

# ROBERT SCHINDELE GesmbH

Vertrieb von Mineralien zur Nahrungsergänzung

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ATU 39990006



## 1. Application of General Business Conditions

Unless expressly agreed to the contrary, these General Business Conditions (GBC) apply to all (including future) business relationships between us and the Customer. The Customer recognises these GBC with the submission of his contractual declaration (see section 2). Conclusions of contract are only possible subject to these conditions – varying, contrary, restrictive or supplementary conditions and provisions of the Customer must be expressly agreed to by us in writing for these to become an integral part of the contract in an individual case; in particular, contractual performance actions by us shall not be treated as agreement to conditions at variance to our GBC.

## 2. Conclusion of contract

- 2.1 The presentation of our products on our website and in our folders does not represent an offer in the legal sense.
- 2.2 We shall announce the prices for our products after contact has been made by the Customer. An order subsequently forwarded by the Customer constitutes a binding offer and his contractual declaration on the basis of these GBC in the legal sense. Acceptance by us shall be by way of a separate confirmation of order sent in writing or by way of actual delivery of the ordered goods. We are entitled to also accept orders in part only or to decline them without stating reasons.

## 3. Price, delivery and despatch costs

- 3.1 Unless agreed to the contrary, the prices announced by us to the Customer and prices based upon a possible contract shall be deemed ex works, i.e. in particular excluding postage/despatch, customs and insurance. Our prices include the statutory turnover tax of 20%, but not the costs for packaging.
- 3.2 For individual customers we currently charge packaging expenses of € 1.80 for up to 6 x 1kg cans and € 2.40 for 7-12 x 1kg cans.
- 3.3 If the Customer submits a valid UID number, Austrian turnover tax shall not be charged.
- 3.4 Insofar as the Customer requests and it is confirmed by us in writing, we shall also undertake the organisation of the despatch. We shall pass on to the Customer as despatch costs the transportation costs paid by us. The current transportation costs can be seen on our website under <http://www.mineralien.co.at/en/transportkosten.html>. The choice of transporter shall be at our discretion, although without any warranty for choice of the fastest and cheapest form of despatch. The Customer hereby expressly consents to our choice of transporter.

## 4. Delivery date and delivery

- 4.1 In the absence of express written agreement to the contrary for the individual case in

question, delivery dates and time limits shall be non-binding.

- 4.2 In each case the time limit for delivery shall be extended by the duration of the impediment where delay is caused by circumstances not attributable to the intentions of the parties, such as cases of forces majeures, unforeseen interruptions of business, interventions by authorities, transportation and customs clearance delays, damage in transport, rejection of important production parts and labour disputes.
- 4.3 Delivery shall be to the address for delivery stated by the Customer. Possible costs caused by stating an incorrect address for delivery by the Customer shall also be borne by the Customer.
- 4.4 In the absence of express agreement to the contrary, the costs (cf. sections 3.1 and 3.4) and the risk of transportation shall be borne by the Customer. The risk of accidental destruction and accidental deterioration of the goods shall pass correspondingly to the Customer on handing over to the transporter.

## **5. Conditions of payment**

- 5.1 Unless otherwise agreed in writing, our outstanding accounts shall be paid in full and without deduction prior to the handing over of the ordered goods.
- 5.2 In the event of default in payment by the Customer, we shall charge the statutory default interest in the case of a consumer transaction; in the case of a business transaction we shall charge default interest at the rate of 10 percentage points above the base interest rate. We shall additionally be entitled to demand from the Customer compound interest commencing from the date of the handing over of the goods to the Customer.

## **6. Reminder and collection charges**

- 6.1 In the event of default, the Customer engages to bear the costs and expenses incurred by us, such as in particular reminder and collection charges or other costs required for an expedient legal prosecution.
- 6.2 Insofar as we undertake the reminder proceedings ourselves, the Customer engages to pay a sum of € 12.00 for each reminder issued, and for the preservation of evidence of the debt relationship in the reminder proceedings a sum of € 5.00 per half-year. The Customer additionally engages to reimburse the costs of a collection agency, which may possibly be engaged, resulting from the applicable directives for maximum fees in collection proceedings, as well as the costs of attorneys pursuant to the Austrian Attorneys' Fees Act (Rechtsanwaltstarifgesetz).
- 6.3 Beyond this, compensation shall be paid for each additional loss, in particular including losses we incur, following non-payment, as a result of correspondingly higher interest on possible credit accounts.

## **7. Rescission of the contract**

- 7.1 For important reasons, in particular in the case of default in payment (cf. section 5.2) or other conduct by the Customer in breach of contract, we shall – after a reasonable period of grace has been set – be entitled to rescind the contract.
- 7.2 In the case of rescission by the parties, payments already reciprocally received shall be returned without delay. However, in the event of fault on the part of the Customer we shall be entitled to retain and/or charge reasonable payment as compensation for the expenses and loss resulting from the rescission; in particular, the Customer now hereby agrees that we can collect the goods at any time at the cost of the Customer.

## **8. Right and consequences of rescission for consumers pursuant to the Austrian Consumer Protection Act (Konsumentenschutzgesetz, KSchG)**

- 8.1 If the Customer is a consumer within the meaning of the Austrian Consumer Protection Act and if he has concluded this contract with us, based upon these General Business Conditions, exclusively using a long-distance communication medium (e.g. telephone, fax, online), he can rescind the contract from this time onwards up until the expiration of the time limits stated in sections 8.2 and 8.3. It is sufficient if the declaration of rescission is sent within the time limit.
- 8.2 The time limit for rescission is 14 calendar days, with the implicit understanding that this period must comprise at least seven working days, whereby Saturday does not count as a working day. For contracts concerning the delivery of goods, the time limit commences on the date of receipt of the goods by the Customer, and for contracts concerning the provision of services, on the date of conclusion of the contract.
- 8.3 If we fail to fulfil our obligations to provide information pursuant to § 5 d paras 1 and 2 of the Austrian Consumer Protection Act, the time limit for rescission shall be three months commencing from the time limits stated in section 8.2. If we fail to fulfil our obligations within this time limit, the time limit for exercising the right of rescission stated in section 8.2 shall commence at the time of conveyance of the information by us.
- 8.4 The consumer has no right of rescission in the case of contracts concerning
- goods produced by us according to customer specifications, which are clearly geared towards personal requirements, which because of their qualities are not able to be returned, which can rapidly become spoiled or whose expiry date would be transgressed.
  - newspapers, journals and magazines with the exception of contracts concerning periodical printed matter (§ 26 para 1 item 1 of the Austrian Consumer Protection Act) as well as
  - home deliveries or leisure services (§ 5c para 4 items 1 and 2 of the Austrian Consumer Protection Act).
- 8.5 In the event of an effective revocation, reciprocally received payments pursuant to § 5 g of the Austrian Consumer Protection Act shall be returned. The consumer shall bear the costs of returning the goods. After receipt of the returned goods we shall refund to the Customer the payment made. Insofar as the Customer has already used the goods prior to their return, we are entitled pursuant to § 5 g para 2 of the Austrian Consumer Protection Act to deduct and retain from the payment made reasonable remuneration, including damages for possible reduction in value.

## **9. Reservation of ownership**

- 9.1 The goods delivered by us shall remain in our ownership until full payments of our outstanding accounts from the delivery.
- 9.2 For the duration of the reservation of ownership the customer is under an obligation to handle the goods with care. The Customer shall inform us in writing without delay of all seizures of the goods by third parties, in particular of enforcement measures, as well as damage or destruction of the goods. The Customer shall compensate us for all losses and costs arising as a result of a breach of these obligations and through necessary intervention measures against seizures of the goods by third parties.
- 9.3 In the event of conduct in breach of contract by the Customer (cf. section 7), we shall be entitled to rescind this contract and demand the surrender of the goods.
- 9.4 The Customer is entitled to resell the goods in the ordinary course of business. The Customer now hereby assigns to us all claims in the amount of invoice which accrue

to him against a third party as a result of the resale, and engages to make an appropriate note in his books or on his invoices. We hereby accept the assignment. Following the assignment the entrepreneur shall be entitled to collect the outstanding account. We reserve the right to collect the outstanding account ourselves as soon as the entrepreneur fails to fulfil his payment obligations in an orderly manner and falls into default in payment.

## **10. Warranty**

- 10.1 With regard to our detailed information and advice on effects as well as indications for intake of our products, we refer to the folder accompanying the delivery or the folder downloadable at any time in the 'Services' section of our website [http://www.mineralien.co.at/downloads/schindeles\\_folder\\_en.pdf](http://www.mineralien.co.at/downloads/schindeles_folder_en.pdf). However, we undertake no warranty for the effects of our products. In particular, our products are not permitted to be transferred into other containers, mixed with other products or relabelled without our express written consent.
- 10.2 Unless otherwise agreed below with entrepreneurs, in the event of defects in goods, the statutory warranty provisions apply to customers. A warranty shall not be deemed to apply in the case of losses caused by improper use or handling of the article. The same applies to normal wear and tear.
- 10.3 Due to the resolution and size of the photographs, the colour and size of the product illustrations on the website and/or in our folders can vary from the appearance of the products delivered. The delivered goods shall be deemed in conformity with the contract if the delivered items correspond with the further specification in the accompanying folder and/or the folder made available in the download section, as well as the further information on the website.
- 10.4 Insofar as the Customer is a consumer within the meaning of the Austrian Consumer Protection Act he shall, if possible after receipt of the delivered goods, examine them with regard to completeness, correctness and other freedom from defect, in particular the intactness of the packaging, and inform us of possible defects by email to [support@mineralien.co.at](mailto:support@mineralien.co.at) and provide a brief description of these defects. A breach of this obligation shall not lead to any restriction of the statutory warranty rights of the consumer. Defective goods shall only be returned at our express request. If a return despatch is required and the goods are in fact defective, we shall bear the relevant costs. Otherwise, possible costs of despatch shall be borne by the consumer.
- 10.5 If the Customer is an entrepreneur within the meaning of the Austrian Commercial Code (Unternehmensgesetzbuch), he shall, if possible after receipt of the delivered goods, examine them with regard to completeness, correctness and other freedom from defect, in particular the intactness of the packaging. If there are defects, he shall give notification of these without delay by email, and at the latest four calendar days after receipt of the goods, to [support@mineralien.co.at](mailto:support@mineralien.co.at). If the entrepreneur does not give such notification within the time limit, the delivery shall be deemed to be approved and all claims, e.g. warranty, avoidance on account of mistake or compensation on account of a subsequently alleged deviation or defect, shall thereby be inapplicable. This also applies in respect of possible wrong deliveries or deviations in the quantity supplied.
- 10.6 If the Customer is an entrepreneur within the meaning of the Austrian Commercial Code, it is our exclusive responsibility to select the legal remedy to remove a defect notified within the time limit. We are also at liberty to annul the agreement immediately (redhibition).
- 10.7 If the Customer is an entrepreneur, he shall bear the costs of returning the goods for

repair and/or for exchange.

## **11. Liability**

- 11.1 We are liable for losses in accordance with the statutory provisions. However, liability is excluded for losses caused by minor negligence. This limitation of liability does not apply to losses arising from injury to life, the body or to the health of human beings and to claims under the Austrian Product Liability Act (Produkthaftungsgesetz).
- 11.2 Customers who are entrepreneurs have to prove the existence of intention or gross negligence and assert claims for damages within one year from the passing of the risk. The provisions concerning damages contained in these General Business Conditions or otherwise agreed shall also apply if the claim for damages is asserted in addition to or instead of a warranty claim.
- 11.3 If the Customer is an entrepreneur, possible claims of recourse within the meaning of § 12 of the Austrian Product Liability Act are excluded, unless the party entitled to recourse proves that the fault was caused within our area of responsibility and had been due at least to gross negligence.

## **12. Prohibitions of refusal to perform and prohibitions of withholding**

Justified complaints shall not create an entitlement to withhold the entire amount of invoice, but only a reasonable portion of the amount of invoice.

## **13. Data protection, change of address, copyright, secrecy**

- 13.1 The Customer gives his consent to the automation-assisted storage and processing of personal data (such as name, address, email, telephone number and address for delivery) disclosed by him in the course of conclusion of the contract, for own marketing purposes and for the enforcement of rights. Beyond this there shall be no further disclosure of personal data to third parties. In addition, the Customer consents to the receipt of advertising notices by SMS and email pursuant to § 107 of the Austrian Telecommunications Act (Telekommunikationsgesetz, TKG). Both consents – separately as well – can be revoked at any time by email to support@mineralien.co.at.
- 13.2 The Customer is under an obligation to notify us immediately of changes to his residential and/or business address as well as contact data during the maintenance of the business relationship. If he fails to provide such notification, declarations shall be deemed to have been received if they are sent to the address last notified by the Customer.
- 13.3 Price lists and other documents such as brochures, catalogues, samples, presentations and suchlike, remain our intellectual property; the Customer shall be granted no rights to use work or rights of exploitation of any kind whatsoever. Every use, in particular the passing on, reproduction, publication and making available, requires our express consent. All documents listed above can be demanded back by us at any time and shall in any event be returned to us without delay and without requirement of a request for their return if no contract comes into being on the basis of these General Business Conditions.
- 13.4 Our Customer additionally engages to keep secret from third parties knowledge acquired from the business relationship.

## **14. Place of performance, legal venue, choice of law, other provisions**

- 14.1 The place of performance for all services provided on the basis of these General

Business Conditions is the domicile of our enterprise in Kicking 18, A- 3122 Gansbach, Austria.

- 14.2 For business transactions and for consumer transactions where at the time of issue of proceedings the consumer has neither domicile nor usual place of residence in Austria, and is not employed within the country, the agreed exclusive legal venue for all disputes arising from this contract is the court with territorial jurisdiction and jurisdiction regarding subject matter for 3122 Gansbach. Our power in this case to also appeal to another court with jurisdiction for the Customer remains unaffected thereby.
- 14.3 The substantive law of the Republic of Austria applies exclusively, except for principles on conflicts of law and UN law on the international sale of goods. For consumers, this choice of law only applies insofar as mandatory provisions of the law of the state in which he has his usual place of residence are not displaced.
- 14.4 Should individual provisions of these General Business Conditions be ineffective in full or in part, this shall not affect the validity of the remaining provisions and the contracts concluded on the basis thereof. In the case of contracts with entrepreneurs, the fully or partially ineffective provision shall be replaced by a provision approximating as closely as possible to the meaning and purpose of the ineffective provision.
- 14.5 Amendments and supplements to the contract must be in the written form. This also applies to the removal of this formal requirement. There are no existing oral agreements. Declarations in the form of faxes, emails or other technical media are also deemed to be in the written form.

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