

General Terms and Conditions of Supply and Delivery

I. Sphere of application / Protective clause to prevent the T&Cs of other parties being applied

1. Our terms and conditions shall apply to all natural persons / legal entities / partnerships having legal capacity who are, at the point in time at which they enter into the contract, exercising their commercial business or profession as a self-employed person (Businessman) as well as towards a legal entity established under public law or a special fund established by public law.
2. Subject to other agreements which may be made in a specific case, only the terms and conditions below shall apply for all our supplies – including future supplies. Terms and conditions of the Buyer differing from, or contradicting these terms and conditions shall not be binding upon us even if we do not object to them. Differing or contradictory terms and conditions recognized by us in writing shall only be binding to the specific contract to which they refer.

II. Signing a contract

1. Our offers are subject to change without notice.
2. The Buyer shall be bound by his order for three weeks from our receipt of it.
3. It shall be the Buyer's duty and personal responsibility to check his order as well as all contractual documents to confirm that they are complete, correct and that the order is suitable for the intended use.
4. Orders, supplements and amendments to an order shall be subject to our written confirmation. The receipt of a delivery note or an invoice by the Buyer as well as actual delivery of a consignment shall constitute order confirmation.
5. Verbal agreements, side agreements, contractual amendments and supplements shall be subject to our written confirmation.

III. Prices / Terms and conditions of payment

1. Our prices are straight net ex Works; ancillary costs, in particular packing, transport or insurance costs as well as costs of special inspections or acceptance tests are not included in our prices. The delivery weights and unit quantities determined by us shall count when calculating prices.
2. Accounts shall be payable upon receipt of an invoice and the terms of payment stated in it. Accounts shall be deemed as received three days after the date of invoice, whereby the Buyer is allowed to offer proof for a later receipt. If the invoice does not include any explicit terms of payment, it shall be due for payment within four weeks. The purchaser will be in default after expiry of the agreed payment period even without a reminder.
3. If the consignment is delayed for reasons for which the Buyer is to blame, we shall invoice storage costs from the date on which we notified the Buyer that the consignment was ready for collection.
4. We shall invoice a low volume surcharge of 250.00 EURO for orders with an order value less than 500,00 EURO.
5. We shall accept drafts which can be discounted and properly taxed if this has been agreed in advance. Credits on the basis of from drafts and cheques shall be allowed subject to receipt, minus the expenses incurred, valued on the date on which we can dispose of the proceeds.
6. Agreed prices are calculated at the prices of raw materials and working materials, collective wage rates, statutory and collective social benefits as well as freight costs in force on the day on which the contract is signed. If these pricing factors increase before the contract is fulfilled, we shall be entitled to increase the price as appropriate. If the price increases by more than 6% the Buyer shall be entitled to withdraw from the contract. In any case we shall be entitled to increase our prices if our goods are to be delivered more than 4 months after the contract is signed or can only be delivered once this 4 month period has expired for reasons for which the Buyer is responsible.
7. If the Buyer is in default with a payment for more than 4 weeks, if he has stopped making his payments or if it is evident that our accounts are jeopardised on account of the Buyer's lack of ability to pay, our accounts under all contracts shall be due for payment immediately. Deferments or other delays in payment – including those created by the acceptance of drafts – shall be terminated. We may demand payment in advance or the furnishing of a security for goods not delivered and if we set a reasonable subsequent period for payment which is unsuccessful, we shall be entitled to withdraw from the contract and demand compensation for damages.
8. The Buyer shall only be entitled to offset or to exercise a right of retention in those cases in which the counter-claim is not contested, admitted or has been declared final and absolute in a court of law.

IV. Item to be delivered / Delivery period

1. If they have been agreed as being non-binding (marked with the suffix ca. for example), delivery periods / dates shall only apply as approximations. Delivery periods shall begin with our order confirmation, but not, however, before the documents to be supplied by the Buyer have been furnished, including full technical specifications approvals, clearances, materials to be furnished by the Buyer and other preconditions essential for the contract to be carried out have been satisfied. Delivery periods shall not begin before the receipt of an agreed down payment. The same shall apply in the event that delivery dates are amended. Any order amendments there may be – in particular order extensions – shall be subject to our consent. Delivery times shall only commence upon receipt of our written consent.
2. If it is agreed that deliveries may be called off, in the event that a call-off is not made on time and a subsequent period set for delivery expires unsuccessfully, we shall be entitled to deliver or to withdraw from the part of the supply contract still outstanding.
3. We shall reserve the right to be delivered with the correct goods on time by our suppliers. This shall not apply if we are to blame for non-supply. In particular if we have not entered into a congruent covering transaction. We shall notify the Buyer straight away of the non-availability of the goods and refund a counter performance already rendered to us straight away.

4. If possible, we will process the order in one single delivery. Nevertheless, we shall likewise be entitled to supply part consignments as well as to supply prior to the expiry of the delivery period in so far as this is reasonable for the Buyer.
5. It shall be our notification that the consignment is ready for collection which shall determine whether a consignment has been delivered on time. We shall only be in default if we have been sent a written reminder after a consignment is due.
6. Our delivery obligation shall be suspended for as long as the Buyer is in arrears with an obligation which is more than minor.
7. Events of force majeure as well other circumstances which could not have been foreseen by us in particular procurement problems, production problems, disruptions in supply, strike, lock-out, etc. affecting us or our suppliers shall exempt us for the duration of the disruption as well as a reasonable start-up time – even during a period of default in which we already find ourselves – from our supply obligation, provided that the disruption was not caused by us, our legal representatives, assistants or vicarious agents intentionally or as a result of gross negligence. The same applies in the case of legal or official orders issued in the event of a pandemic or comparable situation. If it becomes impossible to deliver or economically unreasonable to supply on account of the aforementioned circumstances, we shall be exempted from our obligations. If the delivery period is extended for the above-named reason or if we are exempted from our obligations, the Buyer shall not be able to derive any rights to claim compensation for damages as a result. For the duration of the disruption the Buyer shall be entitled to demand a statement from us that we shall supply within a reasonable subsequent period or withdraw from the contract. If the Buyer does not receive our statement within 2 weeks from our receipt of his demand for a statement from us, he shall be entitled to withdraw from the part of the contract not fulfilled.

V. Claims based on quality defects

1. The goods are free of defects if they are of the agreed condition. The agreed condition shall be defined by our product description and the written order confirmation alone in accordance with II No. 4. Public comments, sales talk or advertising by us, the manufacturer or his assistants shall be of no importance in terms of condition. Discrepancies in dimension, weight and unit quantity within the limits of tolerances normal in the trade, pertinent DIN regulations and casting or technical welding requirements shall not constitute defects to the goods. We do not provide a separate warranty for the goods, unless this is exceptionally agreed in an individual contract.
2. We are not liable for incorrect storage or incorrect use.
3. The Buyer's claims based on defects in the goods shall be subject to the defects being notified straight away once the goods have been delivered to the Buyer if the defects are manifest. If the defects are not manifest, they shall have to be notified straight away following detection. The Buyer must comply with his obligations under German mercantile law to inspect the goods for defects.
4. If the goods can be seen to have defects for which we are to blame, we shall, as we see fit, and at our expense, rectify the defects or supply a replacement free of defects (Subsequent fulfilment). The Buyer shall be obliged, provided that we insist on this, to allow the goods to be inspected by a third party as well. In the period of time between our request that the goods be inspected by a third party and the statement that there is no defect, any defects have been rectified or our refusal to rectify the defect, the period of limitation in accordance with No 6 shall be suspended.
5. If the subsequent fulfilment is unsuccessful, the Buyer, irrespective of any (compensation) claims to compensation as damages he may possibly be entitled in accordance with letter a) to c) as well as Section VI – shall be entitled to reduce the purchase price or – if the defects are serious – to withdraw from the contract. Moreover, the following shall apply:
 - a) If defects are minor, the Buyer shall not be entitled to withdraw from the contract. The Buyer's claim to compensation for damages shall be limited to the difference between the purchase price and the value of the defective goods.
 - b) If the defects are serious, the Buyer's claims to compensation for damages based on a defect in the goods shall only be limited to the extent that the Buyer retains the goods, provided that it is reasonable for him to accept that. Other-claims shall remain subject to these terms and conditions.
 - c) The Buyer's claims to compensation for damages to items other than the goods themselves (consequential harm caused by a defect) shall not be allowed. This limitation shall not apply for damages covered by a warranty furnished by us by way of exception, if we have maliciously concealed the defect or the defect was caused intentionally or as the result of gross negligence by us, our legal representatives, or our assistants, the defect constitutes a breach of major contractual duties for which we are to blame, or the defect results in harm to life and limb or is injurious to health. Major contractual duties are those which characterize the respective contract, make its proper execution possible and are duties which the purchaser usually relies on and may also rely on.
 - d) Subsequent fulfilment will be regarded as having been unsuccessful if we refuse to render it, without justification, refuse to render it on account of the costs being disproportionate or if it impossible to do so, a reasonable subsequent period set by the Buyer for subsequent fulfilment elapses or of a second attempt at subsequent fulfilment is also unsuccessful.
6. Claims based on a defect in the goods shall become time-barred one year after delivery. This does not apply to claims for defects concerning injury to life, body or health and / or gross negligent or deliberate breaches of duty by us or our legal representatives and vicarious agents.

7. The exclusion or limitation of warranty under this section does not apply to our liability according to the German "Produkthaftungsgesetz" (product liability law).

VI. Liability

1. Section V shall apply for our contractual liability on account of a defect.
2. The following shall apply for our non-contractual liability and the Buyer's other claims not based on a defect in the goods themselves:
 - a) Our liability is not limited for damages to the Buyer in terms of death, personal injury and physical harm as well as gross negligent or deliberate breaches of duty caused by us, our legal representatives or assistants.
 - b) Our liability for other damages caused as a result of breaches of contractual obligations which are not cardinal obligations attributable to ordinary negligence is ruled out. In the event of a breach of cardinal obligations (see Section V No. 5 c) attributable to ordinary negligence – including such breaches caused by our legal representatives and assistants, our liability shall be limited to the damages foreseeable for this type of contract.
 - c) Our liability under the German Product Liability Act shall not be affected by the above.

VII. Testing procedure, Acceptance

1. The Buyer must notify us if he wishes us to carry out necessary tests. The type and scale of the tests are to be agreed before the contract is signed.
2. If an acceptance test is requested, the scale and conditions are to be stipulated before the contract is signed. Acceptance tests are to be conducted at the Buyer's expense in the supplier's works straight away once notification has been made that the goods are ready for the acceptance test. If an acceptance test is not conducted, or is not conducted on time or in full, we shall be entitled to dispatch the goods or to put them into store at the Buyer's cost and risk. This means that the goods will be regarded as having been accepted.

VIII. Packing and package items

1. In so far as necessary at our discretion, we shall pack the Buyer's goods as normal within the trade. At our request packing material and packing items are to be returned to us straight away freight-free. They will be credited in accordance with their value in terms of re-use.
2. The Buyer shall be entitled to return our transport packaging to our factory or warehouse after use, carriage paid. If, by way of exception, we agree to collect pallets or other transport packaging from the Buyer, the Buyer shall bear the transport costs incurred by us as a result; we expressly reserve the right to collect pallets separately from deliveries of goods, if necessary, or to have them collected by third parties. The returned transport packaging must not be in a condition that makes it more than insignificantly difficult to reuse or recycle as provided by law.

IX. Dispatch and passing of risk

1. Goods reported as being ready for dispatch are to be taken over straight away, otherwise we shall be entitled as we see fit to dispatch them or to put them into store at the Buyer's risk and expense. We shall also be entitled to take the latter course of action we have assumed responsibility for the dispatch of the goods and they cannot be dispatched without this being our fault. The goods will be regarded as having been delivered one week after the being put into store.
2. The selection of method of transport and the transport route shall be effected at our discretion.
3. Risk shall pass over to the Buyer when the goods are handed over to the railway, the haulier or freight forwarder or one week after the goods have been put into store, and to be more precise, even if we have undertaken to deliver the goods.

X. Reservation of title

1. We shall reserve the title to our goods until all accounts under the entire business relationship including all ancillary claims have been paid for in full and until the drafts and cheques handed in have been cashed. If there is an open account arrangement the reservation of title shall apply as a security for the claim to the outstanding balance.
2. The treatment and processing of our goods shall be effected on our behalf and to be more precise, free of charge and without placing us under any obligation. If the goods supplied by us are processed, combined or blended with goods belonging to third parties we shall acquire co-ownership to the newly created goods in proportion to the invoice value of the goods supplied by us to the other goods at the point in time at which they are processed, combined or mixed. The co-ownership created as a result shall be regarded as goods subject to reservation of title in accordance with a). If our title expires as a result of combination or blending, the Buyer shall consequently assign to us here and now the ownership rights to the new goods to which he is entitled up to the amount of the invoiced figure of the goods supplied by us and he shall keep it in safekeeping for us free of charge.
3. If goods owned by us constitute an important integral part of a property owned by a third party, the Buyer shall assign here and now – if necessary up to the value of our co-ownership share – all the accounts as well as ancillary accounts from the installation to us. We hereby accept the assignment.
4. The Buyer is allowed to resell goods to which we have title or co-ownership in the course of his normal business operations. The Buyer shall assign here and now all the accounts against these buyers created by the resale to us. In so far as we are only entitled to co-ownership of the sold goods, the Buyer shall assign the account to us in accordance with the proportion of our co-ownership. We hereby accept the assignment. The Buyer is authorized to accept the accounts assigned to us.

5. Extraordinary court orders such as pledging, transfer of ownership by way of security and assignment are not allowed. The Buyer is to notify us straight away of third party seizures of our goods subject to reservation of title or of an account assigned to us, in particular levies of execution. The costs of necessary interventions shall be for the account of the Buyer.
6. If the Buyer's conduct is in breach of contract, in particular on account of default in payment, we shall be entitled to demand the return of the goods subject to retention of title. If we assert reservation of title the authorisation in accordance with No 4 shall expire. The assertion of reservation of title as well as the levy of execution on the delivered items shall not be regarded as withdrawal from contract. Upon request the Buyer shall have to forward us a list of the accounts assigned to us in accordance with No 3 and No 4 straight away stating the Buyer's address as well as the amount of the account. Moreover the Buyer shall be obliged at our request to notify the third party debtor that the accounts have been assigned to us, and to pass over the information and any documents which may be required to assert our rights.
7. At the Buyer's request we shall undertake to release goods subject to reservation of title as well as accounts assigned in accordance with No 3 and 4 to the extent that the value of the securities for the goods subject to reservation of title or the accounts assigned in accordance with No 2 exceeds our purchase price claim. We shall be entitled to select the securities to be released. The value of the securities is equal to the amount of the purchase price minus 20% for losses and costs incurred by resale. Release shall be effected by means of transfer of ownership and / or reassignment.

XI. Order-related production equipment, cast parts

1. Order-related production equipment such as models, patterns, core boxes, cast iron molds, casting tools, devices and master gauges furnished by the Buyer are to be sent to us free of charge. We shall only inspect the production equipment provided by the Buyer to confirm compliance with contractual specifications or drawings or patterns submitted to us on the basis of express agreements. Production equipment furnished by the Buyer may be modified by us if this appears necessary for technical reasons and the work-piece is not changed as a result.
2. The Buyer shall bear a share of the costs of the modification, maintenance and replacement of his production equipment.
3. The production equipment shall be kept in safe-keeping by us and handled with the care we would apply to our own equipment. We shall not be obliged to take out insurance cover. We may return the Buyer's production equipment no longer required by us to the Buyer at his cost and risk or if the Buyer fails to comply with our request to collect them within a reasonable period of time we may destroy them.
4. Order-related production equipment which is manufactured or procured by us at the Buyer's request shall remain our property even if the Buyer is invoiced a share of the costs for them. We shall keep them in safe-keeping for a period of three years from the last casting.
5. If, when using production equipment which can only be used once, the Buyer shall consequently have to furnish us with another piece of production equipment or bear the costs of the replacement equipment.
6. Parts furnished by the Buyer which have to be processed by us must be supplied by the Buyer in the correct dimensions and in perfect condition. The Buyer is to supply replacements free of charge for reject parts which are unusable compensate us for production damages incurred by us as a result.

XII. Copyright/Data protection

1. Documents and drawings handed over to the Buyer as well as design work carried out by us and proposals for the design and manufacture of the goods to be supplied may only be used by the Buyer for the intended purpose and he must not allow third parties access to them or allow them to be the subject matter of publications without our consent.
2. If we manufacture to drawing, specification or the Buyer's other detailed instructions and if the product consequently manufactured is in breach of third party proprietary rights, the Buyer shall consequently exempt us from the third party claims resulting from this breach of proprietary rights.
3. Insofar as this is necessary for the fulfillment of the order, we are entitled to process and store data of the customer in compliance with the legal requirements for the duration of the entire contract processing.

XIII. Place of jurisdiction / Applicable law / Final provisions / Written form

1. The place of jurisdiction shall be the courts having jurisdiction where our company is based.
2. In a commercial business transaction it is agreed that the place of jurisdiction shall be the courts having jurisdiction where our company is based, and this shall likewise apply in cases in which the Buyer does not have a place of general jurisdiction in Germany, has relocated his place of residence or general whereabouts outside Germany after signing the contract, or at the point in time at which we take legal action we do not know the Buyer's place of residence or his general whereabouts. We shall also be entitled to take legal action at the courts having jurisdiction where the Buyer's business is based.
3. The application of the national law of the Federal Republic of Germany is exclusively agreed. The UN Convention on the International Sale of Goods (CISG) shall not apply.
4. Our declarations of intent are only effective if they are made in writing or confirmed in writing. The sending of an e-mail fulfills this formal requirement.
5. Should one of these provisions be or become invalid, the validity of the remaining provisions shall not be affected by this as a result. In the event that one or more provisions are invalid, the parties shall be obliged to agree a provision which comes as close as possible economically and legally to the invalid provision.