



## Terms of Payment and Delivery

As of 04/2016

### 1. *General remarks*

- 1.1 Sale and delivery exclusively take place on the basis of the following conditions of the supplier. The conditions of the buyer do not become integral part of the contract, even if they are not explicitly contradicted.
- 1.1 Apart from that, the ICC Incoterms 2000 shall be decisive for the interpretation of the different sales clauses, if no other arrangements have been agreed in these provisions.

### 2. *Quotation, order acceptance*

- 2.1 The quotation of the supplier shall be subject to change regarding prices and delivery possibilities.
- 2.2 A contract shall only come into existence if the order is accepted in writing, but at the latest upon delivery of the goods. Additions, amendments or supplementary agreements made orally or by telephone must be confirmed in writing in order to take effect.
- 2.3 The buyer is responsible for the correctness of the documents as well as drawings, samples, gauges and suchlike to be made available by the buyer.

### 3. *Prices and terms of payment*

- 3.1 The prices are quoted ex works plus statutory value added tax and shipping charges (freight charge, packaging, insurance, express fees) as well as exclusive customs duties. Packaging is charged at prime cost. The buyer can return the packaging to the supplier. The buyer assumes any freight charge associated with the return of the packaging.
- 3.2 Invoices are payable upon receipt. Unless otherwise agreed, payment must be made strictly net within 30 days from the invoice date. Payments for job order production must be made strictly net within 10 days.
- 3.3 Payments shall only be deemed made to the extent to which the supplier can freely dispose of them at a bank. Checks and bills of exchange will only be accepted in lieu of payment and bills of exchange only after prior agreement. Payments to representatives without written power for collection are inadmissible.
- 3.4 The buyer shall only be entitled to the right of offsetting and retention if the counterclaim is a claim which has not been contested by the supplier or which has become *res judicata*.
- 3.5 If there is a period of more than four (4) months between the contract conclusion and the agreed delivery date, the supplier shall be entitled to invoice the prices valid at the time of delivery or provision, or to charge a surcharge for the increased wage, material and overhead costs. The same applies if the delivery date is delayed for any reason which is attributable to the responsibility of the buyer.

### 4. *Delivery*

- 4.1 The indicated delivery deadlines apply only approximately. Delivery dates or delivery deadlines are only binding if they are expressly designated as binding in writing. Delivery deadlines start upon dispatch of the order confirmation, but not before the procurement of any documents to be supplied by the buyer, any releases as well as the clarification of all details of the order execution and of technical questions or the receipt of an agreed down payment. Delivery deadlines are complied with if the delivery has left the factory on or before the delivery date or the readiness for dispatch has been communicated, provided that a collection by the buyer has been agreed.
- 4.2 The supplier is entitled to partial deliveries to an extent that can be deemed reasonable for the buyer.
- 4.3 In the absence of any special agreement, the risk of accidental loss and/or deterioration of the goods shall pass to the buyer upon handing over of the goods to the freight forwarder. This shall also apply if the dispatch is performed by employees of the supplier.
- 4.4 If performance of contract is delayed due to force majeure or similar serious unforeseeable events beyond the control of the supplier – this especially includes operational disorders, legal labour disputes, official decrees and unforeseeable material procurement difficulties – the supplier shall be entitled to postpone the performance of contract by the duration of the hindrance plus a reasonable start-up period, or to withdraw from the contract in view of the part of the contract which has not yet been fulfilled.

### 5. *Warranty and liability*

- 5.1 If not expressly otherwise agreed, the warranty period for defects of title and defects as to quality amounts to twelve (12) months from the date of delivery of the goods.

- 5.2 The buyer must inspect the delivered goods immediately upon their receipt. In case of obvious defects, shortfall quantities and wrong deliveries, the buyer has to lodge a written complaint with the supplier without delay, and not later than within ten (10) days after receipt of goods. Hidden defects must be reported in writing to the supplier immediately after their discovery.

- 5.3 If the goods are defective, we shall be entitled to subsequent performance or to supply a non-defective substitute, at our discretion. The buyer shall only be entitled to rescission from contract or to reduction of the purchase price if the correction of faults has repeatedly failed or is unacceptable for the buyer. The buyer must grant the supplier the time and opportunity required for the owed subsequent performance and/or substitute delivery. The right to self-performance by the buyer only exists in the case of urgent necessity and with the prior written consent of the supplier. Further claims of the buyer, in particular any claim to compensation for damages which are not related to the goods themselves (consequential damages) shall be excluded.

- 5.4 Regarding the design of standard tools, the catalogue details of the supplier apply. However, they are subject to technical progress. Changes and/or deviations due to such technical progress do not entitle the buyer to complaints, provided that they do not disadvantage the buyer and they are deemed reasonable for the buyer. Any further damage claims of the buyer other than the aforesaid shall be excluded, regardless of the legal nature of the claim. This especially applies to damage claims for default on contract conclusion, any other breach of duty and tort.

- 5.5 Damage claims – of any kind whatsoever – against the supplier shall be excluded if the supplier, its legal representatives or its vicarious agents have acted slightly negligently. This exclusion of liability shall not apply if guarantee promises made by the supplier are not complied with or essential contractual obligations have been violated in a manner which endangers the fulfilment of the contract purpose. However, in these cases, the compensation for damages shall be limited to the extent of the guarantee that has been assumed and/or to the foreseeable damage typical of the contract in case of slightly negligent violation of essential contractual obligations. Claims according to the Product Liability Law remain unaffected.

- 5.6 Apart from that, we do not assume any warranty for the following damage, unless they are caused by the supplier: Unsuitable or improper use and/or storage, faulty assembly and/or startup by the buyer or third parties, natural wear and tear, faulty or negligent treatment, unsuitable operating consumables, substitute materials, chemical, electrochemical or comparable influences. The buyer must ensure that no third-party rights are violated by the use of the drawings, samples and similar documents handed over by the buyer, or by the tools of external manufacturers which possibly are to be processed by the supplier. If any third-party right is violated, the buyer shall undertake to indemnify and hold the supplier harmless from all third-party claims which may arise and/or from any other penalties which may be brought against or incurred by the supplier in this way.

### 6. *Retention of title*

- 6.1 The goods delivered (hereinafter referred to as "goods subject to retention of title") remain the property of the supplier until full settlement of all claims to which the supplier is entitled vis-à-vis the buyer on any legal basis, whatsoever.
- 6.2 The processing or alteration of the goods subject to retention of title is always carried out for the supplier as the manufacturer, but without creating any obligation for the latter. In the case of combining or mixing of the goods subject to retention of title with other materials, the supplier shall obtain co-ownership in the newly produced goods, in proportion of the invoice value of the goods subject to retention of title to the other materials. The buyer shall keep the supplier's (joint) property without charge.
- 6.3 The buyer is entitled to process or dispose of the goods subject to retention of title in the normal course of business, as long as the buyer is not in default.

The buyer herewith assigns its claims against a third party arising from the resale of, or from any other legal grounds in relation to, the goods subject to retention of title (including such claims against insurance companies and claims arising from tort) by way of security to the supplier, and the



supplier herewith accepts this assignment. The buyer is hereby entitled to collect the assigned claims in its own name. On request of the supplier, the buyer shall disclose the assignment and provide the necessary information and documents.

- 6.4 Any pledge or transfer by way of security shall be inadmissible. If the goods subject to retention of title are seized by a third party, the buyer shall draw attention to the supplier's ownership rights and notify the supplier without delay.
- 6.5 If the value of the securities exceeds the claims of the supplier by more than 20 percent, the supplier shall, upon request by the buyer, release securities of its choice amounting to the excess sum.
7. *Impossibility, delay, contract adjustment*
- 7.1 The buyer may withdraw from the contract if the entire delivery becomes impossible for us prior to the transfer of risk. The buyer shall also be entitled to withdraw from the contract if, in case of an order of items of the same type, execution of a part of the delivery becomes impossible and the buyer has a justified interest in refusing the partial delivery. If this is not the case, the buyer shall have the right to reduce the consideration accordingly.
- 7.2 Claims for damages due to impossibility shall be excluded insofar as the impossibility has not been caused by the supplier in a grossly negligent or deliberate manner.
- 7.3 In the event of a delay in delivery caused by the supplier, the buyer shall grant the supplier a reasonable additional period of time. If this additional period of time is exceeded by the supplier, the buyer shall be entitled to withdraw from the contract. In the case of any delay in acceptance due to the buyer's fault, the latter remains obligated to pay consideration.
8. *Copyrights*  
The supplier reserves the property right and the copyright in representations, drawings, sketches, calculations, cost estimates and other documents which are sent to the buyer within the scope of a quotation and during the contract implementation.  
Beyond the boundaries of contract fulfilment, such documents may not be used or duplicated and their contents may not be made accessible to third parties without the prior written consent of the supplier. They shall be surrendered immediately upon request.
9. *Additional conditions for job order production*
- 9.1 The material delivered by the buyer to the supplier is treated with utmost care. The supplier does not give a binding guarantee in case of failure during processing.
- 9.2 The material supplied by the buyer must be perfect and correspond to the stipulated specific values. Extra costs incurred and damage suffered by the supplier due to the fact that the material does not correspond to the agreements, shall be additionally charged to the buyer.
- 9.3 The buyer shall supply the material to be processed to the supplier and collect it from the supplier at the buyer's expense and risk. In case of deviations from this arrangement, the buyer shall bear the costs incurred.
- 9.4 The supplier assumes responsibility for correct and careful execution of the assumed work. However, the supplier does not assume liability for damage attributable to material defects or to faults in the technical documents or in any other information.
- 9.5 In the event of justified notices of defect which are filed in due form and time, the supplier shall be entitled to subsequent improvement. After three unsuccessful attempts, the buyer shall be entitled to withdraw from the contract or to a reduction of the purchase price. Any rework by the buyer requires our explicit, prior written confirmation. If the material becomes useless due to material defects or without the supplier's fault, the buyer shall reimburse us for the costs incurred until the notice of defect is made.
- 9.6 The supplier shall only be liable for damage attributable to the latter up to the contract amount. Any claims for damages beyond the aforementioned shall be excluded.
10. *Place of performance and place of jurisdiction*
- 10.1 Place of performance of all obligations arising from this contract shall be Crailsheim.
- 10.2 Exclusive place of jurisdiction shall be Crailsheim for deliveries and payments, including suits filed in connection with checks and bills of exchange as well as any other disputes arising between the parties.
11. *Applicable law*
- 11.1 The mutual legal relationships shall be governed exclusively by the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).
12. *Partial ineffectiveness*
- 12.1 Even if individual provisions of the contract are or become ineffective, the remaining parts of the contract shall remain unaffected.