

# General Terms and Conditions of Supply and Payment for Foundry Products

(dated 01/03/2016)

Our deliveries and services are made only on the basis of the following terms and conditions. Other terms and conditions of the customer do not apply even if we have knowledge of this and carry out the delivery completely without reservation. Our terms and conditions do not apply to consumers in the sense of § 13 BGB. They shall also apply to all future transactions with the customer from the ongoing business relationship. All agreements made between us and the customer for the purpose of executing this Agreement shall be made in writing. Changes and supplements to the Agreement require to be made in writing.

## **1. Conclusion of the Agreement, scope of delivery**

- (a) Our quotation is non-binding, unless otherwise stated in the order confirmation or we have not explicitly declared anything to the contrary in writing. The contract shall only be deemed as concluded if we have confirmed an order in writing or we carried out the order.
- (b) The information contained in brochures and catalogues such as figures, drawings, weights and dimensions are approximations as are customary for the industry, insofar as they have not been expressly designated as binding.
- (c) We reserve all property rights and copyright to figures, brochures, calculations and other documents; they may not be disclosed to third parties. This applies in particular to such written documents that are referred to as "confidential"; the customer requires our express written consent prior to their disclosure to third parties.

## **2. Pricing and terms of payment**

- (a) Our prices shall apply ex works plus charges for packaging, freight, postage, insurance and the respective statutory value added tax.
- (b) If after conclusion of the Agreement costs relating to the order change significantly, the contractual partners will agree on an adjustment.
- (c) Our invoices are due for payment immediately without any deductions, unless otherwise agreed.
- (d) The customer shall only then be entitled to withhold or to offset payments due to any counterclaims, insofar as undisputed or legally binding payment claims exist.
- (e) If we have delivered partly defective goods, the customer is still obliged to make payment for the indisputably fault-free goods, unless the partial delivery is not of interest to him.
- (f) We accept discountable and properly taxed bills of exchange payment, if this has been expressly agreed beforehand. Credit notes for bills of exchange and cheques are issued subject to receipt minus the expenses with the value date of the day upon which we have access to the equivalent value.
- (g) If we are committed to render services in advance and if circumstances become known to us after conclusion of the Agreement, according to which our claim for payment is endangered due to the customer's inability to pay, we can, in addition to the legal claims due to the agreed retention of title stipulated in paragraph 9, prohibit the resale and processing of the delivered goods or demand their return or the transfer of indirect ownership of the delivered goods at the expense of the customer and revoke the direct debit authorisation under the conditions of clause 9 letter (h). The customer empowers us already in the above cases to enter its company operations and to collect the goods. When recovering the goods, withdrawal from the Agreement shall only apply if we have expressly declared this.
- (h) If payment is delayed, we may stop the fulfilment of our obligations until receipt of payments after written notification. After an appropriate deadline has been given, we are also entitled to withdraw in this case.

## **3. Delivery period**

- (a) Delivery periods shall begin with the confirmation of our order, however, not before all details for its execution have been clarified and all other conditions to be fulfilled by the customer are available; the same shall apply to delivery dates. Deliveries before expiry of the delivery period and partial deliveries are permitted, if this is not unreasonable for the customer. The day of notification that the goods are ready for dispatch shall be considered the day of delivery, otherwise the date of dispatch. If nothing else has been agreed or is stated otherwise in the Agreement, the delivery period specified by us is always non-binding.
- (b) Agreed delivery periods and dates due to delays of the customer shall be extended and/or be shifted without prejudice to our rights by the period for which the customer is in arrears with his obligations. If the customer is in default of acceptance or if he culpably violates other duties to cooperate, we shall be entitled to demand compensation for the damage caused to us, including any additional expenses. In this

case, the risk of accidental loss or accidental deterioration of the goods shall pass to the customer at the moment in which his delay in acceptance commences.

- (c) If we are in default, the customer can set a reasonable grace period with the express declaration that he will refuse acceptance of the performance after expiration of this period, and withdraw from the Agreement after expiry.
- (d) At our request, the customer is obliged to explain within a reasonable period of time whether he wishes to withdraw from the Agreement because of the delay in delivery and/or demands compensation for damages instead of performance or insists on the delivery.

## **4. Serial deliveries, long-term and call-off agreements**

- (a) Open-ended agreements can be terminated with a period of six months' notice to the end of the month.
- (b) If an essential change of wage, material or energy costs arises in a long-term agreement (= agreements with a term of more than 12 months and unlimited open-ended agreements) after the first four weeks of the contractual term, each party is entitled to demand an appropriate adjustment of price, taking these factors into account.
- (c) Our prices are calculated on the basis of the agreed order quantity. If no binding order quantities have been agreed, our calculation is according to the agreed target quantities. If the order amount or target quantity falls below this, we are entitled to reasonably increase the price per unit. If the customer exceeds the quantity with our consent, he may demand a reasonable price reduction if he notifies us of this in writing at least 2 months before the agreed date of delivery. The amount of reduction or increase shall be determined according to the basis used for our calculation.
- (d) In the case of call-off supply agreements, binding quantities are to be communicated to us at least 3 months before the date of delivery by call-off, unless otherwise agreed. Additional costs, which are caused by a delayed call-off or subsequent amendments to the call-off in terms of time or quantity by the customer, shall be at his expense; our price calculation shall be decisive in this respect.
- (e) In the case of serial production, excess or short deliveries of up to 10% compared to the order quantity actually due shall be allowed on account of the peculiarities of the foundry process.
- (f) The overall change in price shall correspond to the extent of these deviations.

## **5. Force majeure and other hindrances**

- (a) Force majeure, labour disputes, lockouts and official actions entitle us to delay the delivery for the duration of the hindrance and a reasonable start-up period, or to withdraw completely or partly from the Agreement on account of the not yet fully satisfied part.
- (b) Unforeseen circumstances, e.g. operational disturbances, rejects and after-treatment shall be considered equivalent to force majeure, which make it impossible for us to provide timely delivery despite reasonable efforts on our part; we must provide evidence of this.

## **6. Test procedures, inspection**

- (a) If an inspection has been agreed, the extent and conditions are to be defined at the same time when concluding the Agreement.
- (b) If this has not been done, the inspection will be carried out by us in the usual extent and according to our usual conditions. The same shall apply for the inspection of initial samples.

## **7. Dimensions, weights, quantities**

- (a) Deviations from dimensions, weight and quantities which are within commercially accepted tolerances, relevant DIN regulations, and technical foundry requirements are permitted. Details of dimensions and weights given in our quotations and order confirmations are not guarantees of quality.

(b) The shipping weights and quantities determined by us shall be decisive for the calculation.

### **8. Shipping and transfer of risk**

- a) Unless otherwise agreed in writing, "FCA free carrier" (Incoterms 2010) shall apply as the terms of delivery. This shall also apply if we have committed ourselves to bear the transport costs.
- (b) We shall only cover the shipment by transport insurance at the express request of the customer; the customer shall bear the costs incurred in this respect.
- (c) Goods notified as being ready for dispatch are to be accepted immediately, otherwise we are entitled to send them at our own discretion or to store them at the usual forwarding costs and at the risk of the customer; we are also entitled to the latter if the shipment taken on by ourselves cannot be carried out for no fault on our part. The goods shall be considered delivered one week after the start of storage.
- (d) In the absence of specific instructions, the choice of the means of transport and the transport route shall be at our discretion.
- (e) With the transfer to the railways, the forwarding agent or the freight forwarder and/or one week after the start of storage, but no later than after leaving the factory or warehouse, the risk shall pass to the customer, even if we have undertaken the delivery.

### **9. Retention of title**

- (a) All supplied goods shall remain our property (reserved goods) until fulfilment of all claims, in particular also regarding claims to the respective balance of an order, which we are entitled to from the business relationship. The same shall also apply if payments are made on specially designated claims. Insofar as the customer is in default of payment, we are entitled to demand the surrender of the delivered goods. The customer shall bear the costs. This shall not apply to insolvency proceedings of the customer which have been initiated or opened, for which we are not entitled to demand that the delivered goods be handed over immediately.
- (b) When repossessing the goods and/or asserting the retention of title, a withdrawal from the Agreement shall only exist if we expressly declare it.
- (c) The treatment or processing of the delivered goods shall always be undertaken for us by the customer. If the reserved goods are processed or inseparably linked with other objects not belonging to us, we shall acquire co-ownership of the new item in the ratio of the invoiced value of the goods to the other processed or mixed items at the time of processing.
- (d) If our ownership expires through combining or blending, the customer already transfers to us the rightful ownership of the item in question to the extent of the invoiced value of the reserved goods or the new stock and shall keep it for us free of charge. The resulting co-ownership rights shall apply in the sense of reserved goods within the meaning of letter a), accordingly.
- (e) The customer may only sell the reserved goods in the ordinary course of business at their normal terms and conditions and as long as he is not in default, provided that the claims from the further sale are assigned to us in accordance with the letters f) and g). He is not entitled to dispose of the reserved goods in any other way.
- (f) The claims of the customer from the resale of the reserved goods shall hereby already be assigned to us. They serve to secure to the same extent as the reserved goods.
- (g) If the reserved goods are sold by the customer together with other goods which we have not delivered, the assignment of the claim from resale shall only apply to the amount of our invoiced value for the goods sold, respectively. If goods are sold to which we have co-ownership in accordance with letter b), the assignment of the claim shall apply to the value of the co-ownership share.
- (h) The customer is entitled to collect the claims from the sale in accordance with letters e) and f) until we revoke our action. We have the right to withdraw in the cases referred to in clause 2, if the customer is in default of payment, an application for initiating insolvency proceedings has been made or payments have been suspended. In these cases, the customer is obliged to notify us without delay about the assigned claims and their debtors, to provide all information required for collection, to hand over corresponding documents and to inform the debtors of the assignment. In any case, the customer is not entitled to assign the claims.
- (i) If the value of the existing sureties exceeds the secured claims in total by more than 20%, we are obliged to release the secured claims at our discretion, accordingly. The customer must notify us immediately about any attempts to impound the goods or any other interference by third parties.

### **10. Liability for material defects**

- (a) We are liable for the proper manufacture of parts supplied by us in accordance with the agreed technical supply specifications. The customer is responsible, in particular with regard to the intended purpose, for the proper construction of the goods, taking into account any safety regulations, choice of materials and the required test procedures, for the correctness and completeness of the technical delivery specifications and the technical documentation and drawings submitted to us, as well as for the execution of the production facilities provided, also in the case that changes are proposed by us, which find his approval. Furthermore, the customer shall ensure that based on his data no protection rights or other rights of third parties are violated. Decisive for the contractually agreed condition of the goods is the point in time of the transfer of risk.
- (b) We are not liable for insignificant deviations from the agreed quality characteristics, for minor impairment of utility, as well as for defects which arise from unsuitable or improper use, faulty assembly and/or commissioning as well as normal wear and tear. If improper modifications and/or repair work has been carried out by the customer or by third parties, we are also not liable for these and their resulting consequences.
- (c) Upon receipt of the goods at the place of destination, the customer shall immediately register any material defects, complaints about any hidden defects are to be made in writing after they are discovered.
- (d) Complaints about defects shall be excluded which could have been determined at the agreed inspection or initial sample inspection in accordance with clause 6.
- (e) An opportunity must be given to us to determine defects which are subject to complaint. In urgent cases where there is a danger to operational safety or in order to avert a disproportionately large amount of damage to the customer, we have to determine the defects immediately. Non-compliant goods shall be returned to us immediately upon request. If the customer does not comply with these obligations or makes changes to the goods which have already been complained about without our consent, he shall forfeit any rights due to material defects.
- (f) In the case of a justified complaint made within the prescribed time limit, we shall rework the defective goods at our own discretion or supply a perfect replacement (subsequent fulfilment of performance).
- (g) If we do not comply with our warranty obligations or not within a reasonable time, or if rectification of defects initially fails, the customer may set a final deadline in writing, within which we have to fulfil our obligations. Setting a deadline is not required, if this should be unreasonable for the customer. After this deadline has expired without success, the customer can demand a reduction of the price at his discretion, withdraw from the Agreement or undertake the necessary reworking itself or by a third party at our expense and risk. If reworking has been successfully performed by the customer or a third party, all claims by the customer for reimbursement of the relevant costs incurred by him shall be compensated.
- (h) Claims by the customer for expenses necessary to cover costs incurred for the purpose of subsequent performance, which arise for the relocation of goods after delivery, shall be excluded, insofar as they increase expenses, unless the transfer complies with the originally intended use.
- (i) Statutory rights of recourse of the customer against us shall only exist insofar as the customer has not made any agreements beyond the statutory claims for defects with its customers.
- (j) Further claims of the customer are excluded in accordance with clause 13.
- (k) The proof of a defect is the responsibility of the customer.

### **11. Order-related production facilities, parts to be cast**

- (a) Order-related production facilities such as models, templates, core boxes, moulds, casting tools, devices and control gauges, which will be provided by the customer, are to be sent to us free of charge. The conformity of production facilities provided by the customer with the contractual specifications or drawings or samples given to us will only be checked by us on the basis of express provisions. We may change production facilities provided by the customer if this appears to be necessary for casting reasons and the work piece is not changed by this.
- (b) The customer shall bear the costs of the modification, maintenance and the replacement of its production facilities.
- (c) The production equipment will be treated by us with care and stored in the manner we use for our own facilities. We are not liable for accidental loss or deterioration of the production facility. We are not obligated to take out insurance cover.

(d) The ownership of order-related production facilities, which have been produced or procured by us on behalf of the customer, passes over to the customer with the payment of the agreed price and/or proportionate costs, whereby this has been agreed between the contractual parties. The handover of the facilities is replaced by our retention requirement. The facilities shall be kept by us for the duration of 3 years after the last cast has been made. We can send back production facilities of the customer which are no longer needed by us at his expense and risk or, if the customer does not comply with our request to collect these facilities within a reasonable period of time, store them at the usual costs to be borne by the customer and destroy them after an appropriate deadline has been set and has expired, also at a threatened expense to the customer. The storage relationship may be terminated by the customer at the earliest two years after the transfer of ownership, insofar as no important reason exists. Clause 11 letter c) shall apply mutatis mutandis.

(e) The customer can only assert claims arising from copyright or industrial rights insofar as he points out the existence of these rights and expressly reserves them.

(f) If rejects arise from a one-off utilisable production facility, the customer has to provide another production facility or to bear the costs of the replacement facility.

(g) Parts to be cast by us must be delivered true to size and in perfect condition by the customer. Unusable parts due to rejects are to be replaced free of charge by the customer.

### **12. Confidentiality**

(a) Each party shall use all documents (these also include samples, models, and data) and knowhow which it receives through the business relationship only for the mutually pursued purpose and to treat them with the same confidentiality as would be appropriate as for their own documents and knowhow, and not disclose them to third parties when the other contractual party has referred to them as confidential or has an obvious interest in their confidentiality.

(b) This obligation commences from the initial receipt of documents or knowhow and ends 36 months after the termination of the business relationship.

### **13. General limitation of liability**

(a) Insofar as nothing else shall apply in the following, all other and any further claims of the customer against us, for whatever legal reason, in particular due to infringement of duties from contractual obligations and from unlawful acts, are hereby excluded.

(b) This limitation of liability does not apply in the case of mandatory liability, e.g. under the Product Liability Act, in cases of intent, gross negligence by legal representatives or senior employees as well as after culpable violation of essential contractual obligations. We are only liable in cases of culpable violation of essential contractual obligations - except for intent or gross negligence of our legal representatives or senior employees - for reasonable foreseeable damage which is typical for the contract. This also does not apply to damages arising from injury to life, body or health and, in the absence of a guaranteed quality, if and as far as the warranty merely aims to safeguard the customer against damage which did not arise from the delivered goods themselves.

(c) Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents.

(d) Claims for damages and claims for material defects, to which the customer is entitled to, shall lapse one year after delivery of the goods to the customer. This shall not apply insofar as the law in §§ 438 paragraph 1 No. 2 (buildings and things that are commonly used in buildings) and 479 paragraph 1 (rights to recourse) BGB prescribes longer periods as well as in cases of injury to life, body or health, in an intentional or grossly negligent breach of duty by the supplier and fraudulent concealment of a defect. The legal provisions regarding suspension of expiry, restraint and recommencement of limitation periods shall remain unaffected. For claims for damages under the Product Liability Act, the legal provisions relating to limitation periods shall apply. The statutory limitation rules shall also apply in the case of intentional and gross negligent breaches of duty.

### **14. Place of performance and court of jurisdiction**

(a) If the customer is a merchant, the place of jurisdiction is D-88499 Riedlingen. However, we are also entitled to sue the customer at the court of their registered offices.

(b) Unless otherwise stated in the order confirmation, the place of performance for our services shall be the place of our supply plant. For payment obligations, the place of performance shall be D-88499 Riedlingen.

### **15. Applicable law**

The legal relationships between the parties are governed exclusively by German law under exclusion of the UN Convention on Contracts. (UNCITRAL/CISG).

### **16. Partial invalidity**

Should individual provisions of these general terms and conditions of supply and payment be or become wholly or partly invalid or void, the contractual parties commit themselves to agree to on a ruling which extensively comes closest to the intent and purpose pursued by the invalid or void provision.

### **17. Partnership clause**

For all replacement payments, in particular for compensation for damages, the economic circumstances of the contractual partner, the type, extent and duration of the business relationship and the value of the goods should be reasonably considered in good faith.