

# JAKO General terms and conditions (GTC)

## **1. Scope:**

**1.1.** These general terms and conditions shall apply to all transactions, even to future contracts if these are accepted verbally or in person, in the current updated version (available on our homepage [www.jako.at](http://www.jako.at)). In the event of any conflict between the German and the English version of the GTC, the German version shall prevail.

**1.2.** Other general terms and conditions besides these shall not apply, even if we do not expressly veto them.

**1.3.** Deviations from these terms and conditions require a mutually ratified, **written agreement**. Effective agreements concluded shall have priority over these GTCs.

## **2. Offer and order scope:**

**2.1.** Our offers are non-binding and without obligation.

**2.2.** The **contents of our order confirmation** is exclusively decisive in terms of the scope of the contractually owed supplies or services. Published information about our products and services such as, for example, designs, data sheets, price lists, operating instructions, advertising, circulars or other published media are purely informative and in particular are not to be taken as a guarantee.

**2.3. Custom-made products** with deviations from the ordered quantity of up to +/- 10% shall be accepted and paid for without previous information from the supplier.

**2.4.** We reserve the right to make **technical amendments** even after dispatch of an order confirmation, insofar as no disadvantages arise for the customer. (e.g. construction amendments, different materials, different design)

## **3. Prices:**

**3.1.** All prices apply in the quoted currency, ex works, unpacked and unloaded (**EXW**) plus the statutory value added tax and other fees. Other conditions of sale shall take place in accordance with INCOTERMS 2010.

**3.2.** Packaging costs shall be charged at cost price.

**3.3.** There is a **minimum (net) goods value** per delivery of **EUR 35** to be invoiced. Should the goods value be lower, the difference will be shown separately to the goods value on the invoice.

**3.4.** Cost increases, which are beyond our control and in particular arise during the ongoing processing of orders (framework agreements) e.g. material price increases, collective agreement wage increases, tariff or cost increases for energy costs entitle us to a **price increase that is reasonable and acceptable and comprehensible** for the customer. Should no agreement on the price increase be reached with the customer, we are entitled, according to our own discretion, to withdraw from fulfilling the current order with immediate effect or to deliver the open remaining quantity against advance payment as a one-off delivery at the last valid price.

**3.5.** **Cost estimates** for cost-plus services are subject to a charge and are non-binding unless otherwise agreed.

## **4. Delivery periods:**

**4.1.** All **delivery time specifications** on our order confirmations apply **ex works**. These are **non-binding delivery periods**, which are determined to the best of our knowledge, based on regulated production processes.

**4.2.** The **delivery period** starts with the last respective date, either the day of the order confirmation or the day on which the supplier has all the data, information, patterns or particulars according to the agreement before the start of the contract, or the date of receipt of payment of an agreed deposit.

**4.3.** We are entitled to **partial delivery and partial performance**.

**4.4.** **Unforeseeable and unavoidable events** (war, events similar to war,

shortage of energy or raw materials, sabotage, strike, lockouts, as well as all other interruptions of operations or regulatory actions beyond our control) release us for the duration of their presence from our duty to deliver and supply, also if this should arise during a pre-existing delay. Delivery periods and dates shall hereby be extended as appropriate. This also applies to deliveries or services beyond our control, which are late or inadequate due to our supplier. Should these events last more than six weeks, the customer shall be entitled to withdraw from the contract; the same shall also apply to our right to withdraw.

**4.5.** In case of **late payment or action** by the customer, agreed delivery or service periods shall be suspended for the length of the delay.

**4.6.** A **right to withdraw** due to delay on our part is available to the customer only if we have caused the delay and a grace period set by the customer of a minimum of 30 days has elapsed fruitlessly. Claims for damages due to slightly negligent delay on our part shall be excluded.

## **5. Payments:**

**5.1.** Deliveries to first-time customers and customers overseas shall take place against **advance payment or cash on delivery**, otherwise the **10 days (net)** term of payment shall be deemed agreed.

**5.2.** **Default of payment** shall result in all outstanding receivables being immediately due. Default interest shall accrue in the amount of **3.5% points above the 3-month-EURIBOR per month**. In case of default of payment, we are entitled to withhold due deliveries until full payment is made. In case of default of payment, all reminder fees and collection expenses, including all out-of-court legal costs, shall be at the customer's expense. The customer shall be charged all interest, expenses and other costs on a current-account basis.

**5.3.** A **right to offset**, in particular also on issuing **debit notes**, is only available to the customer insofar as their counterclaim has been stated legally binding or previously recognised by us in writing. Only in these cases shall the customer also be authorised to exercise a right of retention. The right of retention is generally restricted to a fifth of the consideration. Retention due to counterclaims, which are not based on this legal relationship, shall be excluded.

**5.4.** The **assignment** of all customer claims against us to third parties shall require our express written consent in order to be valid, unless a monetary claim is concerned.

**5.5.** If, after concluding a contract, circumstances should become known to us, which call into question the **creditworthiness of the customer**, such as the opening of insolvency proceedings, slow payment, unfavourable information or default of payment in previous deliveries for example, we shall be entitled to refuse to fulfil the contract until adequate security has been given to us, whereby eventual delivery or performance periods are extended accordingly. Should the customer not meet our demand for security within a reasonable time period, we shall be entitled to withdraw from the contract. We shall also be entitled to carry out the delivery by cash on delivery or prepayment. If we have already delivered, we can demand immediate payment of our invoice.

## **6. Shipping, transport, transfer of risk**

**6.1.** **Shipping** shall take place at our discretion in the most favourable way at the customer's expense.

**6.2.** The goods shall be deemed as transferred when transferred to the carrier. At this point, the **risk of loss or deterioration or damage** to the goods shall also transfer to the customer. This excludes deliveries for which we take on and settle **transport insurance** according to written agreement and INCOTERMS 2010.

**6.3.** By accepting the delivery, the customer undertakes to check the delivered goods promptly for completeness, correctness and defects. In the case of apparent deviations, these shall be reported within a **reporting**

**deadline of 4 working days** (received by us) after delivery, failing which guarantee claims for compensation on the grounds of defect and error over the item being free from defects or reduction by more than half shall no longer be valid. The quoted claims shall also be dropped if products are installed despite apparent defects. Customer complaints shall be made in writing with reference to a JAKO reference number, e.g. delivery note number. Damage to transport packaging, product packaging or the product itself apparent from the outside shall be photographed and retained and made available as ongoing evidence. After the expiration of this **reporting deadline**, **protection from any transport insurance taken out shall lapse** and with it any eventual claim to reimbursement of costs in case of transport damage.

**6.4. Distance and direct deliveries** with different delivery and invoicing addresses shall take place **only at the express wish and risk of the customer** on notification of a named contact person including telephone number. This information shall be made available to the supplying company by us. However we do not make any guarantee that the delivery service shall actually contact the contact person prior to delivery, or that they shall be contacted by telephone, or that a delivery will be made to the contact in person. **In case of distance and direct deliveries, transfer of risk shall apply exclusively "ex works".**

**6.5.** If the customer is in default of acceptance, we shall be entitled to demand compensation for the resulting damage.

#### **7. Warranty, liability, limitation:**

**7.1.** The warranty period for deliveries and services amounts to **6 months** from the delivery date.

**7.2.** A warranty claim can first arise, if the customer proves that the defect was already present at the time of transfer of risk. For the examination and determination of the cause of damage, the defective goods shall be returned and made available to us subject to all deadlines. This also applies to the willingness to freely supply information, data and samples, e.g. material samples, in order to establish respective installation and operating conditions and enable the clarification of the cause of damage under lab conditions. Should this be refused or delayed, the warranty claim shall lapse.

**7.3.** All other claims for losses (see point 6.3) in relation to **every product defect**, which was not apparent at the goods acceptance, shall be reported in writing within 4 working days from becoming aware of the defect with reference to order, contract, delivery or invoice documents.

**7.4. Established defects under warranty** entitle us at our own discretion to make an exchange with a functionally equivalent product, repair the defective components (improvement) or to issue commercial compensation via a credit note. The remedy of the defect under warranty assumes that the customer has already met their payment obligation. In case of exchanges and credit notes, the defective products shall become our property. Product defects that have occurred due to improper handling or overuse, e.g. during the installation and operating phase or have arisen from normal wear, shall

not be accepted.

**7.5. The remedy** of a defect alleged by the customer does not constitute recognition of a defect under warranty.

**7.6. Further claims**, in particular consequential damages shall be excluded. This does not apply to wilful and gross negligence by us. Other claims such as, for example, recourse and recovery claims in accordance with product liability law or other mandatory legal provisions shall be restricted to the permitted minimum and shall be **legally asserted** within six months to be valid.

**7.7.** Liability is **restricted** by the liability limit of liability insurance taken out by us in any event.

**7.8.** Customers who sell our products on shall undertake to take out and maintain reasonable insurance for **product liability claims** and to hold us free from blame with regard to recourse claims.

**7.9.** If, and insofar as, the customer can make use of insurance benefits with regard to damages for which we are responsible via insurance they have taken out themselves or which is in their favour, e.g. liability, full comprehensive, transport, fire, business interruption insurance, the customer shall undertake to claim the insurance benefit and restrict our liability only to the detriments still resulting for the customer.

#### **8. Retention of title and property rights:**

The delivered goods shall remain our property until full payment. Resale is only possible with our written agreement. The customer shall declare their express consent that, to assert our retention of title, we may access the **location** of the reserved goods unhindered, in order to pick up the goods again at our free disposal.

**9. Patent rights, copyright, other property rights**, which are embodied in the service provided by us, shall not be transferred to the customer. All documents made publicly available by us, such as designs, data sheets, certificates, for example, online may only be replicated and made available to third parties with reference to [www.jako.at](http://www.jako.at) and as a whole and not in extracts or parts. All documents, samples, offers, brands or trademarks **not made publicly available**, shall be treated as confidential and may only be passed on to third parties **with our written agreement**.

#### **10. Place of performance, place of jurisdiction, severability clause:**

**10.1.** The place of performance and place of jurisdiction for both contracting parties and for all disputes arising directly or indirectly from the contractual relationship shall be **VIENNA**.

**10.2.** Austrian law shall exclusively apply.

**10.3.** Should individual parts of these GTCs be invalid, the validity of the other parts shall not be affected. Both parties shall undertake - based on the good faith of contracting parties - to agree a substitute regulation, which best reflects the commercial result of the invalid regulation, with regard to commercial practice in the business.