

Bundesverband der Deutschen Gießerei-Industrie e.V.

The General Association of German Metal Foundries, a registered association, recommends to its members the following

General Terms and Conditions of Business of Metal Foundries

(Terms and Conditions of Sale, Delivery of and Payment for Cast Metals)

without commitment for use in business dealings with their customers

the addressees are free to follow these recommendations or to use other general terms and conditions of business

1. General/Conclusion of Contract

- a) We solely conclude contracts for delivery subject to the following terms.
- b) Our offers are subject to change without notice. The mutual written declarations by both parties shall be decisive for the scope of delivery of services. Any subsequent amendments of, and supplements to, this contract shall be in writing.
- c) We reject any terms and conditions of the customer to the contrary or deviating from our terms and conditions even if we are aware of the terms and conditions by the customer and perform delivery without reservation, unless we have expressly consented to their validity in writing.
- d) Our terms and conditions shall only be applicable vis-à-vis entrepreneurs (within the meaning of § 14 section 1 German Civil Code (*BGB*)); they shall also apply to all future transactions with the customer within the framework of current business dealings.

2. Prices

- a) Our prices apply ex works, exclusive of packaging and value-added tax.
- b) In the event of substantial changes of order-related cost after the conclusion of the - contract, the parties to the contract shall be obliged to agree on an adjustment of prices.

3. Obligation of Delivery and Acceptance

- a) Commencement of the time of delivery presupposes that all details of execution have been clarified, and that the customer has performed any of his obligations. Unless otherwise agreed, the delivery day shall be the day of dispatch. If the dispatch of the goods is delayed without any fault on our part, the day on which the delivery items are ready for dispatch shall be deemed the day of delivery. We are entitled to part deliveries, unless the customer has an obvious intent to the contrary.
- b) If we are prevented from due delivery by force majeure or due to any other unforeseeable circumstances beyond our control, such as official measures, unrests or

goods not delivered by our suppliers, the delivery period shall be extended by the period of obstruction. If the obstruction lasts longer than three months, the customer and we shall be entitled to rescind the contract with regard to the part not yet performed. In this case, claims for damages are excluded.

- c) In the event that we are in arrears, the customer shall be entitled to grant an additional period of time of reasonable length and to rescind the contract after this additional period of time has expired without results. In the event of a slight degree of negligence or negligence on our part, claims for damages instead of performance shall be limited to the foreseeable damage being typical for the contract.
- d) In the case of call-off orders without agreement on term, size of production lot and date of taking delivery, we are entitled, if not otherwise agreed in writing, to request that same are set in a binding form at the latest three months after confirmation of order. If the customer fails to comply with this request within three weeks, we are entitled to grant an additional period of time of two weeks as well as to rescind the contract after this additional period of time has expired and to claim damages.
- e) If the customer wishes that necessary inspections are made by us, the type and scope of these inspections must be agreed. If this does not take place upon conclusion of the contract at the latest, the costs incurred are to be borne by the customer.
- f) If delivery is to be carried out on the basis of a sample produced by us, the customer must examine and approve this sample in our factory immediately after being informed of the completion of the sample. If the sample is not approved despite determination of an additional period of time of reasonable length for reasons the customer is responsible for, we are entitled to dispatch the sample or to store the sample at the customer's expense and risk, in which case the sample is deemed approved.

4. Dispatch and Passing of Risk

- a) The risk will pass to the customer as soon as the goods leave our works (ex works).
- b) In the event of a delay in dispatch for reasons the customer is liable for, the risk will pass to the customer from the date on which the delivery items are ready for dispatch.

5. Measures, Weights, and Delivery Quantities

- a) The DIN and EN standards shall be decisive for keeping to measures. In all other respects, the measures and weights contained in our offers and confirmation of orders are stated to the best of our knowledge. However, they do not constitute a quality guarantee. Minor deviations, particularly excess weight or short weight on grounds of foundry practice, shall not entitle the customer to complaints or warranty claims, unless otherwise agreed.
- b) Given the particularities of the metal casting process, in the case of series production excess delivery or short delivery of up to 10 % in comparison with the order volume is permissible.

6. Warranty Claims

- a) The assertion of warranty claims of a customer acting in his capacity as merchant presupposes that he fulfils his obligation for inspection and the requirement to make a complaint in respect of a defect immediately upon receipt of the goods in due order, this being owed pursuant to § 377 German Commercial Code (*HGB*). All other entrepreneurs shall be obliged to give notice of any visible defects within 14 days of receipt of the goods, otherwise, the warranty claims of the customer will become forfeited. Any notifications of defects shall be made in writing specifying the defect.
- b) We shall be given the opportunity to inspect the defect notified on the site. We shall be obliged to carry out such an inspection without undue delay, if the customer has an interest in a prompt arrangement.
- c) Warranty rights do not exist insofar as there are only slight deviations from quality or an insignificant impairment of usability of the delivered items.
- d) All our specifications constitute service descriptions and no guarantees, unless expressly otherwise agreed.
- e) If we are responsible for a defect discovered, we shall be entitled, at our option, to repair or replace the delivered item.
- f) In case a customer wrongfully notifies defects for which we are not responsible, for reasons that are not attributable to us, we shall be entitled to charge to the customer's account reasonable expenses incurred by us for remedying the delivered items and/or determining the defects.
- g) We may charge to the customer's account the additional costs of the expenses necessarily incurred for the purpose of subsequent performance, particularly transport charges, travelling expenses, cost of labor and of materials insofar as the expenses are increased as a result of taking the delivered item to such other place, unless the delivered item is taken to such other place in conformity with the contractual purpose.
- h) Claims of the customer under a right of recourse in connection with a purchase of consumer goods (§ 478 German Civil Code) shall insofar be excluded as the customer's agreements with his customers exceed the statutory warranty rights of his customers. The customer shall inform us immediately about any warranty rights of his customers so that we may satisfy, at our option, the claims of the customers of our customer instead of our customer.
- i) Warranty rights will already become statute-barred twelve months after delivery, unless we caused the defect with intention, or by gross negligence, or by fraudulent concealment. The same shall apply to any claims arising in connection with any guarantees given by us or that are binding on us, unless these provide anything to the contrary. The statutory limitation periods for claims for recourse (§ 478 German Civil Code) remain unaffected thereby. The same shall apply to longer statutory limitation periods, e.g. for the construction of buildings or the delivery of goods, used in a building in conformity with their customary use and having caused defects in same. These limitation periods shall also apply to consequential damages caused by a defect

unless these are claimed under an unlawful act. If, as a result of defective delivery, subsequent performance is required, the limitation period until subsequent performance will only be suspended but not set into motion again.

- j) Before the customer may assert further claims or statutory rights (rescission of contract, reduction in the purchase price, damages or reimbursement of expenses), we shall first be given the opportunity to effect subsequent performance within a reasonable period of time, unless we have given any guarantee to the contrary. Should subsequent performance fail despite a minimum of two attempts, should we refuse subsequent performance, should it be impossible or unacceptable for the customer, the customer may rescind the contract or reduce payment. § 7 of our terms and conditions shall apply to the assertion of damage claims and claims for reimbursement of expenses.
- k) Furthermore, the following provisions shall apply to claims from defects in title:
 - (1) Unless otherwise agreed, we shall only be obliged to effect deliveries free of any rights of third parties in the country of the delivery address.
 - (2) In the event of a violation of industrial property rights of third parties for which we are responsible, we may, at our option, either obtain adequate right of use for the agreed or expected use at our expense and assign this to the customer, or transform the delivered items so that the industrial property right is not infringed, or replace the delivered items provided that the agreed or expected use of the delivered items is not thereby impaired. If this is impossible for us, or if we refuse subsequent performance, or if subsequent performance fails, the customer shall be entitled to assert his statutory rights and claims. § 7 of our terms and conditions shall apply to damage claims and claims for reimbursement of expenses.
- l) If selection samples are sent to the customer for inspection, we are only liable insofar as delivery is carried out corresponding to the selection sample in consideration of possible corrections.

7. Damages

- a) The assertion of damage claims and claims for reimbursement (hereinafter referred to as “damages”) based on defects of the items delivered (claims based on defects) shall be excluded insofar as we cannot effect subsequent performance for reasons beyond our control. The assertion of damage claims for damage caused by defects and for consequential damage caused by delivery of defective items basically presupposes that we caused the damage with intention, by gross negligence or by negligent violation of substantial duties, unless otherwise agreed. The same shall apply to the assertion of damages for violation of a durability guarantee given by us or third parties (§ 443 section 2 German Civil Code for which we are liable.
- b) In all other respects, damage claims and claims for reimbursement of expenses (hereinafter referred to as “damage claims”) of the customer – irrespective of the legal grounds – particularly for violation of duties under and in connection with the obligation, from culpa in contrahendo or negligence prior to the conclusion of a

contract, or unlawful act shall be excluded. This shall not apply to claims according to §§ 1,4 Product Liability Act (*Produkthaftungsgesetz*), in case of intent or gross negligence, with regard to any violation of life, or in the event of personal injury or injury to health, in case of a guarantee for the existence of a certain quality (quality guarantee) or in the event of a violation by negligence of substantial duties on our part. Our liability shall not exceed the statutory claims at any rate. In the event of negligence, our liability shall be limited to the typical, foreseeable damage. These provisions under a) and b) do not involve any amendments of the burden of proof.

- c) Insofar as our liability is excluded or limited this shall also apply to the liability of our employees, workers, representatives, and agents.
- d) The limitation of action between supplier and customer is subject to § 6 lit. i of our terms and conditions, unless claims arising in connection with the producer's liability pursuant to §§ 823 ff German Civil Code or the Product Liability Act are concerned. This limitation of action particularly applies to consequential damage.
- e) In the event that we assume the contractual obligation to inspect our products for occurrence of certain characteristics and quality, we shall be liable for damages that are based on our non-observance of the customer's test specifications.

8. Terms of Payment

- a) All invoices due shall be payable free of charge within 30 days following date of the invoice (date of receipt of invoice). Drafts and checks shall be accepted – if at all – as conditional payment only. The costs of drafts and checks shall be for the customer's account.
- b) Costs for workpiece-related designs and manufacturing facilities pursuant to § 10 b) of our terms and conditions shall always be paid in advance, unless otherwise agreed.
- c) The customer shall have a right of set-off only if his counterclaims have not been contested or are final and absolute. The customer shall be entitled to exercise a right of detention or a right to refuse performance only if the same conditions with regard to the counterclaims of the customer have been satisfied or in the event that defects of the goods delivered have at least been made credible (e.g. by written confirmation by a neutral person or office) and, furthermore, his counterclaim is based on the same contractual relationship.
- d) If the customer defaults in payment, we are entitled to demand interest for default amounting to 8 % per year in excess of the current base rate of interest.

9. Reservation of Title

- a) We shall retain title to the delivered item until receipt of all payments owed by the customer under the contract, or, in the case that there is an account current with the customer, until settlement of the balance acknowledged. In the event that the customer acts in breach of contract, in particular defaults in payment despite a reasonable extension of the original term, we shall be entitled to take back the items delivered. This shall not apply if the customer has already filed a petition for the institution of insolvency proceedings or insolvency proceedings have been instituted, owing to

which we are not permitted to immediately take back the items delivered. After taking back the delivered items, we shall be entitled to realize the same; the realization proceeds shall be set off against the customer's liabilities, less reasonable costs of the realization. The provisions relating to realization of the Insolvency Code (*Insolvenzordnung*) shall not thereby be affected.

- b) The customer is obliged to handle the delivery item carefully. In particular, he is obliged to insure the same sufficiently at the reinstatement value at his expense against damage caused by fire, water, and theft. If maintenance and inspection work is necessary, the customer shall carry out such work at his expense in good time.
- c) The customer shall inform us in writing without undue delay of attachments and any other interference by third parties. The customer shall be liable to us for any court and out of court costs of any action which may be necessary pursuant to § 771 German Code of Civil Procedure (*ZPO*) (action in opposition to execution of a judgment, brought by a third party who claims title to the attached property).
- d) The customer shall be entitled to resell the delivery item in the ordinary course of business; however, he herewith assigns to us all claims to the amount of the invoice sum total (including value-added tax) accruing to him from the resale against his customer or third parties, irrespective of whether the delivery item has been resold without or after having been processed. The claim assigned also refers to a recognized, and/or in the case of insolvency of the customer's customer, the "causal" balance.

The customer shall be authorized to collect this claim even after assignment. However, we shall be authorized to collect the claim ourselves if the customer does not perform his obligations to pay from the collected proceeds, defaults in payment or has filed a petition for the institution of insolvency proceedings or such a petition has been filed or payments have ceased. In such cases, we may demand that the customer states which claims have been assigned and their debtors, furnishes all information necessary for the collection, hands over all appurtenant documents and notifies the debtor (third party) of the assignment. However, it will not be possible for us to collect the claim if the Insolvency Code precludes this.

- e) Any processing or transformation of the delivered item by the customer shall always be carried out on our behalf. If the delivered item is processed with other items not belonging to us, we shall acquire joint title to the new thing in the proportion of the value of the delivered thing to the other processed items at the time of the processing. In all other respects, the provisions applicable to the items delivered with a reservation shall also apply to the thing resulting from the processing.
- f) If the items delivered by us are mixed with other items not belonging to us to form an integral part, we shall acquire joint title to the new thing in the proportion of the value of the goods delivered by us to the other mixed items at the time of the mixing. If the mixing is done in such a way that the customer's thing must be deemed to be the main thing, it is agreed that the customer will have transferred joint title to us proportionally. The customer shall hold the sole or joint title in safekeeping for us.
- g) The customer also assigns to us claims for securing claims by the latter against him that arise by connection of the object with a property against third parties.

- h) We undertake to release the securities to which he is entitled at the customer's request also to the extent that the value of his securities exceeds the claims to be secured by more than 25 %, selection of security shall be incumbent on us.

10. Workpiece-related Designs and Manufacturing Facilities

- a) Workpiece-related designs or manufacturing facilities (e.g. foundry casting moulds) provided by the customer shall be forwarded to us without charge. We may request that the customer collects such facilities at any time; if the customer does not comply with such a request we are entitled to send the same back at the customer's expense. The customer shall bear the costs required for modifications desired and maintenance work.

The customer is liable for construction in perfect technical condition and the finish of the facilities in accordance with the purpose of the production, however, we shall be entitled to modify facilities if such modification is required on grounds of foundry practise. We shall not be obliged to check the conformity between the manufacturing facilities provided and the enclosed drawings and samples without special agreement.

- b) Insofar as we manufacture or procure designs or manufacturing facilities at the customer's request, the customer shall reimburse us for any costs thereby incurred. If costs are not charged in full, the customer shall also bear the residual costs if he does not take delivery of such number of items as promised by him upon conclusion of the contract. We reserve title to any designs or manufacturing facilities manufactured or procured by us; they will be used exclusively for goods delivered to the customer during the term of contract. In the event that three years have passed since the last delivery, we shall not be obliged to keep said manufacturing facilities or designs any longer.

If, in derogation of the above, the contracting parties agreed that the customer would become the owner of the facilities, title shall pass to him upon payment of the purchase price. Delivery of facilities shall be replaced by our obligation to keep these items. The customer may terminate the deposit relationship two years following the passing of title at the earliest, unless otherwise agreed.

- c) We will treat the manufacturing facilities with the same care that we usually employ in our own business matters. Upon request by the customer we shall be obliged to insure the latter's designs and manufacturing facilities at his expense. Any claims for damages for consequential damages under § 6 lit. c) and § 7 of our terms and conditions shall be excluded.
- d) If deliveries violating industrial property rights of third parties are effected according to drawings or other information of the customer, the customer shall release us from any claims of such third parties. Our drawings and proposals for a favourable design and production of the casting shall not be passed to third parties and may be reclaimed by us at any time.

License claims of the customer which are based on industrial property rights in designs submitted, or manufactured or procured on his behalf, as well as manufacturing facilities shall be excluded insofar as we use them in conformity with this contract.

- e) The use of a disposable design (e.g. made from polystyrene foam) is subject to special agreement.

11. Parts to be Poured In

- a) Parts that are to be poured in are to be delivered free of charge, they must be accurate of size and ready for sprue. Any necessary costs arising in connection with processing are to be borne by the customer.
- b) The number of sprue parts shall exceed the casting ordered in reasonable proportion.

12. Place of Performance and Jurisdiction, Applicable Law

If the customer is a merchant, the place of jurisdiction shall be our registered office; the same applies to liabilities on bills and checks. However, we are entitled to sue the customer also at the court having jurisdiction over his registered office.

August 2002

(Published in the Federal Gazette no 158 of 24th August 2002 – page 20446.)