



## 1. Application / German Law

- 1.1. The law of the Federal Republic of Germany shall apply. For customers outside of Germany the application of UN business law shall be explicitly excluded.

## 2. Introduction

- 2.1. This Sales and Delivery Agreement shall be valid for all agreements, also those concluded at a future date, for deliveries and other services, in as far as they are not altered or excluded on the basis of our express agreement in writing. The purchase conditions of the Buyer are expressly excluded. They will not be recognised, even if we do not expressly reject them again after we have received them. At the very latest on receipt of our delivery or services our terms and conditions are deemed as accepted and valid.
- 2.2. Our offers are subject to change without notice. Agreements, particularly those made orally, concluded as subsidiary agreements and assurances made by our sales personnel, shall not be binding without our written confirmation.
- 2.3. The information, drawings, illustrations, technical information, descriptions of weights, sizes and performance to which we have the proprietary rights and copyright and are to be found in prospectuses, catalogues, circular letters, advertisements or price lists or in the documents forming part of a quotation, shall only be binding if this has been expressly agreed to in writing.

## 3. Prices

- 3.1. Our prices are to be understood ex works and do not include packaging, freight, postage, insurance, value added tax, etc.
- 3.2. Our prices are based on the costs valid at the time the Contract was signed. If delivery, as was agreed, is more than four months after the Contract was concluded and if, in the intervening period, wages/salaries have increased by more than 3% with reference to the metal industry wage and salary agreements in force in the state of North Rhine-Westphalia, we have the right to increase the invoice we present to the Buyer by the identical percentage.

## 4. Delivery Deadlines and Delivery

- 4.1. Delivery deadlines are to be understood solely as approximate times of delivery.
- 4.2. A delivery deadline shall commence with the date of our confirmation of the order. This assumes, however, that all the commercial and technical queries have been clarified satisfactorily and that the Buyer has complied with all its obligations and responsibilities, e.g. presentation of the official certificates and permits that are required, or the completion of a down payment. If this is not the case, the delivery period will extend accordingly, unless we ourselves are responsible for the delay.

- 4.3. Our adherence to the delivery deadline is subject to our being supplied correctly ourselves. If it becomes apparent that there will be a delay we will inform the Buyer as soon as possible.
- 4.4. A deadline will be treated as met, if the goods to be delivered have left our works before the deadline has expired or if notification has been given that the goods are ready to be despatched.
- 4.5. We have the right to complete partial deliveries, provided that these are of an acceptable volume. We are permitted to complete a delivery that is 10% more or 10% less than the agreed quantity.

## 5. Despatch, Passage of Risk

- 5.1. Where there is no specific agreement, we shall determine the transport route and the means of transport without assuming responsibility to decide on the cheapest or quickest route.
- 5.2. With the transfer of the goods to the forwarding agent or carrier the risks are transferred to the Buyer, even if the terms of delivery are C.P.
- 5.3. As soon as the goods are ready for shipping, but if there is a delay in shipping or in acceptance of the delivery for reasons that are not our responsibility, the Buyer bears all risks as soon as notice of shipping has been received by him.

## 6. Payment Conditions

- 6.1. The purchase price is to be paid within the agreed period without any deductions.
- 6.2. We will not accept payment by cheque or by bill of exchange, unless this has been expressly agreed to. Credit notes via bills of exchange and cheques are on condition of receipt less costs with val. per diem on which bank account entry becomes effective.
- 6.3. If there is a delay in payment on the part of the Buyer, we will charge interest at 8% p.a. above the base rate. We reserve the right to assertion of claims for damages.
- 6.4. The Buyer has the right to withhold payments or to credit against counter-claims only as long as the counter-claims are uncontested or have been declared legally effective.
- 6.5. If the Buyer fails to accept delivery of goods already bought or if we are able to claim damages for non-execution, the amount of the claim will be at least 5% of the purchase price without us having any obligation to furnish proof to substantiate the claim; the Buyer is, however, justified in putting forward evidence that there is no justification in the claim or that the amount is considerably lower.

## 7. Title to Ownership

- 7.1. All goods that have been delivered remain our property until all debt claims have been settled, whatever the legal basis, including those in the future or conditional, also those relating to contracts concluded at the same time or at a later date.

- 7.2. As long as the property has not transferred the Buyer is obligated to treat delivered merchandise with utmost care and to insure the merchandise against the risks of fire, theft, water and other risks at invoice value. Regular maintenance must be performed at the Buyers expense.
- 7.3. The conditional commodities will be handled and processed for us as the manufacturer in the sense of § 950 of the German Civil Code (BGB) without imposing on us any obligation. The processed goods are considered to be a conditional commodity in the sense of 7.1. If the conditional commodity is processed, joined and/or mixed with other goods by the Buyer, we are co-proprietors of the new item in the same proportion as the invoiced value of the conditional commodity to the invoiced value of the other goods that have been utilised. Should our proprietary rights extinguish as a result of combination or mixing, the Buyer shall transfer to us even then his proprietary rights to the new item to the extent of the invoiced value of the conditional commodity and shall retain them in safe custody for us free of charge. The co-proprietorship rights that thus arise are identical to a conditional commodity in the sense conveyed by 7.1.
- 7.4. The Buyer is permitted to dispose of the conditional commodity solely in the course of his normal business activity under his normal terms and conditions of business and as long as he is not in arrears, provided that the debt claims from this further disposal is transferred to us in accordance with 7.5 to 7.7, below. The Buyer has not the right to dispose of the conditional commodity in another way.
- 7.5. The debt claims of the Buyer from the further disposal of the conditional commodity that also includes execution of a contract for work or a sales contract for goods and services are herewith transferred to us even at this stage. The act of transfer is herewith accepted. In the case of disposal of goods of which we are co-owners in the sense stated in 7.3, the transfer of debt claims shall be to the value of this co-ownership.
- 7.6. The Buyer has the right to collect on debt claims from the resale until we utilise our right to annul, which is possible at any time. The buyer is not permitted to re-assign the debt claims, including the sale thereof to a factoring bank, unless he finally acquires a sum equivalent in value thereof. Should we so request, the Buyer is obliged to inform his acquirers immediately of the re-assignment to us to give us the information we will require to collect; unless we do so ourselves. The buyer is not permitted to re-assign the debt claims, including the sale thereof to a factoring bank, unless he finally acquires a sum equivalent in value thereof. Should we so request, the Buyer is obliged to inform his acquirers immediately of the re-assignment to us – unless we do so ourselves – and to give us the information we will require to collect.
- 7.7. The reservation of ownership in accordance with the above provisions shall remain valid, if individual debt claims are included in a current invoice and the account balance is drawn and is approved.
- 7.8. In the case of any action contrary to the terms and conditions of the Contract on the part of the Buyer, in particular with reference to delay in payment, we have the right to re-claim the goods that have been supplied after issuing a demand for payment: the Buyer is under the obligation to surrender the goods.

- 7.9. Our retention of title is under the condition that with the complete settlement of the debt claims in the business relationship the ownership of the conditional commodity reverts to the Buyer and the surrendered debt claims fall to the Buyer.
- 7.10. The Buyer is obliged to inform us without delay of Third Party levy of execution on the conditional commodity, our co-ownership or on the debt claims surrendered to us or other collateral and to surrender to us at the same time all the documents required for an intervention; this shall apply to all other categories of encroachment. To the extent that such a Third Party is unable or unwilling to reimburse us for out of court or in court legal expenses according to § 771 ZPO or § 805 ZPO the buyer is liable for the reimbursement of such expenses.
- 7.11. The initiation of insolvency proceedings against the Buyer gives us the right to rescind the Contract and demand the immediate return to us of the goods that have been delivered.
- 7.12. If the value of the existing collateral exceeds the value of the secured debt by a total of more than 10%, we are obliged to return securities of our own choice to the Buyer should he so request.

## **8. Models Tools, Moulding Equipment**

- 8.1. If models, tools and other moulding equipment (hereafter „tools“) manufactured or procured by us in response to orders placed by the Buyer, a proportional charge will be made for these: the tools will remain in our possession; we are not under an obligation to surrender the tools to the Buyer; on account of all our rights resulting from the business relationship with the Buyer we have the right of retention of the tools.
- 8.2. Should the Buyer place tools at our disposal, he bears liability for the error-free construction and their safety when used for the purpose for which they have been made; we have, however, the right to make alterations to the tools. We are not obliged to check that the tools placed at our disposal correspond to the drawings and illustrations enclosed with them.
- 8.3. The cost of maintenance, modification and replacement of the tools are borne by the Buyer.
- 8.4. If goods delivered in accordance with the drawings or other information provided by the Buyer and if, as a result, the industrial property rights of a Third Party are infringed, the Buyer indemnifies us against all claims made by the Third Party.
- 8.5. The drawings and documents given by us to the Buyer as well as our suggestions as to how to design and manufacture the products to the best advantage may not be passed on to a Third Party and we are permitted to request the return of such drawings and documents at any time. We retain full proprietary rights and copyright of the illustrations, drawings and other documents.

## 9. Warranty Claims

We will admit warranty claims on account of defects and deficiency in title with the explicit exclusion of further liability subject only to the provisions of No. 10.

### Defects in kind

- 9.1. All such parts are to be repaired or to be replaced with an item or items without defect and free of charge, with the final decision resting with us, provided that the defect is due to circumstances that have become evident prior to the passage of risk. We must be informed in writing of the existence of such defects without delay and by the latest within the preclusive period of two weeks after passage of risk. We retain ownership of the replaced parts.
- 9.2. In order to carry out all the repairs and improvements and complete replacement deliveries that we deem necessary the Buyer must arrange for us to be granted adequate time and opportunity, otherwise we are freed from any liability in connection for any consequences. Only in the most urgent cases when there any risk to operational safety and unreasonable damage must be prevented that we must be informed of without delay, does the Buyer have the right to deal with the defect himself or to entrust a Third Party to do so and to request us to assume the costs of such measures.
- 9.3. We will bear the direct cost of a repair or a replacement, including the shipping charge, provided the complaint is shown to be justified. We will, in addition, bear the cost of the removal and installation as well as the cost of engaging the fitters and labourers including travel expenses, provided that this does not result in unacceptably high financial burden for us. In this case the underlying assumption is that the equipment will be easily accessible for the repairs on the site to which the goods were originally shipped to the Buyer.
- 9.4. The Buyer has the right within the limitations of the law to withdraw from the Contract if – under consideration of the exceptions within the law – an appropriate time limit, set by the Buyer for us for the repairs or the replacement as a result of a defect has passed without result. If the defect is only slight, the Buyer has solely the right to a reduction in the price stated in the contract. Otherwise the right to a price reduction is excluded.
- 9.5. There will be no warranty in particular in the following instances:  
The failure to adhere to the operational instructions and/or the maintenance schedule, unsuitable use or misuse, incorrect assembly and commissioning by the Buyer or by a Third Party, natural wear and tear, incorrect or negligent treatment –in particular excessive utilisation -, unsuitable lubricants, chemical, electrochemical or electrical influences, etc. We shall not grant a warranty claim for parts that will wear during the proper use of the equipment and/or those that the User must replace at regular intervals and are disposable items, such as air filters, washers, membranes, pump tubes, etc..

- 9.6. If the Buyer or a Third Party carries out repairs incorrectly, we will not entertain a warranty claim against the resultant damage. The same applies to changes that are made without our prior assent to the item we have supplied.
- 9.7. Key data without tolerances as listed in the catalogues and the instructions for use, as well as the advice and instructions from our personnel, are not reliable facts. They are subject to deviations and changes that are normal in this sector of industry arising from technical developments. The instructions for use provided by us have been written with the care that is expected in this sector of industry, but do not, however, free the Buyer from the obligation to check the equipment for the purpose he intends to use it.

### **Defects in legal right or title**

- 9.8. If the use of the item that has been delivered leads to the violation of industrial property rights or of copyright in this country, we will procure at our expense the right basically for the Buyer to continue to use the item supplied or to modify it in a reasonable manner so that the industrial property rights will no longer be violated. If this should be impossible because of the costs involved or is impossible to achieve within a reasonable period of time, the Buyer has the right to rescind the Contract. Under the conditions stated above we too have the right to rescind the contract.
- 9.9. The obligations listed in 9.8 are subject to 10.1 final if and when a violation of industrial property rights or of copyright should occur. These are deemed to exist only
- if the Buyer informs us without delay of asserted violations of industrial property rights or copyrights,
  - if the Buyer supports us to an adequate extent in our defensive measures against the alleged claims of violation and surrenders to us the right to complete the modifications in accordance with 9.8,
  - if we are accorded the sole right to undertake all defensive measures including out-of-court settlement,
  - if the legal infirmity is not the outcome of an instruction given by the Buyer and
  - if the legal infirmity has not been the outcome of the Buyer making a change or changes without proper authority to the item delivered or has used it in a way that contravenes the terms and obligations of the Contract.

## **10. Consequential Damage**

- 10.1. Our liability for consequential damages is – for whatever the legal reason – limited to the case of
- 10.1.1. intent,
  - 10.1.2. gross negligence on the part of our corporate agents or an executive employee,
  - 10.1.3. culpable risk to life, limb, health,



- 10.1.4. defects that we have not disclosed with intention to deceive or the absence of which we have guaranteed,
- 10.1.5. defects in the item delivered as determined by and in so far as product liability law stipulates a liability for damages to objects or persons from private use.
- 10.2. In the case of culpable violation of the central contractual obligations we will still be liable in the case of gross negligence of non-executive employees and in the case of ordinary negligence, restricted in the latter case to the damage typical or reasonably foreseeable in a contractual relationship.
- 10.3. Other claims are excluded.

## 11. Period of Limitation

- 11.1. All claims of the Buyer – for whatever legal reason – are subject to a twelve-month period of limitation.
- 11.2. The period of limitation as defined in chapter 11.1 applies to all claims against us in conjunction with a defect regardless of the legal base of the claim. Should other claims for damages exist not in conjunction with defects the period of limitation applies also these claims.
- 11.3. The period of limitation according to chapter 11.1 shall not apply
  - 11.3.1. in the case of intent
  - 11.3.2. if the defect was known to us and not disclosed with intention to deceive. In this case the Period of limitation as stipulated by law shall apply
  - 11.3.3. for claims for damages in cases of culpable harm to life, limb, health or freedom , for claims for damages from private use according to product liability law and in case of gross negligence or the breach of substantial contractual obligations.

## 12. Warranty

Any statement made by us in conjunction with this contract (description of functions and operational values, reference to DIN-norms, etc) do not constitute a warranty. A warranty requires a expressly written statement by us.

## 13. Severability

- 13.1.1. If one or more of the conditions listed above whether entirely or partly be null and void, the remainder shall nonetheless retain their validity. Any condition found to be null and void shall be replaced by another condition that fulfils its purpose most closely in the Contract in a commercial sense.

## 14. Place of Performance, Venue, Law

- 14.1. The place of performance for all our shipments and for the payment of the purchase price is Overath-Vilkerath.



- 14.2. The venue for all disputes arising from the Contract is Cologne. We are empowered to proceed against the Buyer also in his general venue.
- 14.3. This Contract and the legal relationships arising from it are subject to German Law to the exclusion of all others.
- 14.4. This English version of our Conditions of Sale are for convenience purposes only. The German version shall always solely be decisive.