulhofer.

5.3. The customer may resell the reserved delivery in the context of its ordinary business operations. In this event, it already assigns to Gaulhofer the remuneration claims to which it is entitled from the resale of the reserved goods against its purchaser. Gaulhofer accepts this assignment.

6. WARRANTY

6.1. For our deliveries and services, the warranty according to the respective statutory provisions relevant for the type of contract are deemed agreed, unless they are modified by the contract or by these conditions.

6.2. The warranty shall lapse in the event of defects that are caused by improper handling, insufficient maintenance and installation or improper operation of the moving parts. With regard to the installation, the relevant rules of engineering are deemed agreed.

6.3. Parts subject to wear are excluded from the warranty.

6.4. In order to avoid any damages, instructions provided in brochures, instruction manuals or other product information must be strictly observed by the customer. The user is explicitly warned against any use beyond the defined areas or customary methods of application.

6.5. Deviations and minor changes to the agreed services (e.g. with regard to colours, wood and veneer appearance, grain and structure as well as dimensions) must be tolerated by the customer if they are due to the nature of the material and are minor. In particular, deviations in measurements of up to 10% are deemed minor deviations if proper use is not impaired by such deviations.

6.6. In all business transactions, the customer must always prove the defectiveness of the delivered goods at the time of handover. The presumption of law pursuant to § 924 Austrian Civil Code (§ 477 German Civil Code for Germany) is explicitly excluded.

6.7. In the event of a warranty obligation, it is up to Gaulhofer to decide whether the warranty claims shall be fulfilled by means of exchange, improvement, price reduction or termination of the contract. After an improvement or exchange, the warranty period does not start anew; not even for the affected part only. In any case, it is agreed that the warranty period shall not be extended, interrupted or stopped by the remedy of defects; this is also not the case for settlement negotiations regarding such claims.

In the event of defects, the costs of fitting and removal shall not be replaced, unless the installation would be carried out by Gaulhofer anyway.

6.8. The brand insulating glass installed by Gaulhofer as standard is designed for an altitude of 100 to 700 metres. Deviating altitudes must be disclosed separately by the customer so as to take the necessary pressure compensation into account for the composition of the insulating glass; otherwise, Gaulhofer accepts no liability for this.

6.9. Warranty claims expire two years after handover for the mere delivery, and three years after handover for delivery and installation by Gaulhofer, unless any claims have been enforced in court within this period.

6.10. The customer is informed that it is possible that maintenance activities will need to be carried out some time after delivery/installation, in particular the adjusting of fittings, the oiling or greasing of common components as well as the inspection of sealing joints. These activities are not part of the scope of work by Gaulhofer, unless explicitly agreed. Failure to have maintenance activities carried out may reduce the lifespan and functionality of the delivered goods, without this giving rise to claims for defects.

6.11. Primed elements: Elements without completed surface treatment, e.g. primed wood windows, casement doors and front doors, do not correspond to ÖNORM B3803 (for Germany, DIN 18355 applies). The warranty and guarantee regarding the protective properties of the surface is excluded for any non-coated elements, since the surface finish does not take place in our factory. For purposes of damage prevention, the final coating should be applied as soon as possible (verifiably within 2 weeks) after delivery; until then, the windows, casement doors, fixed glazings, front doors and accessory parts should be stored in dry rooms (relative humidity <60%).

Due to the coating requirements as stated above and included in ÖNORM B3803 (for Germany, DIN 18355 applies), the following exclusion of warranty and liability apply:

When taking over any primed elements, the customer shall assume any possible complaints and resulting costs directly or indirectly related to the surface treatment, for a warranty period of 3 years.

Recourse and/or forwarding to Gaulhofer in the event of dispute or goodwill is only possible if the processing of the complaint clearly identified a defect caused by Gaulhofer.

Gaulhofer thus fulfils its duties of warning and information towards the customer to the fullest extent.

7. LIABILITY, COMPENSATION

7.1. Gaulhofer shall only be liable for any damage incurred by the customer if Gaulhofer or another vicarious agent of Gaulhofer is subject to wilful intent or gross negligence. This does not apply in the event of injury to life, body or health. The customer bears the burden of proof of gross negligence or wilful intent.

7.2. Compensation for pure financial loss, lost profits or damages resulting from third party claims is excluded.

7.3. Claims for damages shall lapse for business transactions one year after awareness of the damage and the damaging party.

7.4. Gaulhofer does not accept any liability for damages due to improper treatment of the delivered goods. Similarly, Gaulhofer is not liable for any third-party work subsequently performed on the delivered goods.

7.5. The liability of Gaulhofer and its pre-suppliers for consequential damages caused by defects shall only be subject to the compulsory regulations of the respective applicable Austrian Product Liability Act.

7.6. Beyond this, Gaulhofer is only liable for components other than those produced in its factory insofar as these are covered by Gaulhofer's liability insurance.

7.7. In addition, no-fault contractual penalties shall not take place if the delay is caused by delayed deliveries of materials, construction materials or parts to Gaulhofer.

8. APPLICABLE LAW, PLACE OF JURISDICTION, PLACE OF PERFORMANCE

8.1. Austrian law applies to this contractual relationship (German law applies to deliveries by Gaulhofer Germany). The UN Convention on Contracts for the International Sale of Goods is not applicable with regard to the present contractual relationship.

8.2. As the place of jurisdiction, the parties agree that the competent court for 8010 Graz (Austria) has exclusive jurisdiction (for deliveries by Gaulhofer Germany, the parties agree that the competent court for 85646 Anzing has jurisdiction).

8.3. The place of performance is the headquarters of Gaulhofer in 8124 Übelbach (for deliveries by Gaulhofer Germany, the place of performance is 85646 Anzing).

9. OTHER PROVISIONS, DATA PROTECTION

9.1. The invalidity of individual provisions of these General Terms and Conditions does not affect the validity of the remaining provisions. In the event of ineffectiveness or invalidity of individual provisions, a provision shall be agreed that comes as close as possible to the economic effect of the ineffective or invalid provision. The terms and conditions shall also apply to consumer businesses, unless the applicable law expressly states the contrary.

9.2. The present General Terms and Conditions are a supplement to the contracts concluded between Gaulhofer and the customer. In the event of any contradictions regarding the terms and conditions of the contract, or if the contract includes more comprehensive regulations, then the contract shall precede these General Terms and Conditions.

9.3. Amendments to the General Terms and Conditions must be made in writing.

9.4. Gaulhofer is entitled to amend the General Terms and Conditions and to publish these on the Gaulhofer website. Gaulhofer shall inform the customer one month before the date of amendment. The amendment of the General Terms and Conditions shall enter into force unless the customer objects to the amendments in writing within one month of receiving the information.

9.5. For the processing of orders and the handling of complaints, the guidelines on order processing are deemed as agreed.

9.6. The customer agrees that all data provided to Gaulhofer in the context of the business relationship may be used and automatically processed by Gaulhofer. At this point, Gaulhofer refers to its data privacy statement.

© 2022 Gaulhofer Industrie-Holding GmbH, 8124 Übelbach; all rights reserved. No part of this document may be copied or transmitted for any purpose without the explicit written consent of Gaulhofer Industrie-Holding GmbH.

Misprints and errors excepted; subject to technical changes.