



TERMS AND CONDITIONS

VERSION 1st OF MAY 2017

I. SCOPE AND APPLICABILITY

These terms and conditions are applicable to all deliveries and services by Roland Hemedinger, Marxergasse 24/2, 1030 Vienna, Austria (hereinafter „Seller“) in connection with the sale of products of the “Spolia” product line, as shown on the website **www.spolia.at** or offered by other means (e.g. trade shows, individual offers via Email or in person) (hereinafter the “Product“ or “Products”) to individual customers or to registered and authorized retailers (hereinafter „Buyers“ or “Buyer”) in their currently valid version at the time of conclusion of the contract between Buyer and Seller.

These terms and conditions in connection with any specific terms explicitly agreed between Buyer and Seller in writing shall constitute the exclusive legal basis for all purchases of Products. Seller explicitly refuses the application of any terms and conditions of Buyer. Any agreements deviating from these terms and conditions must be in writing and are only valid if they are duly signed by Seller.

All data provided for business transactions is kept confidential by Seller and electronically stored. All data is processed only for the explicit purpose of order processing (e.g. shipment). The Buyer grants his consent that his data may be stored and transferred for the purpose of order processing and compliance with statutory provisions.

II. PRICE AND ORDER

The prices for all Products shall be as individually communicated by Seller to Buyer in the course of an offer. All offers are communicated via Email to Buyer following a request for an offer by Buyer. Requests for offers may be made verbally or via Email to **contact@spolia.at**, as redirected by the website **www.spolia.at** when opting “Request Product”. Seller shall be under no obligation to make offers following a request.

An offer by Buyer may be confirmed via Email to Seller (hereinafter an “Order”). Such Order shall represent a binding contract between Buyer and Seller.

All offers must specify a specific Spolia Product. Upon placing an order, Buyers acknowledge:

- that all Spolia Products are unique pieces which are manufactured for a specific Order only after such Order is received;
- that the display of products on the Spolia website or at trade shows or other points of sale are exemplary only, and that the final product may deviate in form and appearance from such samples ;
- that due to the specificity of each Order and the made-per-order nature of Spolia Products, all rights of rescission under applicable consumer laws or E-Commerce laws are ruled out and Buyer herewith explicitly waives such rights of rescission; and
- that any customization or special requests with respect to Spolia Products must be agreed explicitly in writing with Seller before placing an Order, i.e. in the process of requesting an offer from Seller.



Seller shall consider all Orders placed through the regular means of communication of a Buyer as originating from that Buyer and as binding, regardless of any instances where (i) an order is placed by an unauthorized person, or (ii) an authorized person exceeds his/her power of attorney, or (iii) when a third party gains access to the Buyer's Email. The Buyer is obligated to fulfill the order towards Seller and shall indemnify and hold harmless Seller for all resulting disadvantages. The Buyer has to inform Seller immediately in case of misuse or improper use of the access or in cases of presumption of such cases.

III. DELIVERY

Seller shall not be bound by any specific delivery deadlines, unless explicitly guaranteed by Seller towards Buyer in writing. All guaranteed delivery deadlines shall specify the date the Spolia Product is ready for delivery only, not the date of receipt on Buyer's end.

Buyer may choose between the following types of delivery. This choice is to be made in the course of order placement. Any changes thereafter require the consent of Seller.

- a) Collection: As soon as both (i) payment is received in accordance with section 3. and (ii) Seller has notified that the ordered Product is finished and ready for shipping, Buyer may arrange, in Buyer's sole responsibility and at Buyer's cost, for the Product to be collected directly by a transportation service selected by Buyer at Seller's address Marxergasse 24/2, 1030 Vienna, Austria. It shall be Buyer's responsibility to coordinate with Seller a mutually agreeable time and date for delivery of the Product between Buyer's chosen transportation service and Seller.
- b) Delivery through a transport company: Upon request of the Buyer, Seller commissions a transport company with the transportation of the goods. The transportation takes place at the cost and risk of the Buyer and shall be paid by Buyer in addition to the purchase price at the same time, as specified in 3. below. If the Buyer does not specify the transport company Seller is free to determine the transport company at its own discretion. The handover to the transport company shall take place as soon as both (i) payment is received in accordance with section 3. and (ii) Seller has notified that the ordered Product is finished and ready for shipping.

In principle it is agreed upon that free carrier delivery (FCA Incoterms® 2010) is applicable for all delivery types, unless the terms and conditions differ from individual provisions of the Incoterms. In the event of contradictions the provisions of these terms and conditions apply. For all delivery types, risk of loss shall pass to the Buyer at the time of collection of the Product or when handed over to the transport company. The Buyer or the transport company are responsible for the loading of the Product. The collection has to take place within 10 business days after notification by Seller that the goods are ready for shipping, if the Buyer has chosen delivery by collection. If the collection does not occur within this period the risk of loss shall pass to the Buyer at the time of expiration of this period.

The place of delivery for all delivery types is the Seller's address at:
Marxergasse 24/2, 1030 Vienna, Austria.



IV. TERMS OF PAYMENT

Deliveries of Seller shall be performed against advance payment only. All payments are set in **EURO**. Any other agreements must be made in writing.

All prices for Products indicated by Seller in an offer shall be exclusive of shipping costs and exclusive of any applicable taxes and exclusive of any applicable custom tariffs, unless explicitly stated otherwise.

Buyer shall remit all payments (purchase price incl., if applicable, tax and shipping cost) ensuring that the full amount in EURO is credited to Seller's account below. All bank charges are to be borne by Buyer.

The invoiced amounts are to be paid stating the respective invoice number as payment reference and must be received in full without deductions:

Bank name:	Erste Österreichische Sparkasse
Account name:	Roland Hemedinger
IBAN:	AT51 2011 1222 8467 0703
SWIFT / BIC:	GIBAATWWXXX

All goods remain the property of Seller until the purchase price has been paid in full.

Partial payments are considered installments and are applied to the oldest amounts receivable from the Buyer, regardless of any instructions to the contrary. Also in this case all goods remain the property of Seller until the entire purchase price has been paid in full. In the event of a default in payment the legal rate of interest provided in Section 456 UGB (Austrian Commercial Code) at 9,2% above the base lending rate applies. In the event of payment arrears the Buyer is obligated to pay all adequate expenses for information, reminders and collection costs, as well as the fees of lawyers' consulted by Seller. Moreover, in cases of late payments exceeding 2 weeks, Seller is entitled to rescind the contract after another 14 days' notice is communicated to the Buyer in writing.

V. WARRANTY

The Buyer is obligated to inspect the goods within 14 days upon receipt and to notify Seller in writing about any deficiencies; failing to do so the Buyer forfeits all warranty claims or claims for damages on the account of either the defect itself or claims for any mistake as to the fact that of the goods being free of defects.

The Buyer has the full burden of proof for all prerequisites for a claim, in particular for the defect itself, for the point in time when the defect was discovered and for the timeliness of the notification of the defect. Deadlines shall be deemed observed if statements are dispatched within the deadline.

In the case of a warranty claim Seller shall be free to choose between the remedies of improvement and replacement, unless one of these tools is impossible or associated with disproportionate time and effort. If improvement or replacement is not possible or feasible, the Buyer can either demand price reduction or, in cases where the defect is not only minor, rescission of contract.

The absolute warranty period is six months.



VI. LIABILITY

Seller is not liable for any damages, unless caused with deliberate intent or gross negligence. In the event of minor negligence Seller is liable for personal injury only. The statute of limitations period for damages claims is 6 months after the Buyer is aware of the damage and its cause.

In no event shall Seller be liable for indirect damages, lost profit, interest losses, unrealized savings, consequential damage, financial losses, damages resulting from third party claims or the loss of data. In any case, Seller's liability shall be limited with € 10.000 per order.

Seller is liable only for proprietary content of the Spolia website. As far as the Spolia website contains links directing to other websites, Seller is not liable for the content and accuracy of these websites.

VII. COMPLIANCE:

It is the Buyer's sole obligation comply with and fulfill all applicable laws and regulations which are required for the purchase and shipping of the Products to Buyer's address, both in the country of origin (Austria) as well as in the Buyer's destination country.

Buyer agrees indemnify Seller and hold Seller harmless for any and all claims made against Seller by authorities or third parties. for violation of importation/exportation laws or regulations.

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VIII. APPLICABLE LAW / JURISDICTION / MISCELLANEOUS

Austrian material law applies exclusively on all disputes arising in connection with these terms and conditions. The application of rules on conflict of laws as well as the UN Sales Law is excluded.

The exclusive competent court of jurisdiction for all disputes arising out of contracts or pre-contractual interactions between Seller and Buyers is the competent court of the first district of Vienna, Austria.

Should one provision of these terms and conditions (AGB) be completely or partly ineffective or not enforceable, now or in future, the remaining provisions of these terms and conditions are not affected by that. The Parties will replace the invalid or unenforceable provision by such a valid or enforceable provision that comes as close as possible in its content and purpose.