

**Terms and Conditions
of Prochaska Handels GmbH
(company register no. 307146k)
May 2018**

1 General information

1.1 Only the terms and conditions (T&Cs) as stated below shall become part of the contract. Any deviations therefrom (for instance, in the form of terms and conditions of purchase) shall be applicable only if explicitly agreed between the contracting parties in writing. The same shall apply as to the requirement of written form being subject to agreement.

1.2 The T&Cs shall apply without limitation to legal transactions between entrepreneurs or businesses within the meaning of section 1 of the Austrian Consumer Protection Act (*Konsumentenschutzgesetz*). Where legal transactions take place with consumers within the meaning of section 1 of the Austrian Consumer Protection Act, these T&Cs shall apply only insofar as they do not contradict provisions of this Act which cannot be derogated from.

2 Formation of contract

2.1 Offers by Prochaska Handels GmbH (hereinafter also “Prochaska”) in catalogues, brochures, circulars, advertisements, illustrations, and price lists, etc. shall be non-binding in terms of price, quantity, term of delivery and availability.

2.2 Amendments and additions to the contract shall likewise require written confirmation by Prochaska to be effective. The same shall apply as to the requirement of written form being subject to agreement.

3 Blueprints, plans, and documents

3.1 Information contained in catalogues, brochures, circulars, advertisements, illustrations, offers and price lists, etc. pertaining to elements such as weight, measurements, price, output, and the like shall not form part of the contract unless specifically referred to in the order confirmation.

3.2 Blueprints, plans, sketches, and other technical documents shall always remain the intellectual property of Prochaska, just as trademarks, designs, catalogues, brochures, illustrations, and the like. They must not be exploited, copied, distributed, published, or displayed without Prochaska’s prior explicit and written consent.

4 Prices and packaging

4.1 In the absence of any other (explicit and written) agreement, the prices as stated in Prochaska’s price list in effect at the time of delivery, in Euro and excluding statutory VAT as applicable at the place of sale at that time, shall apply.

4.2 Unless otherwise agreed upon, prices shall be ex store Prochaska, exclusive of packaging and loading. Where delivery including shipment has been agreed, prices shall be exclusive of unloading.

4.3 Where pricing is determined in another way (cf. 4.1), Prochaska shall have a general right to raise prices in the extent in which Prochaska’s costs (purchasing, freight, insurance, etc.) have increased between formation of contract and delivery of the goods or completion of the work at the agreed time of fulfilment.

4.4 Even if the purchase price was stated in a foreign currency, Prochaska reserves the right to increase or decrease its price in such a way that the amount owed will, at the time of agreed fulfilment, correspond to the euro value as calculated based on the amount in foreign currency owed at the time of formation of contract.

4.5 Where weight is the determining factor in calculating the price, weighing shall take place at the shipping point of Prochaska works.

4.6 In the absence of any other agreement, packaging shall be in accordance with standard commercial practice so as to avoid the goods being damaged en route towards the designated place of destination under normal conditions of transport. Packaging shall be at the expense of Prochaska and returns of packaging shall be accepted only upon separate agreement.

5 Payment, legal consequences of default in payment

5.1 Payment must be made in conformity with the agreed terms of payment.

5.2 Buyer shall not have the right to withhold payment because of claims under warranty or other counterclaims not yet recognised by Seller (no set-off).

5.3 Where Buyer is in default on any agreed payment or other delivery under the contract, Seller may either insist on contract fulfilment and charge default interest in the maximum statutory amount above the base interest rate from the due date, postpone fulfilment of Seller’s own obligation until the

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outstanding payment or other delivery has been effected, make the still outstanding purchase price due and payable in its entirety, or rescind the contract without granting any period of grace. Claims for damages on the part of Buyer (being an entrepreneur or a business) shall be excluded by mutual consent.

5.4 In all other cases, Prochaska reserves the right to assert claims for further loss or damage incurred on account of default or non-fulfilment.

5.5 Submission of bills of exchange shall require the prior consent of Prochaska and shall only be accepted in lieu of payment; discount charges, charges and taxes on bills of exchange and similar charges shall be borne exclusively by Buyer.

5.6 Where Prochaska has justified doubts as to Buyer's solvency or creditworthiness, Prochaska may, even if advance performance of contract had been agreed upon, opt to make continued fulfilment contingent on security being provided as Prochaska deems suitable, including advance payment (cf. section 1052, 2nd sentence, Austrian Civil Code (*Allgemeines Bürgerliches Gesetzbuch*)).

5.7 Payments shall not be deemed effected until the amount in question has become available, with final effect, for use on one of Seller's accounts.

5.8 Prochaska shall have the right to apply payments to settle the oldest items invoiced plus any default interest having accrued on them, in the order stated below: default interest, interest, main receivable.

5.9 Withholding and setoff of receivables due to Prochaska and assignment of receivables due from Seller shall be excluded.

5.10 The above provisions shall not affect the rights of consumers under section 932 of the Austrian Civil Code as amended (Federal Law Gazette I 48/2001).

6 Delivery, shipment, obstacles to contract formation, force majeure

6.1 Prochaska shall strive to deliver as promptly as possible. There shall be no fixed delivery terms, and obligations shall be agreed to be fulfilled at obligee's place of business (*Holschuld*).

6.2 The place of performance for deliveries shall be the respective shipping point, the place of payment shall be Vienna.

6.3 Purchase orders shall generally be dispatched CPT named place of destination. Purchase orders in an amount of less than EUR 500 (excl. VAT) to be fulfilled within Austria or in an amount of less than EUR 1,500 (excl. VAT) to be fulfilled in Germany shall be subject to a transfer charge as set out in the price list. In addition, we shall charge EUR 9.50 (excl. VAT) as packaging and handling fee in cases where the value of the goods does not exceed EUR 40 (excl. VAT).

6.4 Where, in contrast to the above, a fixed delivery term has been agreed upon, and any of the reasons given below apply, Buyer shall, upon Prochaska having notified Buyer thereof without delay, grant a reasonable extension of the delivery term, at any rate of not less than three weeks, or a reasonable grace period, at any rate of not less than four weeks.

6.5 Reasons for such exemptions shall include any and all circumstances occurring after the formation of contract which are beyond Prochaska's control, as well as any kind of force majeure; disruptions in operations or transport; loss or damage due to fire; flooding; lack of labour, power, raw and auxiliary materials; strikes, lockouts; disruptions in shipping; government orders, or other obstacles that prevent, delay, reduce, or make unacceptable, production, shipping, acceptance or consumption, all of which shall relieve Prochaska from the obligation to deliver for as long as, and to the extent in which, such disruption occurs. If, due to any of the aforementioned disruptions, the contract is not fulfilled within eight weeks of formation of contract or any agreed upon delivery date, both parties shall have the right to rescind the contract. Should any of Prochaska's suppliers cease their supplies in whole or in part, Prochaska shall be under no obligation to source items from other suppliers. In such an event, Seller shall have the right to allocate available stocks with due consideration of its own requirements.

6.6 Where Buyer rescinds the contract because the period of grace having been granted has lapsed without the desired result, Buyer must return to Prochaska any items already delivered to it.

6.7 Where Buyer fails to collect the goods made available in accordance with the terms of contract at the designated or contractually agreed time, Prochaska shall have the right to demand payment or rescind the contract while granting a reasonable period of grace.

6.8 In both cases, Buyer shall be under the obligation to compensate Prochaska for any and all costs and expenses (such as for storage, freight, etc.) incurred because of Buyer's default in taking delivery.

6.9 Without exception, returns of machinery, accessories and spare parts shall be subject to prior written approval by Prochaska's management. Prochaska may refuse to accept returned items ex-post facto if signs of damage, dirt, usage, or other degradation are detected on such items after their having been shipped to Prochaska. Only items in undamaged original packaging shall be eligible for being

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returned. Provided the item was shipped without original packaging by Prochaska, it must at any rate be returned in mint condition.

6.10 Where, in the case of items returned because of a wrong purchase order placed by customer and in the case of returns approved by Prochaska which were due to reasons not attributable to Prochaska, the respective items are returned in the original packaging along with the delivery note number and purchase order number, credit notes shall be issued subject to deduction of a processing fee of 15% (or as set out in the current price list). If such items are returned without delivery note number and purchase order number and without original packaging, a higher deduction of 20% (or as set out in the current price list) shall be made from the credit note.

7 Passing of risk

7.1 Where obligations are to be fulfilled at obligee's place of business, the risk shall pass from Seller to Buyer at the agreed time of handover (cf. 6.1).

7.2 However, if distance selling has been agreed, the risk shall pass from Prochaska to Buyer at the time the first carrier accepts delivery of the means of transport on which the items are loaded.

7.2 Prochaska shall not be under the obligation to take out transport insurance unless and insofar as this has been agreed upon in writing.

8 Retention of title

8.1 Until Buyer has made full payment (purchase price, interest, default interest, loss or damage caused by default), Seller retains title to the object of purchase. Buyer shall comply with all form requirements necessary to safeguard such retention of title. Where such items are seized or otherwise claimed by a third party, Buyer shall see to it that Seller's title to the items is asserted and shall notify Seller thereof without delay.

8.2 Where Buyer is in default of payment, Buyer must surrender items subject to retention of title without delay upon Seller's first request. A request by Prochaska to surrender items subject to retention of title must not be construed to be a rescission of contract. Rescission of contract shall require an explicit written statement to that effect on the part of Prochaska.

8.3 If Prochaska rescinds the contract, it can claim both appropriate compensation for the time the items were made available to Buyer for use, as well as damages for any loss or damage incurred because of the Buyer being in default.

8.4 Buyer shall refrain from making legal arrangements (including without limitation, pledging or transfer by way of security, etc.) for items subject to retention of title other than those for which Buyer is explicitly authorised. Where Buyer processes the items in conformity with the contract (mixing, combining), Prochaska shall become co-owner of the products created therefrom at a ratio reflecting the invoice value of the items subject to retention of title as compared to the invoice value of the items owned by third parties or Buyer.

8.5 With respect to items delivered by Prochaska subject to retention of title but not yet paid for, or products created therefrom owned or co-owned by Prochaska, which are, subject to Prochaska's explicit written consent, sold within the scope of Buyer's regular business operations and delivered to their respective buyers, the purchase price receivables arising from such resale shall be assigned to Prochaska to cover Prochaska's as yet outstanding purchase price receivable, in other words in lieu of payment. The retention of title shall not lapse until the purchase price payment has been received by Prochaska. Buyer must notify their customers of the continued retention of title by Prochaska so as to prevent such customers from acquiring these items in good faith. Buyer must notify the customers without delay of the respective receivables having been assigned.

9 Warranty

9.1 Buyer acknowledges the information provided, in particular in product descriptions and operating instructions, about features and usage, non-compliance with which shall relieve Prochaska from any obligations under warranty.

9.2 Used machinery: Buyer has been sufficiently informed that individual parts of the machinery have been subject to wear and tear and must therefore be replaced still within the statutory warranty period.

9.3 Goods rejected because of defects may be returned only with Prochaska's explicit consent.

9.4 Prochaska shall bear the costs of any elimination of defects carried out by Buyer themselves only given Prochaska's prior written consent.

9.5 In B2C transactions, the statutory provisions on warranty shall apply without limitation.

9.6 Where Buyers are entrepreneurs or businesses within the meaning of section 1 of the Austrian Consumer Protection Act, the following applies:

9.7 Where a defect is found, Prochaska (Transferor) must, at its discretion, either improve (repair or supplement what is lacking) or replace the item or appropriately reduce the consideration or rescind

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the contract. In the event that Transferor fails to exercise its discretion within a period of four weeks (for instance by making a statement to that effect or by actually carrying out one of the above-mentioned options), Transferee shall then have the right to choose an option under section 932 of the Austrian Civil Code.

9.8 Warranty shall cover only those defects that were already present in the item at the time of transfer to Transferee.

9.9 The warranty period is six months for movables and 12 months for immovables. The period starts upon the day the items are delivered into the sphere of Buyer.

9.10 The parties mutually agree on excluding any right to warranty for used machinery.

9.11 To assert claims under warranty, Buyer shall, without delay, but in any case not later than within 14 days of delivery of the items in question into Buyer's sphere, notify the item or work as being defective, specifying such defect(s) in detail and submitting documents, samples, packing slips and indicating the invoice number and the markings on the packaging.

9.12 Where defects are hidden, a written notification must be submitted without delay after the defect has been found, but in any case not later than within five months of delivery into Buyer's sphere. The burden of proof of such defect being a hidden defect shall be on Buyer.

10 Product liability and damages

10.1 Seller shall be liable for personal injury and property damage subject to the provisions of the Austrian Product Liability Act (*Produkthaftungsgesetz*, Federal Law Gazette 99/1988) as amended and in accordance with the general statutory rules regarding damages subject to the following provisions:

10.2 Other than in accordance with the provisions of the Product Liability Act which provide for liability on the part of Transferor regardless of fault, Prochaska shall be liable for damages to Buyer only in cases where Buyer proves Prochaska acted with gross negligence or wilful intent.

10.3 Transferee must read, without undue delay, and also apply, operating instructions and the like, failing which any and all claims for damages shall become forfeited. Where this obligation is not complied with and loss or damage ensues because of it, Transferor shall be free from liability.

10.4 Claims for damages by Transferee, claims for compensation on account of consequential loss or damage or on account of a violation of ancillary contractual obligations by Transferor shall be excluded in cases of slight negligence on the part of Transferor and Transferor's vicarious agents, with claims for compensation being limited to the amount of the respective invoice.

10.5 Where Transferee intends to assert claims for damages against Transferor, such claims must be notified to Seller, specifying in detail the facts underpinning the claim, within three weeks from the time these facts become known, or without delay if the courts are seized for such purposes. If Transferee fails to do so, any claim for damages shall become forfeited. The period of time for asserting a claim for recourse shall be six months from the timely notification of Transferor.

10.6 Liability for property loss or damage caused by a defective product shall be excluded. Buyer must impose such exclusion of liability on Buyer's customers as well as obligate the same to impose the exclusion of liability further, in their turn, up to the end consumer.

10.7 The aforementioned provisions and limitations in clauses 10.5. et seqq. shall apply only to buyers that are entrepreneurs or businesses within the meaning of the Austrian Consumer Protection Act. Claims for damages on account of one or more defects caused by Seller shall, also in conformity with the relevant administrative provisions, be admissible only if other legal remedies as set out in Section III. of these T&Cs or in section 932 of the Austrian Civil Code have failed.

11 Application consulting

Application, usage, and processing of items purchased falls exclusively within Buyer's sphere of responsibility. Any application consulting provided by Prochaska verbally, in writing and through trials shall be deemed merely a non-binding indication, also with respect to any third-party intellectual property rights, and shall not relieve Buyer of the duty to carry out their own reviews as to the products' suitability for the intended use and purposes. Application, usage, and processing of such products is outside Prochaska's sphere of control and therefore falls exclusively within Buyer's sphere of responsibility.

12 Data privacy

We would like to refer to the data privacy statement available on the website www.prochaska.eu.

13 Venue and applicable law

Insofar as no other provisions that cannot be derogated from apply for consumers, the following shall be deemed agreed:

13.1 The venue for all disputes arising, directly or indirectly, from this contract shall be the court in Vienna having subject-matter jurisdiction.

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13.2 However, Prochaska may elect to bring proceedings before a different court that has jurisdiction for Buyer.

13.3 All claims between Prochaska and Buyer, whether already existing or arising in the future and regardless of being contractual or non-contractual in nature, shall be governed by Austrian substantive law, expressly excluding application of the UN Convention on Contracts for the International Sale of Goods.

14 Miscellaneous

Should individual clauses of these Terms and Conditions be invalid in whole or in part, this shall not affect the effectiveness of the other clauses or parts of these Terms and Conditions. Any ineffective provision shall be deemed replaced by such a provision as is effective and comes closest to the economic purpose of the ineffective provision.