



## Delivery and Payment Terms

### 1. General Information

1.1 Deliveries, performances, and quotes are always based on these terms of business. These terms are considered accepted no later than the date the goods or services have been received.

1.2 Deviations from these sales terms - especially the applicability of supply and sourcing rules and regulations of the ordering party - have to be recognized explicitly in writing.

### 2. Contract Conclusion

2.1 Our quotes are subject to confirmation and are non-binding. Orders are only binding for us insofar as confirmed by us in writing or if fulfilled by sending the goods.

2.2 Verbal subsidiary agreements are only valid if confirmed by us in writing. Our sales employees are not authorized to enter into verbal subsidiary or additional agreements or to issue verbal assurances or promises that exceed the content and scope of the written order confirmation or written contract.

2.3 Drawings, depictions, measures, weights, and other performance data are only binding if explicitly agreed in writing.

### 3. Prices

3.1 Prices are stated in euros ex works and do not include packaging, statutory VAT, customs duties in the case of exports as well as fees and other official charges.

3.2 Subsequent reductions of the order volume or subsequent reductions of the unit quantity in case of agreed part deliveries as well as reductions of agreed release orders necessitate an increase in the unit cost and possibly the agreed equipment cost share as well.

3.3 Our prices are based on currently commonly used and applied calculation factors. We are authorized to adjust our prices in accordance with any cost changes that might occur between contract conclusion and agreed delivery date due to increases in salary and wage tariffs of the metal-processing industry or increased manufacturing costs for the ordered products (raw materials, energy, auxiliary resources, expandable supplies, etc.).

### 4. Packaging

Goods are packaged in the manner customary in the industry; packaging material is invoiced at cost price. If freight paid boxes are returned within 4 weeks in flawless, reusable condition, 2/3 of the invoiced value are credited.

### 5. Shipping

Unless otherwise specified, we select the type and method of shipping without guaranteeing the lowest possible shipping costs. All risks and costs associated with shipping become the responsibility of the ordering party once the shipment has left the plant or shipping facility.

### 6. Transfer of Risks

6.1 Unless otherwise stipulated, the place of performance for all obligations arising out of the contractual relationship shall be Finnentrop.

6.2 Where the goods are dispatched -regardless of which party incurs the cost- the risk shall transfer to the purchaser with delivery to the shipping agent, and the latest when the goods leave the factory.

6.3. If the goods are ready for shipping but delivery is delayed due to reasons we do not have to justify, the risks are transferred to the ordering party once a notification of the goods' readiness for shipping has been issued.

6.4 We carry out shipments only at the explicit request of the purchaser; the purchaser shall be liable for the cost of insuring shipments against theft, breakage, damages in transit, fire damage, water damage or other insurable risks.



## **7. Overdeliveries and Underdeliveries**

Overdeliveries of up to 10% more and underdeliveries of up to 5% of the order volume are considered within the tolerance range of the contract. Contracts featuring continuous deliveries require that we are notified in advance of the release quantities and delivery schedules, i.e. when placing the order. However, we are entitled to produce the total volume of the order as we see fit unless other specific agreements have been made. Subsequent changes to the ordered goods can be considered only if we have not commenced production yet. If schedules and releases are not planned in a timely manner, and if a granted grace period remained fruitless, we are authorized to plan and organize schedules and releases ourselves and to withdraw from the not yet fulfilled portion of the contract and to demand compensation for any consequential damages.

## **8. Equipment/Tools**

8.1 Tools, equipment, and other facilities or resources and devices to produce the products remain our property regardless of the calculation of the cost share. Equipment cost shares are invoiced separate from the value of the goods. These invoices have to be paid when receiving the outturn sample or, if such a sample was not requested, upon receiving the replacement goods shipment.

8.2 Costs for renewing, maintaining, and proper storage as well as the risk for equipment damage are assumed by us, amortization is thus not applicable.

8.3 In case of recipient-based tools and equipment, we are obligated to use these only for shipments to the ordering party.

8.4 We agree to store the tools and equipment for the ordering party for 3 years after the last delivery. If the ordering party notifies us before this deadline expires that additional orders will be placed within one year, we are obligated to extend the storage time by that year. Otherwise, we can use the tools and equipment as we see fit.

## **9. Inspection and Acceptance**

The usual product inspection is carried out in accordance with the contractual agreements and includes inspection of surface flaws caused by production insofar as they can be detected by visual inspections. Costs for the usual inspections are included in the unit price. Type and scope of additional inspections and the inspection methods and procedures to be applied have to be agreed separately and indicated in detail on the tool drawing or the order and order confirmation. If acceptance is required, this has to be done immediately after receiving the shipping readiness notification. The functional acceptance costs are our responsibility, the personal acceptance costs the responsibility of the ordering party.

## **10. Payment**

10.1 Our invoices are payable without deductions within 30 days of the invoice date. A discount of 2% shall be granted where a payment is received to our account within 10 days of the due date, provided all payment obligations in respect of earlier deliveries have been settled. Where the payment deadline elapses, we shall be entitled to charge default interest at the rate the bank charges us for current account loans, albeit not less than eight percentage points above the base rate of interest of the European Central Bank at the time in question. We reserve the right to claim for additional damage or loss.

10.2 We reserve the right to accept drafts or checks; they are accepted only in lieu of payment and are not considered full payment until redeemed. Discount charges are the responsibility of the ordering party.



10.3 If assets or capital of the ordering party take a significant turn for the worse after the contract conclusion or if this situation does not become known to us until after the contract conclusion, we have the right to refuse our performance and to demand that any imperiling of or risks to the contract purpose are eliminated by the ordering party by providing sufficient security or guarantee. We are entitled to withdraw from the contract and/or demand compensation if the ordering party does not comply with the request for providing security or a guarantee within a reasonable period.

10.4 The purchaser shall only be entitled to offset counterclaims or withhold payment on account of such claims to the extent that the counterclaims are undisputed or have been established in law.

## **11. Retention of Title/Ownership**

11.1 The delivered products remain our property until all receivables and claims resulting from the business relationship between the ordering party and us are paid in full. Incorporating individual receivables or claims into a current invoice as well as the balance externalization and acknowledgement of these receivables or claims does not affect the right to retain title or ownership. Receiving the equivalent value is considered payment. In cases where the ordering party pays by check, but we accept a draft-type of liability for the amount or a partial amount of the sum of the check, regardless of the form, title or ownership is retained by us until the check has been processed by the bank and we have received payment in full.

11.2 The ordering party is authorized for resale of the products delivered proviso as part of normal business operations; however, pledging or transfer of the security or guarantee is not a right of the ordering party. The ordering party is expected to safeguard our rights during resale of the products delivered proviso using credit. Moreover, the ordering party already cedes or assigns to us his or her receivables from the resale of the products delivered proviso. We accept this assignment. The ordering party remains authorized to collect on the payables or demands assigned to us on their due date until this authorization is revoked; revocation is possible and permissible at any time. After the collection authorization has been revoked, the ordering party has to immediately provide us with the information about the ceded receivables or demands required for collection and to notify the debtor of the assignment.

11.3 Any processing or working of the products is done for us by the ordering party without resulting in obligations for us. When processing, bonding, mixing, or combining the products with products that are not ours, we are entitled to the resulting co-ownership share in the new object at a ratio of the value of our products with the remaining processed goods at the time of processing, bonding, mixing, or combining them. If the ordering party acquires sole ownership in the new object, he or she will grant us co-ownership in the new object based on the ratio of the values and will store the new object for us free of charge.

11.4 If the products delivered proviso are resold with other goods, regardless of the condition, the advanced assignment agreed in para. 2 applies only in the amount of the value of the products that are the object of the delivery transaction together with the other goods.

11.5 The ordering party has to inform us immediately of any compulsory execution or foreclosure by third parties involving the products or advanced assigned receivables or demands and has to hand over the documentation required for an intervention.

11.6 If the securities or guarantees, to which we are entitled in accordance with the previously mentioned rules, exceed the receivables or demands to be secured by 20%, we will release fully paid deliveries as per our discretion in individual cases, if requested by the ordering party.



## 12. Delivery and Performance Time

12.1 Delivery schedules and deadlines, either agreed as binding or non-binding items, have to be documented in writing.

12.2 We do not have to defend or justify delivery and performance delays due to force majeure and due to events that significantly hinder delivery or even render delivery impossible - among them strike, lockout, government orders, etc., even when occurring with our suppliers/vendors\* or their sub-suppliers or subcontractors - even with bindingly agreed dates, schedules, and deadlines. Such events authorize us to delay the delivery or performance by the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in part or as a whole due to the not yet fulfilled part.

12.3 If the hindrance lasts longer than three months, and after granting a reasonable grace period, the ordering party is entitled to withdraw from the contract with regard to the not yet fulfilled part. If the delivery time is extended or if we are released from our obligation, this does not provide the ordering party with a reason for demanding reimbursement or submitting a claim for payment of damages. We can invoke these listed circumstances only if we immediately notify the ordering party.

12.4 Where we are responsible for non-compliance with binding and agreed deadlines or for delayed delivery, our liability for compensation shall be limited in accordance with section 14 of these standard terms and conditions of delivery and payment.

12.5 We are entitled to partial deliveries and performances at any time.

\* Supplier and vendor are synonymous terms, this document uses supplier

## 13. Duties, Rights, and Demands of the Ordering Party in Case of Material Defects

13.1 The period of warranty is one year from delivery (or from acceptance where acceptance is required).

13.2 The delivered items must be examined carefully and without delay as soon as they are delivered to the purchaser or the third party nominated by the purchaser. The items will be deemed to be accepted unless we receive notice in writing of obvious deficiencies or other defects ascertained in the course of an immediate and careful examination within seven working days of the date of delivery, or alternatively within seven working days of discovery of the defect or the point in time at which the defect becomes apparent to the purchaser, without close inspection being made, in the course of normal usage of the goods delivered.

13.3 Where deliveries to which objection is raised are processed without written agreement or without good cause being demonstrated by the customer/purchaser or where the purchaser/ordering party attempts to remedy the fault itself, all rights of the buyer in respect of material defects shall be forfeited.

13.4 With complaints, we have the right to inspect, verify, and subsequently fulfil the order while we choose whether to remedy the defect or deliver a replacement free of defects. If we select subsequent fulfilment in the form of rectification, the ordering party/buyer can assert further or more inclusive rights only after providing us twice with the opportunity of rectification. If we have issued a property or quality warranty, the ordering party/buyer is entitled to exercise in an unreserved manner his or her statutory material or property defect rights.

13.5 If subsequent fulfilment in accordance with the requirements of para. 3 fails, the ordering party/buyer can reduce the purchase price or withdraw from the contract. Damages due to a material/property defect can be asserted only in accordance with the requirements of the subsequent para. 14.



## **14. Liability for compensation on account of negligence**

14.1 Irrespective of the legal justification – but especially on account of impossibility, arrears, defective or incorrect delivery, breach of contract, infringement of obligations in the contract negotiations and tortious acts – our liability for compensation, insofar as negligence is involved, shall be limited in accordance with the provisions of this section 14.

14.2 We shall not be liable

a. in cases of simple negligence on the part of our official bodies, legal representatives, employees or other agents;

b. in cases of gross negligence on the part of our non-managerial employees or other agents, provided that the infringement does not relate to essential contractual obligations. Essential as regards the contract are the obligations to render a defect-free delivery on time as well as the obligation to provide advice, protection and a duty of care aimed at enabling the purchaser to use the goods delivered in accordance with the contract or at protecting the life and limb of the purchaser's employees or third parties or the purchaser's property from significant damage.

14.3 Where we are liable on the merits for compensation in accordance with section 14.2, this liability shall be limited to damages that we either foresaw as a possible consequence of a breach of contract at the time the contract was concluded, or should have foreseen given circumstances of which we were aware or should have been aware with the application of due diligence. In addition, indirect and consequential damage resulting from defects in the goods delivered shall only attract compensation where such damage is typically to be expected in the course of the normal and intended use of the goods delivered.

14.4 In the case of liability for simple negligence, our obligation to pay damages for injury to persons or property shall be limited to the amount of EUR 10,000,000 per claim, even where essential contractual obligations are infringed.

14.5 In the case of liability for simple negligence in connection with damage caused by delay in performance, the entitlement of the purchaser to compensation for each full week of delay shall be limited to 0.5%, and to a maximum of 5% of the invoice value of the deliveries and services affected by the delay.

14.6 The exclusions and restrictions on liability defined above shall apply in equal measure to the benefit of our official bodies, legal representatives, employees and other agents.

14.7 Where we provide technical information or consulting, and the provision of this information or consulting forms no part of our contractually agreed scope of performance, these services shall be rendered free of charge and subject to the exclusion of all liability.

14.8 The limitations in this section 14 shall not affect our liability as regards wilful conduct, warranted characteristics, injury to life, limb or health or compliance with the Product Liability Act.

## **15. Property Rights**

The client or contracting party (ordering party) is obligated to independently check the possibility of violating commercial or industrial property rights when placing the order and to report any such possibility to us by referencing the parts protected by such rights when placing the order. He or she assumes liability for claims that are asserted by an authorized party against us because such rights were violated when processing or fulfilling his or her order.

## **16. Place of Fulfillment, Jurisdiction, Applicable Law**

16.1 Insofar as the ordering party is a merchant who has been entered as such in the commercial register, Finentrop is the exclusive place of jurisdiction for all disputes arising from the contractual relationship including indirectly or directly caused disputes or disagreements.

16.2 The Commercial Code and the Civil Code of the Federal Republic of Germany apply to the contractual relationship. Application of the "United Nations Convention on Contracts for the International Sale of Goods" is explicitly excluded.



## II. Technical delivery terms in relation to input material

Unless appropriate agreement is reached on special measures as regards manufacture, inspection, type, size and frequency, no guarantee can be given as regards potential malfunctions linked to internal flaws such as leftover cavities or non-metallic inclusions forming part of the input material production process.

Moreover, no guarantee is given as regards the incidence of hydrogen embrittlement, particularly where products receive special treatments or coatings.

Correct as of: November 2009