

## General Terms and Conditions of Sale of Semperit Technische Produkte Gesellschaft m.b.H.

### A. General

1. These General Terms and Conditions of Sale ("GTC") will apply to the entire business relationship between the Customer and Semperit Technische Produkte Gesellschaft m.b.H. ("Semperit"), in particular to the present supply agreement and any supply agreements to be concluded in the future. Deviating provisions shall be ineffective even if Semperit does not expressly object thereto. Deviations from these GTC proposed by the Customer shall only be effective if Semperit accepts the same in writing.
2. Offers shall be valid for a maximum period of four weeks as of their date of issue.
3. Mailing of the Semperit price list shall not be considered an offer. Semperit shall be under no supply obligation regarding orders received on the basis of general offers, circulars or price lists.
4. Agreements concluded orally or over the telephone as well as written and oral agreements with agents of Semperit will only be binding on Semperit if Semperit has acknowledged them in writing.
5. Moulds, production aids and facilities shall be the property of Semperit even if the Customer has paid a mould cost contribution and has provided the proposals and designs for the items to be produced.
6. Instructions provided by Semperit in brochures, instructions for use or other product information shall be strictly complied with in order to prevent damage. **Semperit expressly warns the Customer against any use or treatment of the products beyond the defined areas of application.** The Customer shall ensure that any further customer or user will be instructed sufficiently.

### B. Terms of delivery

1. Deliveries will be made and invoiced at the prices and on the terms and conditions applicable on the date of delivery. Unless the Semperit price lists applicable from time to time provide for a different regulation, the following minimum purchase order values (i.e. minimum final net values invoiced) shall apply:

for goods on stock / deliveries within Austria	EURO	1,000
for manufacturing orders and deliveries abroad	EURO	5,000

2. The Incoterms applicable from time to time shall apply to all trade clauses. Unless otherwise agreed Semperit will deliver EX WORKS.

The goods designated for processing, refining or repair shall be delivered DDP by the Customer to the Semperit production plant and will be returned EXW.

If delivery is delayed due to the Customer's fault, the risk shall pass to the Customer on the day the goods are ready for shipment.

If Semperit delivers goods free of charge to the address of the Customer once or several times, no legal claim to be granted that benefit permanently will arise therefrom.

3. The measurements provided for by the relevant standards and the statutory provisions shall be complied with.
4. Partial shipments shall be permitted.

### C. Packaging

Semperit will charge:

1. total production cost - no pallets, boxes, boards, loading boards, crates or bars will be taken back unless return of the same has been agreed.  
Lattice box pallets will be returned in any case.

General Terms and Conditions of Sale of  
Semperit Technische Produkte Gesellschaft m.b.H.

2. total production cost - tins and bottles will not be taken back;
3. total production cost - 2/3 refund in case of wooden drums and mobile pallets for conveyor belts;
4. total production cost - special boxes will not be taken back.
5. The refund rates stated above will only be granted if the items are returned in a perfect condition freight paid to the plant of dispatch.

#### **D. Delivery periods**

Semperit undertakes to observe agreed delivery periods provided only that there is an undisturbed course of production and delivery.

Consequences of force majeure or similar unforeseeable events occurring at Semperit or third parties with whom Semperit maintains business relations, e.g. interruptions of operations or traffic; fire; floods; lack of workforce, energy or raw materials; strike; lock-out; official measures or the like will release Semperit from its obligation of timely delivery and grant Semperit, in addition, the right to discontinue further deliveries without having to pay damages and without being obliged to make subsequent deliveries.

#### **E. Retention of title**

Semperit will retain title to all goods supplied by it until full payment of the amounts invoiced. This shall also apply if the purchase price has been paid for certain shipments of goods defined by the Customer, because retention of title serves the purpose of securing the total accounts receivable by Semperit. If goods which are the property of Semperit are mixed, blended or combined with other items, the Customer already at this point assigns his ownership rights or co-ownership rights to the new item to Semperit and shall hold the item in safe custody for Semperit with the care of a prudent businessman. The Customer may only sell the goods which are the property of Semperit in the ordinary course of business provided that he is not in default of payment. The Customer already at this point assigns his purchase price claims from resale vis-à-vis his customers to Semperit and shall make the note which is required for this assignment clause to become effective in his books or on his invoices. In the case of assignment Semperit shall also be entitled to notify the customers of the Customer. The consent to resale, process or combine the goods shall automatically expire if insolvency proceedings are opened over the assets of the Customer.

#### **F. Terms of payment**

1. Unless otherwise agreed the selling prices of Semperit as well as all offers and calculations shall be considered net amounts in Euros.
2. If the value of a payment which has been agreed in a currency other than Euro changes by more than 5% (e.g. due to a change of currency parity), Semperit will be entitled to adjust the price accordingly.
3. In the case of unforeseeable increases in the cost of raw materials, energy or production Semperit will be entitled to adjust the selling prices accordingly as of the date of delivery.
4. The amounts invoiced shall be payable within 30 days after the date of the invoice without any deductions and shall be paid free of postage and charges.

Employees and agents of Semperit will only be authorised to accept payments if they hold collection authority. Advance payments and payments on account shall yield no interest.

5. In principle, the Customer shall transfer payments into the account advised by Semperit at his risk and cost. The place of performance for the Customer shall be Vienna.
6. Any retention or set-off by the Customer of any claims whatsoever against claims of Semperit shall be excluded.
7. Acceptance of bills of exchange in lieu of payment shall require the written consent of Semperit.
8. If the Customer is in default of payment, Semperit shall be entitled to charge default interest at a rate of at least 12% p.a. If Semperit is entitled to a higher rate of interest due to statutory provisions or if higher interest has to be paid by Semperit due to higher borrowing costs, Semperit shall be entitled to

General Terms and Conditions of Sale of  
Semperit Technische Produkte Gesellschaft m.b.H.

charge such interest. In addition, the defaulting Customer shall bear any and all dunning charges, collection charges, investigation and information charges incurred in connection with collection of the accounts receivable outstanding.

## **G. Warranty**

1. Semperit will remedy any defects in production or material that occur in products of Semperit or deviations from the relevant standards at its option by means of repair or substitute delivery. Notices of defects due to patent defects and quantity variances can only be taken into account if they are recorded immediately upon receipt of the goods on the shipping document directly at the carrier and claimed vis-à-vis Semperit by no later than three working days of such receipt.
2. In the case of deliveries of class 2 goods or low-quality goods the right to complain on grounds of optical defects and other impairments of quality shall always be expressly excluded.
3. If the items are to be in conformity with earlier deliveries, deviations will be avoided to the extent technically possible. In the case of substantial deviations Semperit shall at its option either provide substitute delivery or rescind the contract.
4. Before rejected goods are returned, Semperit's consent shall be obtained. The items shall be returned free of any charge to Semperit.
5. Special warranty conditions shall apply to the following items:
  - a) rubber lining for funicular railway reels
  - b) conveyor belts

To the extent the special warranty conditions deviate from the general warranty conditions they shall replace the same; for the rest they shall supplement the general warranty conditions.

## **H. Liability**

1. Semperit will be liable for damage caused by its own fault or by the fault of its agents but not in cases of ordinary negligence. To the extent permitted by law no liability shall be assumed in cases of gross negligence either for lost profit due to delayed or defective delivery, for disadvantages due to business interruptions caused thereby, for transportation costs incurred in connection with replacing the defective goods with non-defective goods, for costs of dismantling or installation, if any, for damage to items that are in the custody of Semperit for processing resulting from a violation of custody or occurring during processing, or for claims asserted vis-à-vis the Customer by customers of his.

Semperit will take out an insurance against those kind of disadvantages at the Customer's request and at his cost.
2. Semperit will be liable for personal injury according to the Austrian Product Liability Act [Produkthaftungsgesetz] as amended. Liability for damage to property will only be accepted by Semperit if suffered by a consumer and is otherwise excluded. In the case of resale of products purchased from Semperit, the purchaser shall be obliged to pass on the above exclusion of liability regarding damage to property in the commercial area to each further purchaser.
3. If items are produced or distributed on the basis of drawings, specimens or other documents or instructions of the Customer and rights of third parties are infringed thereby (in particular industrial property rights of third parties), the Customer shall indemnify and hold Semperit harmless.

## **I. Miscellaneous**

1. Unless mandatory statutory regulations to the contrary exist, warranty claims shall be asserted in court within two years and claims for damages within three years after delivery. Claims which are asserted thereafter or exceed the scope determined in these GTC shall be excluded.
2. Semperit and all of its affiliated companies will be entitled to offset claims against accounts receivable, whether already due or not, including future accounts receivable to which Semperit is entitled vis-à-vis

General Terms and Conditions of Sale of  
Semperit Technische Produkte Gesellschaft m.b.H.

the Customer or to which the Customer is entitled vis-à-vis Semperit. (If necessary, the Customer will be informed about the status of such shareholdings upon request).

3. If any provision of these GTC or any contractual agreement between Semperit and the Customer is held by any court or other competent authority to be void, illegal or unenforceable in whole or part, the other provisions of these GTC or the affected Agreement as well as the remainder of the affected provisions shall continue to be valid, in force and binding. The void, illegal or unenforceable provision shall be automatically deemed replaced by such valid, legal and enforceable provision that comes closest to the business purpose of the replaced provision.
4. If after conclusion of the contract Semperit learns that the financial situation of the Customer has developed unfavourably or that insolvency proceedings have been initiated or have not been initiated for lack of assets or that proper fulfilment of the contract is not secured, Semperit may demand advance payment or collateral security equal to the value of the delivery. If the Customer fails to fulfil this request, Semperit shall be entitled to rescind the contract with immediate effect.
5. For all legal disputes arising out of or in connection with the business relationship between Semperit and the Customer (in particular in connection with supply agreements) the court having jurisdiction over the subject-matter and over 1010 Vienna, Austria, shall be the exclusive place of jurisdiction. Semperit shall, however, at its option be entitled to sue the Customer also before the court having jurisdiction over (i) the place of the Customer's registered office or (ii) the location of any goods which may be the subject of dispute.
6. Unless mandatory statutory regulations to the contrary exist, the entire business relationship between Semperit and the Customer (in particular the supply agreements concluded) shall exclusively be subject to Austrian substantive law. Applicability of UN Sales Law (United Nations Convention on Contracts for the International Sale of Goods) and similar international agreements is hereby excluded.
7. Interpretation:
  - All references to 'we', 'us' 'our' and / or Semperit and / or the purchaser are references to Semperit Technische Produkte Gesellschaft m.b.H.
  - All references to agreement by Semperit shall entail agreement in writing signed by an authorised signatory of Semperit