Terms of Sale and Delivery

1. Area of Application

These Terms apply only to businesspersons as defined in § 310 German Civil Code (BGB).
The following delivery and payment terms apply to all our contracts, deliveries and other services, unless modified or agreed otherwise with our express written consent. Our Terms apply, in particular, if we undertake deliveries or services without attaching conditions in spite of being aware of our customer's deviating terms.
The general business terms of our contractual partner apply only if we confirm the same in writing.
Our Terms apply to all future contracts, deliveries and services even if the text thereof is not sent to our contractual partner with each new quotation or confirmation of order.

2. Offer and Conclusion of the Contract

Our quotations are without obligation. Contracts and other agreements become binding only after we confirm them in writing or undertake the delivery or service. All agreements between ourselves and our customer must be documented in writing at the time of entering into the contract. Agreements made between our customers and our employees or representatives during or after conclusion of the contract require our written confirmation in order to be valid; the power of representation of our employees and representatives is limited to that extent.
Supplements, alterations and ancillary agreements to this contract must also be made in writing. This also applies to any cancellation of the requirement for the written form.

3. Prices, Price Increase, Payment

Our prices do not include value added tax, which the Buyer must pay at the relevant statutory rate.
If, in the case of orders to be performed more than 6 weeks after conclusion of the contract, there is a rise in our purchase prices and/or the wages or salary rates applicable to our company between conclusion of the contract and performance of the order, we are entitled to charge a higher price in proportion to the percentage share accounted for by the purchase price and/or wage costs in the agreed price.
Unless otherwise agreed, our invoices are payable net with no deduction within 10 days of invoice.
In the event of failure to pay within the above payment periods, we are entitled to claim interest at a rate of 8% over the base interest rate in application from time to time. Additional claims – in particular based on default by our contractual partner – remain unaffected. The set-off against counter-claims that we dispute or claims that are not final and non-appealable is inadmissible. No right of retention can be exercised in respect of claims that are not based on the same contractual relationship, unless we have acknowledged such claims or they have been judicially confirmed as final and non-appealable.
Our customer may withhold payments by reason of a complaint about defects only if there can be no doubt about justification for the complaint and, moreover, any payments are withheld only in reasonable proportion to the defects that have occurred.

4. Deterioration of Financial Position of Contractual Partner

If one of the following events occurs or if such a situation already existed prior to conclusion of the contract but we only became aware of it thereafter, we may require our customer to make advance payments corresponding to the amount of the agreed price. The same applies in the following cases:

- judicial or extra-judicial insolvency or composition proceedings are instituted on the assets of our contractual partner or the institution of such proceedings has been applied for or has been declined due to lack of assets or a written credit report from a bank or credit reporting agency reveals that our contractual partner is not creditworthy.

If our contractual partner fails to comply with our justified demand for advance payment within a reasonable period of time set by us for this purpose, we are entitled to withdraw from the contract and claim compensation for damages in lieu of performance, however, this only with regard to the part of the contract we have not yet performed.

5. Packaging, Shipment, Passing of the Risk, Insurance

Inside Germany, we deliver orders with a net value including packaging of Euro 400.00 upwards free to the point of receipt and, in the case of foreign countries, free to German border or FOB German port including packaging. Goods deliveries below Euro 400.00 net are charged ex works excluding packaging. We choose the cheapest freight route at our discretion.
The risk passes to the Buyer in each case, independently of the point of shipment and even for carriage paid delivery, at the time of leaving the delivering works. We insure the goods to be delivered only at the request and expense of the contractual partner against every insurable risk requested by our contractual partner, in particular against theft and transport damage. In the event of delays in shipment for reasons for which the Buyer is responsible, the risk passes already at the time of notification of readiness for delivery. If proof of delivery is required, all costs incurred for the same are at the expense of the contractual partner.

6. Delivery Periods, Delivery Dates, Blanket Purchase Orders

Delivery periods and dates are deemed to be binding only if we confirm them in writing.
A period for performance specified only in terms of its duration begins at the end of the day on which agreement is reached about all details of the order contents, however, at the earliest on the date of our acceptance of the order, however, not before the furnishing of all documents, approvals and releases to be procured by the Buyer and not before the receipt of any down-payment to be made by the Buyer.
A delivery period or delivery date has been complied with if we have sent the goods before the period expires or, in those cases where the goods cannot be or are not to be sent, we have sent our notification of readiness to deliver instead.
In the event of force majeure and unforeseeable obstacles that arise after conclusion of the contract for which we are not responsible, insofar as such obstacles are proven to have had considerable influence on the delivery of the item purchased, delivery dates are extended – also during default – by a reasonable length of time. Acts for which we are deemed not responsible for the purposes of this paragraph are, in any case, strikes or lockouts. The aforementioned stipulations also apply in the event that our suppliers or their own suppliers suffer from the delaying circumstances. If delivery delays of this kind last longer than 6 weeks, our contractual partner has the right – to the exclusion of any other rights – to withdraw from the contract.
Delivery periods are extended by the length of time by which the Buyer is in default with its obligations – in the case of continuing business relations, also those obligations arising under other contracts – or has failed to satisfy the prerequisites for the commencement or continuation of the works that must be satisfied by the customer, in particular if the customer fails to make available the necessary documents, plans or other specifications. The burden of proof of satisfaction of the necessary requirements and of having furnished the necessary documents, plans or specifications lies with our contractual partner.
Blanket purchase orders are accepted only with specific acceptance periods. If no exact period for acceptance has been defined, it ends 9 months after conclusion of the contract.
Under blanket purchase orders, the goods must be purchased in approximately equal monthly quantities. If acceptance does not take place within the period agreed, we are free to deliver finished consignments without further notice or take the same into storage at the expense of the Buyer. We are also entitled to set our customers an additional period of time for acceptance together with a warning that we shall refuse to deliver the goods if the period expires without results. If the subsequent period then passes without results, we are entitled to withdraw from the contract by giving notice to our delivery obligations or to claim damages in lieu of performance, however, this only with regard to the part of the contract that we have not yet performed.
If the Buyer does not undertake the apportioning of the goods incumbent upon it within one month of expiry of the period allowed for the said apportioning at the latest or, in the absence of any such agreement, then within one month of our making a demand to that effect, we may apportion and deliver the goods at our discretion. Moreover, we are entitled to set our customer an additional period of time for apportionment together with the warning that we shall refuse to deliver the goods in the event that the period expires without results. If the subsequent period then passes without results, we are entitled to withdraw from the contract by giving notice to our delivery obligations or to claim damages in lieu of performance, however, this is limited to the part of the contract that we have not yet performed.
We are entitled to undertake part deliveries and invoice them separately.

7. Default, Exclusion of Obligation to Perform

If we are in default with delivery, or if our obligation to perform is excluded under § 275 Civil Code (BGB), we are liable only subject to the conditions and in the scope defined in Article 11, however, with the following additional stipulations:
If we are in default with delivery and if there is merely a case of slight negligence on our part, claims for compensation for damages of our customer are limited to a flat-rate sum of default damages equal to 1% of the value of the goods for delivery for each complete week of default, however, a maximum of 8% of the value of the goods for delivery, in which case we reserve the right to prove either that no damages or that lesser damages were suffered as a consequence of default in delivery.
In the event of default on our part, the customer may claim damages in lieu of performance only if the customer has previously set us a reasonable additional period of time for delivery of at least 4 weeks, whereby the customer has the right to grant us a reasonable period of less than four weeks in individual cases if an additional period for delivery of at least 4 weeks is unacceptable to that customer. Any right of withdrawal or claim to damages available to the customer is always limited to the part of the contract not yet performed.
Claims against us for damages based on default or exclusion of the obligation to perform under § 275 BGB become time-barred one year after the statutory limitation period commences.
The aforementioned stipulations do not apply if it is a matter of damages resulting from injury to life, bodily injury or harm to the health of our contractual partner or damages due to an intentional or grossly negligent breach of duty on the part of ourselves, our statutory representatives or agents. Furthermore, they do not apply in the event of default if a fixed transaction has been agreed.

8. Default in Acceptance by our Contractual Partner

If our contractual partner is wholly or partly in default with the acceptance of our services, then, after we have set a reasonable additional period of time with the warning that we shall refuse to allow the customer to accept our services after the deadline expires, and after this deadline has expired without results, we are entitled to withdraw from the contract or claim compensation for damages in lieu of performance, however, only with regard to the part of the contract we have not yet performed.
Our statutory rights remain unaffected in the event of a default in acceptance on the part of our customer. The customer must refund to us any storage costs, warehouse rental charges and insurance costs for any goods that are due for acceptance but not yet accepted. However, we are under no obligation to insure goods taken into storage.
If delivery of the goods is delayed at the request of the Buyer or if the Buyer is in default with acceptance, we may charge storage costs in the amount of 1% of the invoice sum, after a period of one month has passed since notification of our readiness for delivery, for each commenced month of delay in which case we reserve the right to claim any higher damages actually suffered. Our customer has the right to prove that the storage costs were not incurred or not incurred in the minimum amount claimed.

9. Cancellation of Orders, Recovery of Goods, Damages in Lieu of Performance

If our customer wishes to cancel an order placed and if we consent to its cancellation or if we take back goods that we have delivered for reasons for which we are not responsible while releasing the Buyer from his duty to accept and pay for the goods or if we are entitled to claim damages in lieu of performance, we may require damages to be 20% of that portion of the contractual price that corresponds to the part of the delivery affected without offering further proof. Our customer has the right to prove that either no damages or lower damages were suffered.
This does not affect our right to claim any higher damages actually suffered.

10. Characteristics of the Goods, Short Deliveries and Excess Deliveries

Illustrations, drawings, dimensions and other details of characteristics shown in catalogues, price lists and other printed materials represent merely approximate values usual in the trade. Our samples and specimens merely give approximate indications of quality, dimensions and other characteristics.
Our representations concerning dimensions, characteristics and intended purpose of use of our products are for description only and constitute no warranty of these characteristics.
In the event of technical necessity, we reserve the right to deliver the goods ordered with deviations in properties, dimensions and other characteristics. We shall draw our customer's attention to such modifications. Our customer has no warranty rights in this respect if, and to the extent to which, the change results in no considerable impairment of the suitability of the products for use by the customer.
We reserve the right to deliver quantities of up to 10% over or under the quantity ordered.

11. Liability for Defects and Compensation for Damages

Claims of our customer based on defects in the goods are conditional upon the customer duly performing the duties of inspection and notification of defects incumbent upon it under § 377 and § 378 Commercial Code (HGB), in which case the complaint must be submitted in writing.
If our customer fails to submit a complaint in due form on time, it may no longer make any claims in respect of the circumstances to be notified, unless we have acted maliciously.
Claims of our customer based on defects in the goods delivered by us become time-barred one year after delivery of the goods. However, the statutory period still applies to compensation for damages and a right to refund of expenses under § 437 (3) Civil Code (BGB) when it is a matter of damages resulting from injury to life, bodily injury or harm to health of our contractual partner or damages resulting from an intentional or grossly negligent breach of duty on our part or the part of one of our statutory representatives or agents.
The rights available to our customer as a result of defects in the goods are governed by the statutory provisions subject to the proviso that our customer must allow us a reasonable period of time of at least 4 weeks for subsequent performance, in which case the customer has the right in individual cases to grant us a reasonable period of less than four weeks if the customer can prove that a period for subsequent performance of at least 4 weeks is unacceptable to that customer.
The period for subsequent performance does not, in any case, start to run before the point in time at which our customer has returned the defective goods to us, in which case we pay the costs of return shipment.
If only a part of the goods delivered by us is defective, the right of our contractual partner to require rescission of the contract or compensation for damages in lieu of performance is limited to the defective portion of the consignment, unless this limitation is impossible or cannot reasonably be expected of our contractual partner.
There is no exclusion or limitation of our liability for damages for harm to life, bodily injury or harm to health of our contractual partner resulting from a breach of duty for which we are at fault.
We are liable for other damages suffered by our contractual partner, only if they are due to an intentional or grossly negligent breach of duty by ourselves or one of our statutory representatives or agents or employees. If we have caused the damage through slight negligence only, we are only liable if the matter concerns the breach of essential contractual duties, which liability is limited to the typical contractual and reasonably foreseeable damages.

Otherwise, claims of our contractual partner to compensation for damages based on breach of duty, tort or on any other legal basis are excluded. The above limitations of liability do not apply in the event of a lack

of guaranteed characteristics if and to the extent to which such guarantee was intended to protect the partner from suffering damages that did not occur to the goods delivered themselves. Where our liability to compensate for damages is excluded or limited, this also applies to the personal liability of our employees and agents.
The above exclusions of liability also apply in each case to consequential damage. The above exclusions of liability do not, however, apply to claims under the Product Liability Act.

12. Producer Liability
Our contractual partner must indemnify us against all claims for damages brought by third parties based on the provisions regarding tort, product liability or by reason of other provisions for faults or defects in the products manufactured or delivered by ourselves or by our contractual partner insofar as such claims would also be justified against our contractual partner or are no longer justified merely because the claims have meanwhile become statute-barred. Under these preconditions, our contractual partner must also indemnify us against the costs of legal disputes that are brought against us on the basis of such claims.
Insofar as the claims brought against us are justified or no longer justified merely as a result of meanwhile being statute-barred, we have a pro-rata right of indemnity against our contractual partner, the scope and amount of which is determined by § 254 Civil Code (BGB). Our rights to indemnity and compensation for damages under § 437, § 440, § 478 BGB and on other legal grounds remain unaffected by the above regulations.

13. Reservation of Title
Until satisfaction of all receivables accruing to us from our customer now or in the future, our customer grants us the following securities that we release at our discretion on request provided that their realisable value exceeds the values of our receivables by more than 10%.
Delivered goods remain our property. Processing or transformation of the goods is always undertaken on our behalf as manufacturer, however, without incurring any obligations on our part. If the goods we have delivered are processed together with other items that do not belong to us, we acquire co-ownership in the new object in the proportion of the invoice value of the product delivered to the value of the other items used at the time of processing.
If our goods are combined with other movable objects to form one object and if the other object is to be regarded as the main object, our customer assigns to us a pro-rata share of ownership insofar as the main object belongs to it. Any handover necessary in order for us to acquire title or co-ownership is substituted by an agreement already now made to the effect that our customer as borrower keeps the object in safekeeping on our behalf or, if the object itself is not in the customer's possession, then handover is already now substituted by assignment of the customer's right of recovery against the possessor.
Objects in which we hold title or co-ownership under the above provisions are referred to hereinafter as "reserved-title goods".
The customer is entitled to sell the reserved-title goods or combine them with things owned by other parties in the normal course of business. The customer already now assigns to us the receivables arising from the sale or combination or other legal ground relating to the reserved-title goods either wholly or in the proportion in which we hold co-ownership of the sold or processed goods.
If receivables of this kind are incorporated into current accounts, this assignment also covers all outstanding balances receivable. The assignment takes place with priority before the rest.
We empower the customer, subject to revocation, to collect the assigned receivables. If and when our receivables are due, the customer must pass on the sums collected to us without delay. If our receivables are not yet due, the customer must keep the sums collected separate.This does not affect our authority to collect the receivable ourselves.
Nevertheless, we undertake not to collect the receivables as long as our customer fulfils its payment obligations out of the revenues received, does not default on payment and, in particular, does not present any petition for the institution of insolvency or composition proceedings or does not cease to make payments.
If this is the case, however, our customer is obliged to notify us of all receivables assigned and their debtors, hand over the associated documents and provide us with all the details required for their collection as well as notify the third-party debtors of the assignment, in which case we are also entitled to notify the debtor of the assignment ourselves.
In the event of the cessation of payments, petition for or institution of insolvency proceedings, judicial or extra judicial composition proceedings, the rights of our customer to resale, processing, mixing or integration of the reserved-title goods and the authority to collect the receivables assigned are cancelled without necessitating any revocation on our part.
The goods we have delivered subject to reservation of title must be stored separately.
The customer must notify us immediately of any attachment by third parties of the reserved-title goods or receivables assigned to us. The customer pays the costs of any interventions or their defence.
The customer is obliged to treat the reserved-title goods with care, in particular to insure the same adequately for their new value against damage by fire, water and theft at its own expense.
In the event of conduct in breach of contract by the customer, in particular default in payment, we are entitled to recover the reserved-title goods at the expense of the customer or to require the assignment of the customer's rights of recovery against third parties.
Any recovery or attachment of the reserved-title goods on our part does not constitute withdrawal from the contract unless we make an express declaration to this effect in writing.
If our reservation of title should cease to be valid for deliveries to a foreign country or for other reasons, or if we should lose title to the reserved-title goods on any other grounds, our customer is obliged to grant us without delay some other form of lien in the reserved-title goods or other security for our receivable that is legally valid under the law applicable at the Buyer's domicile and which comes closest to the reservation of title under German law.

14. Moulds
The price for moulds includes the costs of sampling, but not the costs of testing and machining equipment or modifications required by the Buyer. Unless otherwise agreed, the selling price for moulds is 50% on confirmation of order and 50% on presentation of the sample casting in conformity with the contract, payable net in both cases. After the Buyer has confirmed modification orders prior to completion of the moulds, all costs incurred up to that point must be refunded if they exceed the down-payment.
Unless otherwise agreed, we are and remain the owner of the moulds that either we or third parties working on our behalf have manufactured for the Buyer. As long as the Buyer continues to fulfil his payment and acceptance obligations, these moulds will be used only for the orders of the Buyer. We are obliged to replace these moulds free of charge only if these are required to fulfil an output quantity that we have guaranteed to the Buyer.
Our obligation to safekeeping expires two years after the last delivery of parts from the mould and our prior notification.

15. Samples, Designs, Advice
We will charge our customer for the production of samples, sketches, designs and test prints requested by our customer even if no order is placed. The same applies to any examinations and reports requested by our customer.
Samples, sketches, designs and test prints issued by us remain our property; our customer may not imitate or reproduce them or make them available to third parties or companies. The same applies to any proposals we have prepared.
Our advice is given to the best of our knowledge and belief, however, does not release our customer from the duty to check the materials and models proposed by us for their suitability for the intended purpose and for compliance with the pertinent regulations. Our customer must examine manufacturing samples, proof sheets, etc. and return them to us with a note of readiness for processing. Required modifications must always be notified to us in writing. If our customer does not request the presentation of a sample casting or this is not possible due to the deadline requirements of the customer, we are liable for any faults only in the event of intent or gross negligence.

16. Ownership of Documents, Secrecy
Illustrations, drawings, calculations, samples and models remain our property. Our customer undertakes not to make any such items available to third parties by any means whatsoever without our express consent. For each case of infringement of the above obligations for which our customer is at fault, our customer promises to pay us a contractual penalty of Euro 6,000.00 in each individual case. This does not affect our right to claim damages actually suffered that exceed the contractual penalty.
The contractual partners mutually undertake to treat all commercial and technical details that become known to them in the course of co-operation and that are not public knowledge as if they were their own business secrets and to maintain strictest confidentiality about the same vis-à-vis third parties.
The contractual parties undertake to pay each other a contractual penalty to the amount of Euro 6,000.00 in each individual case of infringement of the above obligations. This does not affect the right to claim compensation for damages actually suffered that exceed the contractual penalty.

17. Proprietary Rights
If the goods are to be manufactured according to drawings, samples or other specifications of the contractual partner, the contractual partner is responsible for ensuring that no third party rights, in particular patent rights, registered designs, utility models or other proprietary rights and copyrights are infringed as a result.
The Buyer indemnifies us against any claims of third parties based on the infringement of such rights.
Furthermore, our contractual partner assumes all the costs that we incur as a result of the fact that we defend ourselves against such claims brought by third parties based on the infringement of such rights.
Should findings, solutions or techniques arise in the course of our development work that are capable of protection in any way, we are the sole holder of the title, copyrights and rights of use arising from the same and we retain the sole right to apply for protection of the corresponding rights in our own name and at our own expense.

18. Assignment
The customer may assign any claims against us of any kind whatsoever only with our written consent.

19. Place of Performance, Court of Jurisdiction, Miscellaneous
Place of performance for all claims between the contractual partners is Wuppertal. Exclusive court of jurisdiction for all disputes arising out of contracts for deliveries, services and payments, including actions involving cheques or bills as well as all disputes arising between the parties, insofar as our contractual partner is a registered merchant, is Wuppertal, in which case, however, we have the right to bring an action against our customer at a different court having jurisdiction for our customer under Article 12 et seq.
The relations between the parties are governed solely by the law in application in the Federal Republic of Germany to the exclusion of international law on contracts for the sale of goods, in particular to the exclusion of the UN Convention and other international treaties for the uniformity of contracts for the international sale of goods.
Should any provision of these Terms or a provision within the framework of other agreements be or become invalid, this shall not affect the validity of all other provisions or agreements. The invalid provision must be substituted by one which is valid and which achieves as far as possible the economic intention pursued by the invalid provision.
The headings are intended as a guide only and have no material significance, in particular have no conclusive effect.

As at: 01/03/2025