

## **Terms and Conditions of Sale and Delivery**

### **1) Entering into the Contract**

- a) Supply contracts entered into by us will be exclusively governed by the terms and conditions set forth hereinafter, irrespective of whether or not they are expressly referred to in the future.
- b) Our offers are without engagement. We shall be under no obligation unless we acknowledge the order in writing.
- c) Agreements diverging from these Terms and Conditions and from our order acknowledgment require our written confirmation.

### **2) Pricing**

- a) Unless otherwise agreed, our prices are quoted ex works, exclusive of packaging.
- b) Our prices are based on the cost factors and quantities prevailing at the time the offer is made and/or the order is accepted. If such cost factors and quantities change by the time of delivery, we reserve the right to adjust the prices accordingly unless a fixed price has been expressly agreed. This shall also apply to annual financial statements or similar orders.

### **3) Delivery**

- a) The agreed delivery time is approximate only and will commence when all details regarding execution have been settled and the Customer has complied with all requirements. The delivery date shall be the date of readiness for dispatch; partial deliveries shall be permissible.
- b) In the event of circumstances beyond our control occurring at our end or at our second-tier suppliers' end (e.g., raw material and energy shortage, industrial disputes and all cases of force majeure, including misrun, failure of patterns, molds, dies and the machines required for manufacture) which significantly impede or prevent us from delivering, the delivery time shall be extended by the time during which such circumstances exist, plus a reasonable starting period.

- c) In such cases and in the event of default in delivery, the Customer can grant an additional period of time of reasonable length. In the event of non-delivery during the said additional period of time, or if we declare that we do not intend to deliver for reasons as set out in 3b), the Customer may rescind the contract. Any claims for damages shall be excluded. In the event of a partial delivery being delayed, the Customer shall not be entitled to assert any claims with respect to the remaining partial quantities.

#### **4) Acceptance**

- a) If an acceptance test under special conditions is agreed, the Customer shall carry out such a test on our premises at the Customer's expense.
- b) If the Customer fails to carry out such an acceptance test, the goods will be deemed to be delivered according to the conditions upon leaving our premises.

#### **5) Dispatch, Passing of Risk**

- a) Our goods are delivered ex works.
- b) Any risk shall pass to the Customer as soon as the goods are ready for dispatch, irrespective of whether the goods leave our premises and whether they are shipped using our own means of transportation.
- c) Unless otherwise agreed, the transportation route and means of transportation shall be left to our option, excluding any liability.
- d) Transportation insurance will only be taken out if the Customer expressly so requests; in such a case, insurance will be taken out for the account of the Customer and according to a special agreement.

#### **6) Packaging**

Packaging materials will be charged at the lowest possible price. Packaging materials and packaging aids designated as non-returnable packaging cannot be returned. Packaging materials provided on a loan basis or exchangeable packaging materials shall be immediately returned or exchanged. We will charge you the cost of purchase of new packaging materials if you do not return packaging materials provided on a loan basis or exchangeable packaging materials. We will reimburse you for two thirds of the calculated values if you return returnable packaging (e.g., boxes) free of charge and such packaging is received by us in a condition fit for use.

**7) Dimensions, Weights, Quantities to be Delivered**

- a) The dimensions and weights indicated in our offers and order acknowledgments are not binding; we reserve the right to make subsequent changes.
- b) Compliance with dimensions is subject to the usual tolerances. Excess or short weights resulting from the casting process will not entitle the Customer to complain about the goods. Short or excess deliveries of up to 10% of the quantity ordered shall be permissible.
- d) Invoicing will be based on the weights and quantities delivered as indicated in our delivery notes and invoices; any complaints about the weight or quantity delivered shall be made in writing no later than two weeks after receipt of the goods at the place of destination.

**8) Warranty**

- a) The Customer shall examine the goods without delay and shall notify any defects no later than two weeks of receipt at the place of destination. Latent defects shall be notified without delay, no later than seven days after they have been discovered. Parts complained about shall be held at our disposal in their original packaging. Any parts complained about shall not be further processed until their possible use has been settled. Some parts complained about shall be immediately sent to us at our request. We shall be given an opportunity to examine the notified defects on site, if we so request. The goods complained about shall not be modified without our consent; otherwise, any warranty claims will be forfeited.
- b) If reference samples are produced and submitted to the Customer for examination, we will only be liable for delivery according to the reference sample, taking into account any corrections. With respect to workmanship, dimensions, weights and fitness, the reference sample submitted to the Customer for examination and testing or our workshop drawing shall be solely binding.
- c) We will, at our option, remedy or make good any verifiable defects in material or workmanship, or credit the calculated value of the parts complained about. Claims of any nature whatsoever in excess thereof, including, without limitation, for rescission, reduction of the purchase price or damages, arising for any reason whatsoever, shall be excluded. Claims for damages can only be made within six months after delivery and shall become statute-barred no later than one month after rejection of the notification of defects.

- d) If the parts delivered by us are installed into vehicles or other machines, our warranty, which, unless stipulated otherwise, shall be limited as set forth hereinabove, shall extend for a period no longer than six months after the first registration of the vehicle under a regular number, however, not exceeding a total mileage of 10,000 km, and if the said parts are installed into other machines, for an operating time of six months during one-shift operation. The warranty obligation shall expire no later than 12 months after delivery. Moreover, both cases require the parts delivered by us to have been properly treated, stored and installed. In any case, we disclaim any liability for the costs of damaged adjacent parts and for the costs of installation.
- e) Any warranty shall be excluded in case of natural wear and tear, inappropriate treatment and modifications without our consent. Warranty shall also be excluded if the warranty conditions of the supplier of the overall unit are not met.
- f) To the exclusion of any warranty in excess thereof, we assign all of our warranty claims we may have against second-tier suppliers for any accessories not manufactured by us.

## **9) Advice and Recommendations**

We will make suggestions for design and materials to the best of our knowledge and belief, however, to the exclusion of any liability.

## **10) Terms of Payment**

- a) Our invoices shall be paid net cash within 30 days of the date of invoice. We will allow a 2% discount for payment made within two weeks of the date of invoice. Taking discounts requires the Customer to have discharged all prior financial obligations; the application of sec. 368 of the "BGB" (German Civil Code) shall be excluded.
- b) The costs of patterns, casting tools and devices shall be paid in advance at all times.
- c) The Customer shall not be entitled to retain payments or offset payments against any counterclaims, including the Customer's warranty claims.
- d) In the event of the Customer not paying as agreed, we shall be entitled to charge interest in the amount of 4% above the discount rate of the Central Bank of Germany, plus statutory VAT, from the due date.

## **11) Retention of Title**

- a) We retain title to the goods delivered until the any and all claims we may have against the Customer under the business relationship, including interest, costs, claims for damages, if any, have been met. This shall apply irrespective of whether or not the price of specific deliveries of goods as designated by the Customer has been paid. Any processing work by the Customer shall be performed through us. The processed goods will be deemed processed goods within the meaning of these provisions.
- b) The Customer will be entitled to sell the retained goods in the ordinary course of business. The Customer shall not otherwise dispose of the goods.
- c) The Customer shall assign to us in advance any and all its claims resulting from resale or as may exist on other legal grounds. If the retained goods are sold together with other items not owned by us or are used as a substance in the performance of contracts for work and services, such assignment shall only apply in the amount of the invoice value of the retained goods.
- d) The Customer will be entitled to collect the claims assigned to us. The Customer shall notify the debtors of such assignment, if we so request.
- e) The Customer shall notify us without delay of any imminent and completed attachments of the retained goods or any claims assigned by any third parties. The costs of any interventions shall be borne by the Customer.
- f) The Customer's authorization to dispose of the retained goods and to collect the assigned claims shall terminate in the event of the terms of payments not being complied with and of any bills and checks being protested. In such a case, we shall be entitled to take possession of the retained goods. The costs involved shall be borne by the Customer. Such taking back will not constitute rescission of the contract unless expressly declared so by us.
- g) If the value of the securities given to us exceeds our claims by more than 20% in the aggregate, we are obligated to release the aforementioned securities accordingly, at our option, if the Customer so requests.

## **12) Patterns, Casting Tools, Other Tools**

- a) Any patterns, molds and dies made available by the Customer shall be sent to us free of charge and will be stored by us with due care. We do not assume any liability for any loss or consequential losses incurred, unless our insurer's liability accrues. If no castings are made from patterns, molds and dies within a past year, we will charge reasonable storage charges. In the event of the Customer not complying with our request to collect its tools or one year having elapsed since delivery, we will not be obligated to continue to store the said items. We will not be obligated to check whether the patterns and casting tools made available comply with the attached drawings.
- b) If molds, dies or other tools are manufactured or procured by us on behalf of the Customer, we will separately charge the pro rata costs incurred and, in the case of castings, also the costs of progressive tools. If a casting tool is not used, the Customer shall pay the remaining portion of the costs not covered. The costs of patterns will be charged in full to the Customer at all events. We retain title to the casting tools and other tools. We will not be obligated to surrender possession of the tools to the Customer. This shall also apply to progressive tools.

If three years have elapsed since the last delivery, we will not be obligated to continue to store the patterns, molds, dies or other tools. If deliveries are made according to the drawings or other data of the Customer, infringing any third parties' industrial property rights, the Customer shall indemnify us from any and all claims. Our drawings and documents delivered to the Customer and our suggestions for the advantageous design and manufacture of castings shall not be disclosed to any third parties and can be reclaimed by us at any time. The Customer shall not be entitled to assert any claims based on copyrights or the protection of industrial property rights with respect to patterns, casting tools and other tools sent in or manufactured or procured on behalf of the Customer, except when the Customer has pointed out to us that such rights exist and has expressly reserved such rights.

## **13) Parts to be Cast-in**

Cast-in parts in which shall be provided by the Customer shall be delivered to us true to size, ready for casting and free of charge. Their quantity shall exceed the quantity to be delivered by us by no less than 10%. The costs of any rework on cast-in parts shall be borne by the Customer. Any rejects shall be replaced by the Customer free of charge. We assume no responsibility for the return delivery of the full quantity.

**14) General**

- a) Claims of any nature whatsoever shall be excluded unless expressly provided for herein; this shall also apply to claims based on fault at the time the contract is entered into or on positive violation of a contractual duty and on damage to items other than those delivered by us.
- b) The legal relationships with our customers shall be exclusively subject to the laws of Germany.
- c) The place of payment shall be Steyr.
- d) The place of jurisdiction shall be Steyr. We shall also be entitled to sue the Customer (Buyer) at any other legal place of jurisdiction applicable to the Customer.