

Terms and Conditions

Delivery and Business Conditions

I. General

These delivery and business conditions apply exclusively and are an essential component of all present and future dealings between Austro Diesel GmbH (hereafter referred to as Austro Diesel) and the customer, even if they are no longer expressly agreed in subsequent dealings.

In particular, they form an integral part of the purchase order which appears overleaf. A customer's general business conditions shall not form part of the business content.

If the customer is a consumer in the sense of the Consumer Protection Law, the mandatory legal provisions of the Consumer Protection Law shall remain unaffected.

Austro Diesel has a legal obligation only once an order or other mandate has been accepted. All offers made by Austro Diesel are subject to change.

II. Prices

Prices are net prices from the domestic warehouse without packaging and shipping costs. Price increases caused by a change in our cost price, customs, freight costs and other charges, for instance due to an increase or introduction of taxes or because of indexation clauses, between order and delivery are at the expense of the customer. Austro Diesel is entitled to adapt its prices accordingly.

III. Payment conditions

Unless otherwise agreed, all invoices must be paid within 14 days strictly net. All payments must be made in cash, free of expenses and strictly net. Checks and bills of exchange shall only be accepted in particular cases and only as actual rather than conditional payment. Collection and discount charges shall be at the customer's expense.

If a payment deadline is exceeded or an acceptance delayed, Austro Diesel is entitled to charge interest on arrears of 8.0% above the respective base lending rate, but at least of 12% without limiting any further claims. Moreover, the customer is obliged in this case to pay all legal and extrajudicial costs such as reminder fees and, if necessary, costs incurred by Austro Diesel for lawyer services or those of a debt collection agency. If the customer withdraws from the contract, Austro Diesel is entitled to claim either damages incurred and profit lost or a 15% cancellation fee.

If the customer exceeds the payment deadline or an acceptance is delayed despite an 8-day period of grace, Austro Diesel (without affecting other rights) is entitled, to reclaim all goods in the customer's possession. This does not equate with a withdrawal from the contract. Austro Diesel may also fully or partially withdraw from the contract while maintaining its rights, in particular claims for damages due to a failure to fulfil obligations.

IV. Retention of title

All purchased objects remain the property of Austro Diesel until the customer has fulfilled all obligations arising from the business deal. The customer thereby agrees that all payments made by him shall be first used to settle repair costs, then spare-part claims, then interest and other supplementary fees, and only then for the goods covered by the retained ownership title, that is the capital.

The retention of title may be recorded on the manufacturer's model certificate (single-permit notice) and on the purchased object. Austro Diesel is entitled to withhold the manufacturer's model certificate (single-permit notice) until the customer has fulfilled all obligations arising from the purchase agreement.

Should a third party be given access to the goods covered by a retained ownership title, the customer must immediately inform Austro Diesel thereof by means of registered letter. All possible charges arising from Austro Diesel enforcing its rights against a third party shall be paid by the customer.

While the title to ownership is retained, the customer shall have the purchased object insured at its full value against all risks upon the request of Austro Diesel. The transferability of the insurance policies should be restricted in favour of Austro Diesel. Unless expressly agreed in written form, reselling, pledging and transferring ownership as security are prohibited.

While the title to ownership is retained, the customer is obliged to keep the purchased objects in an appropriate condition and, if necessary, to immediately have any repairs done at Austro Diesel's repair workshop – except for emergency cases – or at any other workshop approved by Austro Diesel.

The payment deadline shall be deemed to have been missed if there is a delayed payment or another contractual provision has been infringed.

Any offsetting of alleged counter-claims by the customer against Austro Diesel with open claims by Austro Diesel – for whichever type they may be – (in particular, purchase price instalments or other delivery and performance claims, but also from claims on the principle of benefit enjoyed in the case of a rescission of contract) is not admissible. Likewise, the customer is not entitled to withhold payments due to alleged warranty, compensation or other claims against Austro Diesel.

V. Delivery

Unless expressly agreed as fixed, delivery times are subject to change without notice and are only approximate delivery times. If one of Austro Diesel's suppliers misses an agreed deadline – for whichever reason –, Austro Diesel, for its part, is released from its obligation to keep an agreed delivery time. In this case any possible claims by the customer against Austro Diesel can only be validated insofar as such claims are accepted by the supplier vis-à-vis Austro Diesel.

The delivery period commences when a contract becomes effective, but never before an agreed down-payment or first instalment has been made.

In the case of an agreed modification of the order, Austro Diesel is entitled to re-schedule the delivery date.

Austro Diesel reserves the right to modifications in construction and form during the delivery period.

The details stated in the descriptions regarding performance, weight, operating costs, speed etc. should be regarded as approximate. Austro Diesel is not liable for the accuracy of such details.

Unless otherwise agreed, any scrap material left over from repair work shall become the property of Austro Diesel, without this requiring any separate agreement from or reimbursement to the customer. Notwithstanding this the customer is still obliged in any case to pay the costs for possible disposal.

Any claim for damages on the part of customer for non-fulfilment or delay is excluded.

The supplier/Austro Diesel reserves the right to withdraw from the contract if it becomes aware, after an order has been confirmed, of circumstances concerning the customer's economic situation, which make it appear likely that the settlement or securement of Austro Diesel's claims will be affected.

VI. Fulfilment and Collection Conditions

Austro Diesel has the right to withdraw from the contract within 14 days after an order has been accepted.

A delivery is deemed as completed:

For deliveries from the domestic warehouse:

if notice has been given that the goods are ready for shipment. Once he has been given notice that the goods are ready, the customer must examine and accept the purchased objects at an agreed place of collection.

For deliveries with an agreed shipment address:

Transfer to the first haulier.

If the customer expressly or tacitly waives an inspection in the warehouse, the purchased object shall be deemed to have been duly delivered, collected and approved when it leaves the domestic warehouse.

Once a delivery has been made, all risks shall pass to the customer. The customer shall arrange the necessary insurance coverage at his own expense. Insurance coverage shall be arranged by Austro Diesel only if this has been expressly agreed in detail. This shall also apply to vehicles left for repairs, from the time of their acceptance until the time of delivery. During this time Austro Diesel is also not liable for the accidental destruction of the object. Should Austro Diesel set a collection date which is not adhered to by the customer, a storage fee may be charged.

Shipments shall always be at the customer's cost and risk.

VII. Warranty and Liability

Insofar as a guarantee is given by the manufacturer that the sale or purchase item is free from errors according to the best technology available, any kind of guarantee on the part of Austro Diesel is excluded. Austro Diesel fulfils all of the customer's warranty claims insofar as these are accepted and absorbed by the supplier.

Should the manufacturer not issue a warranty, Austro Diesel shall issue a warranty in line with legal regulations. However, the warranty period for chattels is six months, whereby the customer must prove that the defect already existed at delivery. Upon delivery or at collection the customer must immediately examine the goods and, if need be, immediately provide Austro Diesel with detailed, written information regarding any defects discovered. Should the customer neglect to give due notice (even in the agreed from), the goods shall be deemed as approved unless it concerns a defect that was not transparent at the examination. Should such a defect show at a later stage, notification must be made immediately at its discovery; otherwise goods shall also be deemed as approved even in light of this defect.

Every warranty and guarantee claim is void if the customer does not follow the regulations relating to handling the purchased object (instruction manual) and, in particular, does not duly have mandatory checks (obligatory service) undertaken on a timely basis. The customer is obliged to substantiate both of these.

Even in the case of a legitimate claim, the customer legally waives the assertion of a reduction or (and) an annulment of or (and) indemnity for an indirect or (and) direct loss.

Normal wear and tear as well as damages caused by negligence or improper handling are excluded from the warranty and a possible guarantee.

The warranty or guarantee becomes void if the purchased item is modified or repaired by a third party or if non-proprietary parts have been built into it. The warranty or guarantee does not cover tyres, tubes, filters, lubricants, gaskets, electrical lighting systems or other equipment.

The making of warranty claims shall not release the customer from the contractually agreed payments. This also applies to service and invoices for parts. All warranty claims are void if the customer defaults on payment.

In cases in which no guarantee is issued, all types of claims for compensation are excluded. Moreover, Austro Diesel shall only be liable, insofar as permissible, in cases of intent or gross negligence.

VIII. Choice of Law, Court of Jurisdiction

Austrian law shall apply to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

The contractual language is German insofar as nothing else is agreed in an individual case.

The place of fulfilment and court of jurisdiction is in the Innere Stadt of Vienna (Viennese Municipality District).

IX. Data Processing, Data Protection

The customer acknowledges and affirms that Austro Diesel may use EDP equipment to support the processing of the customer's name, address and other data relevant to the business relationship. The customer agrees to this data being saved. Furthermore, the customer expressly consents that Austro Diesel is entitled to use personal customer data for marketing purposes and advertising, in particular related to the sending of information about products or goods by Austro Diesel. The customer may withdraw this consent at any time via e-mail at verkauf@austrodiesel.at.

X. Miscellaneous

Insofar as individual contractual provisions, for whichever reason, are not applied, this does not affect the validity of the other provisions of these Delivery and Business Conditions. If possible, an individual provision should be scaled back while still maintaining its validity or, if a provision has been agreed, it should be replaced by another provision which most closely corresponds to it.