

**Updated: November 2018**

### **Section 1. Scope of application**

1.  
These Terms and Conditions of Sale apply in respect of companies, legal persons under public law and public-law special funds.
2.  
Our supplies and services take place exclusively on the basis of the terms and conditions below.
3.  
Terms of business of the customer that we have not expressly acknowledged have no validity.

### **Section 2. Quotation/quotation documents, acceptance, conclusion of contract**

1.  
Our quotations remain subject to change unless stated otherwise in the quotation.
2.  
We can accept orders within 6 weeks by means of our order confirmation.
3.  
Contracts are only formed by our order confirmation (at least in text form) or delivery.
4.  
Verbal assurances of properties, additions, promises or side agreements that extend beyond the content of the written contract or change these General Terms and Conditions of Sale to our detriment are only effective if we have confirmed them in writing.
5.  
We reserve the rights of ownership and the copyrights to our illustrations, drawings, calculations and other documents. The customer requires our express written consent before disclosing these to third parties.
6.  
The illustrations, drawings, weights and measurements and tables associated with the quotation always only apply approximately unless they are expressly described as binding. We are unable to accept any liability for departures from these documents that are caused by the design of the contractual object.  
The DIN and EN standards apply for compliance with dimensions. Otherwise we state dimensions and weights in our quotations and order confirmations to the best of our knowledge; however they are no guarantee of quality. Minor deviations, in particular over- or underweights caused by the casting process shall not entitle the buyer to object or to submit claims in respect of defects unless anything has been agreed otherwise.
7.  
In the case of serial manufacture, due to the special characteristics of the metal casting process we reserve the right to deliver quantities of up to a maximum of 10% over or under that ordered. The over- or under-quantity will be calculated accordingly.

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

1.  
Our prices are stated as base prices. As our prices are highly dependent on the costs of energy and metals, these base prices are also subject to a supplement in respect of an increase in energy costs and a supplement in respect of an increase in material costs, which take account of both the current energy and metal prices and the actual weight of the raw parts.  
Unless stated otherwise in our order confirmation, our prices are “ex stock” or “ex works”/“ex collection location”, plus packaging and the respective valid VAT (corresponding to EXW our warehouse/collection location or works, Incoterms 2010).
2.  
In the case of delivery periods of more than 2 months, we are entitled to increase or decrease the prices accordingly insofar as after the conclusion of contract substantial changes have taken place to

the costs of salaries, materials, energy or raw materials and we are not responsible for such changes. Any such price increase will not exceed 10%.

3.

Unless stated otherwise in the order confirmation, the purchase price is payable net (without deductions) within 30 days of the date of invoice to our payment office free of charges for us. The deduction of a discount requires separate written agreement

Partial invoices will be issued for partial deliveries. The payment periods run separately for each partial invoice.

4.

In the event of arrears of payment we charge interest from the due date in the amount of 9 percentage points above the base rate of the European Central Bank.

5.

In accordance with Section 9, the costs of workpiece-specific models must always be paid in advance unless anything has been agreed otherwise.

6.

We accept bills of exchange or cheques only by way of provisional performance and not in lieu of fulfilment, and only after written agreement. Our claim is only fulfilled on the day on which we are able to dispose over the proceeds without having to make allowance for charge-back claims. Collection costs, discounting and bill charges are always at the customer's expense and are payable immediately.

7.

The retention of payments or setoff against counterclaims is only permissible provided the counterclaims are undisputed or have been established as having legal force.

#### **Section 4. Delivery periods, duties of delivery and acceptance, default, inspections, samples, force majeure**

1.

In case of doubt, the delivery period commences when we send the order confirmation. Delivery periods are strictly non-binding and approximate. Compliance with the delivery period requires the timely receipt of all the documents to be supplied by the customer, the timely receipt of all the official approvals and releases required, and the fulfilment by the customer of all the contractual obligations, in particular agreed payment terms. If these requirements are not fulfilled in good time, the delivery period shall be extended accordingly. This does not apply insofar as we are responsible for the delay.

2.

Unless agreed otherwise, we deliver "ex works", EXW. Compliance with the delivery date or delivery period is determined by our announcement of readiness for shipment or collection.

3.

Partial deliveries are permitted to a reasonable extent. They are invoiced separately, with order-related one-off costs being invoiced together with the first partial delivery.

4.

Production-related over- or under-deliveries are permissible within a tolerance of 10 percent of the total order quantity. The total price shall change according to the extent of this.

5.

In cases of force majeure and all events that are beyond our will and control, such as natural disasters, mobilisation, war, uprisings, strikes and lockouts, official import and export restrictions, unforeseen hindrances to production or deliveries – affecting us or our sub-suppliers – the delivery period shall be deemed to have been extended accordingly. We shall inform the buyer of the start and end of such circumstances as soon as possible.

6.

If we are in default and the customer suffers damages as a result of this, the customer shall be entitled to request flat-rate compensation for delay. This shall amount to 0.5% for every full week of delay, but in total at most 5% of the value of that part of the total performance that cannot be used in good time or according to contract as a result of the delay.

7.

In all cases of delayed delivery, both claims by the customer for compensation on account of the delay in the performance and claims for compensation in place of performance that go beyond the limits stated in Section 4 Point 6. are excluded after the expiry of any delivery period that we may have set. This does not apply in cases of intent, gross negligence or where there is mandatory liability on

account of death, injury to body or health. Within the framework of the statutory provisions, the customer can only withdraw from the contract insofar as we are responsible for the delay in delivery.

8.

At our request the customer is obliged to declare within an appropriate period whether they wish to withdraw from the contract due to the delay in delivery or they insist upon delivery.

9.

If the shipment is delayed as a result of circumstances for which we are not responsible, we are entitled to request reimbursement of the damages we have incurred as a result of this (if stored at our works at least 0.5% of the net invoice amount for the stored delivery per month).

In this case the risk shall also pass to the customer at the time at which they fall into default of acceptance.

10.

In the case of framework agreements without agreement on the duration, production batch sizes, delivery quantities and call-off dates, unless anything has been agreed otherwise in writing we can request a binding statement of these no later than 3 months after the conclusion of the framework agreement. If the customer does not comply with this request within 3 weeks, we are entitled to set a 2-week grace period and after its expiry to withdraw from the contract and claim compensation.

11.

The customer's wishes for changes will extend the delivery period until we have reviewed all the technical questions and the feasibility of the changes. The delivery period shall be extended by the period that is necessary for the implementation of the new requirements for the production. If the wish for changes interrupts ongoing production, we can bring forward and complete other orders. We are not obliged to keep production capacities free during the delay.

12.

If the customer wishes us to undertake inspections, the type and extent of the inspections must be agreed. If this does not happen before the conclusion of contract the customer shall bear the costs.

13.

If a delivery is to take place by means of a sample that we have prepared, the customer must inspect and approve this sample at our works immediately after being notified that the sample has been completed. If despite our setting an appropriate grace period the approval does not take place for reasons for which the buyer is responsible, we are entitled to send the sample or to store it at the expense and risk of the customer; the sample shall thus be deemed to have been approved.

## **Section 5. Transfer of risk and insurance**

The risk shall pass to the customer in accordance with EXW Schopfheim (Incoterms 2010). If we engage a processor and this processor delivers direct to the customer, EXW the place of business of the processor shall apply (Incoterms 2010).

The above provisions on the transfer of risk also apply if exceptionally we have assumed the provision of other services, e.g. the shipment costs or delivery.

## **Section 6. Retention of title**

1.

The delivered goods remain our property until full receipt of all payments (including all ancillary claims) and the irrevocable crediting of any cheques and bills of exchange that we have accepted. If there is a current account relationship, the retention of title extends to the acknowledged balance. Until the transfer of ownership, the customer is not entitled to pledge the goods to third parties or assign them as security. The buyer shall keep the goods that are subject to the retention of title safe for us free of charge.

2.

The customer is obliged to treat and maintain the goods that are subject to the retention of title with care; in particular the customer is obliged to insure them sufficiently at its own expense against loss and damage at their replacement value. The insurance policy and proof of payment of the premiums must be presented to us on request. The customer hereby assigns claims from the insurance relationship to us. This cession shall expire as soon as ownership passes to the customer.

3.

The treatment and processing of the goods that are subject to the retention of title by the customer are always undertaken for us without obliging us. If the goods that are subject to the retention of title are combined and mixed with other goods by the customer, we shall acquire joint ownership of the new item according to the ratio between the invoice value of the goods that are subject to the retention of title and the other materials. The newly created item shall count as goods that are subject to the retention of title within the meaning of this Section 6.

4.

The customer is entitled to sell the goods that are subject to the retention of title within the normal course of business unless the customer is in default of payment in respect of our claims to the purchase price.

In any case of such sale, the customer here and now assigns to us all claims they accrue against third parties from the resale of the goods that are subject to the retention of title. If the goods that are subject to the retention of title are sold after treatment or processing, combining or mixing, the cession of the claims from the resale shall only apply up to the amount of the value of the goods that are subject to the retention of title that we have invoiced to the customer.

5.

The customer is authorised to collect the claims even after cession. We can restrict the collection authorisation at any time out of a legitimate interest or an important reason, especially in the event of default of payment. We can ask the customer to inform us of the claims it has ceded and the debtors concerned, provide us with all the details needed for collection, hand us the associated documents and disclose the cession to its debtor. Taking back goods that are subject to the retention of title shall not represent any withdrawal from the contract. If we declare such withdrawal, we shall be entitled to freely dispose of the goods. In the event of our withdrawal, the customer hereby declares its agreement to persons instructed by us entering the site or building in which the goods that are subject to the retention of title are located, on foot or by vehicle, in order to take possession of the goods that are subject to the retention of title.

6.

Access by third parties to the goods that are subject to the retention of title must be notified to us immediately. Costs arising through resisting such access shall be assumed by the customer if they cannot be recovered from the third party.

7.

We undertake to release the securities to which we are entitled in accordance with the above provisions at our choice at the customer's request insofar as their realisable value exceeds the claim being secured by 10% or more.

## **Section 7. Warranty and liability**

1.

The condition of the goods shall be exclusively in accordance with the agreed technical delivery specifications. If we have to supply in accordance with drawings, specifications, samples etc. from our partner, the latter assumes the risk of the suitability of these for the intended use. The time of the transfer of risk is decisive for the contractual condition of the goods.

2.

We are not liable for material defects caused through unsuitable or improper use, incorrect installation or commissioning by the customer or third parties, normal wear and tear, erroneous or negligent handling, or for the consequences of improper modifications or maintenance work and modifications or maintenance work undertaken without our consent by the buyer or third parties. The same applies for defects that only slightly reduce the value or suitability of the goods.

3.

Claims under warranty by the customer presuppose that the customer has complied with its due duties of inspection and reporting defects in accordance with Section 377 HGB [*Commercial Code*]. The customer must examine the delivery immediately, but no later than one week after receipt, for possible defects, and inform us if any such are identified. If there is a defect for which we are responsible, we are entitled to choose between remedying the defect or delivering a replacement. Within the framework of supplementary performance we are obliged to reimburse the customer for the necessary expenses for the removal of the defective item and the installation or mounting of the improved item or defect-free item that is delivered. The reimbursement of costs is excluded if the expenses increase due to the goods being taken to a different place after our delivery, unless this corresponds to the intended use of the goods. This applies mutatis mutandis to the customer's claims to the

reimbursement of expenses in accordance with Section 445 a BGB [*Civil Code*] (recourse of the seller), provided the last contract in the supply chain is not a purchase of consumer goods. If one or both of these forms of supplementary performance should be impossible or disproportionate, we are entitled to refuse it. As long as the customer does not fulfil its payment obligations to us, we can refuse supplementary performance to the extent corresponding to the part of the performance that is free from defects.

4.

If the remedying of the defect or the replacement delivery does not take place within an appropriate period, taking account of our delivery options, or if the supplementary performance and/or replacement delivery fails, the customer can request the reduction of the purchase price (abatement) or withdraw from the contract.

5.

Unless stated otherwise below (Point 7.), further claims by the customer on whatever legal grounds (in particular claims from the violation of principal and secondary contractual obligations, the reimbursement of expenses with the exception of those in accordance with Section 439 II BGB, unlawful acts and other tortious liability) are excluded; this applies in particular to damage not arising to the delivery item itself and to claims for the reimbursement of lost profits; this also includes claims that do not result from the defectiveness of the purchase item.

6.

The above provisions also apply to the delivery of a different item or a lower quantity.

7.

The waiver of liability regulated in Point 5. does not apply insofar as a limit is agreed to the liability for damages arising out of death, injury to body or health that are due to an intentional or grossly negligent breach of duty by the user, and it also does not apply insofar as an exclusion or limit of liability is agreed for other damage due to an intentional or grossly negligent breach of duty by a legal representative or vicarious agent of the user. Insofar as we culpably violate a material contractual duty or a "cardinal duty" (a duty the fulfilment of which makes the proper execution of the contract possible at all, and on compliance with which the customer may regularly rely), liability is not excluded, but limited to the foreseeable damages typical of such contracts. Otherwise it is excluded in accordance with Point 5. The waiver of liability also does not apply in cases in which in accordance with the Produkthaftungsgesetz [*Product Liability Act*] liability is assumed for personal injury or damage to property in respect of privately used articles due to faults in the delivery item. It also does not apply if a warranty is provided and if a characteristic is warranted, if it is precisely a defect covered by this that triggers our liability. The above applies mutatis mutandis to the reimbursement of expenses.

8.

The claims to supplementary performance, compensation and the reimbursement of possession expenses expire one year after the delivery of the purchase item. This does not apply to any item that has been used for a construction according to its normal manner of use and has caused this to be defective; in this case expiry shall only take place after 5 years. Claims to abatement and the exercise of the right of withdrawal are excluded insofar as the claim to supplementary performance has expired. In the event of sentence 3 the customer can however refuse to pay the purchase price insofar as they would be entitled to do so on the basis of withdrawal or abatement; in the event of the exclusion of withdrawal and a subsequent refusal to pay we are entitled to withdraw from the contract.

9.

The customer shall only be entitled to rights of recourse against us in accordance with Section 445 a BGB (recourse of the seller) insofar as the customer has not made any agreements with their purchaser that go beyond the statutory claims on account of defects.

## **Section 8 Confidentiality**

1.

Each contracting party shall keep all documents (also including samples, models and data) and knowledge it receives from the business relationship secret from third parties, only use them for the jointly pursued purposes and treat them with same care as its own corresponding documents and knowledge if the other contracting party describes them as confidential or has an obvious interest in their being kept confidential.

2.

This obligation shall commence on first receipt of the documents or knowledge and shall end 36 months after the end of the business relationship.

3.

This obligation does not apply to documents and knowledge that are generally known, or were already known to the contracting party on receipt without the latter being bound to secrecy, or which were subsequently transmitted by a third party authorised to disclose them, or were developed by the receiving contracting party without the use of documents or knowledge of the other contracting party that had to be kept secret.

## **Section 9 Workpiece-specific models and production facilities, drawings**

1.

Insofar as the customer makes models or production facilities (e.g. foundry moulds) available to us (referred to below as "facilities"), these must be sent to us free of charge. We can ask the customer to collect such facilities again at any time. If the customer does not comply with such requests within 3 months we are entitled to send them back to the customer at their expense. The customer bears the costs of maintenance and desired changes.

The customer is liable for the design being technically correct and the facilities being executed in such a way as to safeguard the purpose of manufacture, however we are entitled to undertake changes necessitated by the casting process. Without a separate agreement we are not obliged to check that the facilities provided correspond to the accompanying drawings or samples.

2.

Insofar as we produce or acquire workpiece-specific models or production facilities at the customer's request (referred to below as "models and production facilities produced or procured by us"), the customer must reimburse us for the costs thus incurred. Insofar as the full costs were not calculated, the customer shall also bear the residual costs if they do not accept the unit quantities envisaged at the time of concluding the contract. The models and production facilities produced or procured by us remain our property. They will exclusively be used for deliveries to the customer during the term of the contract. If 3 years have passed since the last delivery, we shall not longer be obliged to retain them.

Insofar as in a departure herefrom it is agreed in writing that the customer shall become the owner of the models and production facilities produced or procured by us, ownership shall pass to them on full payment of the purchase price. The handover of the models and production facilities produced or procured by us shall thus be replaced by the customer lending them to us free of charge. The customer can terminate this lending relationship no earlier than 2 years after the transfer of ownership unless anything was agreed otherwise.

3.

All models and production facilities in our possession will be treated with the same care by us as we normally apply in our own dealings. At the customer's request we are obliged to insure the models and facilities in our possession at the customer's expense.

4.

If supplies take place in accordance with drawings or other details provided by the customer and property rights of third parties are thus violated, the customer shall indemnify us against all claims in this respect.

5.

Our drawings and documents that we have handed to the customer and our suggestions for the beneficial design and manufacture of the castings must not be disclosed to third parties, and we can ask for them to be returned at any time. Licence claims by the customer on account of commercial property rights to models and production facilities sent, or produced or procured on the customer's behalf, are excluded insofar as we use these contractually.

## **Section 10. Parts to be cast**

1.

Parts intended for casting must be supplied free of charge; they must be dimensionally accurate and ready for casting. Any necessary processing costs shall be borne by the customer.

2.

The number of parts cast must appropriately exceed that of the castings ordered.

**Section 11. Place of performance, applicable law and place of jurisdiction**

1.

The place of performance for all contractual services is Schopfheim.

2.

The law of the Federal Republic of Germany applies to the legal relationship between the customer and us. The United Nations Convention on Contracts for the International Sale of Goods of 11.04.1980 (CISG) is expressly excluded.

3.

If the supplier is a merchant, legal person under public law or a public-law special fund, the place of jurisdiction for all disputes arising from the contractual relationship is our place of business. We are also entitled to bring legal action at the customer's place of business.