

## General terms of supply and payment no. 070916

Update:2020

### 1. Conclusion of contract, scope of delivery

- a) Our offer is subject to change provided the order confirmation does not state otherwise, or we have not expressly stated something to the contrary in writing. A contract exists only when we have confirmed an order in writing or if we complete an order.
- b) All information provided in brochures and catalogues such as images, drawings, weights and dimensions are approximate values standard in the sector, unless they are expressly designated as binding.
- c) We have the right of ownership and copyright over images, brochures, calculations and other documentation and these may not be made accessible to third parties. This applies in particular to written documents marked as "confidential". The customer must obtain our express written approval prior to forwarding them to third parties.

### 2. Pricing and terms of payment

- a) Our prices are valid ex factory plus packaging, carriage, postage, insurance and the respective statutory VAT.
- b) If order-related costs change significantly after a contract is agreed, the parties to the contract shall agree on an adjustment.
- c) Unless agreed otherwise, our invoices are payable immediately and without deduction.
- d) The customer may withhold or offset payments due to counter-claims only in the case of uncontested or legally established payment claims.
- e) If we have supplied partially defective goods, the customer is nevertheless obliged to pay for the undisputed and non-defective goods.
- f) We accept discountable and properly taxed bills of exchange on account of payment if expressly agreed in advance. Credit notes against bills of exchange on account of payment issued subject to receipt and minus disbursements at the value on the day on which we are able to access the exchange value.
- g) If we are obliged to deliver in advance and, after the contract is signed, we become aware of circumstances which jeopardise our claim to payment due to a failure in reservation of title agreed under point 9, prohibit the resale and processing of the goods supplied at the customer's cost and cancel the direct debit mandate under the provision of point 9 letter h). The customer authorises us now to access his business and collect the goods supplied in such cases.
- h) If goods are taken back, the contract is cancelled only if we state this expressly.
- i) If payment is late, we may, following written notification, cease fulfilment of our obligations until payment is received. Following an appropriate deadline we are also, in this case, entitled to withdraw from the contract.

### 3. Delivery period

- a) Delivery deadlines begin when our order is confirmed, but not until all the details of implementation have been clarified and all the customer's other requirements which are to be met are available; this applies equally to delivery periods. Deliveries prior to the delivery period and part deliveries are permitted provided this is not unreasonable for the customer. The delivery day is the day on which readiness for despatch is notified, or the day of despatch.
- b) Agreed delivery deadlines and periods are extended or postponed if the customer is in default without prejudice to our rights by the period of time by which the customer falls behind with his obligations. If the customer is in default of acceptance or culpably breaches other obligations to cooperate, we are entitled to claim any losses we incur, including any additional costs. In this case, the risk of accidental loss or of accidental degradation of the item purchased transfers to the customer at the point at which the customer falls into default of acceptance.
- c) If we fall into arrears, the customer may define an appropriate period of grace with the express statement that, following this period, he will not accept delivery and will withdraw from the contract.
- d) The customer must, at our request, state within an appropriate period of time whether, as a result of the delay in delivery, he will withdraw from the contract and/or request compensation for damages instead of delivery, or insist on delivery.

### 4. Serial delivery, long-term and call-off contracts

- a) Contracts for an unlimited period may be terminated with a period of 6 months to the month's end.
- b) If, under long-term contracts (contracts with a duration of more than 12 months and contracts for an unlimited period), there is a significant change in salary, materials and energy costs after the first four months, either of the parties to the contract is entitled to request that prices be adjusted taking these factors into account.
- c) Our prices are calculated on the basis of the agreed order volumes. If no binding order volumes are agreed, our calculation will comply with the agreed target quantity. If the final order quantity or target quantity falls short, we are entitled to increase the price per unit accordingly. If the customer exceeds the quantity with our agreement, he may request an appropriate reduction in the price provided he does so in writing at least 2 months prior to the agreed delivery deadline. The level of the reduction or increase will be ascertained according to our bases of calculation.
- d) Under call-off supply contracts, binding quantities must be called off at least 3 months prior to the delivery deadlines unless otherwise agreed. Additional costs caused by the customer due to late call-off or subsequent changes to the call-off in terms of time or quantity shall be met by the customer, in which case our calculation is definitive.
- e) In the case of serial production, over or under delivery up to 10% compared with the volume ordered is permitted because of the special features of the casting process.
- f) The total price will change depending on the scope of the order.

### 5. Force majeure and other obstacles

- a) Events of force majeure, industrial action, lock-out and government measures entitle us to postpone delivery and appropriate lead times for the duration of the obstacle, or withdraw fully or in part from the contract with regard to the part not yet fulfilled.
- b) Equivalent to force majeure are unforeseen circumstances e.g. business disruptions, rejects and rework which render it impossible for us to deliver on time despite all reasonable efforts; we must provide evidence of this.

### 6. Testing process, acceptance

- a) If acceptance is agreed, the scope and terms must be set out at the same time before the contract is agreed.

- b) If this is not the case, acceptance will be to our standard scope and under our standard conditions. This applies equally to tests on initial samples.

### 7. Dimensions, weights and units

- a) Deviations in dimensions, weight and unit sizes are permitted within standard tolerances, relevant DIN stipulations and casting requirements. Details of dimensions and weights in our proposals and order confirmations do not constitute quality guarantees.
- b) For calculation purposes, the delivery weights and unit sizes stated by us are definitive.

### 8. Despatch and transfer of risk

- a) Unless agreed otherwise in writing, the delivery clause is "ex works" (Incoterms 2000). This applies equally where we have agreed to take over the costs of carriage.
- b) We will cover delivery with transport insurance only at the customer's express wish; all costs incurred as a result shall be paid by the customer.
- c) Goods ready for despatch must be accepted immediately otherwise we are entitled to choose to despatch them at standard costs or to store them at the customer's risk; we are also entitled to store them if despatch cannot be completed through no fault of ours. Goods shall be deemed to have been delivered after one week of storage.
- d) If not specifically indicated, the choice of transport method and route shall be at our discretion.
- e) Risk is transferred to the customer when goods are passed to the railway, transport company or freight forwarder or one week after the start of storage, and at the latest when goods leave the factory or storage including where we have assumed delivery.

### 9. Reservation of title

- a) All delivered goods shall remain under our property (reserved goods) until all claims have been satisfied, in particular also the respective balance claims, to which we are entitled by virtue of the business relationship with the purchaser. This shall also apply if payments are made for specially designated claims. If the buyer is in delay of payment, we are entitled to demand the return of the delivered goods. The costs of this shall be borne by the buyer. This shall not apply if insolvency proceedings have been applied for or opened by the buyer, so we are not entitled to demand immediate return of the goods delivered.
- b) The withdrawal of the goods or the assertion of the reservation of ownership shall only constitute a withdrawal of the contract if we expressly declare it or if we assert the rights provided by lit. i.
- c) The buyer shall always carry out the machining or processing of the delivered goods for us. If the reserved goods are processed or combined inseparably with other items not belonging to us, we shall acquire co-ownership of the new item in the proportion of the invoice value of the goods to the other processed or combined items at the time of processing.
- d) If our ownership is extinguished due to combination or mixing, the purchaser hereby assigns to us his ownership rights in the new stock or the new item to the extent of the invoice value of the goods subject to reservation of ownership and shall hold them in custody for us free of charge. The resulting co-ownership rights shall be deemed to be reserved goods in the sense of point a).
- e) Subject to the following provisions, the purchaser may only sell the goods subject to the reservation of ownership in the ordinary course of business under his normal conditions and provided he is not in default.
- f) In the event of resale, the purchaser transfers us his future rights for security - subject to further provisions below - in the amount of the value of the goods subject to reservation of ownership (delivery) from the resale to his customer with all additional rights, without the need for any further special declarations. If the reserved goods are resold together with other items without an individual price for the reserved goods having been agreed, the purchaser shall assign to us, with priority over the rest of the claim, the part of the total price claim which corresponds to the value of the reserved goods invoiced by us plus a surcharge of 10% on this value. Until the revocation, the purchaser is entitled to collect the assigned amount from the resale. At our request, the customer shall assign the claim to the customer, shall provide the supplier with the information necessary to assert his rights against the buyer and shall hand over the necessary documents. All costs of collection and interventions shall be borne by the buyer.
- g) If the reserved goods are sold by the purchaser together with other goods not supplied by us, the assignment of the claim from the resale shall only apply to the amount of our invoice value, the respective reserved goods sold. In the case of the sale of goods in which we have co-ownership shares in accordance with letter c), the assignment of the credit shall apply to the amount of these co-ownership shares.
- h) If the value of the existing goods exceeds the secured credits by a total of more than 20%, we are obliged to release the goods of our choice. The customer must inform us immediately of any seizure or other impediments by third parties.
- i) We shall be entitled to take possession of the reserved goods if the customer is in default of performance of the claims against him arising from the business relationship. In this case, we shall declare our withdrawal from the contract prior to the demand for return. We shall then be entitled to use the reserved goods and to satisfy ourselves by offsetting the outstanding claims against the product.

### 10. Liability for material defects

- a) We guarantee the fault-free manufacture of the parts we supply in accordance with the agreed technical delivery specifications. The customer is responsible, in particular, for appropriate construction given the intended use taking into account any safety provisions, selection of the base materials and necessary test procedures, the accuracy and completeness of the technical delivery specifications and the technical documents and drawings supplied as well as construction of the production facilities provided, including where amendments are suggested by ourselves and which he approves. The customer is additionally responsible for ensuring that trademark or other rights of third parties are not breached by his specifications. The contractual condition of goods is defined at the point that risk is transferred.
- b) We are not liable for insignificant deviation from the condition agreed where usability is only slightly impaired or for defects arising from unauthorised or improper use, incorrect assembly or commissioning and normal wear and tear. Neither are we liable for incorrect modifications and commissioning by the customer or third parties, and the consequences of this.
- c) The customer must report defects in writing immediately on receipt of the goods at the destination, and report concealed defects as soon as they are discovered.
- d) Defects which should have been established during final acceptance or testing of initial samples in accordance with point 6 are excluded.

Update:2020

e) We must be given the opportunity to establish defects reported. We are obliged to establish defects reported immediately in urgent cases which endanger operational safety or to prevent disproportionate extensive damage to the customer. Rejected goods must be returned to us on request. If the customer fails to comply with these obligations, or carries out modifications to goods already reported as defective without our permission, he loses all rights arising from defects.

f) Where reports of defects are received in good time and are justified, we may elect either to repair the goods, or supply a defect-free replacement (subsequent performance).

g) If we fail to comply, or do not comply within an appropriate period, with our warranty obligations, or if the repair is initially unsuccessful, the customer may submit a final deadline in writing by which we must meet our obligations. No deadline is required if this would be unreasonable for the customer. If the deadline expires without a successful solution, the customer may elect to request a reduction in the price, withdraw from the contract or carry out the necessary repairs himself or have them carried out by third parties at our cost and risk. If the customer or a third party completes repair successfully, all the customer's claims are deemed to have been met once all necessary costs incurred by him have been reimbursed.

h) Claims on the part of the customer for necessary costs for the purposes of repair incurred because the goods were taken to a different location following delivery are excluded where they increase costs unless said transfer complies with normal use.

i) The customer has statutory rights of recourse against us only in so far as the customer has not reached any agreements with his customer which go beyond the statutory claims for defects.

j) Further claims on the part of the customer are excluded in accordance with point

13.

k) The customer is required to provide evidence of any defect.

### 11. Order-related production equipment, parts for casting

a) Production-related equipment such as models, patterns, core boxes, moulds, casting tools, appliances and gauges provided by the customer must be sent to us at no cost. We will check compliance of production equipment provided by the customer with the contractual specifications or drawings or samples provided to us only with express agreement. We may modify production equipment provided by the customer if we deem this necessary for casting technology reasons, and this does not change the component.

b) The customer must bear the cost of such modification, maintenance and replacement of his production equipment.

c) We will handle and store production equipment with the same care applied in our own business. We are not liable for the accidental loss or degradation of production equipment. We may return the seller's production equipment no longer required by us at the buyer's cost and risk or, if the buyer fails to comply with our request to collect equipment within an appropriate period, store it at standard costs under threat of destruction following an appropriate deadline.

d) Order-related production equipment manufactured by us on the customer's instruction shall remain our property even if the customer is invoiced a share of the costs. We shall retain said equipment for a period of 2 years from the final casting.

If, notwithstanding clause 1, it is agreed that the buyer owns the equipment, ownership is transferred to him on payment of the price or proportion of costs agreed. Instead of handing the equipment over to the customer, we will be obliged to keep it safe. The customer may terminate the storage arrangement at the soonest two years following transfer of ownership unless there is a major reason for doing so.

e) The customer may enforce claims relating to copyright or intellectual property rights only if he points out such rights to us and expressly reserves the right to assert them.

f) If rejects are produced when using production equipment which can only be used once, the customer must either provide new production equipment or bear the costs of replacement equipment.

g) The customer must supply parts to be used by us for casting in the correct dimensions and in perfect condition. The customer must supply replacements free of charge if parts become unusable due to rejects.

### 12. Confidentiality

a) All parties to the contract will use all documents received as part of the business relationship (including samples, models and data) and information only for mutual objectives, and maintain secrecy in respect of third parties with the same due care as applied to his own documents and information where the other party to the contract describes them as confidential or has an obvious interest in keeping them confidential.

b) This obligation begins on receipt of the first documents or information, and ends 36 months following termination of the business relationship.

### 13. General limit of liability

a) Unless specified otherwise below, other claims and claims of a wider scope against us on the part of the customer, on any legal grounds whatsoever, and in particular because of breach of obligations and unauthorised action, are excluded.

b) This limitation of liability does not apply in the case of mandatory liability e.g. in accordance with the Product Liability Act, in the case of wilful intent, gross negligence on the part of legal representatives or executive employees and in the case of culpable breach of fundamental contractual obligations. In the case of culpable breach of fundamental contractual obligations, we are liable - except in cases of wilful intent or gross negligence on the part of our legal representatives or executive employees - only for damages typical of this type of contract and which can be reasonably foreseen. Neither does this limit to liability apply to damages arising from injury to life, body and health and in the case of the absence of guaranteed condition, where and in so far as said guarantee has the specific purpose of covering the customer against damages not arising from the goods supplied themselves.

c) To the extent that our liability is excluded or limited, this applies equally to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.

d) The customer's entitlement to claim compensation for damages and defects expires one year following delivery of the goods to the buyer. This does not apply where the law under §§ 438 clause 1 no. 2 (Construction and items generally used in construction) and 479 clause 1 (Right of recourse) of the Civil Code prescribes longer periods, and in cases of injury to life, body and health, in the case of wilful or grossly negligent breach of obligations on the part of the supplier and where a defect is concealed fraudulently. This does not affect legal regulations governing suspension, expiry and recommencement of time periods. Legal statutes of limitation apply in the case of claims for damages under the Product Liability Act. These legal statutes of limitation apply also in the case of wilful or grossly negligent breach of obligations.

### 14. Place of fulfilment and court of jurisdiction

a) If the customer is a trader, the court of jurisdiction is Marbella. We are, however, entitled to bring action against the customer at the court in the city where his registered office is located.

b) Unless stated otherwise in the order confirmation, the place of performance for our services is the location of our plant. The place of performance for payment obligations is Marbella.

### 15. Applicable legislation

Legal relations between the parties shall be governed solely by Spanish law with the exception of the UN Uniform Law on the International Sale of Goods (UNCITRAL/CISG).

### 16. Partial invalidity

Should individual provisions of these terms of supply and payment become wholly or partially ineffective or invalid, the parties to the contract undertake to agree a regulation which largely achieves the meaning and purpose of the ineffective or invalid provision.

### 17. Partnership clause

In the case of all indemnification payments, in particular in terms of the level of compensation, appropriate attention should be paid, in good faith, to the contractual parties' economic circumstances, the nature, scope and length of the business relationship, and the value of the goods.