

General Terms and Conditions of the company

SYNEX TECH GmbH, FN 353089 z
Ramsau 3, A-4822 Bad Goisern

1. Scope

1.1. The present General Terms and Conditions apply for all legal transactions – in particular for all offers, deliveries and services – of the company SYNEX TECH, including its customers, and if the customer is an entrepreneur, a legal entity under public law or special fund under public law.

1.2. Any terms deviating from these General Terms and Conditions – depending on whether these are General Terms and Conditions, General Terms of Delivery or Purchase – of the contracting partner are not binding for the company SYNEX TECH, also does not require a separate opposition of the contracting party to the General Terms and Conditions of the company SYNEX TECH. The acceptance of an order by the company SYNEX TECH is deemed to be an opposition to any contrary General Terms and Conditions of the contracting party.

1.3. In case of a running business relation, the General Terms and Conditions apply in their respective version – which are available on the website of the company SYNEX TECH – as a framework agreement also for future services and supplementary or follow-up orders, without the need that the company SYNEX TECH would have to point that out in any individual case.

1.4. These General Terms and Conditions apply exclusively. Individual agreements made with the contracting party in the individual case (including collateral agreements, amendments and changes) will only prevail these General Terms and Conditions, if they have been agreed in writing by the company SYNEX TECH or if they have at least been confirmed in writing.

1.5. References to the validity of statutory regulations shall only have clarifying significance. Therefore, also without such a clarification the statutory provisions would apply, insofar as they are not directly changed or are explicitly excluded in these General Terms and Conditions or in any other contract.

2. AGREEMENT OF THE WRITTEN FORM

2.1. All agreements must be expressly made in writing. Therefore, oral agreements do not release any legal consequences.

2.2. Any derogation from the written form can only be made with an explicitly written agreement of the contracting parties.

2.3. Changes, amendments or the notice or any other termination of the contracts need to be confirmed in writing beside such an expressive indication.

2.4. Generally, the written form will also be given if the contracting parties communicate by telefax or by e-mail (simple written form). However, an exception will apply for legally relevant declarations and notifications, which are to be submitted to the company SYNEX TECH by the customer after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of cancellation or reduction), require the written form in order to be valid. The written form requirement should only be given by adhering to the below types of transmission: personally signed or stamped letter, registered letter or telefax. The submission by email is not deemed to be the qualified written form.

3. DELIVERY

In order to meet the deadlines, the date of the delivery is relevant. If the contracting party does not notify us about changes at all or in time and if therefore any legally important documents of the company SYNEX TECH cannot be delivered to him under the address which he last indicated, in particular notices or reminders, such documents are nonetheless deemed to be delivered.

4. QUOTATION AND CONCLUSION OF THE CONTRACT

4.1. In so far as nothing specifically is agreed on the contrary, the quotations of the company SYNEX TECH will be non-binding and without commitment. This will also apply in case of the handing over of catalogues, other product descriptions or documents – including in electronic form – for which the company SYNEX TECH explicitly reserves the property rights and copyrights. After the payment of the agreed fee, the contracting party will be entitled to use the service exclusively for its own specific purposes.

Any other use, especially reproductions, distributions, adaptations, etc. is prohibited without previous expressive consent.

4.2. Quotations, cost estimates and service specifications of SYNEX TECH expect that the trades which are made available by the contracting party are suitable for the execution of works. If it reveals, even after commencement of the work, that the trade was not suitable or defective, the contracting party has to bear the necessary additional costs of the company SYNEX TECH as an additional fee.

4.3. If nothing to the contrary has been agreed upon, the acceptance of a quotation established by the company SYNEX TECH, is only possible regarding the entire quoted service.

4.4. The contracting party can only accept the quotations made by the company SYNEX TECH in writing.

4.5. SYNEX TECH accepts a quotation by a written order confirmation or by delivery of the goods / rendering of the services. However, silence on the part of the company SYNEX TECH does not represent its approval.

5. COST ESTIMATES

5.1. The giving of cost estimates shall only be made in writing, whereby the company SYNEX TECH will not be obliged to accept the order only by giving a cost estimate.

5.2. Cost estimations and cost estimates given by the company SYNEX TECH are not binding; it thus does not include any warranty for the correctness and completeness.

5.3. Cost estimates regarding the work required, material expenses and travel expenses should be rendered in return for payment. When placing an order, the costs paid for the cost estimate will be credited to the fee / compensation for work.

6. PRICES AND TERMS OF PAYMENT

6.1. If nothing else has been agreed in the individual case, the current prices at the time of the conclusion of the contract will apply for purchase agreements, ex warehouse plus the applicable value added tax. For contracts for works, the fees will be separately agreed between the contracting parties in an individual contract.

6.2. The order of goods or the commissioning of the company SYNEX TECH with the work production by the contracting party is deemed as a binding contractual offer.

6.3. For purchase contracts the date of invoice is the date of the delivery of goods. The purchase price is payable from the date of invoice; 3 % discount for payment within the first two weeks, if using the term of payment of 30 days. Instead of the usual terms of payment, upon agreement the company SYNEX TECH may also choose payment options such as cash on delivery, prepayment or any other terms of payment agreed with the contracting party.

6.4. In the case of contracts for work, the compensations will be due upon receipt of the invoice. The invoice amount has to be credited latest 2 weeks after receipt of the invoice to the account indicated on the invoice, provided that nothing else has been agreed in writing.

6.5. In case of default of payment, the company SYNEX TECH is entitled to charge interest on arrears amounting to 10% p.a.. The costs required for an appropriate legal persecution in case of default of payment need to be borne by the contracting party. These costs particularly include reminder fees as well as the costs of a legal representation of a collection service.

6.6. The contracting party is only entitled to set-off the costs, if the counterclaims have been determined by the court or expressly accepted by the company SYNEX TECH.

7. PERFORMANCE FEATURES, EXECUTION OF WORKS AND SCOPE

7.1. The availability as well as the quality of the individual performances result from the corresponding performance specifications and the relevant written agreements between the two contracting parties. The company SYNEX TECH is entitled to adapt contractual services to the corresponding current state of the art.

7.2. The company SYNEX TECH will only be obliged to render the services, as soon as all technical and commercial conditions have been clarified and the contracting parties have enabled the structural, technical and legal requirements for an unhindered execution and any agreed payment.

The performance deadline will actually only start with the fulfillment of these conditions.

7.3. The company SYNEX TECH does not owe any services which are not expressly included in the specifications or in any other contract documents signed by the company SYNEX TECH.

7.4. If the contracting party requires an urgent execution of the order or if an execution is much needed due to its nature and if this fact had not been known to the company SYNEX TECH upon the conclusion of the contract, the incurring additional costs such as in particular overtime allowances as well as any costs for the rapid procurement of material will be invoiced separately.

7.5. If the services are rendered due to the plans, layouts and drawings or instructions handed over by the contracting party, he will guarantee the correctness of the documents and information made available to the company SYNEX TECH. Without a separate order to check the documents and information, the company SYNEX TECH will not be obliged to check the handed over documents and information. However, the company SYNEX TECH will only check such documents or information in case of a separate order to check such documents or information, for which the contracting party needs to pay a reasonable compensation to the company SYNEX TECH. Though, the company SYNEX TECH may refuse such checking or the company SYNEX TECH can commission a skilled third party having professional qualifications at the risk and expenses of the contracting party. If the contracting party agrees to a third party designated by the company SYNEX TECH, the professional competence of such third party to check will expressly be accepted.

7.6. All the necessary official permits to perform the order placed by the contracting party need to be procured by the contracting party at its own risks and costs. SYNEX TECH is entitled to arrange for mandatory reports to authorities at the expenses of the contracting party.

7.7. Any required professional and environmentally compatible disposal of waste material by the company SYNEX TECH needs to be adequately compensated for according to a separate agreement, insofar as it is not included in own positions in the specifications.

7.8. The company SYNEX TECH reserves the right to perform minor changes in technical matters which are reasonable for the contracting party.

7.9. The company SYNEX TECH is entitled to commission subcontractors in order to fulfil its contractual obligations.

8. PLACE OF PERFORMANCE AND PERFORMANCE DEADLINES

8.1. The place of performance is the headquarters of the company SYNEX TECH.

8.2. The deadline within which the company SYNEX TECH has to render a performance, delivery or service, is resulting from the corresponding specifications and / or the corresponding individual contract. Performance deadlines and dates are only binding for the company SYNEX TECH and in case of non-compliance as they will lead to a delay if they had been expressly agreed as maximum deadlines or fixed dates. In the absence of an explicit agreement, the company SYNEX TECH has to render the services within an appropriate term.

8.3. Any agreed completion dates will be correspondingly postponed if the beginning of the execution of works or the execution itself will be delayed and such delay does not arise from circumstances for which the company SYNEX TECH is not responsible. This also applies for amendments or additions to the originally agreed services.

8.4. Any additional costs due to any delay will be borne by the contracting party, if he is responsible for the circumstances causing the delay.

8.5. If the execution of the services which is mentioned in the order remains undone in whole or in part upon request of the contracting party, except for a justified cancellation of the contract by the contracting party, the company SYNEX TECH should be compensated for all thus incurring disadvantages including the lost profit.

9. INTERRUPTION OF THE SERVICE

9.1. SYNEX TECH will inform the contracting party about interruptions or important limitations for purposes of maintenance, the performance of necessary works or the improvement or avoidance of disturbances in a timely manner and in a suitable way.

9.2. In the absence of a special regulation in the individual contract, the company SYNEX TECH will not be liable if it cannot

fulfil its obligations from the contract due to circumstances, for which it is not responsible. In particular, the company SYNEX TECH is not responsible for the availability of services and installations of third parties.

10. PROPERTY RIGHTS

10.1. The company SYNEX TECH reserves all copyrights and industrial property rights as well as any related rights of use and exploitation in the execution documents issued or made available by it such as plans, catalogues, brochures, sketches, other technical documents. etc.. An automatic transfer of these rights to the contracting party does not only come into question by concluding / executing a contract for work or purchase contract with the company SYNEX TECH. The transfer of industrial property rights and the related use or exploitation rights to the contracting parties may exclusively take place if it has not been expressly agreed between the contracting parties in an individual contract.

10.2. As far as the company SYNEX TECH purchases objects from its contracting party or commissions works services with him, the use of any possible licence will be already satisfied as soon as the company SYNEX TECH has paid the purchase price or the wage to the contracting party and the rights of use will automatically be considered as assigned to the company SYNEX TECH upon conclusion of the contract.

11. RETENTION OF TITLE

Delivered goods or materials remain the property of the company SYNEX TECH until the purchase price / wage has been completely paid by the contracting party. It applies – unless mandatory regulations of the property law are opposed – also in case of incorporation and processing as well as resale. In case of resale, the contracting party will be obliged to inform the purchaser about the retention of title of the company SYNEX TECH, to transfer it to him and to cede any receivables from the resale of the company SYNEX TECH or keep the proceeds from the resale separately safe, insofar as it does not exceed the purchase price claim of the company SYNEX TECH and to immediately supply it.

12. DELAY

12.1. Any temporary, not predictable circumstance for which the company SYNEX TECH is not responsible will lead to an extension of the time limits as well as postponing the agreed deadlines for a reasonable time. Insofar as the company SYNEX TECH defaults for any other reasons, the contracting party of the company SYNEX TECH is obliged to set a grace period of at least six weeks. Only after an unused deadline, the contracting party may withdraw from the contract. The setting of the grace period as well as the rescission notice need to be made in writing. All further claims of the contracting party which arises from the delay, in particular claims for damages are excluded insofar as they are not based on intent or gross negligence.

12.2. If the services have not been rendered for reasons or which the contracting party is responsible, the company SYNEX TECH will be entitled to withdraw from the contract if the contracting party does not meet the set grace period of at least four weeks which has been set by the company SYNEX TECH. In case that the company SYNEX TECH withdraws from the contract, the contracting party is obliged to compensate any expenses for already performed works as well as lost profit, but not beyond the remuneration which has been agreed for the rendering of the total of the commissioned services.

13. LIABILITY (WARRANTY AND COMPENSATION FOR DAMAGES)

13.1. The statutory remedies must be applied, unless otherwise stipulated in the present General Terms and Conditions in writing.

13.2. As warranted properties in the sense of the § 922 para. 1 ABGB only such apply which have expressly been confirmed or designated by the company SYNEX TECH.

13.3. The company SYNEX TECH does not assume any warranty for wearing parts. In all other cases, the warranty period generally amounts to 12 months – without prejudice to a different agreement in the individual case – for the delivery

of movable goods as well as for immovable objects or objects which have become immovable due to their incorporation.

13.4. The contracting party of the company SYNEX TECH has to immediately notify and prove

any defects, however no longer than within 3 days of the defect becoming known (within the warranty period) by exactly describing the type and scope of the defect in writing on presentation of all existing data and documents. If a complaint has not been lodged on time in this form, the services rendered by the company SYNEX TECH are deemed to be free of defects and conform to the contract, according to which the contracting party loses all claims from the title of warranty and claims to damages.

13.5. The contracting party has to prove that a defect exists at the time of the handing over. The reversal of the burden of proof according to § 924 ABGB is being excluded.

13.6. In case of a justified notification of defects on time, the warranty will primarily be honoured by replacement or improvement of the demonstrated deficiency.

13.7. The contracting party has to grant the necessary time and opportunity in reasonable circumstances to the company SYNEX TECH. A refusal of the contracting party or an inappropriate reduction of the term would release the company SYNEX TECH from the warranty.

In case of a justified warranty, the contracting party is only entitled to retain the expenditure required for the improvement. However, he is not entitled to retain the whole amount (wage / purchase price).

13.8. The company SYNEX TECH will be liable for any financial loss caused through intent or gross negligence. The company SYNEX TECH will only be liable for any damages caused by its employees and other (as self-employed) assistants in case of intent and gross negligence.

13.9. The liability of the company SYNEX TECH for lost profit, missed savings, pure financial losses, interest losses, consequential damages of any kind, immaterial damages as well as damages resulting from third party claims against the contracting party is independent from the degree of blame is generally excluded.

13.10. The company SYNEX TECH is not liable for claims which might result from any possible breakdowns, irrespective of the cause on which the breakdown has been based on.

13.11. Insofar as the company SYNEX TECH would be liable taking account of the above-mentioned points, its obligation to indemnify for any event causing damage is limited with the sum of the liability insurance. If the total damage would exceed the maximum limit, the compensation claims of the individual injured party will be reduced proportionally.

13.12. The company SYNEX TECH does not accept any penalty regulations of the contracting party, no matter if he is a supplier or customer / buyer, irrespective of the contract in which they are regulated.

14. OBLIGATIONS OF THE CONTRACTING PARTY, NON-DISCLOSURE AND PROHIBITION OF COMPETITION

14.1. Any deliveries of the contracting party to the company SYNEX TECH need to be performed free domicile.

14.2. During the period of the execution, the contracting party will make energy, water and lockable rooms for the residence of workers as well as the storage of tools and materials available to the company SYNEX TECH and bears the risk for the delivered materials and tools.

14.3. The contracting party is obliged, not to compete with the company SYNEX TECH in any way, even if he would be factually able to do so due to the services or deliveries rendered to him by the company SYNEX TECH. The contracting party is in particular obliged to keep all information confidential which it received intentionally or inadvertently from or in connection with the business relationship with the company SYNEX TECH, such as business or trade secrets, know-how, customer relations, operational practices, etc. The contracting party is also obliged to use the above information neither itself, nor to forward them, unless the use or forwarding is not expressly purpose or objective of the contract. In particular, the forwarding or use of quotations or layout proposals, etc. is prohibited. In case of any infringement – including non-culpable – against these provisions, the contracting party has to pay a penalty of 10% of the contract value to the company SYNEX TECH independent from the damage. Any additional contractual or non-contractual claims for damages as well as

more special contractual penalty regulations shall remain unaffected. However, this penalty which is independent from fault and damages

will be allowed for any further claims for indemnity or penalty.

15. COMPENSATION OF THE CONTRACTING PARTY and CONTRACTUAL PENALTY

15.1. The contracting party is obliged to comply with the legal regulations and is obliged to hold the company SYNEX TECH harmless against any breaches of these obligations.

15.2. Independent from the contractually agreed or statutory entitlement to claims for damages, the company SYNEX TECH is entitled to a penalty amounting to 25% of the corresponding total contract value independent from the damage in the case of a breach of contract by the contracting party. Any further contractual or statutory claims to compensation of the company SYNEX TECH shall remain unaffected. However, the penalty will be allowed for.

16. CHANGES OF THE CONTRACTING PARTY

The contracting party has to inform the company SYNEX TECH about any circumstances such as the change of its name or its company, the address, its paying authority, the legal form, the register number, etc. within one month. The SYNEX TECH is entitled to demand all required documents regarding the legal and contractual capability as well as all documents which represent a proof regarding the existence of representation competence and the signatory powers from the contracting party.

17. OPENING OF THE INSOLVENCY ON THE ASSETS OF THE CONTRACTING PARTY

The opening of the insolvency on the assets of the contracting party (bankruptcy proceeding, rehabilitation procedure with or without self-management) will generally lead to a termination of the contractual relationship. However, the company SYNEX TECH may nonetheless deem to meet any possible demand for performance according to § 21 IO.

18. APPLICABLE LAW

Austrian law will be applied to the contractual relationships between the contracting parties as well as to the effects prior to and following the concluded contracts excluding the conflict-of-law rules of the International Private Law as well as excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods (UN Convention on Contracts for the International Sale of Goods) as well as excluding any provisions of the Austrian law, which refer hereto.

19. EXCLUSION OF THE RIGHT TO APPEAL

The contracting parties agree, not to dispute contracts due to error or reduction by half (laesio enormis).

20. PLACE OF JURISDICTION AND ARBITRATION CLAUSE

20.1. Any disputes arising from or in connection with the contractual relationships between the contracting parties including their effects prior to and following, exclusively the general court of jurisdiction of the company SYNEX TECH will be agreed. This also applies if the contracting party has its headquarters or its subsidiaries outside the state territory of the Republic of Austria and / or if the services rendered by the company SYNEX TECH in the corresponding case would (exceptionally) be performed abroad, provided that the contracting party has its headquarters on a subsidiary within the territory of the European Union.

20.2. If the contracting party, neither as its headquarters nor any subsidiary on the territory of the European Union, all disputes or claims which are arising from or in connection with the contract which the contracting parties have concluded, including any disputes about its validity, violence, termination or invalidity, according to the rules of arbitration of the International court of arbitration of the Austrian Economic Chamber (Vienna Rules) one or three appointed arbitrators will be finally decided according to these rules.

21. SEVERABILITY CLAUSE

The ineffectiveness of individual terms of these General Terms and Conditions does not result in the ineffectiveness of the whole Terms and Conditions. The invalid provision will be replaced by an effective provision which comes nearest to the ineffective one with its statutory and commercial effects.