

**TERMS AND CONDITIONS OF SALE AND DELIVERY OF
AUSTIN POWDER GMBH AND
AUSTIN POWDER VERTRIEBSGESELLSCHAFT MBH
(hereinafter referred to as "AUSTIN")**

I. Scope of Application of these Terms and Conditions

Deliveries, services (for instance technical services, blasting advice, the execution of blasting operations, logistics for construction sites above and below ground, and assistance during blasting operations) including proposals, consultations and other ancillary services, offers, unilateral declarations of AUSTIN and all agreements (the entire business relationship) between AUSTIN and its customers shall be exclusively subject to these Terms and Conditions (for the purposes of these Terms and Conditions, the term deliveries also includes services). Contracts, assurances, supplements, collateral agreements, deviating terms, and conditions to the contrary and changes including, without limitation, in the form of cancellations or conditions imposed by the customer, as well as verbal declarations, information and recommendations on the part of AUSTIN shall only be binding and valid if expressly recognized in writing by AUSTIN. Silence on the part of AUSTIN shall not be deemed its consent. These Terms and Conditions shall also apply to legal transactions with consumers, unless this is prevented by conflicting mandatory statutory provisions.

II. Offer and Entry into Contract

1. All offers made by AUSTIN are subject to confirmation unless they are expressly referred to as binding offers. Offers and orders by the customer may be accepted by AUSTIN within four weeks exclusively in writing or by means of direct delivery and/or service provision (de facto acceptance). The Incoterms as amended from time to time shall apply to all transactions entered into with AUSTIN.
2. AUSTIN will prepare a cost estimate to the best of its professional knowledge, but cannot warrant its correctness. Should the costs increase by more than 15% after the contract has been placed, AUSTIN shall inform the customer without delay. If an increase in costs is unavoidable and does not exceed 15%, no separate notification will be required and the extra costs may be invoiced without any further action being necessary. Unless otherwise agreed upon, order changes or additional orders may be invoiced at reasonable prices. As a rule, all cost estimates are subject to a charge.
3. Offers made by AUSTIN, together with all appurtenant annexes such as plans, sketches, drawings, technical documents, prototypes, blasting schemes and specimens shall remain the property of AUSTIN. The customer shall, in case no contract is placed with AUSTIN, return all such documents to AUSTIN without delay. All such implementation documents shall remain the intellectual property of AUSTIN and shall be subject to the relevant statutory provisions regarding reproduction, imitation, competition, etc. AUSTIN shall furthermore reserve all rights to proposals of improvements, ideas and suggested solutions, irrespective of the contract placed by the customer. The customer shall not pass on the content of offers, declarations, etc. made by AUSTIN to third parties without the approval of AUSTIN.
4. Application-relevant information and recommendations, suggestions and/or advice, blasting schemes, plans, sketches, technical documents, specimens and drawings of AUSTIN are non-binding and shall not release the customer from its obligation to convince itself of the properties of the goods and their appropriateness for the intended purpose, the expediency of the selected use and the required quantities of material and to examine the goods delivered by AUSTIN regarding their fitness for the intended processes and purposes. AUSTIN shall not be obligated to examine the documents provided by the customer for their correctness and completeness. Blasting suggestions shall be prepared exclusively on the basis of the information provided by the customer; they are only a non-binding service of assistance on the part of AUSTIN which does not give rise to any liability. The customer shall have the suggestions and recommendations of AUSTIN examined for their correctness and feasibility by its own authorized blasters. The customer may not assert any claims against AUSTIN on the basis of such suggestions and

recommendations or the implementation thereof. When using the goods delivered by AUSTIN, the customer shall comply with the applicable provisions (for instance the [Austrian] "*SprengarbeitenVO*" [Regulation on Blasting Operations], the [Austrian] "*SprengmittellagerVO*" [Regulation on the Storage of Firing Agents] and the [Austrian] "*SprengmittelVO*" [Regulation on Firing Agents]) and with all requirements imposed by public authorities; it shall be responsible for obtaining the relevant permits. AUSTIN shall not be responsible for the proper use of the goods delivered by it.

5. AUSTIN shall at all times be entitled to use subcontractors.

III. Prices and Terms of Payment

1. Unless otherwise agreed upon in writing, all prices shall be in euros and valid ex works and/or ex warehouse exclusive of packaging, value added tax, duties, customs and charges.
2. In the event that there is a period of more than 6 months between the entry into the agreement and the delivery of the goods and/or the provision of the service, AUSTIN shall reserve the right to increase the price to a reasonable extent including, without limitation, on the basis of changes in costs of material, power, or wages. The customer hereby expressly agrees that AUSTIN may also choose to issue and send invoices to it in electronic form.
3. Unless otherwise agreed upon, invoices issued by AUSTIN shall be paid by the customer upon acceptance of the goods without any deductions. Sec. 1333 of the (Austrian) "*ABGB*" (General Civil Code) and sec. 456 of the (Austrian) "*UGB*" (Commercial Code) (interest on arrears, bearing of costs in case of default) shall apply. In the case of delay in payment on the part of the customer, the customer undertakes to reimburse AUSTIN for any out-of-court pre-litigation costs incurred for collection. In the case of default on the part of the customer, AUSTIN may rescind the agreement after having set a reasonable grace period of not more than 14 days and demand surrender of the goods delivered under retention of title. If partial payments have been agreed upon, default on payment occurs even if only a single partial payment is not paid in time or not paid in full. In case of such default on payment, the entire remaining amount outstanding shall become due for payment immediately. In the case of default on payment, AUSTIN also has the right to take into custody the goods delivered under retention of title without having to rescind the purchase agreement until full payment of the outstanding amount, including ancillary costs, has been received. Payments received shall be credited towards the oldest outstanding receivable, starting with costs and other ancillary charges, followed by interest and then capital. Any dedications to the contrary of the payments shall be without effect. Any setoff or retention by the customer in connection with alleged counterclaims shall be excluded.
4. AUSTIN shall be entitled to set off its own accounts receivable against those of the customer. If the accounts receivable have different due dates, the accounts receivable of AUSTIN shall become due, at the latest, on their due date and shall be settled as of such value date. Moreover, all accounts receivable shall become due and payable immediately if the payment terms or deadlines are not met or if circumstances become known which AUSTIN reasonably deems to be able to substantially reduce the creditworthiness of the customer and/or to seriously jeopardize the realization of claims for payment (for instance substantial reduction or complete cancellation of insurance limits by renowned insurance companies). In such cases, AUSTIN shall also be entitled to make any further deliveries contingent on an advance payment or the provision of other reasonable and acceptable security and/or to rescind the agreement (or, if applicable, part thereof) after having set a reasonable grace period, and to claim damages, in particular on grounds of non-performance of the contractual obligation of acceptance.

IV. Return of Goods

AUSTIN shall neither take back nor exchange any delivered goods without its prior written approval. All returns of goods shall be made at the expense and risk of the customer.

V. Retention of Title

Until full payment of the purchase price, interest, and ancillary charges, the goods shall remain the property of AUSTIN. The customer shall inform AUSTIN without delay of any distraint or other legal steps taken or claims made by third parties regarding the goods. The resale, pledging or assignment as security of the goods under retention of title shall require the express written approval of AUSTIN and shall be admissible only against cash payment or transfer of the retention of title to the acquirer.

VI. Delivered Items and Terms of Delivery

1. The subject matter, quantity and quality of the goods delivered and/or services provided by AUSTIN are defined by the respective contractual agreements with the customer. Unless otherwise agreed upon, production-related deviations in terms of measurements, weights, technical features and specifications are admissible in any case if they are within the tolerance limits customary within the industry and/or permitted by the applicable technical standards (such as EN, DIN or ÖNORM standards). Unless otherwise agreed upon by contract, AUSTIN shall not promise any usability of the goods delivered and/or services provided for specific purposes and the customer shall bear the full risk of use and suitability for the intended purposes even if the customer has informed AUSTIN of such purposes.
2. The place of performance for AUSTIN as the seller shall be AUSTIN's warehouse and/or plant location. Adequate partial deliveries as well as deviations from orders of up to +/- 10% shall be admissible. The goods shall be packaged by AUSTIN in accordance with statutory provisions. Packaging material and, where applicable, also waste products (such as detonators and shells) shall be taken back by AUSTIN, which is an ARA (*Altstoff Recycling Austria*) license partner, for an adequate fee (provided that they are in their original packaging compliant with the ADR treaty). AUSTIN is entitled to charge the customer for any disposal costs incurred.
3. Unless expressly agreed upon otherwise, AUSTIN does not engage in any transactions with a fixed delivery date. The dates and periods for delivery and/or service provision are non-binding guidelines which – provided that all details have been clarified – shall begin to run on the date of order confirmation by AUSTIN. In the event that the performance by AUSTIN depends on the supply by a pre-supplier AUSTIN shall be entitled to withdraw from the contract, without this giving rise to any claims on the part of the customer, if the pre-supplier fails to make delivery.
4. AUSTIN's obligation to deliver shall also be deemed fulfilled if preparedness to dispatch or hand over the goods was notified in a timely manner and the goods were not dispatched in time without the fault of AUSTIN. The customer is obliged to accept the goods delivered and services provided by AUSTIN. If the customer is in default regarding acceptance or if, in the case of call orders, no call is made within 14 calendar days after the agreed call date, AUSTIN shall be entitled to put the goods in storage in whatsoever manner at the risk and expense of the customer. From this point in time onwards, the goods shall be deemed delivered in all aspects in accordance with the agreement and the risk shall pass to the customer, unless it has already been transferred before that point in time.
5. The customer may exercise its right to rescind the agreement including, without limitation, in the event of default on the part of AUSTIN, only if it has met all of its obligations and/or complied with the provisions of the agreement. AUSTIN shall only be deemed to be in default of performance after a written reminder has been made, setting a grace period of at least four weeks starting from receipt of such reminder by AUSTIN. AUSTIN shall only be liable for damage incurred as a consequence of intent or gross negligence, which shall be proven by the customer. The customer's right to rescind refers exclusively to the part of the delivery and/or service provision in respect of which AUSTIN is in default.
6. The customer shall bear the risk of damage or loss of the goods starting from the time the goods were handed over to the forwarding agent, freight carrier or any other person or institution designated to transport the goods even if the transport is included in the price and irrespective of by whom the transport is to be carried out or to be organized and irrespective of at whose expense the transport is carried out. This shall also apply in case of deliveries free customer's domicile. Unless otherwise agreed upon, AUSTIN shall choose the packaging and type of shipment using its best judgment. To the extent

permitted by law, AUSTIN shall not assume any liability for the choice of the means of transport and/or the shipper. At the request and expense of the customer, AUSTIN may take out transport insurance suitable for the respective purpose in the name of the customer. Therefore, the goods shall always be dispatched at the risk of the customer, which gives its consent to any proper type of dispatching and transporting. The goods shall be deemed to have been in a proper state when dispatched. Damage to the goods shall be deemed incurred during transport until the contrary is proven.

7. If the customer withdraws from the agreement in an unjustified manner prior to the start of production, it shall pay lump-sum damages in the amount of 10% of the order sum plus all cash expenses already made, if any, to AUSTIN which lump-sum shall not be subject to the judge's right to reduce the amount; the assertion of any additional damages shall not be excluded. If the customer withdraws from the agreement after the provision of the service or the production has started, AUSTIN shall be entitled to demand full compensation.
8. The customer undertakes, in connection with the transfer of deliveries and any services that may be related thereto, to third parties, to comply with all national and international export control provisions, in particular those under Community law. Performance of the contract by AUSTIN is therefore subject to the express reservation that any approvals required under export control law are obtained and that there are no other impediments based on national or international, in particular Community-wide, export control provisions preventing the performance.

VII. Force Majeure and Other Impediments to Delivery

Events of force majeure and other circumstances beyond the influence of AUSTIN, such as disruptions of operations or traffic, difficulties regarding the supply with power, raw materials, combustibles, and auxiliary materials, viruses and other types of third-party interference with the IT system of AUSTIN that occur even though protection measures have been taken with customary due diligence, other impediments regarding production and delivery, strike, lockout and other circumstances such as import and export bans imposed after entry into the agreement, permits that cannot be obtained in time, etc. that significantly impede the delivery or service provision or render it impossible, regardless of whether they occur at AUSTIN or at one of its sub-suppliers, shall exclude any claims for damages on the part of the customer and shall entitle AUSTIN to either extend the delivery period or to rescind the agreement in full or in part. AUSTIN shall, however, inform the customer without delay of the occurrence and termination of any such impediment to delivery.

VIII. Duty to Examine the Goods and Make an Immediate Complaint, Warranty

1. The customer shall examine the deliveries made and services provided by AUSTIN immediately upon receipt and inform AUSTIN in detail of any complaints including, without limitation, deviations from the order, in writing and without delay. This shall also apply to material defects, short deliveries, or deliveries of goods different from those ordered. Hidden defects and other deviations from the order that are not immediately recognizable shall be asserted in court within three months. The resale or use of the goods by the customer shall be deemed its acceptance that the goods are free of defects. In the event of violation of the obligation to examine the goods and make an immediate complaint and/or in the event of assertion after more than three months after delivery, any statutory rights to alter the legal relationship and any claims for damages of the customer arising from a deviation of the delivery from the order shall be excluded.
2. Notwithstanding justified warranty claims, the goods shall be deemed delivered in accordance with the contract upon delivery and/or the service shall be deemed provided in accordance with the contract upon service provision. The customer always bears the burden of proof that any defects already existed at the time of delivery. The warranty period is three months. Statutory warranty provisions shall only apply to the extent their application does not result in an extension of the obligations and liability of AUSTIN as laid down in these Terms and Conditions. The warranty claims of the customer shall be limited, at the selection of AUSTIN, to exchange, rectification or addition of the deficiency. If this is not possible, the customer shall only be entitled to rescind the agreement. Reductions in price and any exceeding warranty claims shall be expressly excluded. If the customer does

not give AUSTIN any opportunity to verify the existence of the defect and if the customer fails to immediately make available the goods complained about or samples thereof, in particular after having been requested to do so, all claims arising from such defects shall be forfeited.

IX. Liability, Product Liability

1. Unless expressly agreed otherwise, AUSTIN shall, in particular, not assume any warranty or other liability for (i) any properties other than the ones expressly agreed upon and (ii) for a specific usability of the goods delivered and/or services provided for specific intended purposes (the risk of use and suitability lies with the customer). As a rule, technical consultations by AUSTIN constitute a service of informative character and therefore merely serve the purpose of technical orientation. Unless the content discussed at such consultations is not expressly declared to be a part of the agreement, no claims whatsoever may be derived therefrom.
2. The goods delivered by AUSTIN only provide the safety that can be expected on the basis of the provisions for admission, instructions of use, provisions of AUSTIN regarding the treatment of the goods, and other information provided. Any liability on the part of AUSTIN shall be excluded if the goods are not stored or used in accordance with the pertinent provisions, the state of the technology and the delivery description provided as well as in the case of changes to the goods that were not made by AUSTIN.
3. All claims for damages of the customer against AUSTIN or its vicarious agents on whatsoever ground, including, without limitation, on grounds of non-performance, defective performance, default, fault prior or upon entry into the agreement, illegal action or any other cause in law whatsoever, including, without being limited to, consequential damage caused by a defective product, indirect or direct damage and/or consequential damage (in particular caused by loss of production and/or interruption of operations) as well as actual harm and lost profits, for savings not made or interest lost, damage from third-party claims and for the loss of data or programs and their restoration and for the compensation of merely financial loss shall be excluded unless they are based on intent or gross negligence on the part of AUSTIN or its vicarious agents. The burden of proof that they acted with gross negligence or intent shall lie with the customer. If a contractual penalty has been agreed upon in any of such cases, such penalty shall be subject to the judge's right to reduce the amount. Asserting any damages in excess of such penalty shall be excluded. The customer waives any claims to recourse that it might have against AUSTIN on the basis of its own liability. Claims for damages and recourse shall be asserted against AUSTIN in court within three months as otherwise they shall forfeit; liability on the part of AUSTIN thus becomes time-barred within three months from the date the customer obtains knowledge of the damage caused and the party having caused the damage. The customer shall indemnify and hold harmless AUSTIN against all claims by third parties that may be asserted against AUSTIN on grounds of warranty or damages in connection with the goods delivered to, or the services provided for, the customer by AUSTIN. The customer waives all claims for damages under the (Austrian) "*Produkthaftungsgesetz*" (Product Liability Act) for property damage that it incurs as an entrepreneur. It furthermore waives all claims for recourse that it has against AUSTIN on the basis of product liability or other no-fault liability. This does not affect any mandatory statutory claims.
4. By no means does the fulfillment or acknowledgement of claims by AUSTIN, for instance warranty claims, constitute an acknowledgement of other claims of whatsoever kind including, without being limited to, claims for damages.
5. All claims for damages of the customer against AUSTIN or its vicarious agents shall be limited to the amounts actually refunded to AUSTIN by its third-party liability insurance company or under other insurance policies or by way of recourse from liable third parties. AUSTIN shall not accept any lump-sum payments for complaints, damage caused and/or the sorting out of defective products.
6. The customer states to be aware of the true value of the goods and/or services; it hereby waives any avoidance of the agreement on grounds of *laesio enormis* and all claims for unjustified enrichment. The customer furthermore waives its right to avoid any agreement with AUSTIN on grounds of error.

X. Data Protection and Declaration of Consent to Data Processing

Information of relevance under data protection law, including without being limited to personal data (such as name/company name, date of birth/registration number, address, data of the contact persons, account data) of which AUSTIN or an affiliated company obtains knowledge in the course of its business operations, the protection of which matters to AUSTIN, shall be processed exclusively in compliance with the respective applicable data protection provisions and shall be used exclusively to meet the respective contractual and statutory obligations of AUSTIN in connection with the business relationship with the customer. No transfer of data to third parties (companies not affiliated with AUSTIN) shall take place except for account data in the course of the settlement of payments to the respective credit institutions, to the commissioned transport companies, and to the tax advisor or other consultants subject to a confidentiality obligation for the purpose of fulfilling their duties. The data shall be stored until the end of the storage period required under tax law or until the end of the product liability period. **The customer hereby gives its consent (which may be revoked at any time) to such data processing and is aware of its right of access to its personal data, right to rectification, right to erasure, right to restriction, right to data portability, right to withdraw the consent and right to object to processing.**

XI. Final Provisions

1. The customer hereby irrevocably undertakes to keep secret all company and business secrets that have been made accessible or disclosed to it by AUSTIN or that the customer has otherwise obtained knowledge of in the course of or in connection with the business relationship or contact with AUSTIN, as well as all commercial and technical information and documents that are not publicly known, and not to make them accessible to third parties in any way whatsoever without the approval of AUSTIN. This secrecy obligation on the part of the customer shall remain in force for a period of five years after termination of the business relationship with AUSTIN.
2. The customer may transfer or pledge, either in full or in part, its rights under the contractual relationship with AUSTIN to third parties exclusively with the prior written approval of AUSTIN (which must not be unreasonably withheld).
3. Should any provision of these Terms and Conditions or of the remaining agreement between AUSTIN and the customer be or become ineffective, invalid or unenforceable, this shall not affect the effectiveness, validity or enforceability of the remaining provisions. In the case of ineffectiveness, invalidity or unenforceability a provision that comes as close as possible to the economic result of such provision shall apply.
4. Amendments and supplements to these Terms and Conditions and the remaining agreement between AUSTIN and the customer shall be made in writing. This requirement of written form may only be deviated from in writing.
5. The place of performance for payments and service provision shall be St. Lambrecht, Austria.
6. The entire business relationship between AUSTIN and the customer shall be subject to Austrian law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods and the conflict of law provisions. For legal disputes about the coming into existence or the legal effect of these Terms and Conditions and for contracts between AUSTIN and the customer or disputes regarding their legal consequences, the exclusive jurisdiction of the court having subject matter jurisdiction at the corporate seat of AUSTIN is agreed upon. AUSTIN shall, however, be entitled to sue in the court at the corporate seat of the customer.

The English translation of these Terms and Conditions of Sale and Delivery is provided solely for convenience. Only the original German text is legally binding.