

## General Terms and Conditions

### **General Provisions**

(1) Any - also future - contracts that we conclude with any entrepreneurs, legal entities of public law and public-law special funds shall be subject to these general terms and conditions exclusively. This shall also apply to any ongoing business relationships in case of contracts concluded by telex or phone. Any purchasing conditions of the orderer that deviate from these conditions or any supplementary purchasing conditions of the orderer shall only be valid if we have expressly agreed to their application in writing. Performance of the contract by us shall not replace this written confirmation.

(2) The contract shall only be concluded at receipt of our written order confirmation. All offers shall be subject to confirmation and non-binding until the written confirmation of the order.

(3) Any side agreements, modifications or supplements regarding the contract shall require our written confirmation.

(4) The documents, drawings and figures that are part of the offer or the order confirmation, as well as any drawings and figures and any other information and performance data shall only be binding if expressly designated as binding. Apart from this, information on the object of deliveries and services shall only be approximates. They shall specifically not be any guarantees, but only descriptions and markings of the goods. The same shall apply to any reference to technical regulations, such as DIN standards and similar.

(5) We reserve the right to perform changes and improvements to our items where these are reasonable for the ordered under consideration of our interests.

(6) The orderer's rights from the contract are only transferable upon our advance consent.

## Prices and Payment Terms

(1) Our prices shall be ex works, strictly net plus the statutory VAT, packaging and transport costs.

(2) The prices named in the order confirmation shall be binding at delivery within four months of conclusion of the contract. In case of a later delivery date, we shall have the right to increase the prices if the situation changes after conclusion of the contract, in particular in case of increases to the raw material prices and the wage or transport costs. The price changes shall, in this case, only be permitted in the scope of and to compensate for the price and cost increases named. If the prices change by more than 5 % of the price named at confirmation of the order under consideration of these circumstances, orderers who are neither entrepreneurs nor special funds under public law, nor legal entities under public law, shall have the right to withdraw from the contract.

The same right shall be due to companies for such legal transactions that are not conducted in execution of their entrepreneurial activity.

(3) Upon the special wish of the orderer, expressed in writing, and at his expense, we will insure the delivery against theft, breakage, transport, fire and water damage, as well as any other insurable risks.

(4) If no different agreement is reached in our offer or the written order confirmation, payments shall be due in cash strictly net within 30 days of the date of the invoice without deduction, or within 8 days with a 2 % discount. Any discount agreement shall not refer to the scrap and alloy surcharges named in the invoice.

Any incoming payments shall be used first to settle the oldest claims if the debtor does not expressly specify anything else in the payment. For the deduction of discount, this leads to the prerequisite that all invoices with earlier dates must be paid first.

Partial payments are not subject to discount. Separately charged freight and packaging costs are not subject to discount. Bills of exchange shall not be deemed means of payment.

(5) Retention of payment by the orderer shall be excluded if the counter-claims result from any different contractual relationship. If the counter-claim is due to the same contractual relationship, retention of payments shall only be permitted if they are undisputed or finally determined counter-claims.

(6) The orderer can only declare set-off against any counter-claims if these are undisputed or finally determined claims.

(7) In case of default of a claim, we shall have the right to retain the deliveries or any other services from any contracts until complete performance of any claims due to us against the orderer. The orderer may prevent this retention right by providing a direct guarantee from a large bank, Sparkasse or Volksbank, unlimited in time and covering the amount of all outstanding claims. After unsuccessful expiration of any payment period set for the orderer, we shall have the right to withdraw from any other contracts not yet executed as well. The assertion of any further default damage is reserved.

(8) The orderer agrees that we may set off against any claims of the orderer even if any due dates of the mutual claims are different.

### **Basis for Credit**

(1) The prerequisite for the supply is the orderer's creditworthiness. If we receive any information after conclusion of the contract that makes granting of a credit not appear safe at the amount resulting from the order, or if any facts occur that permit any doubt in this respect, in particular if there is a considerable deterioration of the asset situation (forced execution, cessation of payment, insolvency, dissolution of business, passing of business, etc.), we shall have the right to demand an advance payment or collateral or cash payment without consideration of any contrary earlier agreements.

(2) Subject to the same prerequisites, we shall have the right to inspect the orderer's warehouse and to preliminarily secure any goods subject to reservation of title after delivery to the orderer, without consideration of any contrary earlier agreements, until

cash payment is made. Transport and storage fees shall be assumed by the orderer.

### **Intellectual Property and Commercial Property Rights**

(1) We reserve title and copyright in any documents that are part of the offer, such as figures, drawings and similar, that we have compiled or developed. They must not be made accessible to any third parties and they must be returned to us upon request.

(2) Regarding any drawings and figures provided by the orderer and/or any specifications made by him, the orderer guarantees that these do not infringe any third-party property rights, no matter where (locally) these property rights are present. The orderer guarantees that he will perform ongoing research in this respect. If production of the contractual object leads to any infringement of copyright, trademark or other property rights of third parties or to any violation applicable law due to specifications made by the orderer, the orderer shall be obligated to indemnify us against any claims resulting from this at first request and to in particular bear the appropriate costs for legal defence.

If any third parties forbid us to produce and/or deliver the contractual object with reference to copyright, trademark or other property rights or with a reference to the violation of applicable law, we shall have the right to cease any further work in this respect and to demand reimbursement of any resulting damage from the orderer.

### **Delivery Times and Delivery Periods**

(1) Where the order confirmation does not expressly determine anything different, the indicated delivery dates shall be non-committal information for the compliance with which we assume no warranty.

(2) The delivery period shall commence on the day of final order confirmation, but not before complete clarification of all execution details, in particular receipt of any documents to be delivered by the orderer and receipt of any

agreed downpayment due at conclusion of the contract. Compliance with the delivery period shall also require compliance with the orderer's contractual obligations.

(3) The agreed delivery period shall extend notwithstanding our rights from default by the period during which the orderer is in default with its obligations from this or any other contract.

(4) The delivery period shall be complied with if the object of delivery has left our factory by its end or, in case of collection by the orderer, if the delivery is ready for shipping and the orderer is informed of this. The orderer must not refuse any partial deliveries except if they are unreasonable for the orderer.

(5) The delivery period shall be extended appropriately in case of measures in the scope of legal labour dispute, in particular in case of strike and lock-out in the own operation and in third-party operations independently of the legal status of the labour dispute measures, provided that we are not at fault for acceptance, prevention or avoidance measures; this shall also apply in case of any unforeseen events such as export and import prohibitions, special statutory or authority provisions, lack of raw materials or fuels, fire or traffic blocks or force majeure where such obstacles verifiably influence completion or delivery of the object of the delivery and occur at a previous or subsupplier or transporter and are not due to our fault, with liability for slight negligence being excluded. If the above circumstances make it impossible for us to render our performance, we shall also have the right to withdraw from the contract.

(6) In case of default on our side, the orderer shall have the statutory rights. The orderer shall, however only have a right to claim damages under the prerequisites stipulated in the section - Passing of risk - Liability for defects - Damages - paragraph (6), with the amount of the resulting delay damage in case of slight negligence being limited to 0.5% per full week of the delay, and at most to 10% of the purchasing price, except of the orderer can prove that he incurred a higher damage from the default.

Upon our request, the orderer shall be obligated to declare within an appropriate period whether he demands performance in spite of the default or refuses performance due to the delay.

(7) If shipping is delayed upon the orderer's request or for any reasons for which the orderer is at fault, we shall charge the costs resulting from storage to him, starting one month after readiness for shipping has been reported; at storage in our factory, this shall be at least 0.5% of the invoiced amount per commenced month. The assertion of further rights from default shall not be affected.

(8) Additionally, we have the right to dispose of the object of the delivery otherwise after setting and unsuccessful expiration of an appropriate grace period or acceptance and to supply the orderer anew with an appropriate period or to withdraw from the contract and/or to claim damages.

### **Reservation of Title**

(1) We reserve title in the goods delivered by us and any objects resulting from their finishing and processing until any current and future claims we have against the orderer from our business relationship, including conditional and temporary claims, no matter the legal reason, have been settled. The secured claims shall specifically include the claim to the purchasing price. The secured purchasing price claim in the above meaning shall also include any expenses resulting in connection with the conclusion and execution of the purchasing contract, preservation of the purchased object and assertion of the rights reserved by us in the purchased object. These shall specifically be: Costs for acceptance, shipping, packaging as well as interest after the due date and default interest, costs for placement, storage and insurance and any costs that arise in assertion of our rights in or out of court.

In case of a legal transaction with an entrepreneur, we shall have the right of asserting the rights from the reservation of title without withdrawing from the contract at default of payment of the orderer.

(2) The orderer shall be obligated to separately store and mark the goods subject to reservation of title. Any finishing and processing shall be performed by the orderer for us without any obligations for us resulting from this. If the orderer processes our reserved goods with any other items that are his property, we shall be due sole title in the new object.

If the orderer processes our reserved goods with any other items that are not his property, we shall be do shared title in the new objects at the ratio of the value of the processed reserved goods to the other items at the time of processing and finishing. The orderer hereby transfers his co-property shares resulting from combination, blending or mixing of the delivered goods with any other objects to us. The orderer shall possess the objects as custodian. He shall be liable for his own wilful and negligent behaviour as well as for that of his statutory representatives and the persons he uses to perform his liabilities. The orderer may sell the delivered goods and the object resulting from their finishing and processing, combination, blending and mixing, only in the proper course of his business against cash payment or subject to reservation of title. Transfer as collateral, pledging and other disposals that endanger our rights shall not be permitted.

(3) The orderer hereby assigns any claims he is due for any other legal reason referring to the reserved goods, including those to damages due to damage or destruction of the reserved goods, no matter if they are contractual or statutory claims against the damaging party, insurance company or other third parties, and to any claims to reimbursement for enjoyed use, in full.

(4) If the reserved goods are sold by the orderer together with his own goods or third-party goods in an unprocessed condition, the orderer assigns the claim resulting from the further sale to us at the amount of the value of the reserved goods. If the purchasing price share arising for the sale of our reserved goods is higher than the value of our reserved goods, we shall also be due the additional amount.

(5) If we acquire shared title in the new object due to finishing or processing of the reserved goods with goods from other suppliers, the assignment at further sale shall include the share of the claim corresponding to our share in the title as far as this can be determined, and otherwise the value invoiced for our processed reserved goods.

(6) If finishing or processing takes place in the scope of a contract for works or work delivery contract, the orderer shall assign the prorated claim to the wage for the work to us that corresponding to the value of the processed reserved goods.

(7) If the above claims are introduced into a current account relationship by the orderer, the current account claims are hereby assigned to us in full. After balancing, they shall be replaced by the balance, which shall be deemed assigned up to the amount of the original claims from the current account. At termination of the current account relationship, this shall apply accordingly for the final balance.

(8) As long as the orderer meets his obligations, the assignment shall be treated as a silent assignment and the orderer shall be authorised to collect the claim. The orderer shall book the amounts received or the assigned claim separately and keep them separately.

(9) if the contracts concluded by the orderer in the scope of further sale of the reserved goods are invalid or void, the orderer hereby assigns any statutory claims to us that he is due in spite of the assigned contractual claims, in particular claims from enrichment, at the same scope.

(10) If and as far as registration and/or performance of any other requirements is a prerequisite for the effectiveness of the reservation of title, the orderer shall be obligated to perform any actions required for this at his expense and to provide any required information.

(11) We commit to releasing the reserved goods and any objects or claims replacing them as far as their value exceeds the amount of the secured claims by more than 20%.

(12) The orderer shall inform us of any third-party access to the reserved goods or the assigned claims without delay and including any documents required for intervention. The costs for intervention shall be assumed by the orderer.

(13) The costs for return transport of the reserved goods shall be assumed by the orderer.

(14) If the orderer's liabilities are settled by participation in direct debiting, any rights we have from the above reservation of title shall continue until revocation of the direct debits is no longer possible, provided that our rights are not preserved anyway based on the above provisions.

### **Passing of Risk - Liability for Defects – Damages Claims**

(1) Any risk shall pass to the orderer at handover of the object of delivery to the forwarder or carrier. This shall also apply in case of delivery carriage paid, cif, fob and similar transport clauses. At transport by our vehicles and employees, any risk shall pass to the orderer at termination of the loading process. In case of delivery delay not due to our fault, any risk shall pass to the orderer on the day of receipt of the notification of readiness for shipping.

(2) Examination of the goods and reporting of defects shall be subject to the provisions of the German Commercial Code with the following supplementary proviso:

a) The orderer shall be obligated to examine the properties of the goods relevant for the respective use for obvious defects without delay after delivery and to report any obvious and/or recognised defects to us in writing without delay, and to cease finishing and processing immediately. In case of intended installation or mounting of the goods, the properties relevant for installation or mounting shall also include the internal properties of the goods and a random-sample function test or test installation is to be performed before installation or mounting.

b) Violation of the obligations to examine and report shall be a particularly severe neglect of the diligence due on the market in the relationship towards us and thus shall consist of gross negligence that excludes any claims for defects. Deviating provisions shall only apply if we have maliciously concealed the defect and/or if we have assumed any guarantee for the properties of the goods.

(3) The orderer shall initially be due subsequent performance as a claim from defects. In this respect, we shall, at our choice, initially meet our warranty obligations by improving or replacement delivery. If both forms of subsequent performance are subject to unreasonable costs in the meaning of § 439 para. 4 German Civil Code, we shall have the right to refuse both types of subsequent performance.

(4) If subsequent performance fails or if we refuse it for a justified reason, the orderer may demand reversal of the contract (withdrawal) or reduction of the compensation (price reduction). In case of inessential violations of the contract, in particular in case of inessential defects, the orderer shall not have a withdrawal right.

(5) If the purchaser has installed the defective object into another object or mounted it on another object according to its nature and purpose, the purchaser may demand reimbursement of the required expenses for removal of the defective object and installation or mounting of the improved or delivered object without defects. Subsequent damage of the purchaser due to the defect, such as lost profit, costs from failure of operations, or additional costs for replacement procurement do not qualify as removal and installation costs and therefore shall not be subject to reimbursement for expenses pursuant to § 439 para. 3 German Civil Code.

(6) Damages claims of the orderer, no matter the legal reason, shall be excluded. This shall not apply in case of mandatory liability under the product liability act, in case of wilful intent or gross negligence, in case of damage due to our fault from violation of life, body or health, non-compliance with guarantees or violation of essential contractual obligations. Damages for violation of essential contractual obligations shall, however, be limited to the foreseeable damage typical for the contract except in case of mandatory liability due to wilful intent or gross negligence or in case of damage from violation of life, body or health or non-compliance with any guarantees or due to claims under the product liability act. Claims based on the Data Privacy Act are expressly not covered by this provision regarding liability.

(7) It shall be the orderer's exclusive responsibility to ensure that the goods are suitable for his specific purpose in quality and properties. Lack of suitability shall therefore not found any claims except if we have expressly promised suitability of the goods for the intended purpose in writing.

Property information shall not be any guarantees in the legal sense. Any manufacturer's guarantees shall not be affected by this.

(8) Any claims from defects of the orderer shall expire within one year of delivery of the goods.

Anything different shall only apply if we have maliciously concealed the defect or if the law mandatorily requires any longer periods according to § 438 para. 2 no. 2 German Civil Code (buildings and objects for buildings) and § 445 German Civil Code (recourse claims).

(9) Damages claims of the orderer due to a defect shall expire within one year of delivery of the goods. This shall not apply if the defect is due to wilful intent or gross negligence or non-compliance with guarantees, or in case of any damage due to us from violation of life, body or health.

(10) Negotiations between the parties shall not lead to inhibition of expiration pursuant to § 203 German Civil Code.

(11) In the cases of subsequent performance, the expiration period shall not recommence.

(12) Consultation by our employees shall not found any contractual legal relationship, nor any secondary obligation from the agreement, so that we are not liable from any such consulting, subject to any other agreements expressly granted in writing.

### **Product Liability**

We shall provide product liability according to the respective laws of the Federal Republic of Germany. Any liability exceeding the statutory provisions is hereby excluded. Any payments for damages that do not result from the statutory provisions on product liability and that are not required by law are hereby expressly refused.

### **Privacy Clause**

The orderer is herewith informed that person-related data is collected, stored and processed, to the extent that it is permitted by law. For further information on the subject, please see the statement on data privacy, which is available on the internet at [www.guelde.de](http://www.guelde.de) and which can also be requested from the data security officer of Gülde GmbH & Co. KG.

**Final Provisions**

(1) The place of performance and the place of jurisdiction for any disputes from any transaction to which these general terms and conditions apply shall be our business residence, both for claims that are asserted by us and for claims that are asserted against us. This proviso shall not apply to any business transactions with orders who are not merchants in the meaning of the Commercial Code nor special funds under public law, nor legal entities under public law, and to transactions with a merchant that are not part of his commercial operation.

(2) The relationships between us and the orderer shall be subject to the law of the Federal Republic of Germany exclusively, but subject to exclusion of the provisions on conflicts of laws and the Convention of the United Nations on Contracts for the International Sale of Goods (CISG).

(3) If individual provisions of these general terms and conditions are or become invalid, this shall not affect the effectiveness of the remaining provisions. The invalid provision shall be deemed replaced by such legally valid provision that comes as close as possible to the purpose pursued with the invalid provision.

As of: June 2018