

# **General Conditions of Delivery**

**Carbo Tech Industries GmbH and  
Mubea Carbo Tech GmbH,**

**both at A-5020 Salzburg, Eugen-Müller-Str. 16,  
herein referred to as "Carbo Tech"**

## I. Scope

1. Carbo Tech performs deliveries and services exclusively according to the following terms and conditions.
2. These conditions are considered accepted upon the placing of an order by the Ordering Party, whether verbal or written, and are therefore an integral part of the individual, concluded contract. They shall also apply to future transactions with the Ordering Party even if not expressly referred to.
3. Conditions and agreements which deviate require Carbo Tech's express written consent for their validity.

## II. Offers, Quotations

1. Carbo Tech's quotations are with costs unless expressly agreed on differently in writing. This also applies to drafts, plans, drawings or the preparation of technical documents.
2. All alterations of contracts, additional and subsidiary agreements after the conclusion of contracts shall only become effective after Carbo Tech's written confirmation.
3. Quotations are non-binding if their binding force was not expressly agreed on in writing. The Ordering Party expressly agrees to waive the legal rights entitled to him according to § 1170 a Subsection 2 Austrian Civil Code; if a considerable exceeding of the quotation is unavoidable, the Ordering Party must therefore pay for additional services corresponding to the individual prices of the quotation or the standard prices; in fact, even if he was not advised by Carbo Tech about the necessary exceeding of the quotation.
4. If special public law regulations or other compulsory standards apply where the Ordering Party will use Carbo Tech's goods and services, they shall be disclosed to Carbo Tech by the Ordering Party before placing the order as far as Carbo Tech's services are or may be concerned. In the case that the Ordering Party does not follow this obligation, he is not only liable in full for all damages arising to Carbo Tech, e.g. in the case of third parties laying claim against Carbo Tech because of non-observance of these regulations or standards, but he himself is not entitled to any claims of warranty or damage against Carbo Tech. The execution and the expenses for possible official approvals shall always fall to the Ordering Party.

Carbo Tech shall be informed in detail and in writing about official requirements and modifications regulated by the government agency by means of presenting certified copies of the individual original documents; otherwise Carbo Tech shall neither warrant for defects concerning this matter nor be liable for related damages. The Ordering Party shall always bear additional costs which are connected with the fulfilment of official demands, orders or necessary modifications due to official measures.

5. Also actual circumstances which are special and must be taken into account during the execution of deliveries or services by Carbo Tech must be reported to Carbo Tech by the Ordering Party in writing before placing an order. In the case of non-compliance, Carbo Tech does not warrant for defects resulting from such non-consideration of special circumstances, nor is Carbo Tech liable for damages as a consequence thereof. The Ordering Party shall bear all additional costs arising due to such actual circumstances.
6. In the case that orders to Carbo Tech are placed verbally, the content of Carbo Tech's offer and of these General Conditions of Delivery shall apply. In the case that Carbo Tech shall provide a written order confirmation, the regulations of the order confirmation and these Conditions are valid; the regulations of a previous offer only apply insofar as they have not been amended by the order confirmation.

### III. Prices and Terms of Payment

1. Prices in quotations or offers are subject to material prices and wages valid at the time of preparation. If these increase later and before fulfilment of the order, Carbo Tech is entitled to adjust the prices in an adequate degree. Moreover, Carbo Tech is entitled to shift the additional costs to the Ordering Party which have arisen during the completion of the order in the case that Carbo Tech staff had to work overtime.
  2. In the case that Carbo Tech offered carriage and duty paid delivery and service, the costs concerning this matter shall be advanced by the Ordering Party upon Carbo Tech's request.
  3. If not expressly agreed upon differently, prices are valid in the respective legal currency of the Republic of Austria, strictly net without cash discounts or other discounts.
  4. Carbo Tech is not obliged to accept bills of exchange; as far as bills of exchange are accepted, they are only accepted in lieu of payment. All related charges, interest and fees shall be borne by the Ordering Party.
  5. Carbo Tech reserves the right of ownership of all delivered materials and other objects until complete payment of the invoice. Carbo Tech is authorised to assert its reservation of title in the case of the cancellation of the contract and to forcibly retrieve its property also against the will of the Ordering Party.
- Moreover, as far as this is legally permitted, it is agreed that Carbo Tech also can assert in accordance with the German legal status an enlarged or prolonged reservation of title. In the case that Carbo Tech asserts an enlarged or prolonged reservation of title, German law is applicable to this enlarged or prolonged reservation of title.

Insofar, only for this single and special case Item XI.2, which generally determines that Austrian law is applicable, is derogated.

6. Restraint of payments because of factual or putative warranty claims or other counterclaims by the Ordering Party not accepted in writing by Carbo Tech is not allowed. A set-off of claims of the Ordering Party, on any legal ground, can only be carried out with Carbo Tech's consent.
7. In the case of default of payment, Carbo Tech is entitled to demand interest for default in the amount of 5% above the particular reference interest rate of the European Central Bank or, optionally, interest for default in the amount of which Carbo Tech has to pay for bank loans taken out.
8. Should reasonable doubt of liquidity or willingness to pay on the part of the Ordering Party arise before or during the execution of the order, if the Ordering Party defaults with due payment or are bills of exchange or checks not honoured on time, Carbo Tech can, at their own discretion, either demand cash payment for all delivered services so far after presenting an appropriate invoice and/or collateral before further deliveries or further working and assert, if necessary, an existing reservation of title, not constituting a cancellation of contract. Before this demand is not fulfilled, Carbo Tech is not committed to further deliveries or services concerning an existing contract. In the case that a relevant demand by Carbo Tech is not met within 10 days, Carbo Tech is entitled to withdraw from the contract. Aside from the full remuneration for rendered deliveries and services, Carbo Tech can furthermore demand that 80% of the value of those deliveries and services which are not rendered any more plus value added tax be paid. This amount is to be calculated according to the agreed upon prices. In the case that the Ordering Party withdraws from the contract or parts of it without giving reasons or for reasons which Carbo Tech is not responsible for or execution is prevented, the Ordering Party is obliged to also pay 80% of the net order value plus value added tax.
9. Carbo Tech is entitled to hand over its claims from the business connection with the Ordering Party to third parties also in the way of a blanket assignment, without the Ordering Party's consent regarding this being necessary.

#### IV. Change of Service During Execution

1. In the case that Carbo Tech realises at the construction of the work or execution of the performance or delivery that for technical or other reasons the work or the performance or delivery can or shall not be rendered in the form originally agreed upon, Carbo Tech must inform the Ordering Party about it. Should the Ordering Party decide to have the work or the performance or delivery performed by Carbo Tech in the form newly realised as necessary, he is obligated to pay the additional costs involved.
2. If the Ordering Party, however, in such a case decides against having the work or the delivery or service performed in the form found to be necessary and insists on the execution agreed on originally, then Carbo Tech is entitled to withdraw from the contract and to demand from the Ordering Party the originally agreed on remuneration plus value added tax, less what is saved due to not rendering services or by acquiring anything by any other use or intentionally failing to acquire anything (§ 1168 Austrian Civil Code).

If Carbo Tech does not make use of this right and renders services according to the requests of the Ordering Party, Carbo Tech is freed from all warranty claims and claims for damages which would not have developed had the Ordering Party accepted the alterations proposed by Carbo Tech.

3. A reduction of the extent of the deliveries and services which Carbo Tech has to produce according to the contract closed requires Carbo Tech's express and written consent. If no agreement is reached in this matter, the Ordering Party is obliged to pay Carbo Tech the remuneration agreed on in the contract closed also for those deliveries and services which Carbo Tech is not to render any longer due to the requests or instructions of the Ordering Party. However Carbo Tech must subtract from these claims for deliveries and services not rendered what they saved by not rendering services or acquired by any other use or intentionally failed to acquire anything (§ 1168 Austrian Civil Code).

#### V. Time Limits / Hindrance to and Interruption of Services

1. Time limits promised by Carbo Tech for their deliveries and services start to run on the day of the clarification of all technical and other particulars of the order at the earliest. If the Ordering Party does not meet its obligation regarding this, Carbo Tech is not bound to comply with the periods and deadlines agreed on.
2. If Carbo Tech's performances are delayed due to circumstances for which they are not responsible, such as e.g. missing preparatory work of third parties who were not assigned by Carbo Tech, the following shall apply:
  - a) Deadlines are deferred accordingly under consideration of adequate additional time for the resumption of work.
  - b) Carbo Tech must inform the Ordering Party accordingly; if Carbo Tech fails to do so, they still have the right to take into account the factual circumstances and all rights stated in this chapter if the circumstances were evident or known to the Ordering Party.
  - c) The Ordering Party shall bear all additional costs connected to the delay. Carbo Tech on their part must do the best that can be justly expected from them in order to perform the appointed deliveries and services as soon as possible.
  - d) Should the performance be interrupted longer than three months, the services rendered must be settled at contract prices, and also such costs have to be refunded, which were incurred by Carbo Tech in addition, e.g. by provision of appropriate resources or the purchase of material. Furthermore, Carbo Tech has the right to withdraw from the contract in this case without setting an extension period. In the case that Carbo Tech exercises this right, aside from the right to payment for already rendered deliveries and services at contract prices, they also have the right to be paid 80% of that part of the net total value of the order that concerns performances and services which they were not yet able to produce plus value added tax.

- e) Carbo Tech also has the right to withdraw from the contract and to claim 80% of the net value of the total order or the part payable of the net value of the total order plus value added tax in the case that a continuation or resumption of the deliveries or services become permanently impossible for reasons Carbo Tech is not responsible for.

Circumstances that Carbo Tech is not responsible for are considered to be all delays originating from the side of the Ordering Party, be they caused by third parties appointed by the Ordering Party or by third parties for whose performance Carbo Tech is not responsible as well as defective or not rendered preparatory work of other professionals etc., but also the not timely supply with raw materials if Carbo Tech timely arranged the necessary steps for the supply of these raw materials and all cases of force majeure.

3. In the case that Carbo Tech is responsible for the detention, interruption or impossibility of the performance of the service or delivery, a possible claim for damages of the Ordering Party must not exceed 10 % of the net order value. A loss of profit shall not be reimbursed.

#### VI. Warranty / Liability

1. a) Carbo Tech exclusively warrants for their own performances and those of their sub contractors. For materials and components supplied by the Ordering Party the warranty applies only to the expert use, not however to the materials or components themselves.
  - b) A higher or different strain of the deliveries and services than stated when placing the order makes any acceptance of warranty or liability invalid as well as interventions in deliveries and services of third parties without Carbo Tech's consent.
  - c) As far as repair work is concerned, warranty and liability only apply to expert technical execution.
  - d) Carbo Tech warrants and is liable for a certain performance of their deliveries only if this was expressly promised in writing.
  - e) Carbo Tech does not grant any warranty or assume any liability for preparatory work of third parties or the Ordering Party himself.
2. Prerequisites for warranty and liability are proper treatment, proper operation and appropriate maintenance of the product.
  3. The duration of the warranty is 6 months from the time of handover to the Ordering Party.
  4. a) Defects discovered must be reported to Carbo Tech in writing within three days; otherwise, any claim for warranty or damages shall be lost.
  - b) In the case of warranty against Carbo Tech, the Ordering Party can only claim correction. Such claims for correction only apply to the defect components of Carbo Tech's delivery or service.

- c) Additionally, in the case of defects, the Ordering Party surrenders the waiver (cancellation) of the contract which is also within the meaning of § 1167 Austrian Civil Code.
  - d) After a report of defects, Carbo Tech is entitled to inspect without delay, if possible after prior arrangement, the alleged defects or to demand the reshipment of the allegedly defect goods.
  - e) In the case that the remedy of defects, for which Carbo Tech warrants, is not possible for whatever reason, Carbo Tech must inform the Ordering Party immediately. In such a case, the Ordering Party can claim reduction of price instead of correction.
5. In the case that Carbo Tech performs correction work exercising a warranty deed, the period of warranty regarding the concerned component of Carbo Tech's deliveries and services is suspended for the period of the correction work. Additionally, these general terms of delivery also apply to corrections.
6. In the case that Carbo Tech makes use of a subcontractor, they can invoke single differing warranty conditions of said subcontractor concerning his services in addition to warranty conditions stated herein also against the Ordering Party, provided they have disclosed to the Ordering Party the company name of the subcontractor and his individually differing warranty conditions before the placing of the order.
7. Carbo Tech's obligation to warn the Ordering Party concerning missing requirements for adequate performance or other important circumstances for the supply of their deliveries and services is considered fully fulfilled if Carbo Tech stated appropriate requirements or details – also in abstract form – before the placing of an order e.g. in the quotation. In such cases, Carbo Tech is no longer obliged to inform the Ordering Party again about the appearance of such circumstances or hindrances during the execution of the deliveries and services. Should circumstances or hindrances occur during Carbo Tech's deliveries and services which could cause such duty to provide a warning, it is sufficient if Carbo Tech informs the Ordering Party about these circumstances and hindrances verbally. Additionally, the duty to provide a warning is limited to circumstances which are recognisable without further testing measures or are even evident to the eye.
8. Warranty claims of the Ordering Party exceeding these preceding warranty terms are hereby expressly excluded. As far as the Ordering Party is entitled to claims for damages against Carbo Tech, be it because of defectiveness itself, be it because of consequential damage after a defect or be it because of other reasons, they are limited to damages concerning cases of intent on Carbo Tech's side. The amount of the liability is always limited to the net order value. This also applies to the possible liability to pay damages according to the Product Liability Act, both for damages to persons or property. In all events, the Ordering Party has to pass on this disclaiming of liability and must stipulate this in contracts with contracting parties in favour of Carbo Tech. At all events, the Ordering Party expressly waives its right of recourse according to § 12 PHG (Product Liability Act).

9. Carbo Tech shall refund the costs for corrections of defects conducted by the Ordering Party itself only in the case that they have given written consent. Alterations on Carbo Tech's deliveries and services that the Ordering Party conducts itself or has conducted by third parties cause any warranty claim of the Ordering Party and also any claim for damages to expire.
10. **In any case, the Ordering Party is not authorised to assign claims against Carbo Tech, resulting from any legal grounds whatsoever, to third parties without Carbo Tech's written consent. Illegal claim assignments shall be considered void on Carbo Tech's part.**

## VII. Place of Performance / Copy Right

1. Place of performance for all obligations of the Ordering Party in this contract is Salzburg, if not expressly stated otherwise in these Conditions.
2. Plans, drawings, technical explanations, instructions and descriptions always remain Carbo Tech's intellectual property. Any exploitation, copying, circulation or publication may only take place with Carbo Tech's express consent.

## VIII. Secrecy / Prohibition of Imitation

1. The Ordering Party is not allowed to copy, reproduce or imitate Carbo Tech's deliveries and services or to have such carried out by third parties. In case of a violation of this regulation a contractual penalty in the amount of U.S. \$ 50,000 - (in words: US-Dollar fifty thousand) per case must be paid and is immediately payable upon a first written claim. However Carbo Tech is free to additionally claim damage exceeding this amount and to, furthermore take all seemingly proper and appropriate steps to find remedies.
2. The Ordering Party is obligated to inform Carbo Tech immediately about copying, imitations or reproductions by third parties that become known to them.
3. The Ordering Party is obligated to keep confidential all business and company secrets and know how acquired in the course of business relations with Carbo Tech and not to use these themselves or make them accessible to third parties without Carbo Tech's express written consent.

## IX. Place of Jurisdiction / Applicable Law

1. The competent court in Salzburg, Austria, shall have the exclusive jurisdiction over any legal disputes arising from a business connection with Carbo Tech. However Carbo Tech is free to hold liable the Ordering Party at its general place of jurisdiction or at another court competent for Carbo Tech's claims.
2. Austrian law is exclusively applicable.