

§ 1 Scope of Application, Data Protection

(1) Where the Customer is acting in the course of his business within the meaning of § 14 of the German Civil Code (BGB), the following standard terms and conditions shall govern exclusively all business relationships between ourselves and the Customer or any subsequent version in force at the time the order is placed. Any terms of the Customer which contradict or deviate from the terms and conditions below shall not apply except where we have expressly agreed to the same in writing

(2) A Customer acting in the course of his business is a private individual or a legal entity or a partnership with legal capacity, which is acting in the course of its business or profession. A partnership with legal capacity is a partnership capable of acquiring rights and liabilities.

(3) Insofar as is necessary for the handling of our business we are entitled to store and process the Customer's data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

(4) These terms and conditions shall also apply to all future goods and works supplied to the Customer.

§ 2 Quotations, Changes, Commercial Terms

(1) Our quotations are without obligation; a contract shall be concluded where we acknowledge the order in writing or text form (§ 126b BGB) or where orders are executed by us.

(2) Any changes, supplements and/or cancellation of a contract or of these terms and conditions must be made in writing or text form.

(3) Where trade terms in accordance with the International Commercial Terms (INCOTERMS) are agreed, the INCOTERMS 2010.

§ 3 Risk, Method of Shipment, Delivery Dates

(1) Except where otherwise agreed we supply our goods and services EXW (ex works) Sinn; we reserve the right to determine the method and route of shipment and the shipper.

(2) Supply of goods or services by installment is permitted except where unreasonable for the Customer.

(3) The commencement of the delivery term quoted shall be subject to clarification of all technical matters and proper and timely performance by the Customer of his obligations. This shall include the timely supply of casting equipment, insofar as these are provided by the Customer.

(4) Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the Customer shall grant us an extension in writing of not less than 3 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Customer desires to rescind the contract or demand damages in lieu of performance, the Customer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention. The Customer is obliged at our request to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.

§ 4 Act of God

In the event of act of god we are entitled to suspend performance of our obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, we reserve the right to rescind the contract. An act of god shall be any circumstance beyond our control which renders the supply of goods or services difficult or impossible irrespective of whether the circumstance occurs at our premises or with our suppliers or vicarious agents.

§ 5 Price, Payment, Set off, Right of Retention

(1) Where orders are placed without any price agreement we shall invoice on a time and material basis at the then current rate.

(2) Our prices are EXW (ex works) our principle place of business. Except where otherwise agreed they do not include packing, insurance, freight and VAT.

(3) Where the delivery or performance date is more than 3 months after the contract date we are entitled upon timely notification to the Customer and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. exchange rate fluctuations, currency regulations, customs duties changes, increases in material and production costs) or by changes of suppliers. For supplies of goods or services within three months from the contract date the contract price shall apply in any event. In relation to framework agreements with a price clause the three month period shall begin to run upon the effective date of the agreement.

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(4) Except where otherwise agreed the Customer shall remit payment of the agreed price without deduction within 30 days after supply of the goods or services. Upon expiry of the payment term the customer shall be deemed in default of payment in accordance with §286 sub-section. 2 No. 2 of the German Civil Code.

(5) We shall be entitled to demand down payments or payment in advance where the Customer places a initial order, or has its place of business abroad or where we have reason to doubt that Customer will remit payment on time or in full. Where one of the circumstances aforesaid occurs after the contract has been concluded we shall be entitled to revoke the term of payment agreed and to declare any outstanding amount immediately due for payment.

(6) The Customer may only set off undisputed counterclaims or counterclaims against which we have no further recourse to appeal. The Customer shall only be entitled to rights of retention in so far as these are based on the same legal transaction.

§ 6 Retention of Title

(1) Goods sold shall remain our property until payment of all claims under the business relationship has been received from the Customer.

(2) If the Customer works or processes the goods our reservation of title shall be extended to cover the whole of the new article. In the case of processing, combining or mixing with external goods by the Customer we shall acquire title in the fraction that corresponds to the invoice value of our goods to that of the other objects used by the Customer at the time the processing, combining or mixing took place.

(3) If the goods subject to reservation of ownership are combined or mixed with a principle good belonging to the Customer, the latter hereby assigns in addition his rights in the new good to us. If the Customer combines or mixes the goods subject to reservation of title with a principle good belonging to a third party against payment, he hereby assigns his claims for payment against the third party to us.

(4) The Customer may resell goods subject to reservation of ownership in the framework of due business activities. If the Customer sells these goods without receiving the full purchase price in advance or contemporaneously with the surrender of the item purchased, he shall agree a reservation of title with his customers in accordance with these conditions. The Customer hereby assigns to us his claims under this resale and the rights under the reservation of title agreed. He agrees at our request to notify the assignment to Customers and to provide us with the information required to claim our rights against the Customers and to hand over documents.

Irrespective of the assignment the Customer shall only be authorised to collect payments under the resale as long as he complies duly with his obligations to us.

(5) If the value of the securities provided to us exceeds our claims by more than 20 percent, we undertake to release securities of our choice on demand by the Customer. If we claim reservation of title this shall only be deemed to be a withdrawal from the contract as well if we declared this expressly in writing beforehand.

(6) In the event that the above retention of title clauses are void or unenforceable according to the law of the state/country in which the goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed

§ 7 Duty to take delivery

(1) Where it is agreed that the Customer shall be entitled to call off installment deliveries, the Customer undertakes to call off the entire order quantity within 6 months from the date the first quantity is called off.

(2) Where the Customer fails to comply with the aforesaid we shall be entitled upon the expiry of the deadline set out in sub para. 1 above to demand reasonable storage costs or upon prior written notice to the Customer to destroy the goods at the expense of the Customer.

§ 8 Customer's Rights in the case of Defects

(1) The goods supplied by us correspond to the German regulations and standards currently in force. We give no guarantee that the goods comply with other national regulations. Where the goods are to be put into operation overseas it is the responsibility of the Customer to ensure that the goods are in conformity with the relevant legal requirements and standards and where required to make appropriate adaptations.

(2) The Customer shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal. Please be advised that deviations in size, weight and quantity which are customary in the trade and compliant with German Industry Norms (DIN) due to casting requirements are unavoidable.

(3) Where the goods delivered by us are defective and the Customer has notified us of the same in writing not later than 28 days after the delivery date we shall at our option deliver a replacement or remedy the defect. The Customer shall grant us a reasonable period of not less than 15 working days to carry out the same.

(4) The Customer is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same.

(5) In the event that we are not in a position to remedy the defect or deliver a replacement the Customer is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the Customer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.

(6) The Customer shall retain a right of recourse against us within the meaning of §478 of the German Civil Code (BGB) insofar as the Customer has not agreed terms with its customer which exceed the statutory liability for defects.

§ 9 Damages

(1) Except where otherwise provided below any claim of the Customer for damages other than those claims set out in §8 aforesaid are hereby excluded irrespective of the legal grounds upon which it is based. Accordingly we do not accept liability for any damage not incurred by the goods themselves nor do we accept any liability for loss of profit or any other pecuniary loss suffered by the Customer. To the extent that our contractual liability is excluded or limited, such exclusion or limitation shall apply in relation to the personal liability of employees, representatives and vicarious agents.

(2) The aforesaid limitation of liability shall not apply where the

damage incurred has been caused by willful default or by gross negligence or where personal injury has been suffered. The same shall apply in relation to any limitation of liability of a guarantee of quality given with regard to the goods or services supplied.

(3) Where we are in negligent breach of a material term of the contract our liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material term of the contract shall be any term which places the Customer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance of which the Customer relied or could be reasonably expected to rely.

(4) Beyond the aforesaid we shall only be liable to the extent of our insurance coverage insofar as we are insured against the damage which has been incurred and subject to payment of the insurance benefit.

(5) Any other liability in damages is hereby excluded.

(6) Any assignment of the Customer's claims provided for in §7 above is not permitted. Section 354 a of the German Commercial Code (HGB) shall remain unaffected.

§ 10 Limitation

The limitation period for claims based on the supply of defective goods and services as well as for claims for damages is one year from the date of delivery or acceptance. The limitation period aforesaid shall not apply in relation to claims based on wilful default, gross recklessness, or to personal injury claims and to claims under product liability laws nor shall the limitation period apply where longer limitation periods are prescribed by law (e.g. for structures §§ 438 s.1. No. 2 of the German Civil Code (BGB), rights of recourse § 479 German Civil Code (BGB) and building defects § 634a s.1 No.2 German Civil Code (BGB)).

§ 11 Intellectual Property Rights

All intellectual property rights and copyright in relation to the goods or works supplied shall remain our property. Except where otherwise agreed we grant the Customer as implice to use the same during the term of the contract. The licence shall not include the right to reproduce or process the goods supplied.

§ 13 Sub Contractors

The use of sub-contractors is permitted.

§ 14 Acceptance of Works

(1) Where for the performance of works acceptance has been agreed, we shall be entitled upon completion – where appropriate prior to the completion date – to request acceptance of performance. The Customer shall accept performance within 12 working days of our request; an alternative deadline can be agreed where appropriate. Where requested self contained works can be accepted separately. Acceptance shall only be refused pending the remedy of significant defects.

(2) Where no acceptance is required the works shall be deemed accepted upon the expiration of 12 working days after written notification of completion. Where no acceptance is required and the Customer has commenced operation, in whole or in part, the works shall be deemed accepted 6 days after the commencement of operation, unless otherwise agreed. The use of structural equipment parts for the continuation of the performance of works shall not be deemed acceptance for the purpose of this sub. para. (2).

(3) Any reservations based on known defects or contractual penalties must be claimed by the Customer within the deadlines set out in sub. paras (1) and (2) aforesaid.

(4) The risk of loss and destruction shall pass to the Customer upon acceptance insofar as it has not already passed in accordance with § 3 sub. para 1 above.

§ 15 Commencement of the Warranty Period for the performance of Works

Where acceptance has been agreed, the limitation period for claims under warranty for the performance of works or for claims in damages shall begin to run from the date of acceptance. Where performance is of several independent works the limitation period shall begin to run from their respective dates of acceptance.

§ 16 Choice of Law, Jurisdiction

(1) For Customers whose principle place of business is situated in the European Union all disputes arising out of these terms and conditions shall be resolved before the courts in Wetzlar, Germany. We reserve the right to sue the Customer at its principle place of business.

For Customers whose principle place of business is situated outside the European Union all disputes arising out of these terms and conditions shall be finally settled in accordance with the Rules of the German Institution of Arbitration e.V. (DIS) without recourse to the ordinary courts of law. The place of arbitration shall be Frankfurt am Main, Germany.

(2) The laws of the Federal Republic of Germany shall govern all the legal relationships between us and the Customer.

(March 2012)