



The present General Terms of Delivery have primarily been drafted for legal transactions between companies. If, in exceptional cases, they are used as a basis for legal transactions with consumers, as defined in the Consumer Protection Act, they shall only apply to the extent that they do not conflict with the provisions of this Consumer Protection Act.

It is mutually agreed that the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

## I. General:

1. These Terms of Delivery are an integral part of every offer and of every agreement. Unless the contracting parties have expressly agreed otherwise in writing, the present Terms of Delivery shall apply.
2. Steyr Motors GmbH, hereinafter called SMO, does not incur any legal obligation except by returning the duly signed order confirmation or by signing the agreement.

## II. Prices:

Unless otherwise agreed, all prices shall be ex works of SMO, without packaging and transport. The criterion for meeting the payment obligations on the part of the purchaser is the value of the delivery in EURO on the day of invoicing.

Price increases on cause of increased cost between order date and delivery date will be charged.

## III. Terms of payment:

1. Payment for goods shall, without exception, be made either in the form of a confirmed, irrevocable letter of credit in favour of SMO, which is to be opened in due time prior to the scheduled dispatch of the goods with a first-class banking institution approved by SMO, or else in the form of an advance payment.

The purchaser's payment obligation is deemed to have been met as soon as the amount is unconditionally credited to the account of STEYR MOTORS GmbH at the Oberbank Steyr.

2. Any terms of payment that differ from those mentioned in Article 1 shall, without exception, require a separate agreement in writing.
3. In case of default in meeting payment obligations or in the event of default in taking delivery, SMO (Supplier) shall be entitled to charge interest for default at a respective – in Austria valid – prime rate + 2 % p.a.  
Any delay of payments as well the violation of any other term of the agreement is tantamount to default and entitles the FACTORY to declare all outstanding debts due for immediate payment as well as to withdraw from the contract. The FACTORY is entitled to call in for premature payment all active debts if there is reasonable doubt as to the creditworthiness and solvency of the purchaser.
4. In all events, buyer shall refund to Seller the dunning charges and collection costs which constitute a further damage caused by the delayed payment.
5. The purchaser shall only be entitled to set off counterclaims if these have been expressly accepted by SMO and if the FACTORY has agreed to such setoff on writing.
6. All products delivered remain the property of SMO (reservation of ownership) until all obligations of the purchaser arising from his business connection with SMO have been fully met. If a third party should attempt to seize such goods that have been delivered with reservation of title, the purchaser must expressly point out the reservation of ownership by SMO and inform the latter right away of any such encroachment upon its right by means of a registered letter. All costs arising from any such distraint of goods delivered with reservation of title or from a vacation of lien are to be borne by the purchaser.

SMO agrees to the resale of the retained goods. The purchaser however, assigns simultaneously with the resale of the retained goods, his claims arising there from in order to secure the rights of the FACTORY up to its extent to the FACTORY. The purchaser is

obliged to collect all debts until withdrawal by the FACTORY. In the event of insolvency of the purchaser the latter is under obligation to hand over all of his records to the FACTORY for the purpose of the direct collection of his claims. The FACTORY is entitled to recover its claims including all costs arising in this connection from the proceeds.

The goods delivered with reservation of title must be carefully stored at his own cost by the purchaser, who is also responsible for insuring them and maintaining them in perfect condition.

## IV. Delivery:

1. Delivery dates are without obligation.
2. In the absence of any other agreement, the period of delivery shall begin at the latest of the following dates: a) the date of the order confirmation; b) the date on which Buyer has complied with all technical, commercial and financial preconditions for which Buyer is responsible under the contract; c) the date on which SMO has received a payment on account that is due prior to the delivery of the goods, and/or a payment guarantee has been issued or otherwise provided.
3. In the event of an agreed change in the order, SMO is entitled to set a new date for delivery.
4. SMO reserves the right to make changes as regards design, color, shape and materials, provided that this causes no fundamental change to the product delivered.
5. Any data listed in the descriptive literature with regard to performance, weights, consumption figures, speeds etc., are to be understood as approximate values only.
6. The purchaser is not entitled to claim compensation for nonperformance or delay, unless these have been caused by SMO willfully or through gross negligence.
7. In case of delays in delivery as a result of circumstances outside the control of SMO, the delivery period is extended accordingly without entitling the purchaser to any claims resulting there from. The FACTORY will inform the purchaser of the occurrence of any such circumstances.
8. SMO reserves the right to withdraw from the order if, after confirmation of the order and prior to delivery, it should become aware of circumstances in the purchaser's economic position as a result of which the claim of the FACTORY does not appear to be sufficiently secured.
9. All deliveries to the purchaser are without exception, made on the lines and in accordance with the provisions of INCOTERMS (International Rules for the Interpretation of Trade Terms).
10. SMO shall have the right to make partial deliveries.

## V. Terms of Fulfillment and Acceptance:

1. On performance of delivery, all risks, including those of accidental destruction, pass to the purchaser, who must arrange for insurance protection at his own expense. SMO will only provide insurance protection if this has been expressly agreed upon.
2. If the purchaser fails to avail himself of his right of inspection, purchased goods are considered as properly delivered and accepted at the time of shipment ex works.
3. If the purchaser, on having been informed of the ready availability of the goods, delays to take over the purchased goods or to supply delivery instructions, or if he is in default as regards making the payments or providing the security agreed upon, the FACTORY, after granting a six weeks' extension of time, is entitled to claim at its own option either compensation for damages suffered or profit lost, or else, in the case of non-acceptance, to demand a penalty sum for non-fulfillment of contract amounting to 20 % of the agreed purchase price.

**VI. Warranty**

1. Subject to the below provisions, SMO shall undertake to remedy any defect affecting the fitness for use which is due to a deficiency in design, material or workmanship. SMO shall also be responsible for any defects concerning expressly properties.
2. The above obligation shall only apply to such defects that appear within a period of one year from delivery date.
3. Buyer may claim the present article only if he informs SMO in writing and without delay of any defects that have appeared. The arrangements on presumption according to § 924 of the Austrian General Civil Law Code are excluded. Once seller has been informed of defects in this way, seller shall – if the defects must be remedied according to the provisions of the present article – at Seller's choice: a) rework the defective goods on site; b) have the defective goods or the defective parts shipped back for reworking; c) replace the defective parts; d) replace the defective goods.
4. If SMO arranges for the defective goods or parts to be returned to SMO for the purpose of reworking or replacement, buyer shall bear the costs and the risk of transport, unless otherwise agreed. The re-shipment of the reworked or replaced goods or parts to buyer shall be at SMO costs and risk unless otherwise agreed.
5. The defective goods or parts, which are replaced according to the present article, shall be at SMO's disposal.
6. SMO shall only refund any costs for remedying a defect, undertaken by buyer himself if SMO has agreed to this procedure in writing.
7. Seller's warranty obligation shall only apply to defects that appear when observing the applicable operating conditions and puffing the item to normal use. His obligation shall, in particular, not apply to defects that are due to inadequate maintenance, inadequate repairs or modifications undertaken by other persons than Seller or Seller's representative without the written agreement of Seller, normal wear.
8. SMO shall be liable for those parts of the goods that Seller obtained from subcontractors prescribed by buyer only to the extent of SMO's own warranty claims vis-à-vis the sub-contractor.
9. If SMO produces items on the basis of Buyer's design data, drawings or models, SMO's liability shall not extend to the accuracy of the design but as to whether the workmanship complies with buyer's instructions. In such cases, buyer shall keep SMO harmless and free from any court action in the event of an infringement of proprietary rights.

**VII. Liability**

1. Compensation for direct or indirect damage is not guaranteed.
2. The liability for compensation for damages resulting from the Product Liability Act. BGBL (99/1 988) as well as product liability claims which are deduced from other regulations are excluded.
3. It is expressly agreed that SMO shall not be liable to buyer for damages in the event of personal injuries, or for damage to goods that are not the subject of a specific contract, as well as for other damage and loss of profit, unless the circumstances of a specific case reveal that SMO acted with gross negligence. The reversal of the burden of proof according to § 1298 of the Austrian General Civil Law Code is excluded.
4. The purchased object provides only that level of safety that may be expected on the basis of the registration provisions, the operating instructions, Seller's Rules on the handling of the purchased object – especially with regard to any possible inspections – and other instructions given.
5. For cases of minor negligence the damages are limited to 5 % of the order value or EUR 50.000,- as a maximum, unless article VII/1 applies.
6. All claims for damages due to defects in deliveries and/or performances must be filed in court within one year after the expiry of the contractually agreed warranty period if seller does not expressly accept the defect, otherwise all claims become extinct.

7. SMO's liability vis-a-vis buyer shall be precluded for any stillstand in production, loss of profit, loss of contract or any other economic or indirect consequential damage.

**VIII. Data protection**

1. SMO shall have the right to store, to communicate, to process and delete person-related data of buyer in the framework of their business relations.
2. The parties shall undertake to keep absolutely confidential vis-a-vis third parties any knowledge obtained in the course of their business relationship.

**IX. Acceptance of Costs:**

As a matter of principle the FACTORY will not accept any costs arising in the receiving country, irrespective of whether such costs are customs' duties or other imposts or dues of any sort whatsoever. This also applies to any costs that may arise in Austria due to statutory provisions in the receiving country (consular fees and the like). This rule applies to the delivery of complete items, advertising material, technical literature etc.

**X. Place of Jurisdiction, Applicable Law**

Place of jurisdiction is the competent court of law in Steyr.

The FACTORY reserves the right to file claims against the purchaser also at the latter's place of jurisdiction. The parties may agree that an arbitral tribunal has jurisdiction.

These Terms of Delivery and Sale shall be construed and governed by Austrian law.

Edition: July 2002