



STYROMAGNESIT®

Styromagnesit Steirische Magnesitindustrie GmbH

GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY

**of Styromagnesit Steirische Magnesitindustrie GmbH
As of October 2017**

A) SCOPE OF APPLICATION

1. The present terms and conditions of sale and delivery (short: the Terms and Conditions) regulate the legal relationship between us, Styromagnesit Steirische Magnesitindustrie GmbH, as contractor / service provider on the one hand, and our customers on the other hand, and they apply for any and all kinds of order (e.g. sales contract, service contract, contract for labour and materials).
2. Our deliveries, services and quotes are exclusively subject to the present Terms and Conditions. These Terms and Conditions also apply for any future business relationships, even if they are not expressly referred to again prior to each business transaction. Deviations from the present Terms and Conditions are effective only if confirmed by us in writing.
3. The general terms and conditions and terms and conditions of sale and acceptance of the customer, if any, do not prevail over the present Terms and Conditions and shall be binding for us only if they are expressly accepted by us in writing for every individual business transaction. In particular, we are not obligated to object to terms and conditions used by the customer that contradict the present Terms and Conditions. If we do not object, or if we execute the respective delivery or provide the service, this does not constitute an agreement or acceptance on our part, even if we are aware of terms and conditions of the customer that contradict or deviate from our Terms and Conditions. Any reference on our part to documents of the customer does not constitute an acceptance of the customer's terms and conditions or regulations. If the customer first learns of the existence or the wording of our Terms and Conditions in our commercial confirmation letter or our order confirmation, these are fully accepted by accepting the confirmation letter or the order confirmation without objection.

B) QUOTE AND CONCLUSION OF THE CONTRACT

1. Our quotes are given without engagement. In particular, the information about services and products provided in our catalogues, price lists, brochures, information material, leaflets, advertisements at trade fair booths, newsletters, advertising mail or other media is non-binding.
2. The information provided in our leaflets, catalogues or similar documents and in our offer, in particular illustrations, drawings, descriptions, specifications of dimensions, weight, performance and consumption, delivery terms and specifications regarding the usability of our products are approximate only, unless such information is expressly labelled as binding. Minor deviations from the description in our offer are considered to be accepted, unless such deviation is unacceptable for the customer. Properties of our services are guaranteed only if agreed in writing beforehand.
3. When contracts and other agreements, if any, are concluded, they become binding only when confirmed by us in writing. Regarding the validity as written confirmation, electronic correspondence is equal to correspondence by letter.
4. If the wording of an order deviates from our quotes in any point, it shall become binding only if expressly confirmed by us in writing.
5. In the case of clerical or calculation errors we have the right to withdraw from the contract if the customer refuses a corresponding amendment. In this case, any claims for compensation of the customer are excluded.

C) PERIOD OF DELIVERY

1. On principle, the specified periods and dates of delivery are approximate only, unless they have been confirmed in writing as fixed dates.

2. The periods of delivery start at the date of our order confirmation at the earliest, but in any case not before full order clarification, and in particular not before any and all documents required to be submitted by the customer have been submitted and any agreements regarding down payments have been fulfilled. The same applies for dates of delivery.

All periods and dates of delivery are ex works. If the goods cannot be collected or dispatched in time without any fault on our part, the periods and dates of delivery are deemed to be complied with upon timely notification of the readiness for dispatch.

If a fixed date has been agreed for collection, the goods have to be collected at the agreed time and date; otherwise, they have to be collected within 5 working days after receipt of our notification of readiness for collection. If the customer does not fulfil this obligation, he shall be in default of acceptance without the need for a reminder.

3. Unless otherwise agreed in the individual contract, the period of delivery for the first delivery and the first provision of our services is at least 6 weeks.

Even if the period of delivery is exceeded, the customer's obligation to accept and pay the processed goods remains valid and in effect.

4. If the delivery is delayed due to circumstances that are beyond our sphere of influence, the customer shall make the agreed payment at the date at which it would become due if the delivery was effected on schedule, and reimburse us for any and all costs arising in connection with the delay.
5. We shall not be considered to be in default of delivery if the customer is in default regarding his payment obligations. In this case, we are exempt from any obligation to perform until these payment obligations have been fulfilled.

6. Delays in delivery and increases in costs due to incorrect or incomplete data and information and/or documents provided or information or documents changed retroactively are not imputable to us and cannot result in a default on our part. Any additional costs resulting therefrom shall be borne by the customer. In the case of a postponement of dates imputable to the customer, we have to establish a new schedule.

7. In the case of a postponement of dates imputable to the customer, we also have the right to order the customer in writing to fulfil his obligation to cooperate to the agreed extent, setting a grace period of 8 days, failing which, we are entitled to withdraw from the contract without setting a further grace period, and we are entitled to payment at cost of any services provided up to that point plus the respective lost profits from the customer. The customer may not raise any counter-claims during this period.

In the case that we declare our withdrawal from the contract in accordance with this clause and charge our production costs accrued up to that moment and/or the expenses for services provided up to that moment including the lost profits, the customer is entitled to those parts of the goods that have already been (partly) completed or processed. The provisions of clause K) of the present Terms and Conditions remain unaffected thereby.

8. The customer may not raise any claims against us for a default in delivery, even if we were responsible for such default.
9. We have the right to make partial deliveries, which the customer shall accept.
10. If the execution of the order and/or the delivery is delayed or impeded, becomes unreasonable or is made impossible due to events of force majeure, we have the right to postpone the date of delivery or to partly or entirely withdraw from the contract. In such a case, the customer cannot raise any claim for compensation against us. If we partly or entirely withdraw from the contract, we are entitled to a remuneration for the services provided up to that point on a pro rata basis. Alternatively, we can

charge the services provided up to that point at cost. In this case, the customer is entitled to those parts of the goods that have already been (partly) completed or processed.

Events of force majeure are all unforeseeable events or events which, even if they were foreseeable, are outside our sphere of influence and/or the customer's sphere of influence, and the consequences of which for the execution of the contract cannot be prevented by means of reasonable efforts.

Strike, lockout, insufficient means of transport, interventions by the authorities, difficulties with the energy supply or other circumstances that significantly impede the delivery or performance on our part or even make it impossible are considered equal to events of force majeure, irrespective of whether they affect us or one of our suppliers.

D) DELIVERY AND TRANSFER OF RISK

1. Deliveries are made ex works, for the account and at the risk of the customer, unless expressly agreed otherwise in writing.
2. The risk of damage to or destruction or non-usability of the purchased and/or delivered goods is transferred to the customer as follows:
 - a) in the case of "ex works" delivery, as soon as the goods are ready for collection at our works;
 - b) in the case of "free carrier" delivery, as soon as the goods have been handed over to the person carrying out the transport for loading;
 - c) in the case of "carriage paid" delivery, as soon as the goods have been handed over to the person carrying out the transport for loading.
3. In case of loss or damage during transport, the recipient is responsible for filing a corresponding complaint with the carrier or freight forwarder.
4. The customer is obligated to accept the goods dispatched or prepared for collection in accordance with the contract without undue delay. If the dispatch is postponed at the request of the customer or for reasons within the customer's sphere of influence, the risk is transferred to him upon notification of the readiness for dispatch.
5. In the case of a default of acceptance, or if it is impossible to deliver the goods due to an event of force majeure, we have the right to store the goods ourselves or with a freight forwarder at the cost and risk of the customer.

E) PRICES

1. The prices indicated in our quotes apply on condition that the data based on which the quote was given remain unchanged.

The prices stipulated in our order confirmations apply. These prices, including any ancillary costs, are exclusive of the applicable statutory value-added tax.

The prices quoted by us are ex warehouse or ex works. They do not include freight, postal charges, insurance, customs duties and other packaging, transport and shipping costs. Incidentally, transport insurance will only be taken out at the express request of the customer. With respect to the ancillary costs, we can choose to charge the actual costs or a lump sum for ancillary costs at our discretion.
2. The customer has to dispose of the packaging delivered by us at his own expense. An obligation to take the packaging material back exists only if expressly agreed in writing.
3. In the case of increases in the freight rates and customs duties applicable at the time of the conclusion of the contract and/or the introduction of new duties, we have the right to increase the agreed sales prices accordingly on a pro rata basis; such an increase does not entitle the customer to withdraw from the contract. We also have the right to increase the prices due to an increase in freight rates and customs duties and/or the introduction of new duties if a delivery is delayed and the respective increase in freight rates, customs and other duties occurs after the originally agreed date of delivery.
4. On principle, quotes and cost estimates on our part are non-binding unless it is expressly confirmed in writing that they are binding.
5. If the delivery is effected more than four months after the conclusion of the contract, the prices applicable at the date of dispatch will be charged.
6. If our quote (cost estimate) is exceeded due to changes of the quote by the customer, this is deemed to be approved by the customer even without a corresponding notification on our part. In this case, the customer waives his right to withdraw from the contract.

F) DISCOUNT CHARGEBACK

Discounts on our listed prices and cash discounts are granted only on condition that the agreed remuneration is paid in full and on time. If the agreed remuneration is not paid in full - in particular due to the initiation of insolvency proceedings over the assets of the customer - we have the right to claim our listed prices.

G) PAYMENT TERMS

1. Payment of the remuneration and/or purchase price is due, without deduction, immediately upon receipt of the invoice, but in any case no later than 30 days after the transfer of the risk. A payment is deemed to have been made only when we can freely dispose of the amount.
2. Bills of exchange and cheques are accepted only if expressly agreed and in lieu of payment, provided that the financial institution has confirmed the acceptance. Refinancing costs and expenses shall be borne by the customer, and they shall be paid by the customer immediately. We assume liability for the timely submission, objection, notification and return of the bill of exchange in case of dishonour only in case of wilful behaviour or gross negligence on our part or on the part of our vicarious agents.

For bills of exchange, cheques or bank transfers, the date at which the financial institution credits the amount to our account is decisive.

3. If the customer refuses to collect the goods despite notification of the readiness for dispatch or to accept the goods, the invoice amount shall still be paid in full within 30 days after notification of the readiness for dispatch or the delivery at the latest.
4. Any right of retention of the customer, in particular on the basis of a claim of non-performance due to claimed defects, is expressly excluded. Furthermore, the customer is not entitled to offset against any claims whatsoever, except for claims acknowledged by us or enforceable claims.

H) DEFAULT IN PAYMENT

1. In the case of a default in payment, we are entitled to charge annual interest in an amount of 9.2% above the respective base interest rate of the Austrian National Bank of the previous 30 June or 31 December, pursuant to § 456 UGB [Austrian Commercial Code].

Such default interest does not exclude further claims for damage caused by such default. The customer is liable to us for such further damage, in particular for interest damage due to late fulfilment of payment obligations, among others.

2. If we assert claims due ourselves, the customer undertakes to pay an amount of EUR 40.00 per reminder sent, irrespective of the actual expenses incurred. The reimbursement of debt collection costs exceeding this amount is subject to § 1333 para. 2 ABGB [Austrian General Civil Code].
3. Furthermore, all claims become due and payable immediately if the payment terms are not complied with or if we become aware of circumstances which, in our opinion, will likely lower the creditworthiness. In this case, we have the right to provide services due only against payment in advance or to withdraw from the contract after an appropriate grace period set by means of a reminder has expired without result.
4. In the case of a default in payment, we have the right to declare our withdrawal from the contract not only with respect to the contract concerned, but also with respect to other transactions not yet processed or with respect to successive deliveries.

Furthermore, we have the right to retain any goods not yet delivered and to stop processing open orders if we do not receive the corresponding pro rata payments. We also have the right to demand the return of any goods already delivered but not yet paid from the customer and to collect such goods at the customer's expense. The customer shall give us access as required to exert our right of recovery.

5. If the customer's economic situation deteriorates significantly, if insolvency proceedings are initiated over the assets of the customer or if such proceedings threaten to be initiated, if insolvency proceedings are not initiated due to insufficient assets, or if we receive information which could likely cause doubts regarding the customer's ability or willingness to pay, we have the right to declare any and all claims against the customer due and payable immediately at any time. If a method of payment other than cash payment has been agreed, we are furthermore entitled to demand cash payment.

The above provisions do not affect our right to terminate the contract in accordance with Clause P) of the present Terms and Conditions.

I) PROVISION OF COLLATERAL

Even if the provision of collateral has not been agreed upon conclusion of the contract, we have the right to demand collateral for the fulfilment of the payment obligation before dispatch, and if the customer refuses, we have the right to withdraw from the contract.

J) TECHNICAL SPECIFICATIONS AND DOCUMENTS

1. Our illustrations, drawings, blueprints and information on dimensions and weight in catalogues, advertisements, quotes, etc. are approximate only and subject to change.
2. Any and all documentation provided contains know-how, ideas and developments of us and our suppliers. The intellectual property rights and all tangible property rights in such documentation remain with us. The customer is only granted a right to use them to the extent absolutely required for the operation and maintenance of the goods subject-matter of the contract. This right of use expires upon decommissioning of the goods subject-matter of the agreement.
3. All the documents and information may not be copied, interpreted, reproduced or disclosed to third parties in any way whatsoever, either in part or in their entirety, without our consent. Individual details from such documents and information are also subject to the statutory protection.

K) RETENTION OF TITLE

1. Any and all goods delivered by us remain our property until all financial obligations owed to us, including interest and costs, have been fulfilled in full.
2. The delivered goods remain our property even if they are firmly connected to, mixed or blended with or installed in the property of the customer.

The customer shall, at his own expense, take every measure necessary to mark our ownership in the delivered goods vis-à-vis others in accordance with the applicable statutory publicity requirements and/or to expressly point out our right of ownership if a third party attempts to use them.

3. If parts and/or goods delivered by us have been combined with the customer's property and have thereby become an independent part of his property, the customer is obligated, if he does not settle all his liabilities to us in due time, to tolerate the disassembly of any and all such parts and/or goods at his risk and expense and to bear any and all costs arising from or in connection with measures related to such disassembly up until the arrival at our premises. The customer recognises our right of ownership in such disassembled objects.
4. While the retention of title persists, the goods delivered by us may not be sold, pledged, assigned as collateral, rented or otherwise transferred to third parties without our written consent.
5. The products that have been manufactured from our goods delivered subject to retention of title may be sold by the customer only subject to retention of our title in the goods and the proceeds. If the new product is sold, we obtain co-ownership in the sales proceeds, which the customer receives from the third party as our fiduciary.
6. If parts and goods delivered by us that are still subject to retention of title are seized by third parties, the customer is obligated to notify us of the name of the prosecuting party, the amount of the claim, the intervening court, the file number and the date of the auction, if any, immediately. Furthermore, the customer is obligated to notify us of any extraordinary depreciation of the goods delivered subject to retention of title.
7. If the applicable law agreed with the customer is not Austrian law, or if another law is applicable for other reasons, and if the retention of title does not apply pursuant to the statutory provisions of this law, the collateral that can be provided pursuant to this other law are deemed to have been agreed. If the cooperation of the customer is required for this purpose, the customer is obligated to take all measures necessary to establish and maintain such rights.

L) WARRANTY

We provide warranty for defects in the goods delivered by us, if any, in accordance with the following provisions:

1. The warranty period starts upon dispatch or collection of the goods. If the customer is in default of acceptance, the warranty period starts upon notification of the readiness for dispatch.
2. The warranty period is 12 months.

3. On principle, the warranty obligation applies only for defects claimed in writing without undue delay, but no later than 3 working days after the defect has become apparent for the customer, specifying the potential causes at the same time. If the customer does not send a notice of defect in due time, he cannot raise the claims specified in § 377 para. 2 UGB. In order for our warranty obligation to apply, the customer has to provide proof that the claimed defect is imputable to us and that it existed already at the time of delivery. Further limitations of liability according to the present Terms and Conditions remain unaffected thereby.

4. The warranty obligation applies only for defects that occur under normal use if the intended operating conditions are complied with and the specified maintenance and service intervals are observed. It does in particular not apply for defects imputable to the customer or third parties.
5. The warranty is also excluded if the goods delivered are treated and/or used improperly, and in particular if our relevant instructions and regulations are not complied with.

If the quantity and weight of our delivery deviates from the order by less than 5%, such deviation does not constitute a defect. Only our input and/or output weighing is decisive in this respect.

6. The warranty obligation expires if the customer changes or modifies the delivered goods in any way without authorisation and without our prior written consent.
7. The warranty applies only for goods delivered by us. With respect to those goods that we have procured from our suppliers, we assume liability only to the extent that we have warranty claims against these suppliers.
8. If we are obligated to remedy a defect, we can either replace the defective goods or the defective part of such goods, repair the defect on site during normal working hours, or have the defective goods or the defective part of the goods sent to us for repair. We have to be granted an appropriate period of time to verify the defects and to repair them or to deliver replacements.

The costs and the risk of the transport of the defective goods or parts to us and back are borne by the customer. If the defects are repaired on site, the customer shall bear our travel and accommodation expenses, if any.

9. The warranty period is not extended after a defect has been repaired and/or the respective part replaced.
10. If the customer repairs the defect himself or has it repaired by a third party, we shall bear the corresponding costs only if we have given our written consent.
11. In any case, we are exempt from any warranty obligation until payment has been made in full by the customer.
12. Warranty claims do not entitle the customer to withhold agreed payments.
13. As of the start of the warranty period, we do not assume any further liability other than that defined above, even for defects caused prior to the transfer of the risk.
14. If a guarantee is given, the above provisions apply by analogy. Guarantee repairs are recognised only with prior consultation of our guarantee department and subsequent written confirmation.

M) LIABILITY

1. We assume liability vis-à-vis the customer for damage to goods that are not subject-matter of the contract, for damage other than damage to the goods subject-matter of the contract, for lost profits, for consequential damage and for damage due to interruption of the production and operation only in case of gross negligence or wilful behaviour.

The above limitations of liability apply to the same extent for our vicarious agents.

2. In case of slight negligence, we are only liable for damage to goods that are subject-matter of the respective contract, and only up to the purchase price.
3. Any and all claims for damages become time-barred one year after delivery and/or provision of the service at the latest.
4. We are in no case liable for damage to any work pieces provided.
5. Any obligation to pay damages for claims for property damage resulting from the Product Liability Act, and product liability claims that can be derived from other provisions are excluded.
6. In any case, our obligation to pay damages is limited to the available sum insured of our business liability insurance.

N) CHANGES OF CIRCUMSTANCES

If the circumstances under which a contract has been concluded change significantly, to an extent that leads to the assumption that the contract would not have been concluded under these changed circumstances, or that it would only have been concluded under different terms and conditions, and if this change of the circumstances was not foreseeable at the time of the conclusion, even with the due diligence and caution of a prudent businessman, we have the right, depending on the nature of the respective case, to withdraw from the contract or to demand an amendment of the contractual terms and conditions in accordance with the changed circumstances.

O) WITHDRAWAL OF THE CUSTOMER / CONTRACTUAL PENALTY

1. If the customer declares his withdrawal from the contract - for whatever reason - we can decide to either accept such withdrawal against payment of a contractual penalty or to refuse such withdrawal.
2. If we accept the withdrawal, the contractual penalty amounts to:
 - a) for marketable goods: 10% of the sales price;
 - b) for non-marketable goods and other services: 10% of the sales price plus the production cost incurred up to the moment when the withdrawal is accepted, the customer being entitled to those parts of the goods that have already been (partly) completed or processed.

P) PREMATURE TERMINATION OF THE CONTRACT

1. We can prematurely terminate any and all contracts with the customer for good cause without notice at any time.
2. Good cause for premature termination is given in particular if
 - a) a request for the initiation of insolvency proceedings over the customer's assets has been denied due to insufficient assets, or if we receive information which could likely cause doubts regarding the customer's ability or willingness to pay (§ 25b IO [Austrian Bankruptcy Act] remains unaffected by this provision);
 - b) the customer did not settle outstanding liabilities despite a corresponding reminder;
 - c) the customer does not fulfil his obligation to provide the documents required for the execution of the contract and/or other obligations to cooperate despite a corresponding request.

Q) PLACE OF PERFORMANCE AND PLACE OF JURISDICTION

1. Unless otherwise agreed, the place of performance for both delivery and payment is the registered office of Styromagnesit Steirische Magnesit-industrie GmbH at Oberdorf 41, 8611 St. Katharein an der Laming, Austria.
2. For claims raised by the customer, the sole place of jurisdiction for legal disputes regarding the existence or non-existence of a contractual relationship subject to the present Terms and Conditions and for disputes arising from such contractual relationships is the competent court at 8611 St. Katharein an der Laming, and for claims raised by us, the place of jurisdiction is either the competent court at 8611 St. Katharein an der Laming or the usual place of jurisdiction of the customer at our discretion.
3. Unless otherwise agreed, Austrian law is applicable, with the exception of its conflict of law rules. The same applies for the effective conclusion of the contract. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.
4. Furthermore, it is agreed that we always have the right (but not the obligation) to lodge claims with German courts of law at our discretion. In this case - in deviation from clause 3. - German law applies, with the exception of its conflict of law rules. The same applies for the effective conclusion of the contract. The application of the United Nations Convention on Contracts for the International Sale of Goods is expressly excluded.

R) GENERAL PROVISIONS

1. Any and all deviations from the present Terms and Conditions require the written form to be effective. The same applies for any deviation from the requirement of the written form. Verbal collateral agreements are not legally effective.

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2. If individual provisions of the present Terms and Conditions are invalid or unenforceable, in part or in their entirety, the validity of the remaining provisions shall remain unaffected thereby. In this case, the contractual parties undertake to replace the invalid or unenforceable provision by a valid or enforceable provision which comes as close as possible to the intended economic purpose of the partly or entirely invalid or unenforceable provision within the framework of the entire contract.
3. If a contractual lacuna becomes apparent at a later time, the provision that corresponds best to the regulation that would have been agreed, in accordance with the intent and purpose of the present Terms and Conditions, if the solution of the issues not regulated by the contract had been taken into account from the start is deemed to have been agreed.
4. If contractual agreements are concluded between us and the customer apart from the present Terms and Conditions, and these agreements contradict the provisions of the present Terms and Conditions, it is agreed that the contractual provisions outside the present Terms and Conditions shall prevail only if it is expressly agreed in writing that the corresponding provisions of the present Terms and Conditions are subordinate.
5. The contractual parties undertake to treat any and all commercial and technical information of which they gain knowledge in the course of this business relationship as trade secrets, unless such information already is in the public domain.
6. The customer agrees that we store the data we collect within the framework of the business relationship and use it for our own business purposes in accordance with the *Datenschutzgesetz* [Austrian Data Protection Act].