

**General Terms and Conditions of Business  
of Carl Auböck GmbH NfG. KG  
for businesses with consumers**

**FN 186244p  
Bernardgasse 23, 1070 Vienna**

Status: May 2023

**1. scope of application:**

**1.1.** These General Terms and Conditions (hereinafter referred to as "**GTC**") shall become an integral part of between Carl Auböck GmbH NfG. KG (hereinafter referred to as "**Carl Auböck GmbH**") and the orderer of work, buyer or principal (hereinafter referred to as "**Customer**") closed purchase, work and other contracts concluded in the respective valid version. These GTC shall be binding for all present and future business transactions with the Customer as well as for follow-up orders, even if no express reference is made thereto.

**1.2.** Any provisions deviating from or supplementing these GTC, such as the Customer's general terms and conditions of business, payment and delivery, shall only become part of the contract if expressly confirmed in writing by Carl Auböck GmbH.

**2. conclusion of the contract:**

**2.1.** The conclusion of the contract shall come into effect with the order confirmation sent to the customer. Carl Auböck GmbH expressly points out that the decision to conclude a contract with a customer is at its discretion and that such a decision may also be rejected by Carl Auböck GmbH without stating reasons.

**2.2.** The product descriptions contained on the website or in catalogues of Carl Auböck GmbH do not constitute binding offers, but serve for the submission of a binding offer by the customer.

**2.3.** The customer submits his legally binding offer by e-mail to Carl Auböck GmbH regarding the selected products.

**2.4.** Carl Auböck GmbH may accept the customer's offer within five working days by sending the customer an order confirmation by e-mail.

**2.5.** The period for acceptance of the offer begins on the day after the customer sends the offer and ends with the expiry of the fifth working day following the sending of the offer.

**2.6.** The contract may be concluded in German or English.

**2.7.** Oral communications by Carl Auböck GmbH to the Customer shall always be non-binding, even if prices, dates and other technical specifications are communicated. The conclusion of the contract, even in such a case, shall only be concluded by means of an order confirmation of Carl Auböck GmbH transmitted to the customer and in accordance with the content of the transmitted order confirmation.

### **3. cost estimates:**

**3.1. Offers and cost estimates are prepared by Carl Auböck GmbH to the best of its knowledge, but no guarantee can be given for their correctness.** Should unavoidable costs increase by more than 5 % after the order has been placed, the Carl Auböck GmbH shall inform the Customer thereof. If unavoidable cost overruns of less than 5% occur, a separate notification is not required and these costs can be invoiced without further ado. If the actual costs are lower than originally estimated, this underrun shall also be taken into account by Carl Auböck GmbH and the price of the work produced shall be reduced accordingly from the customer's point of view. Unless otherwise agreed, order changes or additional orders may be invoiced at reasonable prices.

### **3.2. Cost estimates for custom-made products shall be subject to payment.**

**3.3.** Carl Auböck GmbH reserves the right to insignificant, reasonable deviations in dimensions and designs (e.g. colour and structure), in particular in the case of repeat orders, insofar as these are in the nature of the materials used and are customary. Objectively justified shall be deemed to be, in particular, material-related changes, e.g. in dimensions, colours, horn, wood and veneer appearance, leather texture, grain and structure. Photographically depicted patina, leather colours or polishes represent the best approximation to the goods. Due to the variety of possible monitor technologies and settings as well as the natural tanning variations of leather or colour characteristics of the patina and horn, the colour fastness may deviate slightly. Leather in particular is naturally subject to slight variations in colour.

## **4. Retention of title:**

**4.1.** Carl Auböck GmbH retains title to the delivered and manufactured goods and services until receipt of the full purchase price.

## **5. custom-made products:**

**5.1.** Due to their special and creative production, custom-made products are subject to individual written agreements between Carl Auböck GmbH and the customer. Their nature, form and appearance shall be agreed and produced separately. The purchase price is calculated on this basis and offered separately. The delivery time depends on the individual shape and condition of the product, which is why this is also specially agreed. The contract is concluded with the order confirmation sent to the customer.

**5.2.** It is expressly pointed out that there is no general right of return for products and other services of Carl Auböck GmbH, in particular regarding custom-made products.

## **6. prices and terms of payment:**

**6.1.** All prices are quoted in EURO. Unless otherwise stated in the product descriptions, the prices quoted are total prices which include the statutory VAT, provided that the sales are within the European Union and the customer does not have a tax number (B2C). Any fees are to be paid by the customer.

**6.2.** Unless otherwise stated in the product descriptions, the prices indicated are total prices that do not include the statutory value added tax, provided that the sales are outside the European Union. Any fees are to be paid by the customer.

**6.3.** Additional delivery and shipping costs are not indicated in the respective product description. These are calculated by Carl Auböck GmbH, shown on its invoice and are therefore to be paid by the Customer.

**6.4.** Transfer fees and bank charges shall be paid by the customer.

**6.5.** In the case of deliveries to countries outside the European Union, further costs may be incurred in individual cases for which Carl Auböck GmbH is not responsible but which are to be paid by the customer. Such costs include, for example: Costs of money transfer by banks and credit institutions (e.g. transfer fees, exchange rate fees) or customs and import duties or taxes. Such costs may also be incurred in relation to the transfer of funds if the delivery is not made to a country outside the European Union but the customer makes the payment from a country outside the European Union.

**6.6.** All orders are paid in advance in the form of online bank transfers. The bank details of Carl Auböck GmbH can be found under item 20. of the present General Terms and Conditions and on every invoice of Carl Auböck GmbH.

**6.7.** In the case of custom-made products pursuant to item 5, deviating prices and terms of payment may be agreed in detail.

**6.8.** Partial invoices are permissible for partial deliveries. Such partial invoices shall be agreed separately between Carl Auböck GmbH and the Customer before the offer is made.

**6.9.** In the event that partial payments are agreed, the Customer shall lose the delivery date if even one partial payment is not made on time or in full. Upon the occurrence of a missed deadline, the entire outstanding balance shall become due for payment immediately. In the event of loss of payment on the due date, Carl Auböck GmbH shall be entitled to take custody of the goods delivered under retention of title without withdrawing from the purchase contract until the entire claim, including ancillary costs, has been fully covered. During the period of outstanding payment, the production of Carl Auböck GmbH shall be interrupted and the product shall not be delivered until full payment has been made.

**6.10.** Travel costs and expenses incurred in the execution of the order shall be borne by the client in addition to the agreed price and shall be notified to the client separately in advance.

## **7. discounts:**

**7.1.** Rebates, discounts and price reductions shall only be granted after written agreement in detail and shall apply until revoked. The Seller may revoke such agreements at any time and without giving reasons, with immediate effect.

## **8. delivery and shipping conditions:**

**8.1.** The place of performance shall be Carl Auböck GmbH NfG. KG, 1070 Vienna, Bernardgasse 23.

**8.2. The customer shall bear the costs of transport.** The risk of accidental loss and accidental deterioration of the goods sold in the course of transport shall in principle only pass to the customer upon handover of the goods to the customer.

**8.3.** The delivery of goods shall be made by dispatch to the delivery address specified by the customer, unless otherwise agreed. The delivery address stated in the order with Carl Auböck GmbH shall be decisive for the delivery.

**8.4.** Shipment shall be insured for value via the United Parcel Service (UPS) or the Austrian "Post" or another transport company agreed in detail.

**8.5.** A different mode of shipment shall be agreed separately with Carl Auböck GmbH at the customer's request. It shall then be incumbent on the customer to select and pay for the carrier deviating from item 8.4.. The risk of accidental loss and accidental deterioration of the sold goods in the course of transport shall already pass to the customer at the time the goods are handed over to the selected carrier. The same shall apply if the customer has himself commissioned the forwarder or the person otherwise designated to carry out the transport, which must also be agreed separately with Carl Auböck GmbH.

**8.6.** If the customer decides to use his own carrier, Carl Auböck GmbH shall inform the customer of the exact number of packages, the dimensions and weight as well as the place of collection. In such a case, the customer undertakes to provide Carl Auböck GmbH free of charge with all necessary shipping labels and papers of the forwarder selected by him as well as any delivery note documents used by Carl Auböck GmbH.

**8.7.** Subsequently to the handover of the goods to the carrier, Carl Auböck GmbH shall transmit the shipment information (e.g. tracking number) to the customer by e-mail. This confirms the handover of the goods and the shipment to the customer.

**8.8.** If the transport company returns the dispatched goods to the seller because delivery to the customer was not possible, the customer shall bear the costs for the unsuccessful dispatch.

**8.9.** Shipments of goods to third parties ("dropship") shall be agreed in detail. The risk of accidental loss and accidental deterioration of the goods sold in the course of transport shall also pass to the customer in this case as soon as Carl Auböck GmbH

has handed over the goods to the carrier or other person designated to carry out the shipment or to the third party.

**8.10.** The goods shall be shipped in a transport-safe manner using safety packaging, whereby Carl Auböck GmbH shall pay attention to sustainability and individually adapted packaging.

**8.11.** In the case of self-collection, Carl Auböck GmbH shall first inform the customer by e-mail that the goods ordered by him are ready for collection. After receipt of this e-mail, the customer may collect the goods at the registered office of Carl Auböck GmbH, subject to separate agreement with Carl Auböck GmbH. In this case, no shipping costs will be charged.

**8.12.** For data, the risk of loss or alteration of the data during download and dispatch via the Internet shall pass to the customer when the data crosses the network interface of Carl Auböck GmbH.

**8.13.** Carl Auböck GmbH shall comply with delivery periods and dates as far as possible: **Unless expressly agreed as binding, they shall not be binding and shall always be understood as the expected time of provision and handover to the customer.** Claims for damages due to delayed performance and/or delivery or handover are excluded.

## **9. defects and warranty:**

**9.1.** The statutory warranty provisions shall apply to defects in the goods and services of Carl Auböck GmbH occurring after handover.

**9.2.** The customer shall bear sole responsibility for the proper and professional use of the goods. Carl Auböck GmbH shall only provide a warranty for those properties that can be expected of the product when used properly and for the intended purpose.

**9.3.** Carl Auböck GmbH undertakes to provide an assessment of the damage or defects notified by the customer on the basis of the documentation provided by the customer and to submit proposals for remedying the damage or defects.

**9.4.** Deviations which are the basis of the actual artisan work technique of Carl Auböck GmbH as well as unavoidable, material-related deviations in casting quality, surface colour or condition of the goods shall not be deemed to be damage or defects.

**9.5.** If there is damage or a defect, Carl Auböck GmbH undertakes to remedy these defects. This shall not apply if remedying the defect would involve disproportionate effort and/or disproportionate costs for Carl Auböck GmbH. In this case, the goods shall be exchanged by Carl Auböck GmbH and resent to the customer at its expense. An exchange shall only be possible against goods of the same type and quality, provided that these are in stock at Carl Auböck GmbH. If neither a remedy of defects nor an exchange is possible, the purchase price shall be refunded.

## **10. erroneous orders:**

**10.1.** Goods ordered in error by the customer may be returned after consultation with Carl Auböck GmbH at the customer's expense and exchanged for other goods at the same price.

**10.2.** The customer is obliged to report an erroneous order immediately, at the latest within three working days, in writing by e-mail to [auboeck@carlauboeck.at](mailto:auboeck@carlauboeck.at).

**10.3. The transport costs for returns are to be borne by the customer.** These goods must be clearly indicated and designated by the customer as "returned goods". Customs and import duties or taxes on the return shipment shall be paid by the customer. Other handling or storage charges incurred by Carl Auböck GmbH shall also be paid by the customer.



## **11. repair:**

**11.1.** Carl Auböck GmbH reserves the right to carry out repairs itself if possible. If it becomes apparent only in the course of the repair and without Carl Auböck GmbH having been aware of this on the basis of its expertise that the item is unsuitable for restoration, Carl Auböck GmbH shall inform the customer of this without delay. If neither repair nor replacement is possible, the purchase price shall be refunded.

## **12. Compensation and liability:**

**12.1.** Carl Auböck GmbH shall be liable to the customer for all contractual and tortious claims for damages and reimbursement of expenses only in the event of intent or gross negligence. In the event of slight negligence, Carl Auböck GmbH shall only be liable for personal injury.

**12.2.** If the customer provides Carl Auböck GmbH with plans or measurements, the customer shall be liable for their correctness, unless their incorrectness is obvious. If a plan, measurement or instruction of the customer proves to be incorrect, Carl Auböck GmbH shall notify the customer thereof immediately and request the customer to provide appropriate instructions within a reasonable period of time. The costs incurred until then shall be borne by the customer. If the instruction is not received within a reasonable period of time, the customer shall be liable for the consequences of default.

**12.3.** If, in any case whatsoever, a penalty has been agreed to the detriment of Carl Auböck GmbH, it shall be subject to the judicial right of moderation and the assertion of claims for damages in excess of the penalty shall be excluded.

**12.4.** Carl Auböck GmbH shall not be liable for damage caused by the customer or by third parties, e.g. in a showroom, accidentally, negligently or intentionally.

**12.5.** If several customers have committed themselves to Carl Auböck GmbH by means of a contract, they shall be jointly and severally liable for the fulfilment of all obligations assumed in this contract in accordance with the Austrian Civil Code.

**12.6.** Product liability claims that could be derived from provisions other than the Product Liability Act are excluded. Any recourse claims which contractual partners or third parties may make against Carl Auböck GmbH under the Product Liability Act shall be excluded unless the party entitled to recourse proves that the defect was caused within the sphere of Carl Auböck GmbH and was at least due to gross negligence.

**13. offsetting prohibition:**

**13.1.** Offsetting against claims of Carl Auböck GmbH with counterclaims of the Customer of any kind whatsoever shall be excluded. The right of the consumer to set off his liabilities by offsetting shall, however, apply notwithstanding the foregoing in the event of the insolvency of the entrepreneur or for counterclaims which are legally connected with the consumer's liability, which have been determined by a court or which have been acknowledged by Carl Auböck GmbH.

**14. Indemnification, third party rights and confidentiality obligations:**

**14.1.** If, according to the content of the contract, Carl Auböck GmbH owes not only the delivery of the goods but also the processing of the goods according to certain specifications of the customer, the customer shall ensure that the contents provided to Carl Auböck GmbH by the customer for the purpose of processing do not infringe the rights of third parties (e.g. copyrights or trademark rights).

**14.2.** The customer shall indemnify Carl Auböck GmbH against claims of third parties asserted against Carl Auböck GmbH in connection with an infringement of their rights by the contractual use of the contents made available by the customer.

**14.3.** In this context, the customer shall also bear the reasonable costs of the necessary legal defence, including all court costs and lawyers' fees in the statutory amount. In the event of a claim being made against Carl Auböck GmbH by a third party, the customer shall be obliged to provide Carl Auböck GmbH immediately, truthfully and completely with all information required for the examination of the claims and a defence.

**14.4.** The customer irrevocably undertakes to maintain secrecy with regard to all trade and business secrets made available by Carl Auböck GmbH or otherwise disclosed in connection with or as a result of a business relationship or contact with Carl Auböck GmbH and not to make them available to third parties in any way whatsoever without the consent of Carl Auböck GmbH. Furthermore, the customer undertakes to limit information only to what is necessary and to use it within the framework of the concluded contract.

**14.5.** The obligation to maintain secrecy shall remain in force for three years after termination of the business relationship with Carl Auböck GmbH or, irrespective of a business relationship, for three years after Carl Auböck GmbH has submitted an offer.

## **15. Right of withdrawal:**

**15.1.** Consumers residing in the European Union shall have a right of withdrawal from contracts if the contract between Carl Auböck GmbH and a consumer is concluded without the simultaneous physical presence of Carl Auböck GmbH and the consumer within the framework of a distribution or service system organised for distance selling, whereby exclusively means of distance communication were used up to including the conclusion of the contract. The consumer may withdraw from a distance selling transaction or a contract concluded outside business premises (outward transaction) within 14 days without giving reasons. The period for withdrawal begins on the day on which the goods are handed over to the consumer or to a third party not acting as a carrier and named by the consumer. The declaration of withdrawal is not bound to any specific form. The withdrawal period shall be deemed to have been observed if the notice of withdrawal is dispatched within the withdrawal period.

**15.2.** The consumer has no right of withdrawal in the case of distance or off-premises contracts for goods if Carl Auböck GmbH had already begun with the execution, the goods were then completely manufactured and these goods were produced according to customer specifications and clearly tailored to the personal needs of the consumer.

**15.3.** In the event of withdrawal by the customer, the purchase price shall only be refunded after the undamaged, unused and resalable goods have been returned and inspected by Carl Auböck GmbH. For goods which have been impaired by transport-related damage, Carl Auböck GmbH will charge an appropriate fee for reconditioning and this will be paid by the customer. The return shipment shall be made to the address of Carl Auböck GmbH, customs and import duties or taxes on the shipment of the customer as well as the return costs themselves shall be paid by the customer, unless otherwise agreed in writing. Handling or storage charges of the forwarding agent shall be paid by the customer.

**15.4.** The customer's right to withdraw from the contract is excluded if the customer has altered or damaged the goods or removed the surface finish, whereby reference is made to the special nature of the seller's goods (leather, horn or polished brass surfaces) and these are therefore not to be treated with chemicals.

**15.5.** Withdrawal from the contract by the customer due to delay in delivery is only possible by granting a reasonable - at least four-week - grace period. The withdrawal shall be asserted by registered letter. The right of withdrawal shall only apply to the part of the delivery or service in respect of which there is a delay.

**15.6.** Goods not accepted by the customer on the agreed date shall be stored for a period of six weeks at the risk and expense of the customer, for which Carl Auböck GmbH shall charge a storage fee of EUR 10.00 per calendar day or part thereof. At the same time, Carl Auböck GmbH shall be entitled either to insist on performance of the contract or to withdraw from the contract after setting a reasonable period of grace and to dispose of the goods elsewhere.

## **16. safety provisions:**

**16.1.** Luminaires ordered from Carl Auböck GmbH are exclusively and always equipped with two-pole technology and are only checked for their function. Carl Auböck GmbH accepts no liability for the safety of the electrical system.

**16.2.** The use of warm light bulbs on LED basis is recommended, as usual incandescent bulbs from 60 W can represent a safety risk due to the waste heat in combination with paper/cardboard shades. On customer request, US standard plugs can also be installed. Other plug variants are associated with additional costs, which are to be agreed in detail.

**17. privacy policy:**

**17.1.** The customer agrees that the following data will be stored by Carl Auböck GmbH for the purpose of processing the contract: First and last name and/or company, delivery address, telephone number and e-mail address.

**17.2.** The data provided by the customer is required for the fulfilment of the contract or for the implementation of pre-contractual measures. Without this data, the contract cannot be fulfilled. Data will not be transferred to third parties.

**17.3.** After fulfilment of a contract, stored data will be deleted. In the event of the conclusion of a contract, all data from the contractual relationship shall be stored until the expiry of the retention period under tax law (seven years). The data name, address, purchased goods and date of purchase will also be stored until the expiry of the product liability (ten years). The data processing is carried out on the basis of the legal provisions of § 165 para 3 TKG 2021 and Art 6 para 1 lit b of the DSGVO.

**18. Applicable law and place of jurisdiction:**

**18.1.** The law of the Republic of Austria shall apply to all legal relationships between the parties, excluding its conflict of law rules and the UN Convention on Contracts for the International Sale of Goods. The contractual language is German or English.

**18.2.** The place of performance for delivery and payment and the place of jurisdiction for legal disputes regarding all contractual relationships subject to these GTC shall be the registered office of Carl Auböck GmbH, Vienna, Austria.

## **19. other provisions:**

**19.1.** Should any provision of these GTC be or become legally invalid or unenforceable in whole or in part, this shall not affect the legal validity or enforceability of all other business provisions. The contracting parties shall replace the legally invalid or unenforceable provision by a valid and enforceable provision which comes as close as possible to the legally invalid or unenforceable provision in terms of content and purpose.

**19.2.** Amendments or supplements to a contract must be made in writing. This also applies to the amendment of the written form requirement.

**19.3.** The use of subcontractors is not permitted.

## **19.4. bank details of Carl Auböck GmbH:**

**Carl Auböck GmbH NfG. KG**

PSK KTO. No.: 7884951 / Sort Code 60000 BIC: BAWAATWW

IBAN: AT8360000007884951

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