

## **CONDITIONS OF SALE AND DELIVERY FOR THE FORSTER GROUP AUSTRIA**

### **1. General**

Unless otherwise expressly agreed in writing, the General Terms and Conditions advised to the contractual partner (in short: Forster Group T&C) apply.

They can be found on the homepage [www.forster.at](http://www.forster.at).

*The provisions of the Consumer Protection Act (KSchG) apply for all non-commercial customers.*

Changes and amendments, as well as any differing order conditions imposed by the client, only apply once confirmed in writing by us.

### **2. Offers / Quotes:**

Our offers are subject to change. The contract is only considered valid once a written order confirmation has been sent by us. A separate agreement is not necessary for unavoidable cost overruns up to 15% after order placement, and we are entitled to charge for these costs without further notice.

Quotes incur a charge. A fee paid for the quote is credited if this quote results in an order.

### **3. Non-disclosure**

For the rest, our contractual partner commits to not disclosing to third parties the knowledge to which it has gained access as a result of the business relationship.

### **4. Prices**

The prices are ex the Forster Group works/warehouse and are exclusive of sales tax and additional costs.

For net invoice values less than Euro 100.00, we charge an additional packaging and freight fee of € 10.00. In the field of traffic engineering for orders with a net invoice value below € 200.00 we charge a packaging and freight fee of € 15.00.

Prices displayed are in EUROS.

Our online shop is predominantly aimed at commercial customers, as these are Forster's main clientele. All prices stated in the online shop for the items sold are thus exclusive of sales tax and are subject to change. For end consumers, we expressly point out that the shopping basket shows the order's final total, including sales tax and other surcharges.

### **5. Price changes**

We reserve the right to make price changes up until the day of delivery/service, particularly for orders differing from the products/services on offer.

Unless otherwise agreed, our receivables must be paid reciprocally and simultaneously in exchange for handing over the goods / rendering the service.

A cash discount requires a separate agreement.

### **6. Delivery/Service periods:**

The delivery period begins on the latest of the following dates:

- a) Date of our order confirmation, or
- b) Date of fulfilment of all technical, commercial and other requirements imposed on the purchaser; or
- c) Date on which we as a seller receive a security deposit or advance payment to be made prior to delivering the item.

Stated delivery periods are not binding.

Any hindrances beyond the Forster Group's control, and which have been reported to the contractual partner, extend the execution periods.

Unless otherwise expressly agreed, official third-party approvals, and any third-party approvals necessary to run systems, must be obtained by the purchaser. If this is not done promptly, the delivery period is extended accordingly.

If stand-by delivery is agreed on, the item is considered as having been called on no later than 6 months after order, and must be paid for.

We are entitled to make partial or early deliveries and to charge for these.

### **7. Transfer of risk and place of fulfilment:**

Usage and risk are transferred to the purchaser upon dispatch of the delivery ex works/warehouse, regardless of the price agreed on for the delivery (e.g. CMR clauses).

This also applies if the delivery is made as part of an assembly process, or if transportation is also performed or organised by us.

### **8. Warranty:**

Any apparent defects must be reported in writing by the contractual partner immediately, but no later than within 7 days, otherwise the services is considered as having been approved, despite the defect. The existence of a defect must be proven by the recipient (contractual partner).

§ 924 ABGB (Austrian Civil Code) does not apply.

No warranty claims can be derived from information in catalogues, brochures or advertisements, or from written or verbal statements, not included in the contract.

Recognised warranty claims entitle the Forster Group to carry out the warranty service (improvement/repairs, replacement, price reduction or rescission) of its choice.

Costs for replacements by third parties are not recognised.

Unless special warranty periods have been agreed on for individual delivery items, the legal warranty periods apply.

The warranty period for electronic and electrotechnical components is 12 months.

The following defects are not covered by the warranty:

- a. Non-compliance with the operation/installation/maintenance rules or for a purpose other than that stipulated
- b. Normal, typical wear and tear (including lights, LED lights, etc.), overuse
- c. Defects resulting from atmospheric discharge, fluctuations in currents, overvoltage and chemical influences.
- d. Assembly/installation or repairs by third parties, including the client
- e. Use of materials or products in consultation with the client
- f. Materials and products which the client has provided,
- g. Materials, products, methods and constructions, insofar as they have been used at the express instruction of the client
- h. Parts which we as the contractor have purchased from third parties, insofar as the third party has not granted us any guarantee

If the contractual partner performs or arranges dismantling, repairs or other work on the product without our prior written consent, this invalidates any warranty claim.

All additional costs incurred in relation to rectifying the defect (e.g. for fitting/dismantling, transportation, disposal, commuting times, travel/accommodation expenses, but not limited to these) are borne by the purchaser. The necessary aids, hoisting equipment, scaffolding and incidentals etc. must be provided free of charge for warranty-related work at the purchaser's premises or on construction sites.

### **9. Damage compensation**

The Forster Group is only liable for damages not covered by the product liability act if it is proven to have acted out of deliberate intent or with gross negligence.

No compensation is provided for secondary damages or indirect costs.

Insofar as justified claims have been raised, the scope of liability is always limited to the maximum of 2 times our delivery scope.

No liability is assumed for components not included in our delivery scope, or if our products are subsequently installed in a complete system (not supplied by us).

### **10. Payment and retention of title**

Even if the contractual partner is delayed with payment through no fault of its own, we are entitled to charge annual default interest of 10% above the basic rate, as well as the appropriate and necessary costs incurred by us to ensure correct execution.

Delivered items remain our property until full payment.

In the event of resale, the purchase price claim is considered as having been assigned to us, without requiring any special agreement.

### **11. Counterclaims**

The purchaser is not entitled to withhold or offset payments because of warranty claims or other counterclaims.

### **12. Withdrawal from the contract**

A delivery delay caused by gross negligence of the part of the Forster Group is a pre-requisite for the purchaser to withdraw from the contract, insofar as no special rule has been made. This negligence must be proven by the contractual partner.

The Forster Group is entitled to withdraw from the contract regardless of its other rights

- a) if it becomes impossible to perform the delivery/service or start/continue it for reasons caused by the purchaser, and the delay persists despite an extension period being set,
- b) if there are concerns about the purchaser's ability to pay, and the purchaser does not make an advance payment or provide a suitable security deposit prior to delivery at our request, or
- c) if a delay caused by unforeseeable or unintended circumstances, such as force majeure, lasts for more than half the originally agreed delivery period, but at least 6 months.

If bankruptcy proceedings are initiated on a contractual party's assets, or a request to do so is rejected due to insufficient assets, the other contractual party is entitled to withdraw from the contract without setting an extension period.

Regardless of the Forster Group's damage compensation claims, including pre-trial costs, all services or partial services already rendered must, in the event of withdrawal, be invoiced and paid for as per the contract.

This also applies if the delivery or service has not yet been accepted by the purchaser, and for preparatory activities performed by the Forster Group.

Claims cannot be asserted by the purchaser for lesion beyond moiety, error or loss of business foundations.

### **13. Print jobs**

In the event of print jobs, over-deliveries and under-deliveries of up to 10% are permitted and are charged at the agreed unit price. The proof checked by the client is used as the printing template.

### **14. Place of fulfilment**

The place of fulfilment for both contractual parties is the Forster Group's headquarters in Waidhofen/Ybbs.

### **15. General**

If individual provisions of these terms and conditions are invalid, this shall not affect the validity of the remaining provisions. The invalid provision must be replaced by a valid provision which pursues the original aim as closely as possible.

### **16. Jurisdiction and law**

The competent court at the Forster Group's headquarters has sole jurisdiction when settling all disputes arising from the contract – including those relating to its existence or non-existence -, and this jurisdiction agreement is deemed to have been accepted once the order confirmation has been sent.

The contract is governed by Austrian law, under exclusion of the conflict-of-law rules. The United Nations' UNCITRAL convention on contracts relating to the international sale of goods does not apply.

As at 30/09/2019

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