



## Terms and Conditions of Sale and Delivery

### §1 – Validity

1.  
The following conditions only apply to companies in terms of §310 BGB [German Civil Code].
2.  
The following conditions apply to all our contracts, deliveries and other services unless they are changed or excluded in writing with our express written consent. They particularly apply when we perform our services/deliveries without reservation knowing of divergent conditions on the part of our contractual partner.
3.  
Our conditions also apply to all future contracts, deliveries and services, even if their text is not sent anew to our contractual partners with our offer or order confirmation.

### §2 – Offer and Conclusion

1.  
Our offers are subject to confirmation. Contracts and other agreements only become binding upon our written confirmation or delivery/performance.
2.  
All agreements between ourselves and our contractual partners shall be recorded in writing upon conclusion of the contract. Agreements made upon or after conclusion of the contract between our employees or representatives and our contractual partners require our written confirmation to be valid; the authority of our employees and representatives is restricted in this respect.

### §3 – Prices, Price Increases and Payment

1.  
Our prices are ex-works plus packaging, freight, duty, export duty, insurance, other duties and statutory sales tax, which we shall additionally calculate in every case at the rate applicable on the day of delivery or performance.
2.  
In the case that our purchase price and/or applicable salary or wage tariff change during a contract that shall be fulfilled more than four months after conclusion of the contract due to the conditions of the contract or for reasons caused by our contractual partners, we are entitled to charge an increased price proportional to the increase in the affected purchase price and/or the affected labour costs.
3.  
Our invoices shall be paid in the invoiced currency within 30 days of the invoice date net without any deduction of any additional charges. If a right to discount is agreed, it is only valid if all invoices due in the discount period are settled together.
4.  
Drafts and cheques shall only be accepted after previous agreement and, in any case, only on account of performance. Discount charges shall be borne by our contractual partners and shall be paid immediately.
5.  
After due date, we are entitled to interest at 8% over the respective base interest rate. Other and further claims – in particular due to delays by our contractual partners – remain unaffected.



6.

Our invoices shall count as accepted if our contractual partner does not object in writing within 30 days of receipt of invoice. We shall bring this to our partners' attention with each invoice.

7.

Offsetting counter claims that are disputed by us and not legally asserted is not permitted. The assertion of a withholding right due to claims that do not result from the same contractual relationship is prohibited if these claims are not accepted by ourselves and are not legally asserted.

8.

Our contractual partner may only withhold payment due to a notice of defects if there can be no doubt about the correctness of the notice of defects, and furthermore only a proportion appropriate to the defects that have occurred.

## **§4 – Worsening of the Contractual Partner's Financial Condition**

1.

Should one of the following situations occur or should such a situation that was already present at the conclusion of the contract come to our attention after conclusion of contract, we are entitled to demand advance payment to the value of the agreed price from our contractual partner. This applies in the following situations:

Judicial or extrajudicial insolvency or settlement proceedings are opened on our contractual partner's assets, or the opening of such proceedings is refused due to lack of assets, or a written credit report from a bank or credit agency is existent that shows that our contractual partner is unworthy of credit, or a cheque or draft accepted by ourselves is not honoured or is protested.

2.

Should our contractual partner not comply with our rightful demand for advance payment within an appropriate period of grace set by us, although we have explained to the partner that we shall refuse the acceptance of further performances by the partner, we are then entitled to withdraw from the contract or to demand damages for non-fulfilment, this, however, only with regard to the part of the contract not yet fulfilled by us.

## **§5 – Shipping and Transfer of Risk, Insurance**

1.

The risk for the accidental destruction or accidental deterioration of the goods transfers, in every case, independent of the place of shipping, to our contractual partners upon shipping of the goods, and also in the exceptional case that freight-free delivery and/or assembly are agreed.

2.

Deliveries shall be made using our choice of rail, post, forwarding agent or our own HGV in appropriate packaging chosen by us. Only at the request of our contractual partner, and at their cost, will we insure the delivery against each insurable risk wished by our contractual partner, in particular against theft and shipping damage. We must be informed without delay of any cases of shipping damage. Furthermore, our contractual partner shall ensure upon delivery that corresponding claims and reservations are registered with the carrier.

3.

If the goods should not be shipped or shipping is delayed due to our contractual partner's wishes or for reasons caused by our contractual partner, the risk for accidental destruction and accidental deterioration transfers to our contractual partner upon our giving notification that the goods are ready to be delivered. In this case, the goods are stored at the risk and cost of our contractual partner.

4.

To the extent that we are obligated to take back packaging, our contractual partner bears the costs for the return of the used packaging.



## §6 – Delivery and Performance Deadlines and Times, Buying on Call

1.

Delivery and performance deadlines are only binding if confirmed in writing by us.

2.

A delivery or performance date agreed only on duration begins at the end of the day on which the agreement of all details of the contract contents was concluded, at the earliest with our acceptance of the order, however not before the adduction of all documents, permissions, acceptances to be furnished by our contractual partner and not before receipt of any down payments to be made by our contractual partner.

3.

Delivery or performance deadlines or dates are kept if the goods, or in cases where the goods should not be shipped, our notice that the goods are ready for delivery have been dispatched by us by the date/deadline.

4.

Deadlines extend and dates are postponed – also within a delay – appropriately in cases of force majeure and unseen and obstacles arising after conclusion of contract for which we are not responsible, insofar as such obstacles have a demonstrable, significant influence on the delivery of the sold objects. In every case, strikes and lock-outs count as actions for which we are not responsible in terms of this paragraph. The above-stated condition applies also if the delaying circumstances arise with our suppliers or their sub-suppliers. As far as thus caused delivery delays last longer than 6 weeks, our contractual partner is entitled to withdraw from the contract under exclusion of any further claims.

5.

Delivery deadlines and dates are postponed by the period that our contractual partner is behind in their contractual obligations – also from other contracts within a running business relationship – or during which it cannot fulfil the conditions for the start or continuation of work that is to be performed by it, in particular if it has not supplied required documents, plans or other specifications. The burden of proof that it has created necessary conditions and supplied the required documents, plans or specifications lies with our contractual partner.

6.

Orders on call are only accepted with acceptance periods. If the acceptance period is not exactly specified, it ends 9 months after conclusion of the contract. In this case, the goods are to be accepted in approximately the same monthly quantities. Should acceptance not occur within the agreed period, we are free to deliver ready deliveries without further notice or to store them at the cost of our contractual partner. Furthermore, we are entitled to set our contractual partner a grace period for acceptance connected with the threat that we shall refuse the acceptance in the case that the grace period expires fruitlessly. In the case that the grace period expires fruitlessly, we are entitled by notice of termination of our delivery obligations to withdraw partly or fully from the contract or, upon refusal of the delivery, to demand damages for non-fulfilment.

7.

Should our contractual partner fail to take an allocation of goods due to it within one month of the expiry of the agreed period for the allocation, and if there is no such agreement, no later than one month after our request to do so, we are entitled to allocate and deliver the goods as we see fit. Furthermore, we are entitled to set our contractual partner a grace period for allocation connected with the threat that we shall refuse the acceptance in the case that the grace period expires fruitlessly. In the case that the grace period expires fruitlessly, we are entitled by notice of termination of our delivery obligations to withdraw partly or fully from the contract or, upon refusal of the delivery, to demand damages for non-fulfilment.

8.

We are entitled to perform part-deliveries and bill them separately.



## **§7 – Declaration of Choice of Rights After Setting Grace Period**

In all cases in which our contractual partner has set us a grace period due to non-delivery or incorrect delivery and this period has not ended, we are entitled to require from our contractual partner that it declares within an appropriate period whether it shall further assert its right to fulfilment/supplementary fulfilment despite the expiry of the deadline, or whether it shall turn to the other optionally given rights. Should our contractual partner not declare within the set period, its right to fulfilment/supplementary fulfilment is excluded. If our contractual partner declares within the set period that it still requires fulfilment/supplementary fulfilment, it remains at liberty to set a new deadline, and in the case of the fruitless expiry thereof, to make use of other rights.

## **§8 – Delay, Exclusion of Liability**

Should we find ourselves behind with deliveries or performances or if our liability is excluded in accordance with §275 BGB, we are only liable for damages under the conditions of and within the scope of §12 point 3, however with the following additional provisos:

1.

Should our delivery be delayed and there is only a case for slight negligence on our part, all claims for damages by our contractual partners are restricted to a flat-rate of 1% of the value of the delivery for each entire week's delay, up to a maximum of 8% of the value of the delivery, whereby we reserve the right to demonstrate that no or very little damage has occurred as a result of the delay.

2.

In the case of our delay, our contractual partner is entitled to damages instead of the performance only if we have previously been set an appropriate grace period of at least 6 weeks to deliver, whereby however the contractual partner retains the right to set us an appropriate grace period of less than 6 weeks provided that, in the individual case, a grace period of 6 weeks for delivery is unreasonable for it. Our contractual partner only has the right to damages for non-fulfilment in cases of intent or gross negligence, in cases of slight negligence, its right to damages is limited to 15% of the part purchase price that corresponds to the deliverables in which regard the contract will no longer be fulfilled.

3.

If we are liable due to inability to deliver/perform or impossibility of delivery/performance and it is a matter of slight negligence, our liability is restricted to the scope described in point 2.

4.

A contractual partner's right to withdraw from the contract or to damages is fundamentally restricted to the not yet fulfilled part of the contract, unless our contractual partner reasonably has no further interest in the fulfilled part of the contract.

5.

Claims for damages against us due to delay or exclusion of the duty to perform in accordance with §275 BGB become time-barred one year after the start of the statute of limitation.

6.

The above conditions do not apply concerning injury to life, the body, health or the freedom of our contractual partner or the damages are based upon a deliberate or grossly negligent breach of duty by us, one of our legal representatives or auxiliary persons. Furthermore, they do not apply in the case of a delay if a forward deal has been agreed.

## **§9 – Acceptance Delay by our Contractual Partner**

1.

Should our contractual partner suffer delays with the acceptance of our performances in total or in part, we are entitled, after the fruitless expiry of a reasonable grace period set by us, with the threat that we shall refuse our services in the case of a deadline expiry, to either withdraw from the contract or to demand damages instead of the performance; this however only with regard to the part of the contract not yet fulfilled by us. We have no right to claim for damages if our contractual partner is in no way at fault for the delay in acceptance. Our statutory rights remain unaffected in the case of a delay in acceptance by our contractual partner.



2.

The contractual partner shall reimburse our storage costs, warehouse rent and insurance costs for goods due for collection but not collected. We have no obligation to insure stored goods.

3.

If delivery is delayed at the wish of our contractual partner, or it finds itself behind on acceptance, we may bill storage charges at a level usual for storage at a specialist firm in this area from one month after sending notification of availability for delivery, whereby we reserve the right to claim actual, higher costs.

## **§10 – Cancellation of Orders, Withdrawal of Goods, Damages instead of Performance**

If we declare ourselves agreed with the cancellation of a placed order at the wish of our contractual partner, or we withdraw goods supplied by us for reasons for which we are not responsible while releasing our contractual partner from its obligation to accept and pay, or we have the right to damages instead of performance, we can demand 20% of the contractual part price that corresponds to the affected part of the delivery as compensation without proof, whereby our contractual partner retains the right to demonstrate that no or only slight loss was caused. Our right to claim actual, higher damage remains unaffected.

## **§11 – Composition of Goods, Increased and Decreased Output**

1.

Pictures, drawings, dimensions, weights and surface composition, which are contained within catalogues, price lists and other printed material only represent industry-typical approximate values. Our samples are only approximate display pieces for quality, dimensions and other characteristics. Our specifications on dimensions, characteristics and applications of our products serve only descriptive purposes and contain no specifications or promises of composition.

2.

In the case of technically required necessity, we reserve the right to supply the ordered goods with deviating composition, dimensions and other characteristics. We will inform our contractual partners of any such changes. Insofar, our contractual partners gain hereby no claims due to defects, if and as far as the alterations do not represent a significant restriction on the usability of the product for our contractual partner.

3.

We reserve the right to deliveries up to 10% under or over the ordered quantity as well as deviations from dimensions, weight, illustrations and composition specifications, insofar as the supplied objects are thereby not reduced in their usability.

## **§12 – Liability for Defects and Damages**

1.

Claims by our contractual partner due to defects require that it has fulfilled its obligation to investigate and notify of defects as specified in §377 HGB, whereby the reprimand must be in writing. If our contractual partner neglects the correct and timely reprimand, it may no longer assert claims due to the circumstances to be reported unless we had behaved maliciously.

2.

The rights of our contractual partners due to material defects are determined in accordance with the statutory regulations with the requirement that our contractual partner must provide us with an adequate grace period for supplementary fulfilment of at least 4 weeks, whereby it remains our decision, whether we repair the defect or deliver defect-free replacement goods. Our contractual partner retains the right to give us a reasonable grace period of less than 4 weeks in individual cases if a grace period of 4 weeks is unreasonable for it.

If only a part of the goods delivered by us is defective, the right of our contractual partner to withdraw from the contract or demand damages instead of performance is limited to the defective part of the delivery/performance, unless this restriction is impossible or unreasonable for our contractual partner.

Claims for damages by our contractual partners due to defects in deliveries or services are restricted to the scope defined in the following point 3.



3.

Our liability for damages resulting from injury to life, body, health or the freedom of our contractual partner that are based on culpable breach of duty is neither excluded nor limited. We are only liable for other damages to our contractual partner if they are based on a deliberate or grossly negligent breach of duty by us, one of our legal representatives or auxiliary persons. If we caused the damage only through slight negligence, we are only liable if the breach concerns significant contractual duties, and indeed limited to contract-typical and reasonably predictable damage.

For the rest, claims for damages by our contractual partners due to breach of duty, illegal actions or for other legal reasons are excluded.

The above liability restrictions do not apply to the lack of assured characteristics and to guarantees if and as far as the assurance of characteristics or the guarantee have the purpose to protect the partner from damages that did not themselves arise in the supplied goods.

As far as our liability is excluded or limited, this also applies for the personal liability of our employees and auxiliary persons.

The above liability exclusions also apply in every case to consequential damage.

The above liability exclusions do not however apply for claims in accordance with the Product Liability Act.

## **§13 – Producer's Liability**

Our contractual partner shall indemnify us from all claims for damages brought by third parties against us based on the regulations on illegal actions or product liability due to errors or defects in the products manufactured or supplied by us, so far as such claims would also be valid against our contractual partners or are only no longer valid due to an expired statute of limitation. Under these conditions, our contractual partner shall also indemnify us from the costs of legal action that is filed against us due to such claims. As far as the asserted claims are also well-founded against us or only no longer valid due to an expired statute of limitation, we have a partial claim for indemnity against our contractual partner whose scope and size are determined in accordance with §254 BGB.

Our indemnification and damages duties in accordance with §§437 point 3, 440, 478, 634 point 4 BGB or on other legal bases remain unaffected by the above regulations, while the restrictions in accordance with §12 point 3 of the present conditions apply for them.

## **§14 – Reservation of Proprietary Rights**

1.

Until the fulfilment of all claims that we currently have or will have on our contractual partner, our contractual partner guarantees us the following securities, which we release on demand after our choice provided their nominal value enduringly exceeds our claims by more than 20%:

Delivered goods remain our property.

Processing or alteration are always carried out for us as the manufacturer, however without obligating us. If the goods supplied by us are processed with other objects not belonging to us, we gain joint ownership of the new object proportional to the invoice value of the goods supplied by us relative to the invoice value of the other goods used at the time of processing.

If our goods are connected with other movable objects to one unit and if this other object is seen as the main object, our client transfers joint ownership proportionally to us, so far as this main object belongs to it.

A transfer required for our purchasing of ownership or joint ownership shall be replaced by the now concluded agreement that our client stores the object for us like a hirer or, so far as it does not own this object itself, the transfer to us of the right to release against the owner. Objects of which we have (joint) ownership under existing regulations are hereafter designated reserved goods.

2.

Our contractual partner is entitled to sell the reserved goods in proper business as well as to combine them with others. The claims arising from the sale, combination or another legal basis regarding the reserved goods shall be relinquished to us in proportion with our joint ownership of the sold or processed object. When placing such claims in open invoices, this relinquishment also covers all outstanding balance claims. The relinquishment occurs with a higher priority than the rest.



We authorise our contractual partner to collect the relinquished claim under reservation of the right to revoke. The collected sums shall be immediately transferred to us by the contractual partner as far as and as soon as our claim is due. As far as our claims are not yet due, the collected sums shall be recorded separately by our contractual partner.

Our permission to collect the claims ourselves remains unaffected. However, we obligate ourselves not to collect the claims as long as our client fulfils its obligations from the collected sums, does not fall behind in payment and in particular no application for insolvency or settlement proceedings is made, or there is a stoppage of payments. If this is however the case, our contractual partner is obliged to inform us of the relinquished claims and its debtors, to provide us with the accompanying documents and to provide us with all details necessary for collection as well as to indicate to third party debtors the relinquishment whereby we are also entitled to indicate the relinquishment to debtors ourselves.

Upon stoppage of payments, application for or commencement of insolvency proceedings, of judicial or extrajudicial settlement proceedings, the rights of our contractual partner to resell, process, combine or building-in of the reserved goods and the authorisation to collect the relinquished claims expire without our revoking them.

3.

Our contractual partner shall immediately inform us of third party access to the reserved goods and the relinquished claims. Any costs for interventions and their defence are borne by our contractual partner.

4.

Our contractual partner shall handle reserved goods with care, in particular it shall insure them for full value at its own cost against fire and water damage and theft.

5.

In the case of contractual partner's behaviour that is in breach of contract – in particularly delays in payment – we are entitled to withdraw the reserved goods at the contractual partner's cost or to demand the relinquishment of rights to release to third parties without having to previously or simultaneously declare our withdrawal from the contract. In particular, The withdrawal or garnishment of the reserved goods by us does not represent a withdrawal from the contract unless we explicitly state this in writing.

6.

Should our reserved ownership lose its validity upon delivery abroad or for other reasons, or should we lose ownership of the reserved goods for any reason, our contractual partner is obligated to guarantee us without delay another security on the reserved goods or another security for our claims, which is valid by the law applicable at the contractual partner's registered office and matches German law's reserved ownership as closely as possible.

## **§15 – Custom Manufacturing and Tool Costs**

1.

For orders for custom manufactured products, specifications on construction, dimensions etc. require our written confirmation without exception.

2.

The reimbursement of parts of the costs for our tools does not give our client any claim on the tools, rather they remain our property in our possession. We commit to keep the tools for one year after the last delivery for the contractual partner. If the contractual partner informs us before the end of this period that further orders shall be placed within a further year, the retention period extends by a further year. After this time, and in the absence of repeat orders, we can freely dispose of the tools.

3.

If orders for which tools are made are not carried out, the following applies:

We reserve the right to charge for all costs incurred if series orders are not carried out or are annulled in the lead time, whereby the costs incurred for the first use of tools before acceptance of samples, and for annulment after acceptance of samples, depending on the size of the intended monthly need, the costs incurred for the entire scope of series tools, custom devices and gauges shall be billed. The installed, invoiced tools shall remain in place for 4 weeks for inspection, and shall be scrapped after the expiry of this period. Finished sequence of operation drawings and construction drawings of tools are not subject to the duty to show or make available for inspection to protect the procedures used.



## **§16 – Ownership of Documents, Confidentiality**

1.

Illustrations, drawings, calculations, samples and models remain our property. Our contractual partner is obligated to not allow third parties access to such objects without our express permission. For each case of culpable violation of the above obligation, our contractual partner promises us a contractual penalty of €6,000.00. The right to demand actually incurred damages beyond the contractual penalty remains unaffected.

2.

The contractual partners mutually commit to treat all non-obvious commercial and technical details like their own commercial secrets and to maintain absolute confidentiality towards third parties. For each case of violation of the above obligation, the contractual parties shall pay a contractual penalty of €6,000.00. The right to demand actually incurred damages beyond the contractual penalty remains unaffected.

## **§17 – Industrial Property Rights**

1.

If the product is to be manufactured in accordance with drawings, samples or other specifications from the contractual partner, the contractual partner avouches that no third party rights, in particular patents, utility models, other industrial property and copyrights are not infringed upon herewith. The contractual partner indemnifies us from third party claims that result from any infringement upon such rights. Furthermore, our contractual partner assumes all costs incurred to us by third parties asserting the infringement of such rights and our defending ourselves. The same applies to the use of samples, drafts, printing templates etc. created by us or committed by our contractual partner. The above conditions do not apply if third party rights are knowingly infringed upon by us.

2.

In the course of our development, should results, solutions or technologies arise that are protectable, we are the sole owners of the copyright and ownership and usage rights, and we reserve the right to register corresponding industrial property rights in our name.

## **§18 – Relinquishment**

1.

We are entitled without restriction to relinquish the claims against our contractual partners to third parties.

2.

Our contractual partner may only relinquish claims of any kind against us with our written consent.

## **§19 – Place of Performance, Place of Jurisdiction, Applicable Law**

1.

Place of performance and exclusive place of jurisdiction for deliveries, performances and payments, including cheque and draft complaints as well as all disputes arising between the contractual partners is Velbert, whereby we however also have the right to sue our contractual partner in another jurisdiction applicable to it in accordance with §§12 ff. ZPO.

2.

The relationship between the contractual partners is regulated exclusively by the law of the Federal Republic of Germany, excluding international sales laws, in particular UN sales law and other international agreements on sales law.