

## **General Terms and Conditions**

### **1. Scope**

- 1.1 All deliveries and services effected by us shall be governed by these General Terms of Sale and Delivery exclusively. We do not acknowledge any terms to the contrary or any deviating terms used by the customer, unless such have been expressly approved by us.
- 1.2 These General Terms and Conditions shall also apply to future business, even if, in specific cases, they have not been enclosed.

### **2. Offers and Conclusion of Contract**

- 2.1 Our offers and cost estimates are without obligation and are not binding unless they have been expressly stipulated to be binding.
- 2.2 Each conclusion of contract shall be governed by our written acknowledgement of order. Dimensions, weights, drawings, illustrations and any other supplementary details shall only be binding for the execution of the order if such has been expressly confirmed. We reserve the right to perform technical modifications.
- 2.3 If an order is executed immediately, our invoice or delivery note shall be deemed to be the acknowledgement of order.
- 2.4 If the customer has any objections as to the contents of the acknowledgement of order, he must oppose such acknowledgement of order without delay. Otherwise the contract shall take effect in accordance with our acknowledgement of order.
- 2.5 Subsequent additions, modifications or other collateral agreements must be confirmed by us in writing in order to be effective.
- 2.6 Unless otherwise indicated, all dimensions shall be given in millimetres. Any tolerances shall be in compliance with DIN or the Ott+Heugel company standards.
- 2.7 Tool samples shall only be delivered at extra cost.

### **3. Prices**

- 3.1 Each order shall be subject to the prices in Euros quoted in the acknowledgement of order. These prices shall apply to the specific order, they shall not apply to repeat orders. Unless otherwise agreed, prices quoted shall be ex works Ötisheim. They shall not include packaging, freight, insurance, customs duty and unloading, assembly or the statutory value-added-tax. Any additional costs for express delivery as well as for any special forms of packaging and shipment requested by the purchaser shall be borne by the purchaser.
- 3.2 The minimum order value shall be EUR 200.00.
- 3.3 If, after the conclusion of the contract and until the execution of the order, any cost increases arise which were unforeseeable for us, e.g. on account of an increase in wage or material costs, we shall have the right to adjust the prices, taking into consideration the altered circumstances and without calculating any additional profit.

### **4. Payment**

- 4.1 Unless otherwise agreed, payment of the invoiced amount shall be effected within 14 days of the date of the invoice less 2 % cash discount, or without deduction within thirty days of the invoice at the latest. Wage labour (e.g. repair work, service) shall be due for payment without deduction immediately after invoicing.

- 4.2 Bills of exchange and cheques shall only be accepted as payment if such has been expressly agreed. Any charges and costs incurred thereby shall be borne by the customer.
- 4.3 The customer may only offset counterclaims that are undisputed or recognised by declaratory judgement. The customer may only enforce a right of retention if such claim is based on the same contractual relationship and if the counterclaims based on such contractual relationship are undisputed or recognised by declaratory judgement.
- 4.4 We shall be entitled to request instalment payments for services performed.
- 4.5 In the event of initial orders, we shall only deliver against cash in advance or cash on delivery.

## **5. Delivery**

- 5.1 Unless expressly agreed otherwise, we shall deliver ex our works.
- 5.2 The stated dates of delivery shall only be deemed to be non-binding guidelines, unless expressly stipulated as binding.
- 5.3 The delivery period shall commence with the dispatch of the acknowledgement of order, however not before the documents, approvals and releases to be procured by the customer have been submitted and advance payment, if such has been agreed upon, has been received.
- 5.4 The delivery period shall be deemed to be met if, by the expiry of the same, the delivery item has left our works or if its readiness for shipment has been notified.
- 5.5 In the event of activities connected with labour disputes and upon the occurrence of unforeseeable impediments beyond our control, the delivery period shall be extended appropriately, as long as it can be substantiated that such impediments materially affect the completion or handover of the goods to be delivered. Such shall also apply if these circumstances or impediments occur at the sub-supplier. Neither shall we be responsible for such circumstances if they occur during a delay that already exists. In important cases we shall communicate the beginning and end of such impediments to the customer. The term of delivery shall also be extended if the order is amended subsequently.
- 5.6 Unless such cannot be reasonably expected of the customer, we shall be entitled to deliver ahead of schedule, to effect partial deliveries and to issue partial invoices.
- 5.7 If dispatch is delayed at the customer's request or if the customer is in default of acceptance, he will be charged the costs incurred as a result of storing the goods for each month of storage, commencing one month after notification that the goods are ready for dispatch – if stored in our works however not less than 0.5% of the amount of the invoice for each month. Upon the expiry of a reasonable period of time we shall however be entitled to dispose otherwise of the goods under contract and to supply the customer with new goods subject to an appropriate extension of the delivery period.
- 5.8 Unless otherwise agreed, complete acceptance of on-call orders shall be effected within 12 months of the acknowledgement of order. Upon expiry of this time period, the remainder of the order or the full order shall be delivered at the expense of the customer. The customer is under the obligation to accept delivery.
- 5.9 If special tools are ordered, for technical reasons associated with production, the volume ordered may be exceeded or undercut by approx. 10 %, however at least plus/minus 2 items. The quantity delivered shall be charged.

## **6. Passing of Risk**

- 6.1 The risk shall pass to the customer as soon as the goods leave our premises – irrespective of whether this is done with our own means of transportation or that of third parties. Such shall also apply in the event of partial deliveries or if we have undertaken further services, e.g. forwarding charges, delivery or assembly.

- 6.2 If shipment or acceptance is delayed or does not happen due to circumstances for which we are not responsible, the risk shall pass to the purchaser on the day of notification that the goods are ready for shipment or acceptance. At the cost of the purchaser, we undertake to take out such insurance as is requested by the purchaser.

## **7. Rights in the Event of Deterioration of the Financial Situation**

- 7.1 If it becomes known to us that the customer has bills of exchange subject to protest, that debt enforcement proceedings have been initiated against him or that any other deterioration of his financial situation has occurred, we shall be entitled to request advance payments or the provision of security even for claims that are not due and to refuse delivery on our part until such request has been satisfied. If the customer fails to comply with our request despite the fact that a reasonable extension has been set and despite our warning that we refuse delivery, we shall, at our option, be entitled to withdraw from the contract or to claim damages.
- 7.2 Furthermore, and subject to any further claims from retention of title, we shall be entitled to enjoin the customer not to resell the goods and at the expense of the customer to recover possession of goods which have not yet been paid.

## **8. Industrial Property Rights, Documentation**

- 8.1 If orders are placed on the basis of drawings or samples, the customer shall be responsible to us that the industrial property rights of any third party are not infringed.
- 8.2 We shall reserve ownership rights and copyrights with respect to samples, cost estimates, drawings and similar information in both tangible and intangible form, including information in electronic form; such information must not be disclosed to any third party. We bind ourselves not to disclose information and documents which have been designated by the purchaser as being confidential to any third party without the consent of the purchaser.

## **9. Retention of Title**

- 9.1 We retain title to all goods delivered by us until each and every claim we have against the customer on account of existing contracts has been paid in full. Claims shall also include receivables from bills of exchange and cheques as well as receivables from current account. If, in connection with payment by way of bill of exchange, a liability to recourse is created against us, retention of title shall only become extinct if it is ruled out that a creditor might have recourse against us.
- 9.2 If the customer is in default of payment or if it becomes apparent that our claims for payment are at risk due to the customer's difficult financial situation we shall be entitled to claim the surrender of the goods based on our retention of title.
- 9.3 The customer may not pledge the delivery item or transfer ownership of the same by way of security. In the event of attachments or other third-party interventions the customer undertakes to notify us immediately thereof. The customer shall bear all costs which need to be incurred in order to ensure that such intervention discontinues and to ensure the recovery of the goods delivered, to the extent that such costs cannot be collected from such third party.
- 9.4 Subject to admissible revocation for good cause, the customer shall be entitled to dispose of the delivered goods within the framework of his ordinary course of business. In particular it shall not be permitted to pledge the goods or use them as security. The customer may only pass on goods that are subject to retention of title to the purchaser if the customer is not in default with respect to his obligations to us.

In the event of resale, as early as with the present the customer shall assign to us all and any claims from such resale, in particular claims for payment, but also other claims relating to the sale, up to the total amount of our invoice (including value-added-tax), irrespective of whether the goods delivered were sold

without or after processing.

Subject to our admissible revocation for good cause, the customer shall be entitled to collect the assigned claims on a fiduciary basis. Resale of the receivables within the framework of actual factoring shall be subject to our prior consent. For good cause we shall have the right to notify third-party debtors of the assignment of claims also on behalf of the customer. Notification of the assignment to a third-party debtor shall end the customer's right to collect the debt. If the right to collect the debt is revoked, we can require the customer to disclose to us the claims assigned as well as the debtors thereof, to provide us with all information required for collection, to hand over all relevant documents and to notify the debtors of the assignment.

Good cause within the meaning of the present stipulations shall include but not be limited to the customer being in default of payment, the customer having suspended his payments, in the event of insolvency proceedings having been initiated against him, bills having been protested or in the event of evidence indicating an over-indebtedness or imminent insolvency of the customer.

9.5 Processing and/or transformation of the delivery item by the customer shall always be undertaken on our behalf. We shall be deemed to be the manufacturers within the meaning of § 950 of the German Civil Code (BGB), without any further obligation. If the delivery item is processed together with other products which do not belong to us, we shall acquire co-ownership of the new product in proportion to the value of the invoiced amount to the purchase price of the other processed products. In all other respects, the provisions applicable to the delivery item shall also apply to the product created by such processing.

9.6 If the delivery item is combined, mixed or blended with movable products of the customer in such a way that the product of the customer is to be considered as the main thing, as early as with the present the customer assigns to us his ownership of the total product in proportion to the value of the delivery item to the value of the other combined, mixed or blended things or substances. If the delivery item is combined, mixed or blended with movable property of a third party in such a way that the product of the third party is to be considered as the main thing, as early as with the present the customer assigns to us his payment claim against the third party to the amount of the sum total of the invoice relating to the delivery item.

The new product created by combining or mixing or the rights to (co-)ownership in the new product to which we are entitled or which are to be transferred to us as well as the claims for payment assigned to us pursuant to the above paragraph shall serve to secure our claims in the same way as the delivery item itself.

9.7 If or to the extent that a retention of title or an assignment of claims is ineffective or unenforceable due to mandatory provisions of foreign law, the security corresponding to retention of title or assignment of claims applicable in this area shall be deemed as agreed. If, according to this, the assistance of the customer is required, he must take all steps necessary in order to establish and maintain the security.

## 10. Warranty

10.1 Upon receipt or taking delivery of the goods, the customer is under the obligation to inspect each delivery without delay and to notify us of any apparent defects immediately and in writing. Any hidden defects must be communicated in writing as soon as they are discovered. Otherwise the shipment shall be deemed as having been accepted.

10.2 In the event of a defect in the delivery item for which we are responsible, we shall be entitled, at our option, to remedy the defect or to deliver a replacement. If the repair or delivery of the replacement fails or is unreasonably delayed due to reasons attributable to us, the customer may, at his option, demand a reduction of the purchase price or cancellation of the contract.

10.3 Claims of the customer based on defects shall be subject to a limitation period of 12 months after delivery. However, the statutory periods of limitation shall apply to things which in accordance with their customary usage have been used for a building as well as to cases of fraudulent concealment of a defect and cases of the entrepreneur's right of recourse.

10.4 Any claims for damages based on warranty shall only be taken into consideration subject to the stipulations of the following section 11.

## 11. Damages

- 11.1 We shall be liable for damage caused by intent and gross negligence. We shall only be liable for slight negligence if such negligence results in the breach of fundamental contractual obligations which go to the root of the contract or if such breach of contract endangers the attainment of the contractual purpose. In all other respects, claims for damages asserted by the customer and relating to slight negligence – including but not limited to claims based on the breach of obligations which occurred when the contract was entered into or a breach of secondary contractual obligations as well as claims based on warranty - shall be excluded, irrespective of the legal grounds such claims are based on.
- 11.2 The aforesaid limitation of liability shall not apply to claims under the German Product Liability Act [*„Produkthaftungsgesetz“*], in the event of initial inability to perform or in the event of impossibility to perform for which we are responsible, as well as in case of missing characteristics which have expressly been assured and which were especially meant to protect the customer against exactly the damage which has occurred.
- 11.3 Claims for damages relating to material defects shall be subject to a limitation period of 12 months after delivery; in the cases stipulated under item 10.3 hereof, in cases of intent, gross negligence, harm to life, body and health for which we are responsible, as well as in the event of claims under the German Product Liability Act [*„Produkthaftungsgesetz“*] the statutory provisions governing limitation periods shall apply.

## 12. Special Terms and Conditions relating to Processing Contracts [*German „Bearbeitungsvertraege“*] (Finishing, Refurbishment, Adaptation or Repair of Tools)

Supplementary to or deviating from the present General Terms and Conditions, the following shall apply to processing contracts:

- 12.1 We shall not assume any liability for the properties of the material sent to us. Our entitlement to reimbursement shall be unaffected hereby.
- 12.2 If during processing and for reasons for which we are responsible the material becomes unusable, our entitlement to remuneration shall no longer apply. Claims for damages asserted by the purchaser shall be subject to item 11.1 hereof.

## 13. Applicable Law, Place of Performance, Jurisdiction

- 13.1 All legal relationships existing with us shall be governed by German law. The UN Convention on Contracts for the International Sale of Goods (CISG) shall not apply.
- 13.2 Place of performance for delivery and payment for both parties shall be our company's principal place of business exclusively.
- 13.3 In the event of any dispute, claim or litigation arising out of or in connection with the contractual relationship as well as with its creation and effectiveness, the town of Maulbronn shall have jurisdiction for both parties (both parties being merchants). At our discretion, we may also bring an action at the customer's seat.