

## Standard Terms and Conditions of Sale and Delivery of the Christof Group – as at July 2019

### 1. Scope of Application

- 1.1. The General Terms and Conditions of Sale listed below, which have been brought to the buyer's attention before the formation of the sale contract, are the exclusive terms and conditions applicable to quotations made and order confirmations issued by Christof Holding AG and its affiliates within the meaning of § 189a UGB (Austrian Commercial Code) (the **Christof Group** and each of them a **Seller**) for the sales of products, equipment and associated parts and/or services relating thereto (the **Products**). The term **Agreement** as used herein means collectively (a) the Seller's quotation, (b) the Buyer's purchase order expressly accepted by the Seller and (c) the Seller's order confirmation, together with any attachment hereto, any documents expressly incorporated by reference, and these General Terms and Conditions of Sale.
- 1.2. In addition to the present Terms and Conditions of Sale and Delivery, the mutually agreed assembly conditions shall apply to assembly work carried out by the relevant Christof Group company.
- 1.3. Conditions of the customer that deviate from the present Terms and Conditions of Sale and Delivery shall only become provisions of the contract if the relevant Christof Group company expressly agrees to these in writing within the context of each, individual business transaction. If no express agreement in writing is concluded, suppletive law shall apply in its place.
- 1.4. If any provision of these Terms and Conditions of Sale and Delivery is or shall become invalid and/or unenforceable, this shall not affect the validity of the remaining provisions. The invalid provisions shall, without further agreement, be replaced by valid and enforceable provisions that best correspond to the function of the invalid and/or unenforceable provisions and the intentions of the contracting parties.

### 2. Quotations

- 2.1. Quotations from the relevant Christof Group company shall be subject to change. Cost estimates shall be prepared by the relevant Christof Group company in good faith but no liability can be assumed for their correctness. No separate notification shall be required for unavoidable cost increases by an amount of less than 15%, and such costs can be invoiced without further ado. Changes of orders or additional orders as well as all costs attributable to the customer's sphere can be charged at a reasonable price.
- 2.2. Unless agreed otherwise, the preparation of quotations, plans, cost estimates and the like by the relevant Christof Group company shall be reimbursed by the customer.

### 3. Conclusion of Contracts

The contract shall be regarded as having been concluded when the relevant Christof Group company confirms the customer's purchase order in writing.

### 4. Terms of Delivery

- 4.1. Liability for the agreed delivery times shall be subject to the fulfilment of all the obligations incumbent on the customer, in particular timely provision of documents, clarification and approval of all plans and drawings as well as compliance with the agreed payment terms.
- 4.2. The customer shall be required to obtain regulatory and third-party authorisations necessary for the installation of equipment before the agreed delivery date.
- 4.3. The relevant Christof Group company shall be entitled to carry out preliminary and partial services and to submit partial invoices.
- 4.4. The involvement of subcontractors by the relevant Christof Group company shall always be permitted.
- 4.5. Where not expressly agreed as binding, delivery dates shall be non-binding and shall always be regarded as the probable date of delivery and handover to the customer.
- 4.6. If compliance with the delivery date is prevented due to unforeseen or unavoidable circumstances, in particular events of force majeure, occurring within the relevant Christof Group company or its subcontractor or for reasons that lie within the customer's sphere of responsibility, the delivery period shall be extended at least for the duration of these circumstances. Should additional costs arise due to the extension of the delivery date described above as a result of unforeseen or unavoidable circumstances, they shall be reimbursed to the relevant Christof Group company by the customer.
- 4.7. Delivery of goods for which the works of the relevant Christof Group company are agreed as being the place of performance must be called for immediately by the customer, otherwise after the elapse of 14 (fourteen) days from notification of readiness for dispatch the relevant Christof Group company shall be entitled to store the goods at the customer's expense and risk at the discretion of the relevant Christof Group company.

- 4.8. The delivery deadline shall be complied with if the goods are available within the agreed delivery deadline at the place of performance and readiness for dispatch is notified, or services at the place of performance have been performed.
- 4.9. Unless otherwise agreed, the customer shall assume responsibility for the costs of transportation and shall therefore be entitled and at liberty to choose the method of transportation and the route of transportation.
- 4.10. If the goods are not delivered on time, in the absence of any fault on the part of the relevant Christof Group company, the goods shall be deemed to be delivered when notice of readiness for dispatch is sent.

## **5. Place of Performance/ Transfer of Risk**

- 5.1. Unless agreements to the contrary have been concluded, the place of performance shall be the works of the relevant Christof Group company. If the services are provided at the customer's work premises or construction site, the place in question shall be the place of performance.
- 5.2. If the works of the relevant Christof Group company are the place of performance, risk shall transfer upon handover to the carrier or forwarder. If the place of performance is not the works of the relevant Christof Group company, risk shall transfer at the agreed place of performance unless expressly agreed otherwise in writing.

## **6. Dimension, Weights, Quality**

- 6.1. Deviations in dimension, weight and quality shall be permitted in accordance with generally applicable practice. If calculated weights are decisive, the usual allowance shall be calculated in relation to rolling tolerance, rivets, screws, welding stock and the like.
- 6.2. The weights shall be determined on public scales and shall be decisive for the calculation. Proof of weight shall be effected by means of the presentation of a weighing slip.

## **7. Acceptance**

- 7.1. The customer shall bear all the costs arising in connection with acceptance.
- 7.2. If services are not accepted within the agreed time limit, the transfer of risk shall pass to the customer upon notification by the relevant Christof Group company of readiness for acceptance.

## **8. Reservation of Title**

- 8.1. The ownership in the Products vests in the Supplier until all payments hereunder have been made in full. Therefore, Seller shall be entitled to repossess delivered Products in case payments are not made when due. Buyer acknowledges that Seller may file a financing statement or comparable document as required by applicable law and may take all other action it deems reasonably necessary to perfect and maintain such retention of title in Seller and to protect Seller's interest in the Products. If the customer is in payment default, it shall be required, upon request by the relevant Christof Group company, to immediately return goods already delivered.
- 8.2. If the item is taken abroad and if the reservation of title becomes invalid by virtue of provisions of property law, the customer shall be obliged to take all measures necessary to re-establish, maintain and enforce reservation of title.
- 8.3. The combining or mixing of the goods with other goods shall not be permitted until full payment of the agreed price plus interest and costs.
- 8.4. In case of seizure or other claim, the customer shall be obliged to disclose the relevant Christof Group company's reservation of title and to inform the relevant Christof Group company immediately of the name of the pursuing party, the amount of the claim, the court and the case number.
- 8.5. In order to secure the claims of the relevant Christof Group company, the customer hereby assigns to it its claims arising from the resale of the goods which are subject to reservation of title, even if they have been processed, transformed or mixed, and undertakes to make a corresponding entry in its books or invoices. In addition, the customer shall be obliged to notify the relevant Christof Group company of any abnormal depreciation in the value of the goods.
- 8.6. Neither Buyer nor any of its affiliates shall have any right to set off undisputed claims against Seller or any of its affiliates for amounts owed under this Agreement or otherwise, or to suspend payment of any invoice issued by the Seller on the basis of any disputed sums claimed by the Buyer.

## **9. Price and Payment Terms**

- 9.1. The price agreed between the parties shall be net and shall not include any costs, taxes or duties which may arise in the course of the service that were not foreseeable at the time that the contract was awarded. These must be reimbursed separately by the customer.

- 9.2. If there is a delay in the performance of one of the obligations of the relevant Christof Group company which is a precondition for a payment by the customer, the payment shall be made by the customer on the original date despite the delay. If the customer is in arrears with an agreed payment or other service resulting from this or other transactions, then the relevant Christof Group company, irrespective of its other rights, can withhold or defer its own performances until the overdue payments have been made, and shall be entitled to withdraw from the contract without setting a grace period, and shall be entitled to reimbursement for the expenses and costs that have arisen up until that time.

## **10. Withdrawal from the Contract**

- 10.1. The relevant Christof Group company shall be entitled at any time to withdraw, including in part, from the contract, with or without grace period, for the following reasons
- a change in the customer's ownership structure;
  - the assignment of claims against the relevant Christof Group company and the transfer of the collection of claims against the relevant Christof Group company to third parties;
  - violations of statutory regulations or the provisions of these General Terms and Conditions of Sale and Delivery by the customer.

This shall also apply if

- the customer has to the disadvantage of the relevant Christof Group company entered into agreements with other companies that contravene ethical standards or the principles of competition;
  - the customer has directly or indirectly promised or given benefits to employees of the relevant Christof Group company who are involved in the conclusion or performance of the contract, or has threatened or inflicted disadvantages on them;
  - the execution of the delivery or the commencement or continuation of services is, for reasons for which the customer is responsible, made impossible or further delayed despite a reasonable grace period;
  - concerns have arisen about the customer's solvency and neither the requirement of the relevant Christof Group company for an advance payment nor a suitable security before delivery has been satisfied
- 10.2. The customer shall be obliged to inform the relevant Christof Group company immediately of such circumstances. In the event of withdrawal, performances or part-performances already provided shall be accounted and paid for in accordance with the contract without prejudice to the relevant Christof Group company's claim for damages, including pre-litigation expenses. This shall also apply in so far as the delivery and service have not yet been accepted by the customer, and to preparatory acts provided by the relevant Christof Group company. In lieu of the aforesaid, the relevant Christof Group company also reserves the right to demand the return of goods already delivered.
- 10.3. Unless more specific rules have been agreed, a prerequisite for the customer's withdrawal from the contract shall be a delay in delivery due to the gross negligence on the part of the relevant Christof Group company, and the unsuccessful expiry of a grace period. The withdrawal shall be notified in writing by registered letter.

## **11. Warranty and Liability**

- 11.1. The customer shall be obliged to immediately assess the performances provided by the relevant Christof Group company, at the latest within 3 (three) days of the provision of these performances and object to possible defects pursuant to Section 377 of the UGB (Austrian Enterprise Code), on pain of the immediate forfeiture of all claims. The objection to any defects shall require the written form.
- 11.2. Section 924 of the ABGB (Austrian Civil Code) is excluded. The existence of defects must always be substantiated by the customer. The warranty period shall be 12 (twelve) months. Rights of recourse according to Section 933b of the Austrian Civil Code shall also become statute-barred after the expiry of 12 (twelve) months.
- 11.3. The relevant Christof Group company shall only be subject to a warranty obligation with regard to hidden defects if these defects are reported within a period of 6 (six) months from the date of the transfer of risk or, in the case of delivery together with installation, from the completion of the assembly, however at the latest within 9 (nine) months from the time that the goods are notified as being ready for dispatch.
- 11.4. The warranty period shall not be extended by the remedying of defects or any other remedial measure under warranty.
- 11.5. The relevant Christof Group company shall only be subject to any warranty obligation for defects that occur when the prescribed operating conditions are complied with and in normal use of the performances. No warranty shall be offered for manifestations of wear and minor damage to the paintwork.
- 11.6. The customer shall not be entitled to any warranty claims and claims for compensation in the event of defects which are attributable to

- incomplete information from the customer;
  - unauthorised interventions, alterations and maintenance and repairs on the part of the customer and/or third parties concerning services of the relevant Christof Group company without the consent in writing of the relevant Christof Group company;
  - improper assembly, commissioning or use of the relevant Christof Group company performances by the customer and/or by third parties;
  - repair orders, alterations or conversions of existing or third-party facilities or performances. .
- 11.7. The relevant Christof Group company shall be entitled to choose the remedial measure at its discretion. In the event of the remedying of defects, the relevant Christof Group company can choose to remedy the defect on site during normal working hours, have the defective goods or components sent to it for the purpose of rectification, or replace the defective goods or the defective components. The relevant Christof Group company must be granted the necessary time to check for defects and to effect rectification or deliver replacement parts or equipment, as the case may be.
  - 11.8. All additional costs arising in connection with the remedying of the defects (such as for installation and dismantling, transportation, disposal, journey time and time in transit) shall be borne by the customer. For warranty work on the customer's premises, the necessary support personnel, lifting equipment, scaffolding and sundry materials etc. shall be made available by the customer free of charge. Replaced parts shall become the property of the relevant Christof Group company.
  - 11.9. The cost of the remedying of defects by the customer itself or by third parties will only be accepted by the relevant Christof Group company if written approval has been given for such remedy.
  - 11.10. The relevant Christof Group company accepts no liability for damages or under the warranty for components which were purchased from subcontractors against the advice of the relevant Christof Group company and at the customer's express request or instruction.
  - 11.11. The relevant Christof Group company shall only be liable in the event of intent and gross negligence within the context of the statutory regulations.
  - 11.12. It shall be deemed to be expressly agreed that the relevant Christof Group company shall not be required to provide compensation for damage to goods which are not the subject of the contract, for other damage and for lost profits, unless the circumstances of the individual case show that the relevant Christof Group company is guilty of gross negligence.
  - 11.13. Liability for compensation for consequential losses (resulting from the defect) and pecuniary losses, for profits not achieved and loss of interest or damages resulting from third-party claims shall be excluded.
  - 11.14. Liability shall be assumed only up to the value of the order.
  - 11.15. If a performance is manufactured or provided on the basis of design specifications, drawings, plans, models or other information supplied by the customer, the liability of the relevant Christof Group company shall extend only to such performance being executed in accordance with the information supplied by the customer.
  - 11.16. If the relevant Christof Group company is subject to a third-party claim on the basis of the customer's conduct, the customer shall be required to fully indemnify the relevant Christof Group company and hold it harmless.
  - 11.17. If Buyer is not the end user of the Products sold hereunder (the **End User**), then Buyer will use its best efforts to obtain the End User's written consent to be bound to Seller by the provisions hereof. If Buyer does not obtain such End User's written consent, Buyer shall defend and indemnify Seller and Seller's agents, employees, subcontractors and suppliers from any action, liability, cost, loss, or expense for which Seller would not have been liable or from which Seller would have been indemnified if Buyer had obtained such End User's consent.
  - 11.18. If the Buyer of the Products is not the end user, the Buyer is obliged to name (i) the end user, (ii) the Product, (iii) the Product number and (iv) the country where the Products are used.

## **12. Force Majeure**

- 12.1. Force Majeure Defined. For the purpose of this Agreement **Force Majeure** will mean all events, beyond the reasonable control of either party, whether foreseeable or not, which affect the performance of this Agreement, including, without limitation, strikes, lockouts or other industrial disturbances, acts of public enemy, wars, riots, earthquakes, fires, storms, severe weather, floods, inability to obtain labor or materials from usual sources, serious accidents involving the work of suppliers.
- 12.2. Suspension of Obligations. If either Buyer or Seller is unable to carry out its obligations under this Agreement due to Force Majeure, other than the obligation to make payments due hereunder, and the party affected promptly notifies the other of such delay, then all obligations that are affected by Force Majeure will be suspended or reduced for the period of Force Majeure and for such additional time as is required to resume the performance of its obligations, and the delivery schedule will be adjusted to account for the delay.

Option to Terminate. If the period of suspension or reduction of operations will extend for more than four (4) consecutive months, then either Buyer or Seller may terminate this Agreement.

### **13. Intellectual Property Rights**

13.1. Buyer acknowledges that the information which Seller share with the Buyer (whether orally or in written form) in connection with this quotation, acknowledgment or performance of this Agreement includes Seller's confidential and proprietary information, both of a technical and commercial nature. Buyer agrees not to disclose such information to third parties without Seller's prior written consent granted on a case by case basis.

The intellectual property rights, copyrights and other rights connected therewith, in respect of design, manufacture, supply of the Product, drawings, specifications, documents, data and software made available by the Seller to the Buyer shall be owned solely by the Seller and shall remain its property and may be reclaimed by the Seller at any time. Seller grants to Buyer a non-exclusive, non-transferable, non- sublicensable (except to Buyer's end customer), royalty-free, perpetual, paid-up license to use Software and Seller's confidential and proprietary information for the sole purposes of installing, operating and maintaining the Product, for the territory where Products are used by Buyer's end customer and in the case of Product-embedded Software, for the duration of Buyer's end customer use of the Product embedding the Software. Buyer further agrees that it is not allowed to permit any third party to conceive, develop and/or fabricate the Products or any parts thereof from Seller's drawings or to use the drawings other than as expressly indicated in the purchase order confirmation by Seller. Buyer will defend and indemnify Seller from any claim, suit or liability based on namely personal injury (including death) or property damage related to any Product or part thereof which is fabricated by a third party without Seller's prior written consent and from and against related costs, charges and expenses (including attorney fees).

### **14. Data Protection**

Regardless of these general terms and conditions the national Data Protection Rules as well as the EU Data Protection Regulation EU 2016/679 applies to the Agreement.

### **15. Prohibition of Assignment**

Any prohibition of assignment will be agreed by the parties in a separate contract.

### **16. Exclusion of Offset / Exclusion of Withholding**

The offset of claims against claims of the relevant Christof Group company and the withholding of the full payment or part-payments by the customer shall be excluded.

### **17. Confidentiality**

17.1. The customer shall be obliged to treat all contractual documents and information, drawings, calculations and the like received from the relevant Christof Group company or otherwise in connection with the preparation of quotations or the performance of the contract as strictly confidential and to use such only to fulfil the contractual obligations. The aforesaid shall not apply to such information and documents whose disclosure by the customer is required by law or that are in the public domain.

17.2. If the disclosure of information and documents to third parties is absolutely necessary to fulfil the contract, the customer shall impose the obligation to maintain confidentiality on them and assume liability for their compliance.

17.3. In the event of a violation of the confidentiality obligation, the customer shall for each violation pay the relevant Christof Group company a penalty of EUR 100,000.- (one hundred thousand euro).

17.4. The customer shall in any event be liable for any violations by its employees and subcontractors and their employees for compliance with the obligation to maintain confidentiality and shall fully indemnify the relevant Christof Group company in this respect and hold it harmless.

### **18. Applicable Law, Place of Jurisdiction**

18.1. Austrian law shall apply, with the exception of its conflict-of-law provisions and the UN law on the sale of goods (CISG).

18.2. The place of jurisdiction shall be the court with local and material competence for the relevant Christof Group company. The relevant Christof Group company shall also be at liberty to assert claims before the court with material jurisdiction at the customer's location.

### **19. Language**

If there should be discrepancies or contradictions between the German-language and a foreign-language version of the present standard terms and conditions, the normative content of the German-language version exclusively shall apply between the customer and the contractor.