

General Business Terms of Metallwarenfabrik Gemmingen GmbH, 75050 Gemmingen

1. Validity of our General Business Terms

- 1.1 For the term of the business relationship our General Business Terms will apply exclusively to business relations between us and the customer, including for future orders and replacement deliveries unless our order confirmation stipulates otherwise or we approved an amendment of our confirmation order or General Business Terms by the customer in writing. They will be regarded as having been recognized upon placement of the order; by the latest upon acceptance of the goods or service. Without the written confirmation of our Management they cannot be rescinded or amended, not even through declaration of our customer's own general business terms or in agreement with one of our employees.
- 1.2 We hereby object to any deviating terms on order forms or in our customer's order correspondence. These will not be binding for us even if we do not object to them or do not object to them in every case or where we carry out delivery after receipt of the deviating purchase terms.
- 1.3 Ancillary agreements and guarantees within the framework of contractual negotiations and after confirmation of the order, as well as amendments or addenda to the contract being concluded will require our written confirmation.
- 1.4 Obvious errors, spelling, printing and calculation errors are not binding for us. The offer's corresponding documents such as illustrations, drawings, calculations, weight and measurements will only be approximate unless otherwise agreed. Such data, in particular regarding the services and use of the products being delivered, as well as DIN norms will only be regarded as agreed features as defined by §§ 434 BGB (German Civil Code), if we declare this explicitly in writing. We can only assume a guarantee for technical data by external manufacturers upon special agreement.

Samples are to be regarded only as approximate display items with regard to quality, measurements and colors.

2. Deliveries

- 2.1 All our offers will be subject to availability and are subject to change with regard to delivery time and volume. Delivery confirmations will be subject to the supply of the products by our own suppliers in compliance with the respective delivery deadlines. Delivery deadlines specified by us, even where they are set in accordance with the calendar, will only specify the approximate delivery period. Accordingly, the lapse of the deadline does not constitute delayed delivery per se unless we specified a "binding delivery deadline" in writing or confirmed such a deadline in writing. Delays in the customer's scope of responsibility will extend the delivery deadline accordingly.
- 2.2 Foundry parts delivered by the customer are exclusively subject to his liability and must be in flawless condition. Must be delivered free of charge and in an adequate volume (+10%) with free shipping.
- 2.3 In cases of strike, lock-out, operational failure, force majeure and other obstructions for which we are not liable we have the right to postpone delivery for the period of obstruction and to refuse delivery entirely where the obstruction cannot be removed permanently and to rescind the contract.
- 2.4 Damage compensation claims due to delayed or partially delayed delivery or due to non-delivery are excluded unless the delay or failure to deliver was caused willfully or by gross negligence by us or our vicarious agents.
- 2.5 Part-performance and partial deliveries are permitted to a reasonable extent. We may charge installment payments to a reasonable extent.
- 2.6 Where after conclusion of the contract we become aware of facts from which we can infer significant financial deterioration of the customer according to business judgment, in particular delayed payment for previous deliveries, we will have the right to demand advance payment or provision of security and to rescind the contract where the customer refuses to provide these; any partial deliveries already made will be charged immediately.

3. On-call Order

- 3.1 Unless other dates have been agreed on in writing, on-call orders will be subject to a maximum acceptance deadline of six months.
- Where this acceptance deadline is exceeded, we have the right to charge the total amount, to deliver it to our customer or to store the goods at his expense.
- 3.2 This will also apply where the acceptance of the goods ordered does not take place at the agreed date.
- 3.3 In the cases set out under Item 3.1 and 3.2 the quality and danger risk will pass to the customer at the time the acceptance deadline or agreed acceptance date is exceeded.

4. Conclusion of the Contract

- 4.1 All delivery orders, including those made to our employees, will only be binding where they are confirmed in writing by our headquarters in Gemmingen unless delivery was made immediately after placement of the order.
- 4.2 In the latter case delivery will be regarded as the acceptance of the delivery order placed to us, in the case of partial delivery, the delivery order will be regarded as having been accepted only to the extent of the partial consignment.
- The same will apply to further partial deliveries to the extent that there is no written confirmation of the total volume on our part.

5. Retention of Title

- 5.1 The goods delivered by us will remain our property until the complete payment of all outstanding claims from our business relationship with the customer, including ancillary claims. In the case of breach of contract by the customer, in particular delayed payment, we will have the right to take back the goods. The customer will allow us to enter his premises, property and construction sites for this purpose and will do everything to facilitate the return transport. The contract will only be rescinded through the reclaiming and pledging of the goods where we expressly declare this in writing.
- 5.2 The customer may only resell or process the goods subject to the retention of title in the regular course of business subject to the condition that no assignment prohibition on advance claim assignments as set out in Item 5.3 has been agreed on between him and the customer in accordance with § 399 BGB.
- Neither may the customer pledge the goods subject to the retention of title to third parties or furnish them as collateral. We must be informed immediately in writing of all details concerning pledging and other risks to our rights from third parties, which we require for an intervention lawsuit as set out in § 771 ZPO. Where we suffer a financial loss because a third party is unable to pay us the legal and out-of-court expenses of a lawsuit according to § 771 ZPO, the customer will be liable. In the case of pledging or other risks to our rights by third parties the customer must inform the third party immediately of our retention of title.
- 5.3 The customer hereby assigns to us all claims and security rights against his own customers or third parties incurred to him from the resale regardless of whether the goods are sold unprocessed or after processing. This will also apply with regard to the claim to issue of a covering mortgage as set out in § 648 BGB. We accept the assignment. Where the goods are resold together with other goods not belonging to us the advance assignment will only apply up to the amount of the value of our goods including VAT at the statutory rate and to the corresponding amount. Until revocation by us, which is possible at any time, the customer of the contractual products supplied by us will be entitled to collect the claim assigned to us. Our authorization to collect the claims assigned ourselves will remain unaffected. However, we will only use this authorization where the customer fails to fulfill his duties toward us and is in arrears with payment. In this case the customer must inform us upon request of the assigned claims and the debtors and provide us with all data and papers necessary for debt collection.
- 5.4 The processing or reshaping of the goods by the customer will always be carried out for us. Where the goods are processed or mixed inseparably with other items not belonging to us we will acquire a share in the ownership of the new item in proportion to the ratio of the value of our goods to the other goods. Where our goods are combined with other movable items to make a single item or are mixed inseparably and the item is to be regarded as the main item, it is agreed that the customer will proportionally assign to us a share in the ownership and the main item will belong to him. He will safeguard the ownership or share in ownership on our behalf. The same will apply to the item produced through processing or combination or mixture as to the goods subject to the retention of title in other respects.
- 5.5 We will be obligated to release the security we are entitled to against the customer in accordance with the above terms where the values of the securities do not exceed the value of the claims being secured by more than 20%.

6. Prices

- 6.1 Our new price list, subject to price increases and/or technical changes, is the basis for the prices.
- 6.2 Shipping and packaging costs will be due additionally on all prices unless otherwise stipulated in a written agreement.
- 6.3 Where an order consists of several partial deliveries, each partial delivery will be regarded as a separate business which does not affect the remaining partial deliveries and will be charged separately. This will also apply to the shipping and packaging costs.
- 6.4 Value added tax is not included in the prices quoted by us and will be charged separately.
- 6.5 Where we fail to deliver the products later than four months after conclusion of the contract in accordance with the contract we will be entitled to a price increase commensurate with the increase of our primary costs.
- 6.6 Special services will be charged according to time and effort expended; in the case of customized production we may demand a down-payment of at least 50% of the price.

7. Shipping, Transport Risk

- 7.1 The transport risk will pass to the customer upon handover of the goods to our warehouse, where the customer collects the goods and in the case of shipment, including freight paid delivery, upon the handover of the goods to the shipping agent or other person entrusted with shipment by the customer.
- We will choose the shipping route and means. Packaging will not be on an individual basis, but exclusively in accordance with transport and production-technical and environmental policy aspects. The larger measurement unit will determine the length of the packaging in every case.
- 7.2 The customer must have any externally visible damage to our consignments confirmed in writing by the transport company upon receipt of the goods.
- 7.3 Where shipping is delayed at the request or fault of the customer the goods will be stored at the costs and risk of the customer. In such a case notification of readiness for shipping will be equivalent to shipping. The invoice for the goods will be due immediately upon storage.
- 7.4 Where transport is carried out with our own vehicle or with third party vehicles, transfer of the goods will be regarded as having been effected by the latest they are available to the recipient before delivery destination on a paved road or on the truck. Where the delivering party deems it impossible to enter, transfer of the goods will take place where trouble-free entry and departure of the vehicle is possible.
- 7.5 Unloading will exclusively be the customer's responsibility and he must ensure that there is suitable unloading equipment and the necessary staff. Any waiting times will be charged in the local shipping of goods in accordance with KVO and GNT.

- 7.6 Where the customer requests deviation from the contractually agreed assistance with unloading (including unloading equipment), further transport or application, this expenditure will be charged additionally. Cooperation with this work will not imply the assumption of additional liability or risk assumption.

- 7.7 Recyclable packaging will only be loaned to the customer. Return of the packaging units is to be reported by the customer in writing within three weeks and the packaging is to be provided. Where the customer fails to do this, we will have the right to retroactively charge leasing fees or the value of the packaging, which will be due immediately for payment upon receipt.

- 7.8 In the case of a delivery of the goods on a transport frame the frames will remain our property. The customer is not authorized to pass them on to third parties. He will be obligated to unload our frames as soon as possible and to return them. In other respects, the same will apply as in the case of the recyclable packaging.

8. Claims Based on Material Damage and Liability

- 8.1 Claims based on material damage must be reported immediately in writing in the case of defects detected after careful inspection, but must be received by us by the latest within seven days after handover of the goods to the customer. The same will apply in the case of an incomplete or inaccurate delivery.
- 8.2 Claims based on material damage for hidden defects must be reported in writing immediately after detection, providing all details, to be received by us by the latest within three days.
- 8.3 Claims based on material defects must be made in writing before processing or installation of the goods in every case.
- 8.4 The customer will be obligated to give us the opportunity of detecting the reported material defect on site or to provide us with the alleged defective item or sample upon our request; this failing, liability for material defects will not apply. In the case of transport or breakage damage the goods are to be left in the condition in which they were at the time the defect was detected.
- 8.5 We will provide electrotechnical consulting and calculations upon the customer's special request as ancillary services. Liability for any damage from such services is not being assumed, including not for persons or companies assigned services of this kind by us. This will apply both to damage caused indirectly or directly which are attributable to such services. Products from cutting and casting dies manufactured by us according to drawings provided by the customer by be offered by us to third parties and in particular be represented in our catalogs without this giving rise to a basis for claims by the customer against us.

- 8.6 We are not assuming any liability for damage caused by inappropriate or improper use, defective assembly, operation, alteration or repair not carried out by us, wrong or negligent handling or natural wear and tear. In particular, all claims for damage compensation, lost processing costs and surface treatments not explicitly specified are excluded from liability. We can only accept liability for an identical volume of parts as returned to us, to the extent that the liability is legitimate.

- 8.7 Where in addition to delivery we took on the obligation to assemble the product, our service will be regarded as accepted and approved where visible defects or those detected during inspection are not reported to us in writing in an acceptance record to be signed by both parties to the contract by the latest after seven days after the end of the assembly reported to us.

- 8.8 In the case of legitimate and timely reports of material defects, including deviation from an agreed feature, our liability for defects will be as follows, excluding further-reaching claims by the customer:

- 8.8.1 We may opt to rectify or provide make-up performance of the damaged part or of the entire damaged goods independently or by third parties.

- 8.8.2 Where the customer lodges another material defect report with us after our second attempt at rectification or make-up performance and it cannot be expected that he will tolerate further rectification or make-up performance attempts, he will have the right to either demand a reduction of the purchase price or to rescind the contract with regard to the defective goods in every case. Further guarantee claims by the customer are excluded.

- 8.9 Our liability for material defects will be extinguished:

- 8.9.1 In the case of non-compliance with our operating and installation manual, where the customer provided one, unless it can be proven that the material defect reported by the customer was not caused by this.

- 8.9.2 In the case of independent rectification work by the customer. In such a case, the customer forfeits all claims to material damage.

- 8.10 Claims by the customer based on material damage will expire after 12 months. This will not apply where the law prescribes longer periods as set out in §§ 438 | 2, 479, 634 a | 2 BGB.

- Where we have assumed assembly obligations the aforementioned will apply after acceptance as set out in Item 8.7. All damage compensation claims made against us, regardless of their legal ground, will expire upon lapse of the year after delivery of the goods or completion of the assembly work.

- 8.11 Costs incurred through unjustified claims based on material damage, in particular travel expenses, will be borne by the customer.

- 8.12 All further claims, in particular damage compensation claims of any kind, regardless of the legal ground, including those from illegal acts against us, our legal representatives, vicarious agents and company associates are excluded except where liability is prescribed for cases of willfulness and gross negligence regardless of whether the damage was incurred to the good itself or elsewhere. In such cases however we will only be liable for foreseeable damage, given the circumstances of the individual case. Claims arising from the Product Liability Act will remain unaffected.

9. Product Changes

- We reserve the right to make changes to our products to the extent that they are only a minor impairment of the customer's interests, the basic features of the product remain unchanged through the alterations and the changes are acceptable for the customer. In particular, we reserve the right to make technical improvements.

10. Payment Terms

- 10.1 Our invoices will be due for payment 10 days after receipt of the goods or provision of the services.
- 10.2 Overseas deliveries will be made in return for cash payment or COD or irrevocable letter of credit.
- 10.3 Set-off by the customer with counterclaims not declared res judicata, not recorded by us as such or not ready for decision is excluded. Assertion of a right of retention on the basis of such counterclaims is excluded.

11. Delayed Payment

- 11.1 Default interest is charged at 8% p.a. above the basic interest rate in accordance with §§ 288 Sect. 2, 247 BGB. It is to be set higher or lower where we can prove that higher interest rates apply or where the customer can prove that lower interest rates apply.
- 11.2 Bills of exchange and checks are not equivalent to cash payment; where we accept them it will be exclusively for the purpose of payment. Interest to the minimum amount of 8% p.a. above the basic interest rate as set out in §§ 288 Sect. 2, 247 BGB will be charged on the bill of exchange.

12. Place of Performance, Jurisdiction and Applicable Law

- 12.1 The place of performance is D-75050 Gemmingen
- Where the customer is an entrepreneur as defined in § 14 BGB, legal entity under public law or an estate in public law, the place of jurisdiction-including for lawsuits for bills of exchange and checks will be – D-74072 Heilbronn, or the customer's general place of jurisdiction, as we choose.
- 12.2 Where the customer has no general place of jurisdiction in the Federal Republic of Germany, D-75050 Gemmingen will be the agreed place of jurisdiction.
- 12.3 The laws of the Federal Republic of Germany will apply exclusively to the contract. The Hague Convention on July 1, 1964 on Uniform Laws in International Sale and the UN Sales Convention of April 11, 1980 will not apply.

13. Validity for Consumers

- Where the customer is a consumer as defined by § 13 BGB the legal provisions will apply subject to the proviso that the guarantee period in Sales Law is limited to 12 months for material defects in the case of the sale of used goods. This will not apply where the law prescribes longer periods in accordance with § 438 IB. All damage compensation claims against us will likewise expire after one year after delivery of the goods or completion of the assembly work in the case of legal transactions with consumers, regardless of the legal ground. The customer is being explicitly advised that the purchase price will be due immediately upon receipt of the invoice. The customer will be in arrears with payment by the latest where he fails to effect payment within 30 days after receipt of the invoice. Regardless of the receipt of the invoice, the thirty-day period will commence upon receipt of the goods or completion of the assembly work. The amount of the default interest is set out in §§ 288 | 247 BGB

14. Partial Invalidity

- Should individual terms of the present General Business Terms be wholly or partially invalid or become so due to future amendments of the law this will not affect the validity of the remaining terms. In this case the parties agree to replace the invalid term with a term which comes as close as possible to the contractual purpose.

Gemmingen December 2003