

1. Scope

All offers, deliveries and/or services of Forster Profilsysteme GmbH (hereinafter referred to as Forster) are made - without prejudice to deviating written agreements in individual cases - exclusively on the basis of these General Sales and Delivery Conditions (hereinafter AVLB) in the respectively valid version. The AVLB also apply to all of Forster's future offers, deliveries and/or services, even if this is no longer agreed separately in individual cases. In any case, buyer submits to these AVLB upon acceptance of our delivery and/or service.

The terms and conditions of the customer or purchaser (hereinafter referred to as AG) that conflict with these AVLB are hereby expressly excluded, also for the future.

Deviations from these AVLB require in every single case the explicit, prior written approval by Forster.

2. Offers and order confirmation

The basis for the deliveries and/or services to be provided by Forster is the order placed by AG as well as the documents and information provided by him. Forster is not obliged to check the documents and information provided by AG for any ambiguity, incompleteness or whether they are suitable for the intended use.

An order is only concluded with the written order confirmation from Forster or by effecting the delivery and/or service; silence alone is not considered acceptance of an order. AG is obliged to check the order confirmation without delay. If the order confirmation deviates from the order, it shall be deemed to have been approved by AG unless he notifies to the contrary in writing within 3 days.

Forster is not obliged to acknowledge the cancellation of confirmed orders or to take back already delivered goods. Should Forster recognise a cancellation in an individual case, AG is obliged to pay Forster a negligence and from the occurrence of a damage independent penalty in the sum of 20% of the order amount affected by the cancellation. The right to compensation for damages exceeding the contractual penalty remains reserved for Forster. Forster's employees, field staff and/or sales representatives are not entitled to make any kind of commitments.

3. Changes / Deviations / Price increases

Forster reserves the right, even after the order has been confirmed, to increase the price of its list price to the status on the delivery day in case of considerable increase in material, raw material or supplier prices; increase in personnel costs due to mandatory legal or collective agreements; change of foreign exchange rates and regulations; increase of duties or increase of transport or delivery costs. Costs that are based on a subsequent change or adjustment of the order are borne exclusively by AG.

AG expressly agrees with deviations (tolerances) of the delivery quantity, in particular with regard to weight, length, quantity, etc., up to plus/minus 10% of the delivery quantity according to the order. Furthermore, for custom-made products, the tolerances of the supplier are binding.

4. Delivery / Delivery dates

Delivery times and delivery dates are always to be estimated, even if this is not expressly mentioned. The observance of the delivery periods and dates requires the fulfillment of all AG's contractual obligations from the current business relationship. AG delays with the transmission of data, information and documents necessary for order execution entitle Forster to extend the delivery deadlines and dates accordingly.

Any production and delivery obstacles for which Forster is not responsible, such as force majeure, strikes, breakdowns, subcontracting problems, shortening and loss of working hours, transport difficulties and official intervention result in a reasonable extension of delivery times and dates. In this case, AG is obliged to grant a reasonable period of grace, but at least eight weeks.

In the event of a delivery delay for which Forster is responsible, AG may only in regard to goods affected by this delay under exclusion of further claims either demand fulfillment or by expressly setting in writing a reasonable grace period of at least 8 weeks declare its withdrawal from the contract.

In the case of successive delivery contracts, the right of withdrawal exists only with regard to each individual delivery. In the case of custom-made products, the period of grace must always be determined in accordance with the special nature of the production. Forster is also entitled to make partial deliveries.

Forster reserves the right to determine the transport mode, which in any case unloaded. In the case of dispatch, in whatever way, it occurs ex works Forster Wiener Neudorf and always at AG's expense and risk; with dispatch ex works Forster Wiener Neudorf the risk is transferred to AG even if delivery "free house" or "free" was agreed. Forster is entitled - even without AG's express order - but not obliged, to take out insurance against transport damage of all kinds at AG's expense. If AG wishes packaging or if this is deemed necessary by Forster or its supplier, it will be invoiced according to Forster's valid price list. AG is obliged to return packaging material to Forster at its own expense and risk.

If insolvency proceedings are initiated against AG, bankruptcy over AG's assets is not inaugurated due to insufficient assets, an execution proceeding is instituted against AG, AG's assets decline, there is not completely unobjectionable credit information about AG or AG is in default of payment to Forster, Forster is entitled to demand the immediate payment of all, even not yet due, amounts. Furthermore, Forster is entitled in each of these cases to make further deliveries confirmed by Forster dependent on prepayment or seizure, even if such has not been agreed. Goods ordered "on call" or "on pickup" or the like shall be stored at at Forster at AG's expense and risk or, at Forster's option, at a third party from the date of the agreed on-call or pick-up date. For even objective default of AG's acceptance, Forster is entitled after prior notice to use the goods freehand, in particular to sell them to third parties.

5. Prices / Payment

Prices are ex warehouse Forster in Wiener Neudorf or ex delivery works, respectively without packaging.

Bills of exchange and checks are accepted only on the basis of express agreement, without obligation to submit and protest, and only on account of payment. Acceptance takes place with value date of the day on which Forster can have the equivalent value. AG shall bear discount charges and all costs associated with the redemption of the bill or check.

Incoming payments are credited first to costs and expenses, then to interest and finally to the capital; Forster is entitled to credit incoming payments to the oldest open items. In the case of merely objective default of payment, AG shall be liable for default interest, unless higher default interest is payable under statutory provisions, pursuant to § 352 UGB, but at least 1.25% per month. Any discounts, reductions or other benefits shall be deemed not granted in the event of late payment or in the event insolvency proceedings are initiated against AG. In the case of even merely objective default, AG undertakes to pay the appropriate dunning and collection charges for obtaining the claim.

AG shall also be jointly and severally liable for any claims by Forster if, at its request, the invoice is issued directly to a third customer or delivered to a third party and/or rendered.

6. Retention of title

Forster expressly reserves the right of ownership until full payment of the goods delivered under retention of title. In case of payment default, Forster is entitled to reclaim the reserved goods; return of the reserved goods does not constitute a withdrawal from the contract. Forster will otherwise sell the retained goods on the free market and credit AG with the proceeds received less any expenses associated with the redemption and other disposal. Seizure of the reserved goods at Forster's instigation shall not be regarded as a waiver of the retention of title. In the case AG disposes or resells the reserved goods, all of AG's claims against third parties resulting from the sale or other disposition shall be assigned to Forster up to the amount of the outstanding claims. AG is obliged to provide comprehensive information and accounting regarding the buyer, purchase price, delivery date, location of the goods, etc. as well as to disclose the assignment. In case of collection by AG, it is obliged to the separate safekeeping of the proceeds.

In the event of action by third parties against the reserved goods, including confiscation, seizures and the like, AG shall point out Forster's ownership rights and inform Forster immediately in writing. AG will hold Forster completely safe and harmless for all expenses incurred in order to prevent any action against the reserved goods.

Forster is entitled after previous announcement to withdraw from the contract and to collect the reserved goods if AG is merely objectively in default of fulfilling its obligations or if circumstances arise which justify a threat to Forster's claims, in particular those described in Section IV. in the AVL B.

7. Warranty

Forster makes no warranty for a particular usability of the goods without express written consent. Forster only warrants for material defects if replacement can be obtained from the supplier and if Forster demonstrably could have recognised the defect with due diligence.

In the event of other claims due to imperfections, AG is obliged to inspect Forster's (partial) deliveries immediately and in detail with regard to suitability for the intended use and report any defects in writing without undue delay. AG is not entitled to withhold payments due to insignificant defects or to withhold payments due to a part of the goods because another part of the goods has significant defects. In the event of insufficient, delayed or ineffective notification of defects, the goods are deemed to have been approved and AG is not entitled to any warranty, error or compensation claims.

Any claims for warranty are suspended as long as AG is in default of payment; however, this inhibition does not prevent the beginning, course and expiry of the warranty. AG has the burden of proving that a defect is present at the time of delivery. AG is obligated to note such defects in writing on the delivery note (delivery note, rail voucher, postal bill, etc.) and to assist Forster in determining and rectifying the defect and to allow all necessary measures (such as access, document inspection, etc.). If AG fails to remedy its obligation to cooperate in spite of a written reminder by Forster, the assertion of any claims resulting from a defective performance is excluded. In the case of timely and justified notice of defects, the defects shall be remedied within a reasonable period of at least 8 weeks at Forster's discretion, either by improvement or by replacement, to the exclusion of further claims. AG will send defective goods at its own expense free of freight and packaging to Forster for the purpose of correcting the defects. For minor defects, at its option Forster is also entitled, but not obliged, to refrain from any improvement or replacement and instead to grant a reasonable price reduction, in particular if replacement or improvement involves a disproportionate effort. In the case of minor as well as larger defects, at its option Forster is also entitled, but not obliged, to take back the goods against crediting the order value under exclusion of further claims. Improvement or replacement will not break the original warranty period.

Any claims for warranty are excluded if the goods have been used, modified, reworked, repaired or otherwise impaired by AG or a third party.

In the event of an improvement or exchange delay for which Forster is responsible, AG may only in regard to goods affected by this delay under exclusion of further claims either demand fulfillment or by expressly setting in writing a reasonable grace period of at least 8 weeks declare its withdrawal from the contract. The withdrawal is only legally effective if Forster negligently missed the express deadline. For insignificant defects there is no right of withdrawal. Claims for warranty lapse 6 months after the agreed delivery date or, if this should be earlier, after the actual delivery of the goods to the AG.

Any technical calculations, designs or tender documents produced by Forster as part of its customer service for AG shall be examined by AG in all respects for their correctness and completeness. Any liability or warranty by Forster is excluded..

8. Compensation

Forster's liability is basically limited to such property and financial losses that are demonstrably caused by Forster intentionally or at least through gross negligence. The amount of liability in any case is limited to the order or goods value. Replacement of damages for late delivery or improvement or replacement delay, defects, damages due to AG's resignation from the contract, further consequential damages, mere financial losses, lost profits and third party damages is excluded by Forster's slight negligence in any case. In any case, claims for damage compensation with other exclusion must be asserted in court for a maximum of one year from the date of delivery. Any liability asserted or incurred after this period is excluded. The foregoing exclusions and limitations of liability also apply to damages caused by persons for whom Forster is responsible.

In the case of production that Forster carries out on the basis of drawings or other information provided by AG, AG shall indemnify and hold Forster harmless in all respects, including interest and costs, for any encroachments on third party rights, in particular intellectual property rights.

9. Return of ordered goods

The return or exchange of already ordered goods is only possible with advance approval from Forster. AG shall bear all resulting costs and expenses. Return or exchange is not possible with regard to already processed or surface-coated goods.

Articles marked with 'on request' (PD) are made to order. Cancellation of the order or return of this item is excluded.

No return of goods where the delivery date is more than 12 months old (invoice date is decisive).

10. Compensation and assignment prohibition/refusal of service

Compensation with AG's counterclaims against Foster's claims is excluded. Assignment of any AG claims against Forster is inadmissible and legally ineffective. Retention and refusal of AG performance rights are excluded, as long as compelling legal provisions do not preclude.

Foster is entitled to retain all services and deliveries as long as AG has not fulfilled all obligations or liabilities from the business relationship with Forster.

11. Place of performance, jurisdiction and applicable law

For all claims arising from the contract, Vienna as the place of fulfillment and the exclusive jurisdiction of the relevant courts in Vienna are expressly agreed. However, Forster retains the right to sue AG at its (residential) headquarters.

Application of the substantive Austrian law is agreed for the contract and all claims arising out of or in connection with it. Applicability of the United Nations Convention on the International Sale of Goods is expressly excluded.

12. Written form

Forster's consent to make changes in the contract require Forster's written confirmation in each case in order to be legally binding. If the written form is provided as a condition of validity, transmission by fax also satisfies this requirement.

13. Deliveries

Deliveries from Forster to AG are made to the last address given by AG. AG is obliged to notify Forster of any address changes, otherwise deliveries to the last known address shall be deemed to have been received.

14. Severability clause

Nullity or invalidity of individual provisions in the AVLB and the contract does not affect the legal validity of the remaining provisions; in this case, those agreements are deemed to have been made which are legally valid and economically closest to Forster's original objective.

Forster Profilsysteme GmbH