

## **General Terms and Conditions of Sale and Delivery**

### **Section 1 Scope of Validity**

Our deliveries and services are performed exclusively under the following terms and conditions of business. These terms and conditions also apply to all future business relationships even if they are not expressly agreed again. They also apply should, in individual cases, we not object to deviating terms and conditions of the purchaser, which we herewith expressly reject. Our terms and conditions of sale also apply even if we carry out delivery to the purchaser without reservation although we are aware of conflicting terms and conditions of the purchaser or conditions which deviate from our terms and conditions of sale. Likewise, independent of the content of these General Terms and Conditions of Sale, we will not be subject to any obligation insofar as the purchaser's terms and conditions of business deviate from legal regulations.

### **Section 2 Offers and Conclusion of Contracts**

1. Our offers are subject to confirmation. They are merely a response to the purchaser's request to submit an offer.
2. Orders made by the purchaser will be binding offers. Insofar as nothing else has been agreed within the scope of a specific contract, we may, at our discretion, accept or decline such offers within 4 weeks by sending a written order confirmation (also by fax or email).
3. We reserve rights of ownership, copyright rights and rights covered by German patent and utility model law with regard to pictures; drawings; calculations; the results of data processing procedures and other documents made available by us to the purchaser within the scope of initial contractual negotiations. Such documents are only provided for the purpose of submitting the relevant offer and may not be reproduced or made accessible to third parties, also in part, without our express consent. This applies in particular to such written documents as are deemed "confidential"; the purchaser must obtain our express written consent before forwarding them to third parties. Should the order be placed elsewhere the documents must be returned to us free of charge or, at our wish, destroyed.
4. Our employees; sales representatives or other sales personnel are not authorized to waive the requirement to issue a written order confirmation or to enter into agreements of a deviating nature or to declare warranties.
5. The purchaser is obliged to examine our order confirmation for the correctness of its content. Should the purchaser fail to object to our order confirmation within one week of receipt then we will view this as recognition and the basis for a contract.

### **Section 3 Prices and Payment**

1. Insofar as the order confirmation states nothing else our prices are "ex works". Value added tax at the corresponding legal rate is payable in addition to the prices stated. Any and all supplementary fees; public levies or similar will be borne by the purchaser insofar as not opposed by legally mandatory regulations. We are entitled to demand immediate reimbursement of freight costs paid in advance and any other expenses incurred. Packaging will be charged at cost. Our alloy surcharge for stainless steel will be calculated on the basis of the market prices valid on the day of delivery.

We reserve the right to increase our prices accordingly should, following conclusion of the contract, price increases occur, in particular due to collective wage agreements or price increases for materials, and a period of at least 4 months lie between conclusion of the contract and the planned delivery.

2. The purchaser is obliged to pay the purchase price net within 30 days of the invoice date insofar as nothing else has been agreed. Insofar as the latter is not the case he will, without further

preconditions, be in default from this point in time. Any foreign bank charges will be borne by the contractual partner.

In accordance with Sect. 247 BGB [German Civil Code] we will, from the moment at which default occurs, be entitled to demand interest for default at the rate of 8% above the base interest rate. Should we be able to prove that the damages caused by the default are greater than this, we will be entitled to assert a corresponding claim. The purchaser is, however, entitled to provide proof that we have not suffered any or only substantially lower damages as a result of the delay in payment.

3. Should the purchaser fall behind with a payment then all other receivables will become due immediately unless the contractual partner proves that he is not responsible for the delay.
4. The purchaser will only be entitled to offsetting rights if his counter-claims have been established by a declaratory judgement; are undisputed or have been recognized by us; on no account, however, may offsetting concern claims which have been assigned to the purchaser.
5. We are, despite contradictory provisions of the purchaser, entitled to first offset payments against his older debts. Should costs and interest already have accrued then we will be entitled to first offset the payment against the costs; then the interest and, lastly, against the main contractual service, even if the purchaser's conditions state otherwise. In the case of financial assistance offsetting will first be against the main contractual service, then the interest and the costs.
6. Should we become aware of circumstances which call into question the purchaser's ability to pay and creditworthiness, in particular if he fails to honour a cheque or bill of exchange; ceases to make payments or it becomes known that an application has been made to institute insolvency proceedings, then we will be entitled to call in the entire remaining debt, even if we have accepted cheques or bills of exchange. In addition to this, we may, in such cases, demand advance payments and the provision of securities. Insofar as this is not fulfilled or, possibly, is fulfilled in a potentially contestable manner, we will not be obliged to continue performance of our services. The same will apply in the case of late payment of a previous delivery. Any discounts agreed will not be granted if a balance in our favour is due at the time payment is made.

#### **Section 4 Condition of the Object of Purchase**

1. The condition of the object of purchase is based on the brochures and other concrete descriptions of the products, which can be viewed at any time on our premises and which can, on request, be sent at any time. The details stated are neither promised nor guaranteed.
2. The condition of our products will deteriorate if they are used incorrectly or stored improperly. The corresponding information, which is made known to the purchaser in the information brochures mentioned in Clause 1 above or by other means, must thus be complied with in all cases.
3. Prior to conclusion of the contract the purchaser is obliged to provide us with express notification should the goods ordered not be suitable for use exclusively in the usual manner or should they be used under unusual conditions; conditions representing a particular health, safety or environmental risk or under conditions representing increased stress.
4. Deviations from measurements, weight and quality are permitted in accordance with the agreed specification of a specified standard or general practice. We thus reserve the right to make over- or under-deliveries of up to 10%.

#### **Section 5 Acceptance**

1. Should acceptance testing have been agreed, then it can only take place on the supplier's premises. It must be carried out immediately following completion of the goods.
2. We will only bear the costs of making available the goods to be tested. All other costs incurred in connection with acceptance testing will be at the purchaser's expense.
3. Should acceptance testing not take place; not take place in time (i.e. at the latest within 14 days of our corresponding demand) or not be complete then we will be entitled to dispatch the goods without acceptance testing or to store them at the purchaser's cost and risk. The goods will be

deemed to have been supplied in accordance with the contract upon dispatch or storage and can be invoiced accordingly.

4. Acceptance testing represents one of the purchaser's main obligations. In the case of delay we will, without prejudice to further rights, be entitled to charge the purchaser for the costs incurred by storing the goods. These costs may be equivalent to at least 1% of the value of the order and be charged for each month of storage, beginning one month following notification of readiness for dispatch. We will also be entitled to set a reasonable deadline and, following its expiry, to make alternative use of the goods and, subsequent to this, to supply the purchaser by a reasonably extended deadline.

The same will also apply if delivery is, at the purchaser's request, delayed by mutual agreement.

### **Section 6 Delivery and Performance Times**

1. Delivery deadlines will not commence before any documents which are required to process the order and must be procured by the purchaser have been submitted and before payment of any deposits agreed. Deliveries will be ex works. A delivery deadline will have been met if the shipment is ready for dispatch on or before the deadline and the purchaser has been notified accordingly or when the goods have left our premises.
2. In the event of Acts of God or other circumstances which are unforeseeable, exceptional and for which we are not responsible – e.g. non-delivery of materials; production disruptions caused by fire, water and similar circumstances; break-downs of production systems and machines; strikes and lock-outs; shortages of materials, energy, transport media or action taken by the authorities (also if this affects our suppliers) – we will, insofar as we are, through no fault of our own, prevented from timely fulfilment of our performance obligation, be entitled to postpone the delivery or service for the duration of the impediment plus a reasonable period of grace of at least 14 days if we overrun the agreed delivery date by more than 1 week. Should the period of grace expire without success then the purchaser will be entitled to withdraw from the contract. Should the impediment make it impossible or unreasonable for us to deliver then we may withdraw from the contract.
3. Prior to expire of the delivery deadline we will be entitled to make partial deliveries to an extent which is reasonable. Partial deliveries and invoices for functioning units are permissible.
4. Should dispatch of the delivery be delayed by circumstances for which we are not responsible then we will be entitled to charge storage fees to the value of 1% of the invoice amount for each month which has commenced, unless the purchaser is able to prove that the damages we incur are lower. Further claims shall remain unaffected by this – e.g. claims resulting from the occurrence of the delay.
5. Should we be responsible for failure to comply with an agreed delivery deadline then, unless our actions have been grossly negligent or with intent and excluding further claims, following the expiry of a reasonable period of the grace as per Sect. 6 Clause 2 the purchaser will be entitled to demand compensation for the delay or to withdraw from the contract. The compensation for the delay will be limited to a maximum of 5% of that part of the delivery which has not performed as per the terms of the contract. The purchaser's right to prove that damages are higher remains reserved. Withdrawal is excluded if the purchaser himself is in default of acceptance.
6. In the case of call orders for which no delivery time, production lot size and acceptance date has been agreed we may demand binding fixing of these terms at the latest 3 months following confirmation of the order. Should the purchaser fail to comply with this demand within 3 weeks then we will be entitled to set a 2-week period of grace and, following its expiry, to withdraw from the contract and/or to demand damages.
7. Should the purchaser fail to fulfil his obligation to accept the goods then we will, without prejudice to further rights, no longer be bound by regulations concerning resale of goods following default by the purchaser but rather will, following prior notification of the purchaser, be able to sell the goods on the open market.

## **Section 7 Transfer of Risk**

1. Insofar as no obligation to perform at the purchaser's address has been agreed risk will be transferred to the purchaser as soon as the goods have been handed over to the individual carrying out shipment or have left our commercial site for the purpose of dispatch. This will apply irrespective of whether we carry out shipment using our own vehicles or use a third party freight forwarder to do so and irrespective of whether we bear the shipping costs. Loading of the goods is the purchaser's duty. Clauses such as "Delivery free..." or clauses of a similar nature will merely result in deviating regulation of the shipping costs, will not, however, affect the transfer of risk regulated above.
2. Should shipment be delayed for reasons for which the purchaser is responsible then risk will be transferred to the purchaser on the day on which the goods are ready for dispatch.

## **Section 8 Liability for Defects**

1. The purchaser's warranty rights are based on the requirement for him to fulfil his duties to inspect the goods and make notification of defects as defined by Art. 377 HGB [German Commercial Code]. The customer must make written notification of any defects which are obvious and/or typical and recognizable during the course of an orderly inspection within 8 days of handover of the goods. The contractual partner is obliged to provide us with a detailed written description of the defects he notifies. Written notification of defects which are not obvious and not recognizable during the course of an orderly inspection must be made at the latest 8 days after their discovery. Should the deadline for notification not be met, warranty for the relevant defects will not be considered. By processing complaints received and inspecting the goods we will not be waiving our right to assert declare late or incomplete notifications of defects invalid. Should defects become apparent then, following consultation with us, processing and refining of the goods must cease immediately.
2. We will not grant any warranty for damages and disruptions which can be attributed in particular to natural wear and tear; incorrect installation and/or start-up by the purchaser; improper use and operating errors; incorrect and/or unsuitable power supply; operation using the wrong type of electricity or voltage; fire; a lightning strike; explosion; damp and failure to carry out the required and/or recommended operating and maintenance work. Likewise no warranty will be granted if parts have been replaced or expendable items have been used which do not correspond to the original specifications.
3. We will grant a warranty covering our products' freedom from defects for the period of one (1) year from delivery. Should a defect be on hand then we will, at our discretion, first be entitled to remedy the defect or supply an item free of defects. Should attempts to remedy the defect fail then the purchaser will retain the right to reduce or, at his discretion, to withdraw from the contract. Failure to remedy the defect will be on hand if two attempts to remedy the defect fail. Further claims, in particular claims for reimbursement of expenses or for damages caused by defects or consequential damage, will only be on hand within the scope of the provisions of Section 9 below.
4. Insofar as the purchaser is, in order to assert his rights, obliged to set us a reasonable period within which to perform of our services, then this period will only be reasonable if it is not less than 20 days.  
We are entitled to refuse to remedy the defect if this is only possible by incurring unreasonable costs. Costs will be unreasonably high if, in particular, the overall costs for remedying the defect are equivalent to more than 30% of the market value of the goods sold. The purchaser's further rights will remain unaffected by this.
5. We must bear the costs required to remedy the defect, in particular shipment, travel, work and material costs, insofar as these costs are not increased by the fact that the object in question has been shipped to a place which is not the place of fulfilment. Replaced parts will become our property.

6. Should it not be possible to establish the defect then the purchaser will bear the costs of the inspection.
7. Only the direct purchaser will be entitled to warranty claims against us; these claims may not be assigned.
8. The purchaser will not be entitled to a right of withdrawal in the case of minor defects; he will also be obliged to accept the shipment.
9. Rights to recourse as per Art. 478, 479 BGB will only be on hand insofar as the consumer's making use of them was legitimate and only within the scope of the law; not, in contrast, for goodwill provisions which were not discussed with us and will require that the party asserting the rights to recourse complies with his own duties, in particular the obligation to make notification of defects. We will not be liable as per Art. 478, 479 BGB if our customer has supplied the goods to a customer abroad and, when doing so, excluded the UN Convention on Contracts for the International Sale of Goods (CISG).
10. Should the deadline for remedying the defect expire without success, then we will be entitled to request the purchaser to assert his further warranty rights against us and set him a deadline of one month to do so. Should he fail to make such a declaration by this deadline then warranty rights will be excluded; this will only apply if we expressly pointed out this legal consequence in the request including the deadline.

### **Section 9 Claims for Damages**

1. Insofar as these terms and conditions do not specify anything else, then we will only be liable for damages arising from the breach of contractual, non-contractual and legal duties and for reimbursement of costs incurred in vain in cases of intent or gross negligence. This also applies to breaches of duty on the part of our legal representatives and vicarious agents. In the event of simple negligence we will only be liable in cases in which material contractual obligations have been breached.  
In the event of liability we will, taking into consideration the following limitations, reimburse the purchaser's proven damages to the extent to which we could, at the time of concluding the contract, foresee them in terms of the occurrence of damages and the amount of damages as a result of breach of obligation and to the extent to which they could not be prevented by the purchaser.
2. We will not be liable for damages which do not occur to the object delivered itself; we will, in particular, not be liable for the purchaser's loss of profits or other financial losses.  
We will not be liable beyond the extent for which we have insurance coverage.  
This limitation of liability does not apply to liability for damages resulting from loss of life, bodily injury or damage to health.
3. The above mentioned limitation of liability with the aforesaid modification also applies to claims arising from fault when entering into the contract; breach of secondary obligations and, in particular, to claims resulting from producers' liability as per Art. 823 BGB.
4. The purchaser may only demand damages instead of performance in cases of significant breaches of duty on our part.
5. The burden of proving the causality of an advertisement for the decision to purchase will be on the purchaser. Should the purchaser cite a quality agreement based on public statements or advertising on our part or the part of the manufacturer or his vicarious agents, then the purchaser will be responsible for proving that this statement was causal for the decision to purchase.
6. The purchaser must prove that the object sold was defective at the time that risk was transferred. This provision will not apply if the purchaser is a consumer. Rathermore within a period of 6 months from transfer of risk it will be assumed that the object was already defective at the time that risk was transferred.
7. We do not furnish any guarantees or quality assurances whatsoever.
8. Should the object of the contract only be defined in generic terms, then our liability will, in such cases, also be defined by the above provisions; liability independent of culpability is excluded.

## **Section 10 Retention of Title**

1. All of our deliveries and services are performed under retention of title. Title is only transferred to the purchaser when all of our demands arising from the business relationship as well as those relating to the purchased goods have been satisfied. This includes all accounts receivable, no matter what their legal basis, including future arising/conditional accounts receivable also arising from contracts concluded simultaneously or later within the scope of the business relationship. This also applies to payments made for specifically designated receivables. In the case of open invoices the property subject to retention of title will serve as a security for our payment balance claim.
2. The purchaser is obliged to treat the purchased goods with care; he is, in particular, obliged to insure them against fire, water and theft at his own cost, with the insurance sum being sufficient to cover the replacement value. The purchaser must, insofar as maintenance and inspection work is required, carry this out at his own cost; in good time and in a professional manner.
3. The purchaser may not pledge or assign the delivered goods to which we retain title as a security. He must notify us immediately in the case of attachment or seizures and other disposals by third parties. In such cases the purchaser must provide us with the assistance required to safeguard our rights. The costs for any intervention which becomes necessary will be borne by the purchaser. In the case of stoppage of payments the purchaser must, furthermore, inform us of the goods still on hand.
4. Should the purchaser be in default of payment then we will, without prejudice to the continuation of the contract, be entitled to demand immediate return of the goods – i.e. without withdrawing from the contract. The purchaser will be obliged to hand over the goods and to return them to us free of charge. Should we assert our claim to retention of title then this will only be deemed to be a withdrawal from the contract if we expressly declare this in writing.
5. Processing or conversion of the goods subject to retention of title by the purchaser will always be carried out on our behalf. In the case of processing or refining of the goods subject to retention of title or its mixing with other materials, title to the processed or combined goods will continue to be retained. Should the goods subject to retention of title be manufactured into items which do not belong to us or be inseparably mixed, then we will acquire ownership of the new item equivalent to the proportion of the invoice value of the goods subject to retention of the title to the invoiced value of the other goods used at the time of manufacturing or mixing. The correspondingly acquired co-ownership rights will be deemed to be an object subject to retention of title in the sense of these terms and conditions. Should our goods be combined with other movable objects to create a single item or be inseparably mixed with them and should the other item be considered to be the primary item, then the purchaser will transfer proportional co-ownership to us insofar as the primary item belongs to him. In the above mentioned cases the purchaser herewith assigns to us his ownership rights to the processed, combined or mixed goods. Handing over will be replaced by the purchaser holding the processed, combined or mixed goods for us. For the rest the same will apply to the items created by processing, combining or mixing as for the goods subject to retention of title.
6. The purchaser is entitled to process and sell the goods subject to retention of title within the scope of usual business proceedings unless he is in default of payment to us; has stopped making payments or an application has been made to institute insolvency proceedings with regard to his assets. The purchaser herewith assigns to us his claims against purchasers or third parties resulting from selling on with all rights and to their full extent. We accept this assignment. Should, following processing or combining, the purchaser sell the goods subject to retention of title together with the goods which do not belong to the purchaser, then he herewith assigns to us claims arising from the selling on to the value of the goods subject to retention of title with all ancillary rights and with priority over all other debts. We herewith accept this assignment. The purchaser is still authorized to collect this account receivable after assigning it to us. Our option to collect the account receivable ourselves will remain unaffected by this. We do, however, undertake not to

collect the account receivable as long as the purchaser fulfils his payment and other obligations in an orderly manner; is not in default of payment and, in particular, as long as no application has been made to institute insolvency proceedings; no stoppage of payments is on hand or there are no grounds for doubt concerning the purchaser's ability to pay and creditworthiness. The purchaser is, on no account, entitled to assign the claim to another party.

7. We may demand that the purchaser informs us concerning the claims assigned and the corresponding debtors; provides all the information required for collection; hands over the relevant documents and informs the debtors regarding the assignment. Any bills of exchange issued by third party purchasers must be assigned to us.
8. Should the value of the securities to which we are entitled exceed the total claim against the customer by more than 20% we will, at the purchaser's demand, be obliged to release the securities of our choice to this extent. Should, by mutual agreement, we take back goods, then the credit note for them will only be to the sum of their corresponding current market value.

### **Section 11 Applicable Law, Place of Jurisdiction; Place of Fulfilment; Suspension of the Statute of Limitations Period**

1. The contractual relationship is subject to the laws of the Federal Republic of Germany. The CISG is excluded.
2. The place of fulfilment for all obligations arising from the contractual relationship is, in the case of deliveries – also freight-free deliveries; in the case of payments and similar, our place of business in Werther (Westphalia, Germany).
3. Should the purchaser be a businessman or a legal entity subject to public law, the place of jurisdiction, also for actions pertaining to bills of exchange and cheques, is our place of business in Werther, Westphalia, Germany (Halle District Court, Bielefeld Regional Court). The same place of jurisdiction applies if the purchaser does not have a general place of jurisdiction in Germany or, following conclusion of the contract, moves his place of domicile or habitual residence to a foreign country. We may, in all cases, also bring an action against the purchaser at his domicile.
4. Irrespective of further legal provisions the suspension of the statute of limitations period will also end if the negotiations on which the suspension is based are not continued for a period of over four weeks. Recommencement of the statute of limitations for the customer's claims will, in all cases, require our express written confirmation.

### **Section 12 Industrial and Intellectual Property Rights**

1. Should we be obliged to make delivery according to drawings, models, samples or by using parts provided by the purchaser, then the purchaser vouches that third party industrial and intellectual property rights in the goods' country of destination will not be infringed by so doing. We will inform the purchaser concerning all rights of which we are aware. The purchaser must indemnify us from third party claims and provide compensation for any damages caused. Should a third party forbid us to manufacture or deliver goods, citing his industrial or intellectual property rights as the grounds for so doing, then we will, without examining the legal situation, be entitled to stop work until the legal situation has been clarified by the purchaser and the third party. Should the delay make it unreasonable for us to continue with the order, then we will be entitled to withdraw from the contract.
2. Drawings and samples provided to us but which do not result in an order will be returned on request; otherwise we are entitled to destroy them 3 months after submitting our offer. This obligation also applies to the purchaser accordingly. The party entitled to destroy the items must inform the contractual partner in good time concerning his intention to destroy the items.
3. We are entitled to the copyright and, where applicable, industrial and intellectual property rights, in particular all usage and exploitation rights concerning the models, moulds and equipment, drafts, drawings and the delivered goods designed by us or by a third party commissioned by us.

**Section 13 Severability Clause**

Should a provision of these Terms and Conditions of Business be or become invalid, then this will affect the validity of all other provisions or agreements. The faulty provision will be replaced by a valid agreement which comes closest to the commercial purpose of the faulty provision.