

# General Conditions of Business for Foundry Products

## (Status 01.02.2004)

Our products and services are supplied solely on the basis of the following conditions. Other conditions of the customer will not apply, even if we are aware of these and our products are delivered without reservation. Our conditions do not apply for consumers as defined by § 13 BGB. They apply also to all future business with the customer within the current business relationship. All agreements made between ourselves and the customer for the purposes of the execution of this contract must appear in writing in this contract. Any changes or additions to this contract must be made in writing.

### 1. Conclusion of contract, scope of supply

- a) Our quotation is made without engagement. We are bound only by the content of our written order acknowledgement or when an explicit written statement has not been made to a different effect. A contract is concluded only when we have acknowledged an order in writing or when we carry out the order.
- b) Information contained in brochures and catalogues, such as illustrations, drawings, weights and measures are approximations commonly used in the foundry industry unless explicitly stated to be binding on our part.
- c) We reserve title to and copyright in illustrations, brochures and other documents. These must not be made available to third parties. This applies in particular to written documents which are marked as "confidential". These may be made available to third parties by the customer only with our explicit written consent.

### 2. Pricing and conditions of payment

- a) Our prices apply ex works and do not include packaging, freight, postage, insurance or statutory value-added tax.
- b) Should costs relating to the contract change substantially following conclusion of the contract, the contracting parties will agree on an appropriate adjustment.
- c) We grant a discount of 2% on payments which are credited to our account within 8 days of invoice date. Otherwise, our payment terms are 30 days net cash following invoice date. No discount will be granted where the due date for payment of previous invoices has been exceeded.
- d) Unless otherwise agreed, costs for workpiece-specific patterns and production equipment according to section 11 must be paid on placement of the order.
- e) The customer is entitled to withhold payment or make deductions from payments due to counter claims, where these claims for payment are undisputed or have been established by a court of law.
- f) Should we have supplied goods which are partially defective, the customer is nonetheless obliged to make payment for the goods which are indisputably free of deficiencies unless the partial delivery is of no interest to him.
- g) We accept discountable and correctly taxed bills of exchange as payment where this has been explicitly agreed beforehand. Credits for bills of exchange and cheques are made under reservation of receipt minus costs at the value of the date on which their equivalent value is available to us.
- h) Should we be committed to making delivery in advance, and should we, after conclusion of the contract, become aware of circumstances which may affect the ability of the customer to meet our claim for payment, we may, in addition to our legal claim with regard to reservation of title as agreed in section 10, prohibit the processing and further sale of the goods supplied or demand their return or the transfer of indirect possession of the goods supplied at the cost of the customer and revoke the collection authorisation under the conditions given in section 10 part h). The customer hereby authorises us to enter his premises and collect the goods delivered. The return of the goods will entail withdrawal from the contract only when this is explicitly declared by us.
- i) In case of arrears of payment, we may, upon written notification, suspend the fulfilment of our obligations until payment has been received. Following a reasonable period of notice, we will then be entitled to withdraw from the contract.

### 3. Delivery period

- a) Delivery periods commence with our order acknowledgement, however, not before all the details of execution have been settled and all other conditions of the customer to be fulfilled are known to us. This also applies to delivery dates. Deliveries before expiry of the delivery period and partial deliveries are permitted unless these are unreasonable for the customer. The date of notification of readiness for delivery is regarded as the date of delivery, or alternatively, the date of dispatch. Unless otherwise agreed, or other circumstances result from the contractual relationship, the delivery period stated by us is without obligation on our part.
- b) Agreed delivery periods and dates will be postponed or extended, without prejudice to our rights resulting from arrears of payment on the part of the customer, by the period of time by which the customer is in arrears with regard to his obligations. Should a delay in acceptance on the part of the customer arise, or should he infringe other obligations of co-operation, we will be entitled to demand compensation for damages incurred including any additional costs. In such a case, the risk of accidental loss or deterioration of the goods will pass to the customer at the moment in which his delay in acceptance commences.
- c) Should a delay occur on our part, the customer may set a reasonable period of notice containing the explicit statement that he will refuse the goods on expiry of the period of notice, and that he may withdraw from the contract should its fulfilment at this time no longer be of any use to him.
- d) At our request, the customer is obliged to declare within a reasonable period of time whether he wishes to withdraw from the contract due to delay in delivery and/or demands compensation in place of delivery or insists on the delivery being carried out.

### 4. Serial deliveries, long-term and call-off orders

- a) If no term has been contractually agreed, all contracts providing for a permanent supply obligation on our part are terminable with 6 months prior notice effective as of a calendar month.
- b) If, in the case of long-term contracts (contracts with an agreed term of over 12 months or contracts with an indeterminate term), a substantial change in labour, material or energy costs should occur after the elapse of the first 3 months of the term

of contract, then each party to the contract will be entitled to demand a reasonable price adjustment taking these factors into account.

- c) Unless otherwise agreed, in the case of call-off orders for delivery, we must be notified of the binding quantities for delivery at least five months before the date of the call-off delivery. Additional costs incurred by a delay in the call-off, or subsequent changes in the call-off with regard to time or quantity on the part of the customer, will be borne by the customer. Our calculations will be regarded as definitive in such cases.
- d) In serial production, deliveries of 10% above or below the order quantity are permitted for technical reasons.
- e) The invoice price will be adjusted accordingly.

### 5. Force majeure and other hindrances

- a) Circumstances of force majeure, labour disputes, lockouts and governmental measures will entitle us to postpone the delivery by the duration of the hindrance plus a reasonable response period or to withdraw wholly or partially from the contract with regard to the part of the contract still to be fulfilled.
- b) Unforeseen circumstances such as disruptions in production, rejections and re-treatment of parts are equivalent to force majeure since they prevent us from making punctual delivery in spite of all reasonable efforts. Proof of such circumstances must be provided by us.

### 6. Test processes, acceptance

- a) If acceptance testing has been agreed upon, the extent and conditions of such testing must be fixed before conclusion of contract.
- b) If this is not the case, acceptance testing will be carried out according to our customary procedure and under our customary conditions. This also applies for initial sample testing.
- c) If the customer wishes that the testing required for a proper acceptance be carried out by us or if he desires our support in such acceptance, the customer must specify in detail the nature and extent of the desired support and bear all cost associated therewith.
- d) If technical acceptance has been agreed according to special conditions, the customer must carry this out in our plant at his own cost immediately after notification of readiness for acceptance. If the acceptance has not taken place within a reasonable period of notice, we reserve the right to dispatch the goods or to place them in storage at the expense and risk of the customer.

### 7. Technical data

- a) Deviations from technical data are permissible within customary technical tolerances, the applicable DIN standards, and the technical requirements of the casting process. The statements made by us with regard to technical data in our quotations and order acknowledgements do not represent a guarantee in quality.
- b) The price invoiced will be based on the weights and quantities determined by us.

### 8. Dispatch and transfer of risk

- a) Unless otherwise agreed in writing, deliveries will be made "ex works" as defined by Incoterms 2000. This also applies when we have agreed to pay the costs of transport.
- b) The consignment will be insured by us only at the explicit request of the customer. The costs incurred thereby will be charged to the customer.
- c) Goods which have been notified as being ready for dispatch must be collected immediately. Otherwise we will be entitled to dispatch them at our discretion or to place them in storage at customary transport cost and at the customer's risk. We will also be entitled to take such steps where the customer has entrusted us with the dispatch of the goods and such dispatch cannot take place for reasons for which we are not responsible. The goods will be regarded as delivered one week after commencement of storage.
- d) Failing special instructions we will select a method and route of transport at our discretion.
- e) All risks will be transferred to the customer when the goods are delivered to the railway company, the carrier, transport company etc. or one week after commencement of storage, but at the latest, on leaving our premises or stores, even where we have engaged to deliver the goods.

### 9. Reservation of title

- a) All goods supplied remain our property (goods subject to reservation of title) until all our claims have been met in full, in particular all outstanding claims which have arisen in the course of the business relationship. This applies equally when payments are made against specified claims. Should the customer be in arrears of payment, we will be entitled to demand the return of goods delivered. The costs hereof will be charged to the customer. This will not apply where insolvency proceedings have been initiated against the customer or the customer has applied for such proceedings to be initiated. In such cases, we will not be entitled to demand immediate return of the goods.
- b) The return of the goods or exercise of reservation of title will entail withdrawal from the contract only when this is explicitly declared by us.
- c) The goods supplied are processed by the customer on our behalf. If the goods subject to reservation of title are processed with or inseparably joined with other objects of which we are not proprietor, we will acquire co-ownership of the new product with a share corresponding to the relation of the invoice value of the goods to that of the other goods with which they were processed or combined, at the time of processing.

- d) Should our proprietary rights expire on processing or combination with other goods, the customer hereby transfers his proprietary rights in the new product to an extent corresponding to the invoice value of the goods subject to reservation of title and holds them free of charge on our behalf. The rights of co-ownership will then apply as goods subject to reservation of title as defined in section a).
- e) The customer may sell the goods subject to reservation of title only in the course of his normal business and only as long as he is not in arrears, provided that the claim arising from the re-sale is transferred to us in accordance with sections f) and g). He is not entitled to dispose of the goods subject to reservation of title in any other way.
- f) The customer's claims arising from the re-sale of the goods subject to reservation of title is hereby transferred to us. They serve equally to secure the goods subject to reservation of title.
- g) If the goods subject to reservation of title are re-sold by the customer along with other goods not supplied by us, the transfer of claim arising from the re-sale will apply only for the portion of the re-sold goods subject to reservation of title corresponding to the value of our invoice. On re-sale of goods of which we are co-owner as defined by section b) the transfer of claim will apply only for the value of the portion of which we are co-owner.
- h) The customer is entitled to collect claims arising from the sale as defined in sections e) and f) until this is revoked by us. We have the right of revocation in the cases stated in section 9 if the customer is in arrears of payment, if an application for insolvency proceedings has been made or if payments have been suspended. In such cases, the customer is obliged to notify us of the transferred claims and their debtor, to provide all information and documents necessary for collection of the debt, and to inform the debtor of the transfer of the claim. Under no circumstances is the customer entitled to transfer the claims.
- i) If the value of existing securities exceeds the secured claims by more than 20%, we are obliged to release securities of our choice upon the customer's request. The customer must notify us immediately of any seizure or other encroachment by third parties.

#### 10. Liability for deficiencies

- a) We warrant for the flawless manufacture of the parts delivered by us in accordance with the agreed specifications, but we do not warrant for the parts fitness for the customer's purpose of use. In this respect, the customer is responsible for correct design, in particular as concerns the intended application, with due regard to any safety regulations, selection of material and required test processes, correctness and completeness of the technical conditions of supply, the technical documents and drawings made available to us and design of production equipment provided, even if these are modified in accordance with our suggestions and such modifications are approved by the customer. Furthermore, the customer assures that no patent or other third-party rights are infringed by data or information provided by him. The condition of the goods will be in compliance with contract unless found to be otherwise at or before the moment of the transfer of risk.
- b) We do not assume any liability for only slight deviations from the agreed quality. A deviation shall be deemed to be slight if the parts delivered can be used for their intended purpose of use despite slight deviations from the agreed specifications. We do also not assume any liability for any inappropriate or use, slight impairments of serviceability, or defects attributable to incorrect or unsuitable use, incorrect assembly or operation and normal wear and tear. Similarly, we are not liable for any incorrect modifications or maintenance carried out by the customer or third parties or for the consequences of such modifications or maintenance.
- c) Deficiencies must be notified by the customer without delay following arrival of the goods at their destination. Concealed deficiencies must be notified in writing immediately after discovery of such deficiencies.
- d) If acceptance or first-sample testing in accordance with section 6 has been agreed, complaints concerning deficiencies which should have been detected during such testing will not be accepted.
- e) We must be given the opportunity to verify the notified deficiencies. In urgent cases, where there may be a risk to safety or of disproportionately serious damage for the customer, we are obliged to verify the deficiency immediately. Defective goods must be returned to us immediately. Should the customer fail to observe this obligation, or make repairs to such goods without our approval, he will lose any rights he may have on grounds of product deficiency.
- f) In case of justified punctual complaint, we will, at our discretion, repair the defective goods or supply defect-free replacements.
- g) Should we be unable to perform our warranty obligations or unable to perform our warranty obligations within a reasonable period of time (subsequent performance), or should the repairs undertaken be unsuccessful, the customer may set a time limit in writing, within which we must fulfil our obligations. A time limit need not be set if this would be unreasonable from the point of view of the customer. Upon the expiry of this time limit, the customer may, at his choice, demand a reduction in price, rescind the contract, or, subject to our prior consent, carry out the necessary repair work himself, or, with our approval, have such repair work carried out by a third party at our expense and risk. Claims for damages by the customer are subject to the provisions of section 13. hereof. If the repair work is carried out successfully by the customer or the third party, the customer will have no further claim against us apart from reimbursement of the necessary costs incurred by him.
- h) Claims on the part of the customer arising from the fact that it has been necessary to transport the goods, after delivery, to another place in order to achieve subsequent fulfilment, will not be accepted if the costs are thereby increased, unless this is in accordance with their intended use.
- i) The customer has a legal right of recourse against us only inasmuch as the customer has made no agreement with his own customer which goes beyond the legal claims in cases of deficiency.
- k) Any other claims on the part of the customer will not be accepted in accordance with the provisions of section 13.
- l) Proof of deficiency must be provided by the customer.

#### 11. Order-specific production equipment, casting inserts

- a) Order-specific production equipment such as patterns, casting tooling, fixtures and gauges provided by the customer should be sent to us free of charge. The conformity of production equipment provided by the customer with contractual specification, drawings or samples will be verified by us only if this has been explicitly agreed. Production equipment provided by the customer may be modified by us if this appears necessary for technical reasons and the workpiece is not affected thereby.
- b) The costs for modification, maintenance, repair and replacement of his production equipment will be charged to the customer.
- c) Production equipment will be treated by us with the same care and stored under the same conditions as used for our own property. We are not liable for accidental loss or deterioration of the production equipment. Production equipment belonging to the customer which is no longer required by us may be returned to the customer at his expense and risk, or, if the customer does not comply with our request to collect the equipment within a reasonable period of time, store the equipment at the customary costs, and upon expiry of a period of notice and due reminder, scrap the equipment.
- d) If workpiece-specific patterns or tooling are manufactured or procured by us on behalf of the customer, the customer will acquire ownership hereof upon payment of the agreed purchase price. The transfer of the equipment is replaced by our obligation of safe-keeping. Our retention of the tooling may be terminated by the customer two years after transfer of ownership at the earliest, unless good reason exists. We may refuse to return the workpiece-specific patterns or tooling if we still require these for the contractual supply of the customer or we have obtained a lien or a right of retention thereon due to outstanding claims arising from the business relationship.
- e) Claims arising from copyright or commercial legal protection may be exercised by the customer only inasmuch as he draws our attention to the existence of such rights or explicitly reserves the right of appeal thereto.
- f) Should the product produced by production equipment which is usable once only be rejected, the customer must either supply new equipment or bear the costs for replacement thereof.
- g) Inserts to be incorporated in castings must be dimensionally accurate and supplied by the customer in perfect condition. The customer must also provide spare inserts free of charge to cover possible product rejections.

#### 12. Secrecy

- a) Each of the contracting parties undertakes to use all documents (including samples, patterns and data) and knowledge which he receives in the course of the business relationship for the jointly pursued purpose and to maintain their secrecy towards third parties with the same care as exercised with regard to his own equivalent property if these are designated as confidential or the other party has an obvious interest in maintaining their secrecy.
- b) This obligation commences with the first receipt of documents or knowledge and terminates 36 months after the end of the business relationship.

#### 13. General limitation of liability

- a) Unless resulting from the provisions given below, no other claims on the part of the customer against us, for whatever legal reason, will be accepted, in particular where these are based on infringement of obligation arising from the contractual relationship and prohibited action.
- b) This limitation of liability does not apply in case of obligatory liability e.g. in accordance with product-liability legislation, criminal intent, gross negligence on the part of legal representatives or executives or culpable infringement of important contractual obligations. In case of culpable infringement of important contractual obligations, we will be liable only for reasonably foreseeable damages within the context of the contract, except in case of criminal intent or gross negligence on the part of legal representatives or executives. Similarly, it does not apply in case of damage to life, limb or health, or absence of a guaranteed quality, where the intention of this quality is to assure the customer against damage other than to the goods supplied themselves.
- c) Where liability on our part is excluded or limited, this also applies to the personal liability of employees, legal representatives and agents.
- d) Claims for compensation for damages and deficiencies to which the customer is entitled will lapse one year after the delivery of the goods to the purchaser. This will not apply where a longer period is prescribed by law in § 438 paragraph 1 no. 2 (buildings and objects normally used in buildings) and § 479 paragraph 1 (rights of recourse) of the BGB. The statute of limitations will also apply in case of infringement of obligation through intent or gross negligence.

#### 14. Place of performance and legal domicile

- a) Where the customer is a businessman, the legal domicile is Meschede. We are however entitled to take legal action against the customer in the court with jurisdiction at his place of business.
- b) Unless otherwise stated in our order acknowledgement, the place of performance for our supplies is the location of the plant to which they are delivered. For payment obligations, the place of performance is Bestwig.

#### 15. Applicable law

The legal relations between the parties will be governed solely by German law under exclusion of the UN Agreement on Purchasing Law (UNCITRAL/CISG).

#### 16. Partial nullity

Should any provision of these General Conditions of Business be wholly or partially invalid or null and void, the contracting parties undertake to agree on an arrangement by which the intention and purpose of the original provision is most closely achieved.

#### 17. Partnership clause

With all payments of compensation, in particular with regard to the amount of compensation for damages, the economic circumstances of the contracting party, type, extent and duration of the business relationship and the value of the goods should be given reasonable consideration in all good faith.