

Scope

The following conditions are applicable only to business persons, legal entities under public law or of public utilities.

§1 Applicability

- (1) Orders become binding only after the supplier has confirmed the order. Variations and additions to the tender shall be made in writing. All offers and tenders are subject to alterations, unless they are explicitly marked as fixed.
- (2) These terms are valid in respect to on-going business and also future business, even if not expressly referred to, as long as the supplier has been advised of these terms at the occasion of a previously agreed to contract.
- (3) Any terms of business on the part of the customer are not applicable unless expressly accepted by the supplier.
- (4) Should a particular term be or become null and void, the remaining terms are unaffected.

§2 Prices

- (1) Unless agreed otherwise, prices are considered to be ex works, packing included, plus VAT - applied at the legally proscribed rate, excluding freight, customs, import duties.
- (2) The final price shall be calculated by weight of inspected and released parts if the agreed method of price determination is by weight of parts.

§3 Delivery and Receipt

- (1) Delivery schedules commence with the receipt of all necessary documentation, down payment or the timely provision of materials, if such were agreed to. The supply deadline is considered fulfilled upon receipt of the delivery advice note, even when the actual delivery is delayed or has become impossible as long as the supplier does not cause the delay.
- (2) If a delivery deadline is not kept due to remiss action by the supplier, but not due to gross negligence or intent, the customer is entitled to seek compensation due to the delay or rescind the contract, excluding further demands of the customer after an appropriate extension. Compensation due to delays is limited to no more than 5% of the delayed portion of the contracted scheduled delivery. A cancellation of the contract is excluded if the delay is due to acceptance delays by the customer. The customer retains the right to sue for higher damages.
- (3) Adequate part delivery as well as reasonable variation of order quantities up to ± 10% shall be deemed acceptable.
- (4) The supplier is obliged to accept follow-on orders with suitable delivery terms, as long as he holds the rights to the moulds, tools and equipment provided by the customer and/or his obligation to keep his own order-related moulds, tools and equipment is still effective. This obligation entails no commitment to earlier price agreements. The same applies to running orders if cost factors (e.g. raw material prices, rates of exchange etc.) change to any considerable extent.
- (5) The supplier may demand a firm commitment to on-call contract periods, manufacturing quantities and delivery schedules three months after receipt of an order at the latest. Should the customer not comply to make such commitments within 3 weeks, the supplier is entitled, after a further extension of two weeks, to withdraw from the contract after expiration of the latest deadline and/or demand compensation.
- (6) The supplier is not bound by any regulation regarding re-sale and may freely dispose of any items of delivery after prior notification of the customer, regardless of any other rights or regulations governing disposal sales, if the customer fails to duly receive the said items.
- (7) Cases of „force majeure“ affecting the supplier or his sub-contractors shall extend the delivery term accordingly. This also applies to interventions by public authorities, difficulties with power and raw material supplies, strikes, lock-outs and unforeseeable delivery problems insofar as they are not attributable to the supplier. The supplier is to notify the customer thereof immediately.

The customer may request the supplier to declare within two weeks whether a cancellation of the contract or a late delivery is appropriate. If the supplier does not respond to the request the customer may rescind the remaining, not yet completed part of the contract.

The supplier is to keep the inconvenience to the customer to a minimum, if necessary by releasing the moulds, tools and equipments for the duration of the impediment.

§4 Provision of Materials

- (1) If the materials are provided by the customer, they are to be delivered at the latter's cost and risk plus an appropriate surcharge for quantity but at least 5%, in good time and in accordance with the agreed specification.
- (2) If he fails to comply with these conditions the delivery term shall be extended accordingly. Apart from cases of „force majeure“ the customer is to bear any additional cost arising, even for the interruptions in production incurred thereby.

§5 Packing, Dispatch, Risk Transfer

- (1) If not specified differently, the supplier chooses packing, mode of transport and transport route.
- (2) The transport risk transfers to the customer upon goods leaving the works, even if delivery is free ex works. If the customer delays a delivery, the risk already transfers to the customer after the issue of the dispatch advice note.
- (3) As the written request of the customer, the goods will be insured at his expense against stock, breakage, transport and fire damage.

§6 Reserved Ownership

- (1) Deliveries remain the property of the supplier until all claims of the supplier on the customer have been met; even when the purchase price for specially marked claims has been met. For account customers the reserved property rights to the delivered goods (reserved ownership goods) are in force as security for the supplier until the balance has been paid in full. If payments are made by means of a bill of exchange, then reserved ownership is not transferred until the bill of exchange has been cleared.
- (2) Further processing or treatment of supplied goods by the customer may only be carried out by excluding the ownership rights of the customer according to § 950 BGB (Federal Common Law of Germany) as contracted by the supplier. The supplier becomes co-owner of the thus produced goods to the proportional value of the net manufacturing costs to the net post-manufacturing processed cost of the thus produced goods, which serve as reserved ownership goods to secure the property claims of the supplier as per clause 1.
- (3) Further processing (in combination or addition) by the customer with other goods not owned by the supplier, §§ 947, 948 BGB (Federal Common Law of Germany) are applicable, resulting in proportional co-ownership by the supplier in the resulting goods, which are now considered reserved ownership goods.
- (4) The re-sale of reserved ownership goods by the customer is only permissible as part of normal commercial practise and on condition that the customer reaches an agreement with the supplier regarding reserved ownership goods as defined in clauses 1 to 3. The customer is not entitled to take any other action in respect of reserved ownership goods, in particular pawning, mortgaging or using the goods as security.
- (5) The customer relinquishes herewith all claims, which may result from the re-sale of goods and all other justifiable claims, including associate rights on his customers to the supplier. The customer is duty-bound to inform the supplier immediately and supply all necessary documentation to secure the rights of the supplier against the customers of the customer.
- (6) When reserved property is re-sold by the customer after further processing action in combination or addition with other goods, not owned by the supplier, as outlined in clause 2 and 3 above the customer owes all purchase price claims according to clause 5 to the account value of the reserved ownership goods of the customer.
- (7) Should the value of the securities held by the supplier exceed the total billed value of the goods by more than 10% the supplier must release such securities to a commensurate value; the supplier may nominate the securities to be released.
- (8) The supplier must be notified without delay of any confiscation or seizure of reserved ownership goods by a third party. All associated costs due to such intervention are to be born by the customer inasmuch as costs are not born by third parties.
- (9) Should the supplier, taking action according to the above clauses, make use of his right to take back the reserved ownership goods, the supplier is entitled to an unencumbered sale or auction of said goods. Laying claim to restricted ownership property and in particular the request of surrender represents a cancellation of the contract. The value of the returned reserved ownership goods shall be as sold or auctioned and no higher than the agreed contract price. Further claims for compensation, in particular compensation for loss of earnings, are reserved.

§7 Payment Terms

- (1) All payments are to be made in € (EURO) and are to go solely to the supplier.
- (2) Unless otherwise agreed the purchase price is to be paid as follows:
 - a) for moulds 1/3 payable on receipt of the order, 1/3 payable on presentation of the outturn samples and 1/3 payable on approval of the outturn samples agreed in the contract – at the latest 4 weeks after presentation of the said samples – all three without any discount. In cases of amended orders from the customer prior to production of the moulds and confirmation by the supplier all costs incurred prior to that are to be refunded.

- b) for finished parts or other works, payment with 3% discount on advance payment or cash on delivery, with 2% discount on payment within 14 days and without discount within 30 days from the invoice date. Any discount will only be granted if all earlier invoices due have been settled.
- (3) Payments made on accounts in arrear attract an interest charge of 8 percentage points over and above the applicable base rate of the ECB, unless the supplier proves higher damages. The customer may prove lower damages.
 - (4) Payment by cheque or notes of exchange may be refused. If cheques or re-discountable bills of exchange are accepted as due payment all associated bank charges are to be met by the customer.
 - (5) The customer may offset an account or use his right of retention only if his claims are indisputable or established in law.
 - (6) Sustained non-compliance with conditions of payment or circumstances, which raise serious doubts as to the credit worthiness of the customer, will result in claims for all payments becoming due immediately. In this case the supplier is also entitled to demand pre-payment for all outstanding deliveries and even to cancel the contract if an appropriate deadline has not been kept.

§8 Moulds, Tools, Equipment

- (1) The price for tooling also contains the once-off costs for the making of patterns, but does not contain the costs for test and processing procedures, nor costs incurred by customer initiated alterations. Any further patterns required by the supplier are at his own costs.
- (2) If the supplier is the owner of the moulds, tools and equipment, these are only to be used for the customer's orders, provided the customer fulfills his payment and acceptance obligations. The supplier's obligation to keep the moulds, tools and equipment expires 2 years after the last part-delivery and after prior notice has been given to the customer.
- (3) If the customer is the owner of the moulds, tools and equipment the supplier has the right to retain the moulds, tools and equipment until the customer has fulfilled all the conditions of the agreement. The hand-over of the moulds, tools and equipment to the customer is replaced by the supplier's obligation to store them. Regardless of the customer's legal claim to hand-over and of the life of the moulds, tools and equipment, the supplier is entitled to sole possession of the moulds, tools and equipment up to acceptance of an agreed minimum unit quantity and/or up to the expiry of a set period. The supplier is to mark the moulds, tools and equipment as someone else's property and insure them, if the customer so requests, at the latter's expense. In the case of hand-over of the moulds, tools and equipment and the associated transfer of know-how, the supplier has a right to appropriate compensation.
- (4) The liability of the supplier in respect of storage and care and maintenance of moulds, tools and equipment owned by the customer as per clause 3 above or moulds and tooling loaned by the customer to the supplier is restricted to like treatment of proprietary property. Costs incurred in care and maintenance and insurance are the responsibility of the customer. The obligations of the supplier cease when, after completion of the contract and a corresponding request by the supplier, the customer fails to collect the moulds and tooling within an appropriate period. The supplier has the right to withhold moulds and tooling as long as the customer has not complied with his contractual duties to the fullest extent.

§9 Liability for Faults / Product Liability for Material Defects

- (1) The customer alone is liable for the design and fitness for purpose of the parts, even if he received advice during the development phase, unless the supplier provides the corresponding written undertaking.
- (2) Defects are to be notified without delay, hidden defects are to be noted immediately after discovery. In either case the warranty only extends to one year after risk transfer, unless agreed to differently or if the statutory limit of § 438 para. 1 clause 2 BGB, 479 para. 1 BGB and § 634a para 1 clause 2 of the German Federal Common Law (BGB) proscribes longer warranty periods as mandatory.
- (3) The supplier must re-supply if the warranty claims are found to be justified – in which case the production samples released by the customer determine the expected quality and finish. The customer is entitled to reduce the purchase price or rescind the contract if the supplier does not fulfil his duty to re-supply within a reasonable period or replacements fail repeatedly. Further claims, in particular claims for loss or damages due to defective supplies or subsequent resulting damages are regulated by § 10. Replaced parts are to be returned to the supplier at his request and cost.
- (4) Liability under national product liability legislation is unaffected.
- (5) Reworking or inappropriate processing by the recipient shall result in the loss of any claims based on faults. The customer is only entitled to rectify the goods in order to avoid unreasonably serious damage or in case of delayed fault removal by the supplier, and to claim compensation for the appropriate costs, after first notifying the supplier.
- (6) Normal wear and tear caused by contractual usage does not imply any rights to make warranty claims.
- (7) Rights to referred warranty provisions according to §§ 478, 479 of Federal Common Law (BGB) only allow the consumer to make claims within the scope of the legislation and do not regulate the understanding of good will provisions with the supplier and assume that any party with referred warranty rights will duly observe their duty, in particular the duty to report defects.

§10 General Limitations of Liability

In all cases, which differ from the conditions outlined above, and to which the supplier is obligated by reason of contractual or legal liability to pay compensation or reimbursement, his liability is limited only to cases in which he, his employees or subcontractors are guilty of culpable intent, gross negligence or injury to life, limb and health. The statutory product warranty is unaffected independent of any blame as well as any liability in respect of the legal fulfillment in regards of any product integrity warranty; as is the liability for culpable negligence of major contractual duties and obligations, which are, however, limited to typical damages as may be predicted in such contract situations, except for cases outlined in clause 1 above. However, the above rule does not imply a reversal of the onus of proof, putting the customer at a disadvantage.

§11 Commercial Protection and Legal Limitation

- (1) For all deliveries based on models, patterns or parts supplied by the customer the customer guarantees that the commercial rights of third parties in the country for which the goods are being manufactured are not injured. The supplier will advise the customer of any rights known to him. The customer has to release the supplier from any claims of a third party and pay compensation for any resulting damage. The supplier is entitled to stop all work – without any further examination of the legal position – until the legal position has been clarified by the customer and the third party involved after an injunction covering the supply or production of the goods to protect the commercial rights of the third party has been issued.
- (2) Any drawings and patterns that had been made available to the supplier, but did not eventuate in a contract will be returned if requested; else the supplier is entitled to destroy the same three months after the issue of the quote or tender. The same obligation applies to the customer. The party entitled to dispose by destruction must inform the other party of the intention prior to doing so and in good time.
- (3) The supplier retains all copyrights and applicable rights to commercial protection, in particular the rights of utilization and exploitation (usufruct) of models, moulds, tooling, designs and drawings made by him or for him under contract by a third party.
- (4) For all other legal product limitations § 9 applies.

§12 Place of Performance and Jurisdiction

- (1) The place of performance is Bietigheim-Bissingen.
- (2) The legal venue, including matters such as deeds, notes of exchange or cheques, is the local court of the supplier or customr by choice of the supplier.
- (3) Only German law applies. The application of the United Nations convention of 11 April 1980 on contracts for the international sale of goods (BGBl 1989 page 586) as it applies to the Federal Republic of Germany (BGBl 1990 page 1477) is not valid.