

## General terms of delivery and payment

### 1. Scope of application

- (1) The following terms and conditions apply to all our deliveries and services to persons who, upon conclusion of the contract, are acting in the exercise of their commercial or self-employed professional activity (entrepreneurs within the meaning of section 14 of the German Civil Code "BGB"), legal persons of public law, or a special fund under public law. They do not apply to consumers within the meaning of section 13 of the German Civil Code ("BGB").
- (2) Our deliveries and other services are carried out solely based on these general terms and conditions of delivery and payment. Deviating, conflicting, or supplementary terms and conditions of delivery and payment, or general terms and conditions of the customer not contained in these general terms and conditions, do not apply unless explicitly acknowledged by us, even if we perform deliveries or services without reservation in the knowledge of the general terms and conditions of the customer.
- (3) These general terms and conditions of payment of delivery and payment apply to all current and future delivery agreements; they do not have to be referred to in each individual case.
- (4) References to the validity of the statutory regulations are only for purposes of clarification. Even without such clarification, the statutory provisions apply unless directly or expressly excluded in these General Terms and Conditions of Business.
- (5) Separate orders, collateral agreements, amendments and other agreements are only effective if confirmed by us in text form.
- (6) Our quotations are subject to alteration and non-binding. The information and illustrations contained within brochures and catalogues are approximate values customary for the industry, unless we have expressly designated them as binding. They do not constitute guarantees as such.

### 2. Confidentiality

- (1) The customer shall use all documents (including samples, models and data) and information received because of the business relationship, as well as constructive services and proposals for the design and production of forgings provided by us, exclusively for the joint objectives pursued. The customer will keep them confidential vis-à-vis third parties with the same care as exercised for its own documents and information if we designate them as confidential, or have an obvious interest in keeping them confidential. This obligation commences from the first receipt of the documents and ends 36 months after termination of the business relationship.
- (2) The obligation does not apply to documents and information that are general knowledge, or which were already known to the customer before the customer was bound by this confidentiality obligation, or which are subsequently forwarded by authorized third parties, or which are developed by the customer without exploiting any of our documents or knowledge under confidentiality obligation. Likewise, the obligation does not apply to documents and information that must be disclosed as required by law or orders of a court or authority. Consultants may be granted access to confidential information if they are bound by professional secrecy or they have previously committed to the confidentiality obligations of this agreement.
- (3) For each case of culpable infringement against the obligation in section 1, the customer pays a contractual penalty the amount of which will be at our reasonable discretion. In case of dispute over the appropriate amount of the contractual penalty, the customer is free to seek decision by the Regional Court of Rottweil, Germany. The defense of the continuation of offense is excluded for intentional violations of duty. Payment of contractual penalty does not affect the obligation to compensate damages incurred; the forfeited contractual penalty is set off from the damage to be compensated.

### 3. Ownership of tools, devices, drawings and documents

Tools created for the production of forged parts and devices remain our property irrespective of the cost share calculation, as well as drawings provided to the customer or technical documentation on the goods to be delivered or their production.

#### **4. Samples and manufacturing equipment**

- (1) Unless otherwise agreed, the production costs for samples and manufacturing equipment (tools, molds, templates, etc.) is charged separately in addition to the goods to be delivered. The invoice amount is due for payment without deduction immediately upon receipt. The same applies to manufacturing equipment that must be replaced due to wear and tear.
- (2) Costs for the maintenance and proper storage, as well as the risk of damage or destruction, of the production equipment are paid by us.
- (3) In the event that the customer suspends or terminates the cooperation while samples or manufacturing equipment are being produced, production costs incurred up to that point is borne by the customer.
- (4) Manufacturing equipment initially remains in our possession even if the customer has paid for it. Manufacturing equipment will be provided on condition that a mutual agreement has been reached and the customer has met its contractual obligations in full.
- (5) We store manufacturing equipment free of charge for three years after the final delivery to the customer. After expiry of the three-year period, we request the customer in writing to forward instructions within 6 weeks on the intended use. Our obligation to retain such materials ends in case no instructions has been received or new order has been placed within the six-week period. In the event that the customer demands retention periods exceeding three years, we have the right to demand storage costs.
- (6) Customer-related manufacturing equipment may only be used for deliveries to third parties with the prior written consent of the customer.

#### **5. Prices**

- (1) Unless otherwise agreed, all our prices are in EUR but exclude packaging, freight, postage and insurance. VAT is charged additionally as applicable.
- (2) Prices are based on the cost bases of our purchase offer. We are entitled to increase or reduce the agreed prices correspondingly for services provided later than four (4) months if substantial materials, energy or raw material costs changes have occurred after submission of tender for which we are not responsible. Any price increase shall not exceed 10 %. In the event of materials, energy or raw material cost changes exceeding 10% each party is entitled to request additional negotiations of the other party to agree on a reasonable adjustment of the contractually agreed prices.

#### **6. Terms and conditions of payment**

- (1) Unless otherwise agreed, our invoices are due for payment within 30 days of the invoice date without deduction.
- (2) We have the right to assign the claims from our business relations.
- (3) In the event that we have indisputably delivered partially defective goods, the customer is nevertheless obliged to make payment for the non-defective portion, unless the customer has no interest in the partial delivery. Other than that, any offsetting or retention of payments is permitted only in case of legal claims of the customer, which are acknowledged by us, undisputed, or established by a final decision.
- (4) In case of default, we are entitled without need of a reminder to charge default interest at the rate calculated by the bank for current account overdraft, but at least to the amount of 9 percent points exceeding the applicable base lending rate pursuant to section 247 subsection 1 of the German Civil Code ("BGB"). This does not limit the right to claim further damages. In the event of default of payment, we are entitled, after notice in text form to the customer, to suspend the execution of our obligations until the payments have been received.
- (5) Bills of exchange and checks are only accepted if so agreed by the parties. Furthermore, they are accepted only in lieu of formal payment and if they can be discounted. The discount charges are calculated from the date the invoice is due. Any guarantee for proper presentation of the bill of exchange and the protest of the bill of exchange is excluded.
- (6) In case a significant risk to our payment claim arises after the conclusion of the contract due to the customer's failure to meet payment obligations, we can refuse performance and set a reasonable deadline to the customer for delivery versus payment or the provision of security. In case of refusal of the customer or expiry of the deadline, we are entitled to withdraw from the contract and claim damages. This does not affect the right to claim further damages.

## **7. Delivery / Dates/ Preliminary suppliers**

- (1) Unless otherwise agreed, delivery will be FCA ("Free Carrier") Fridingen, Germany (Incoterms 2010). Decisive for compliance with the delivery date or the delivery deadline is the notification of dispatch or collection by us.
- (2) The delivery period is reasonably extended, even within a delay, in case of the circumstances mentioned in section 15.
- (3) Our information on dates and deadlines is not binding unless a fixed delivery date is or special other delivery or performance dates are agreed in text form. The delivery dates specified in our confirmation of purchase order are subject to the timely delivery of materials from our suppliers.
- (4) We have the right to choose or change preliminary suppliers at any time without previous consultation of the customer. We are committed to select our preliminary suppliers carefully.
- (5) Partial deliveries are permitted within reason. They are invoiced separately. Delivery quantities deviating from purchase order shall be permissible within the tolerances specified in DIN EN 10254: 1999. For the calculation, the delivered quantity as determined by us shall be permissible.
- (6) In case of cancellations or "on-demand" positions within three (3) months before reaching a delivery date, we cannot release the customer from the purchase obligation for the previously acquired primary material.

## **8. Packaging**

At the customer's request, our products will be delivered to the customer in both disposable as well as reusable packaging and in both cases according to the German Packaging Regulation for the Avoidance of Packaging Waste (VerpackV). Disposable packaging such as wooden crates, cardboard boxes, etc. are calculated at cost price and will not be taken back unless otherwise excluded. Reusable and lattice box pallets, pallets with collars and lids, containers and cassettes remain our property. They must be returned at no cost to us immediately to the delivery point. The take-back of packaging is done only at the expense of the customer.

## **9. Shipping and transfer of risk**

- (1) Goods notified as ready for shipment must be accepted immediately, otherwise we shall be entitled to ship them at our own discretion or store them at the expense and risk of the customer. The same applies if the shipping taken over by us cannot be performed without fault on our part. One week from commencement of storage, the goods is deemed delivered. Unless otherwise agreed, we are free to choose means of transport and transport route. Partial deliveries are permitted.
- (2) With the handover to the railway, forwarding agent or freight carrier (the start of the loading process is decisive), or on commencement of storage, but at the latest when the shipment has left the factory or warehouse, the risk is transferred to the customer, even if we have undertaken delivery.

## **10. Performance of the contract and delayed delivery**

- (1) If we do not meet agreed delivery or performance dates, we default only after expiry of a reasonable grace period of at least two weeks granted in text form by the customer. We are not in default while the customer does not fulfill its duties to cooperate, for example the delivery of documents, drawings, plans, necessary permits and releases that matter. In this case, our deadlines are extended correspondingly.
- (2) Contract fulfillment is subject to the proviso that no obstacles of national or international administration exist to the contrary. Our confirmation of the purchase order is subject to the validity of prohibitions or constitutionally effective embargoes, in particular by the United Nations or the EU.
- (3) If we can foresee that the goods cannot be delivered within the delivery period, we will notify the customer immediately in writing, explaining the reasons for the delay and, if possible, stating the expected delivery date.
- (4) If delivery is delayed by one of the circumstances mentioned in section 14 or by an act or omission of the customer, a reasonable extension of the delivery period appropriate to the circumstances will be granted.
- (5) The customer is only entitled to withdraw from the contract if we are responsible for the failure to comply with the delivery date and if the customer has unsuccessfully set a reasonable grace period.

## **11. Retention of title**

- (1) We reserve title to the goods delivered until all existing or future claims from the business relationship with the customer have been fulfilled; all deliveries are in this context considered a single delivery transaction. If operating a running account, the retention of title serves as a security for an outstanding balance.
- (2) The customer may sell the delivered goods in the normal course of business, unless we revoke this permission. However, the customer does not have the right to pledge the goods subject to retention of title, or assign them as a security. The customer is obliged to safeguard our rights in credited resale of the reserved goods.
- (3) To exercise the retention of title, a withdrawal from the contract is not required.
- (4) All claims and rights arising from the sale or, if applicable, the leasing of the goods if any, to which the customer is entitled and to which we hold ownership rights, are assigned to us for security at this point. We hereby accept the assignment.
- (5) Any preparation or processing of the reserved goods is undertaken on our behalf by the customer. If the reserved goods are processed or inseparably mixed with other items not belonging to us, we acquire co-ownership of the new item according to the ratio of the invoice value of the goods subject to retention of title to the other goods processed or mixed at the time of processing or mixing.
- (6) If our goods are connected with other movable objects to form a single object or if they are inseparably mixed, and the other item is to be regarded as the main item, the customer agrees to transfer joint ownership to us in proportion to the extent to which the main item belongs to the customer. The purchaser shall keep the property or co-ownership in safe custody for us. As for the rest, the same applies to the item resulting from the processing, transformation or connection as well as mixing as for the reserved goods.
- (7) The customer undertakes to inform us immediately if third parties carry out enforcement proceedings on the reserved goods or on the claims assigned in advance or other securities while providing us with the documentation necessary for intervention. This also applies to any impairments.
- (8) If the value of the existing securities exceeds the existing securities by more than 20 percent, we undertake to release securities of our choice at the request of the customer.

## **12. Withdrawal**

- (1) For breaches of duty of the customer, especially in case of default, we are, after unsuccessful expiry of a reasonable period for performance granted to the customer, entitled to withdraw from the contract with regard to the goods delivered. The statutory provisions concerning the dispensability of setting a deadline remain unaffected. The purchaser is obliged to surrender the goods delivered.
- (2) In addition, we are entitled to withdraw from the contract, if insolvency proceedings over the assets of the customer are opened.

## **13. Material defects**

- (1) The condition of the goods is based exclusively on the agreed technical delivery instructions. If we are obliged to perform delivery in line with drawings, specifications, samples etc. belonging to our customer, the customer bears the risk of the suitability for the intended use. The time at which risk is transferred is decisive with regard to the contractual condition of the goods in accordance with section 9.
- (2) We are not responsible for defects caused by inappropriate or improper use, faulty assembly or commissioning by the customer or third parties, normal wear and tear, faulty or negligent treatment, or for the consequences of improper modifications, or modifications carried out without our consent, by the customer or third parties. This also applies to defects that only marginally reduce the value or suitability of the goods.
- (3) Material defect claims come under the statute of limitations within 12 months.
- (4) If acceptance of the goods or an initial inspection of a sample has been agreed, any notice of defects is excluded which the customer, upon careful acceptance or initial inspection of the sample, could have detected.

- (5) We must be given the opportunity to establish defects claimed. Goods forming the subject of a complaint must be immediately returned to us upon request; we shall bear the transport costs if the notification of the defect is justified. In the event that the customer does not comply with these obligations or modifies the goods already complained without our consent, the customer loses material defect claims if any. If the examination of a complaint in respect of a defect results in the finding that there is no defect, or that the customer is responsible for the defect, we are entitled to charge the costs incurred by the inspection and, where appropriate, the removal of the defect.
- (6) In the case of justified and timely notice of defects we will, at our discretion, repair the defective goods or deliver faultless replacement goods. Repair or replacement shall not establish new independent warranty claims nor do they start a separate new limitation period.
- (7) In case further attempts at subsequent performance are unacceptable, the customer can withdraw from the contract or reduce the purchase price if we are not willing or able to perform such repair or provide replacement, the repair or replacement is delayed for reasons for which we are answerable, or the repair or replacement fails in any other way. Reimbursement is excluded if the expenses increase because the goods were relocated after our delivery, unless this complies with the intended use of the goods.
- (8) Legal recourse claims of the customer against us exist only to the extent that the customer has not made any agreements with his buyer that go beyond statutory warranty claims. Section 13 subsection 7 last sentence applies accordingly to the scope of recourse claims.

#### **14. Other claims, liability**

- (1) We are liable in accordance with the provisions of the German Product Liability Act ("ProdHaftG") as well as in the cases of inability and impossibility for which we are responsible. In addition, we shall be liable for damages in accordance with statutory provisions in cases of intent, gross negligence, upon assumption of a guarantee, as well as injury to life, limb or health for which we are responsible. If we violate a contractual obligation (so-called cardinal obligation, in German: Kardinalpflicht) with simple negligence (i.e. a duty whose fulfillment is essential for the due and proper implementation of the contract and on whose observance the customer can reasonably rely on), our liability shall be limited to the foreseeable damage typical of the contract. In all other liability cases, claims for damages for the breach of an obligation arising from obligations under the agreement and tort are excluded, to the effect that we are not liable for lost profits or other financial damages of the customer.
- (2) Insofar as our liability is excluded or limited in accordance with the provisions above, this also applies to the personal liability of our employees, workers, staff, representatives and agents.

#### **15. Force majeure**

Force majeure, especially industrial disputes, unrest, natural disasters, epidemics, pandemics, war, terrorism, administrative measures, failure to deliver on the part of our suppliers and other unforeseeable and unavoidable events and serious events shall release the parties from their obligations to perform for the duration and to the extent of such disruption. The same applies if these events occur at a time when the contracting party concerned is in default, unless it caused the default intentionally or through gross negligence. The contracting parties shall, within reasonable bounds, promptly provide all necessary information and adapt their obligations to the changed circumstances in good faith.

#### **16. Data storage**

We hereby inform the customer of the fact that personal data, provided and to the extent that this is necessary for business purposes and permitted under the General Data Protection Regulation, are stored electronically and are processed by us for fulfilling the contract. The legal basis for the storage of data is section 6 subsection 1 lit. b) General Data Protection Regulation.

The person responsible pursuant to section 4 subsection 7 of the General Data Protection Regulation is Hammerwerk Fridingen GmbH, Dr.-Werner-Strasse 1, 78567 Fridingen, Germany, E-mail: [info@hammerwerk.de](mailto:info@hammerwerk.de), Phone +49 - 7463 - 81-0 Please contact our data protection officer at [datenschutz@hammerwerk.de](mailto:datenschutz@hammerwerk.de).

For more information on the processing of personal data by us, including your rights, please visit <https://www.hammerwerk.de/de/unternehmen/datenschutz>.

**17. Place of performance, jurisdiction**

- (1) Unless otherwise stated in the order confirmation, the place of performance is our registered office. For all legal disputes, including bills of exchange or checks, jurisdiction is, at our choice, our registered office or Bonn, Germany. We are also entitled to sue at the registered office of the customer.
- (2) This agreement is subject to the substantive law of the Federal Republic of Germany, excluding its provisions on conflicts of law. The applicability of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Sales Convention") is excluded.
- (3) If any provision of this agreement is or shall become invalid or unenforceable, this does not affect the validity of the remaining provisions. In this case, the invalid or unenforceable provision is replaced by a valid or enforceable clause that is closest to the regulatory objectives of the invalid or unenforceable provision. The same applies to the closing of any contractual loopholes.

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