

GENERAL TERMS AND CONDITIONS OF DELIVERY AND PAYMENT (ALZB)

GSI German Service International GmbH, Grünwald (Supplier)

I. Conclusion of contract and content of contract

- a) All offers are without engagement on our part.
 - b) The General Terms and Conditions of Supply and Payment shall apply in conjunction with the Supplier's order confirmation to any and all contracts with businessmen within the sense of Section 14 BGB (German Civil Code), with legal entities under public law, and with special funds under public law. Buyer's terms and conditions of business shall not become content of the contract unless the Supplier expressly consents to their inclusion.
 - c) Each acceptance of deliveries confirms the effectiveness of the content of the order confirmation and of these General Terms and Conditions of Delivery and Payment
 - d) Our representatives are authorised to mediate business transactions. They are not authorised to receive payments on our behalf. All business transactions shall, in all cases, not be binding for the supplier until they have been confirmed to the customer in writing.
2. a) The present terms and conditions shall also apply even without further reference to them in subsequent contracts.
 - b) Nullification, amendment or subsidiary agreements, as well as assurances of employees, require the written confirmation of the supplier. Information in prospectuses and advertisements shall not apply as an agreement of features.
 - c) The rights of the customer from the contract can only be transferred with the prior consent of the supplier.
 - d) The proviso of the covering of requirements for raw materials and foreign currency is reserved, so that the supplier is only obliged to deliver if covering of requirements with the necessary raw materials and other materials at the prices applicable or normal on the day (date) of the order confirmation is possible.
 - e) The Supplier holds the sole and exclusive copyright to any commercial and technical documents he has prepared, in particular to calculations and drawings. Finished documents may be disclosed to third parties solely with the Supplier's express written consent. Upon request, they shall be returned to the Supplier immediately. Any right to retention shall be excluded unless the assertion thereof is based on a claim which has been finally determined by a court of law or which is undisputed by the Supplier.
3. a) Special agreements must be made for international deliveries.
 - b) Goods sold for the home market must be used or exploited exclusively in the home market, goods sold for export must be used or exploited exclusively abroad.
 - c) In all cases of export, the supplier must, at his request, be provided with evidence of export in a nonprocessed condition.
 - d) Should the customer violate b) himself or through third parties and in the event of failure to provide evidence as per c), the supplier can demand a higher price or compensation for damages.

II. Prices

1. Should unforeseen increases in material, wage or transport costs, taxes and charges occur between conclusion of the contract and delivery, the supplier shall be entitled to make a price adjustment corresponding to these factors, unless delivery is to be made within four months following conclusion of the contract.
2. The writing-off of call-offs shall be non-binding on the basis of the deliveries made. If call-offs are made over and beyond the order quantity, the supplier shall be entitled to cancel the surplus amount or to invoice this at the daily price.
3. With reworking transactions the agreed prices and conditions presume that the necessary reworking material will be made available to the supplier in good time prior to execution of the order.
4. a) Through remuneration of costs or shares of costs for tools, the customer shall not acquire any rights whatsoever to these tools or to reimbursement of services for these tools.
- b) Upon request by the supplier, tools not made full use of in the manufacture for the customer must be taken over by the customer within 2 years from the last use by the supplier against payment of the tool costs not covered. After a further year, the supplier can scrap these.
5. Periods for payment, rebates and cash discounts require a separate agreement.

III. Freight and packing

1. Dispatch shall be made unfranked. If the supplier has assumed responsibility for the freight, he shall be at liberty, either to deliver freight-free or to reimburse the freight envisaged by the contract. Additional freight costs, including those resulting from the particular characteristics of the good (bulky goods etc.), shall be for the account of the customer. In the event of delivery to a station to which the freight is cheaper than envisaged in the contract, only the freight incurred shall be reimbursed.
2. Packing desired or considered necessary by the supplier shall be invoiced. In the event of return to the supplier free of freight and charges and in good condition, reimbursement shall be made on the basis of a special agreement.
3. Spools shall remain the property of the supplier. They must be returned to the supplier free-house immediately following emptying in reusable condition. Spools not returned shall be invoiced at their new price. Repair costs shall be invoiced for damaged or rusty spools.

IV. Acceptance

1. a) If the goods are to be tested in accordance with special conditions, the acceptance shall be in the plant of the supplier. Material acceptance costs shall be borne by the supplier, personal travel and accommodation expenses of the acceptance delegate shall be borne by the customer.
- b) Should the customer not perform acceptance in the supplier's plant, the goods shall apply as accepted as soon as they have been prepared in the supplier's plant.
2. With effect from 1.a) and b) the risk shall pass to the customer even if transport is carried out with own transport means of the supplier.
3. If goods are taken back, the customer shall bear all risks up until receipt by the supplier.

V. Liability for defects

1. Depending on the type of the products, variances in terms of weight, number of metres, units and dimensions of up to 10% are allowed for the delivery and, indeed, both in terms of the entire contract quantity, as well as of the individual part deliveries. The DIN tolerances shall apply for complaints regarding DIN standardised goods.
2. If a reciprocal trading transaction applies, the customer must notify defects that are recognisable during an examination in the correct course of business, without delay and in writing.
3. Correct handling of a notification of defects does not constitute renunciation of the adherence to the provisions of points 1.-2.
4. If the complaint turns out to be justified, subsequent fulfillment shall be made free of charge and freight free through removal of the defect or delivery of a defect-free item at the discretion of the customer against weight (metre against metre etc.). Points 1-3 shall also apply for the acceptance of the replacement.
5. Claims of the customer for compensation for damages as a result of violation of obligations or tortious act are excluded, unless they are based on intentional or grossly negligent conduct or on culpable violation of fundamental contractual obligations (cardinal obligations) on the part of ourselves or our vicarious agents, or we are liable for damage to life, limb and health.

If we are obliged to provide compensation for damages, this obligation shall always be restricted to the damage foreseeable at the time of conclusion of the contract.

Claims as a result of violation of obligations from the obligatory relation shall become statute barred after the same period as the warranty rights, unless these are fundamental contractual obligations.

Claims as a result of negligently omitted failure to explain negative material characteristics of our products are excluded if no material defect is justified by this, unless we have assumed explicit advising of the customer in addition. Our liability as per the product liability law shall remain unaffected.

6. The supplier can refuse the removal of defects for as long as the customer fails to fulfil his obligations. The right of the customer to withhold an appropriate amount of the remuneration under consideration of a defect shall remain unaffected.
7. Technical advice and recommendations of the supplier are based on careful checking and shall not release the customer from his own check for their suitability for the intended procedures and purposes.

VI. Protected privileges of third parties

If deliveries are made on the basis of drawings or other information of the customer and if, as a result, protected privileges of third parties are violated by this, the customer shall indemnify the supplier against all claims of third parties.

VII. Delivery, acceptance and call-off periods

1. The delivery periods are authoritative for the time of the delivery ex-works. They shall apply only as approximate. They shall begin with the date of the acceptance of the order, however not before complete clarification of all details of the order. An appropriate extension of the delivery period shall apply if the customer fails to adhere to his obligations or if the delivery is delayed by unforeseen and excusable or extraordinary events in the plant of the supplier, with one of his suppliers or with a transport company. The same shall apply in the event of strikes and lock-outs or force majeure.
2. If the failure to adhere to a period or deadline is attributable to force majeure, mobilisation, war, commotion, strike, lock-out or other unforeseeable hindrances affecting our company, for which we are not responsible or which have occurred or become known to us subsequent to conclusion of the contract, the period or deadline shall be extended appropriately. This shall also apply in cases of unforeseeable events that have an effect on the operation of our supplier and for which neither he nor we are responsible.
3. Should we be liable for violation of obligations as a result of delay in performance, no liability shall be assumed for loss of profits. Compensation for damages can be asserted as from a default duration of one month and which is limited to 1% of the order amount for each complete week of the default, subject to a maximum of 10% of the order amount, unless the damage to be expected in the ordinary course of events is higher. If, after we have been in default for more than one month, the customer sets us an appropriate period

of grace and unless the setting of a deadline can be dispensed with, he shall, following expiration of this period of grace, be entitled to withdrawal or to compensation for damages instead of performance. Compensation for damages instead of performance is limited to 10% of the order amount.

The above limitations of liability shall not apply if a commercial firm deal has been agreed or if we are guilty of intentional or grossly negligent conduct or if we are liable for damages from injury to life, limb or health.

4. Call-offs and specifications of individual partial deliveries must be made at as equal periods and in as equal quantities as possible and in such good time, that correct manufacture and delivery is possible within the contractual period. If no period has been determined for the allocation, the customer must call off within three months from the date of the order confirmation with an appropriate period of notice.
5. If call-off or specification is not made or not made on time, then following unsuccessful setting of a deadline and unless the setting of a deadline can be dispensed with, the supplier shall be entitled to demand compensation for damages or to withdraw from the contract instead of the performance.
6. With intra-community transactions, the customer is obliged to indicate his VAT no., as well as to provide us with the other information necessary for checking the exemption from tax and to provide us with vouchers necessary as evidence of exemption from tax. Should the customer fail to comply with these obligations in good time, we shall not treat the deliveries as exempt from tax. We shall then be entitled to invoice and demand the respectively applicable turnover tax in addition. If we have incorrectly accepted a delivery as exempt from tax as a result of incorrect information of the customer, the customer shall indemnify us against the tax debt and shall bear all additional expenses.

VIII. Reservation of delivery, right of securing and right of withdrawal of the supplier

1. Should a fundamental deterioration occur in the economic relations of the customer, as a result of which the claim to our counter-performance is endangered, we shall be entitled to refuse further deliveries until all of our claims, whether due or not, are settled or collateral is provided for them.

Should a fundamental deterioration occur in the economic relations of the customer, we shall be entitled to terminate all goods credit and to demand from the customer immediate settlement of all claims still outstanding from deliveries. The same shall apply if the customer ceases payments, the opening of judicial insolvency proceedings is applied for, or the insolvency application of a creditor is approved.

2. Under the same preconditions, the supplier shall, at all times, be entitled to inspect the warehouse of the customer, to take over goods subject to retention of title following withdrawal from the contract and subject to crediting of the rejection amount, or to secure these at the expense of the customer in a form that appears to him to be suitable, as well as to forbid the further sale of the goods subject to our extended retention of title and to demand revelation of the credit transactions.

IX. Retention of title

1. The supplier shall reserve title to the goods delivered by him, as well as to any items resulting from their treatment or processing, until such time as all claims to which the supplier is entitled against the customer from the business relation, either now or in future, have been fulfilled. The customer is obliged to store and mark the goods subject to extended retention of title separately.
2. Treatment and processing of the conditional commodities shall be carried out for us as manufacturer in the sense of §950 BGB (German Civil Code) without obliging us. Should the customer process conditional commodities with other goods, the supplier shall be entitled to joint ownership of the new item in the ratio of the value of the processed conditional commodities to the other goods at the time of the treatment or processing. The customer hereby assigns henceforth to the supplier any joint ownership shares resulting to him through combination, blending or mixing of the goods delivered with other items. It is agreed that the customer shall have possession of the items as safe-keeper for the supplier with the due care of a businessman.
3. The customer must only sell the goods delivered and the items resulting from their treatment or processing, their combining, blending or mixing, in the proper course of business and against cash payment or subject to retention of title. Transfer by way of security, pledging and other disposals that endanger the rights of the supplier, are not allowed.
4. The customer hereby assigns henceforth to the supplier the claims to which he – the supplier – is entitled from the onward sale of the customer or from other legal reasons concerning the conditional commodities, as security for the supplier in the amount of the value or of the proceeds from sale, if the latter is less than the value of the goods. If the conditional commodity is sold by the customer together with other goods, the customer shall assign the selling price claim for the conditional commodity in the full amount or, in the event of prior treatment or processing with goods not belonging to the supplier, in the amount of the value of the processed conditional commodity, which is the subject matter of the sale. The value is respectively at least the price agreed between the supplier and the customer (total value).
5. For as long as the customer fulfils his obligations, the assignment shall be treated as a dormant assignment and the customer shall be empowered to collect the claim. The customer must post and administer the amounts received against the assigned claims separately.
6. Should the value of the collateral exceed the due or non-due claims of the supplier by more than 20%, the customer shall be entitled to demand release of the collateral to this extent. The customer is obliged to insure the goods delivered and products manufactured therefrom, against accidental deterioration or accidental perishing, including against the risk of fire and theft and, upon request by the supplier, to provide the supplier with evidence of the taking out of the insurance policy.
7. The customer must notify the supplier immediately of access by third parties to the conditional commodities or to the assigned claims, indicating the documents required for intervention. The costs of the intervention shall be for the account of the customer.

X. Terms and conditions of payment

1. The customer can only offset against undisputed claims or claims determined as legally binding or exercise a right of withholding as a result of such claims, unless the customer claims material defects.
2. Unless otherwise agreed, invoices shall be payable strictly net within 30 days of the date of the invoice. If a settlement discount has been agreed, the customer can only deduct the settlement discount if no older invoices are still outstanding.
3. Bills of exchange shall only be taken as payment following prior agreement and only on account of payment, as well as subject to the reserve of the possibility of discounting. Should payment be made by bill of exchange, cheque or other order papers, the customer shall bear the costs of discounting and collection, unless explicit agreements to the contrary have been made. Any differences such as bank charges, costs with international papers etc. as well as differences between the rate of exchange invoiced and the official rate of exchange on the date of payment, shall be for the account of the customer.
4. In the event of failure to adhere to the terms and conditions of payment or the other contractual conditions, the following shall apply:
 - a) All claims of the supplier shall be due in cash without consideration for bills of exchange accepted.
 - b) Should the customer be in arrears with payments to the supplier, he shall be obliged to provide valuable collateral for all claims of the supplier due or not yet due at the discretion of the customer.
 - c) The customer must not sell the items under sole or joint ownership of the supplier as per point IX, paragraphs 1 and 2 and, upon request, must hand these over to the supplier. Rights of third parties to these must be redeemed immediately by the customer, should the supplier redeem them, the claims redeemed shall pass to him and he must be reimbursed for redemption amounts including interests and costs.
 - d) The customer shall accept cash payment for the assigned claims and bank credit balances in the amount to be calculated as per point IX, paragraphs 4, 5 and 6. The amounts must be forwarded to the supplier without delay.
 - e) Without prejudice to further-reaching claims, the supplier is entitled to demand interest on overdue payments in the amount of 8% above the basic rate of interest. The customer shall retain the right to demonstrate that fundamentally lesser or no damage at all has been incurred.

XI. Place of performance and jurisdiction = D-82031 Munich!

Place of performance for all obligations from the contract, in particular for payment of the selling price, as well as place of jurisdiction is Munich. We are, however, entitled to initiate legal action at the legal domicile of the customer. In the case of foreign customers the international responsibility of the German courts is agreed.

XII. Miscellaneous

1. The customer can only make recourse to declarations issued or to be issued by the customer to the supplier if these have been issued in writing and he provides evidence of receipt.
2. They shall not apply as having been received until the date of receipt by the supplier.
3. German Law (FRG) shall apply between the contracting parties. The application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) is hereby excluded.
4. With regard to the drawings of the supplier, we reserve all rights, even in the event of granting of a patent or registration of a utility model. Without the prior consent of the supplier, the drawings must neither be reproduced or made accessible to third parties. In addition, they must not be misused in any other way by the customer or third parties. Contraventions shall result in an obligation to provide compensation for damages and can have penal law consequences.
5. Should individual provisions of the contract not be valid, the validity of the remainder of the contract shall not be affected.