

General terms and conditions of delivery and payment for cast products of the Pleissner GmbH

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Our deliveries and performances are effected only on the basis of the following terms and conditions. Other terms and conditions of the customer are not even valid, if we have knowledge of them and execute the delivery unconditionally. Our terms and conditions are not valid for customers in the meaning of § 13 German Civil Code. They are also valid for all future business with the customer in the current business relation. All agreements, which have been reached between us and the customer for the purpose of the execution of this contract, must be set down in this contract. Alterations and supplements of the contract must be in writing.

1. Contract performance and scope of delivery

a) Our proposal is subject to change without notice, if nothing different arises from the confirmation of order or if we did not expressly set down anything else in writing. A contract will be achieved only, if we confirmed an order in writing or if we execute the order.

b) The information contained in brochures and catalogues, as illustrations, drawings, declarations of weight and dimensions are conventional approximations, if they are not expressly declared as binding.

c) We keep reserved our property and copy rights in illustrations, brochures, calculations and other documents, it is not allowed to make them available for third parties. This is specially valid for those written documents, which are marked „Confidentially“; before their transmission to third parties, the customer needs a expressly written authorisation.

2. Pricing and terms of payment

a) Our prices are ex works plus packing and packaging, cargo, postage, insurance and the respective statutory value-added tax.

b) If the costs related to the order change after the conclusion of the contract, the parties will come to an agreement regarding the adjustment.

c) Our invoices are payable net within 30 days after the date of invoice, if nothing else was stipulated. Subsequently the customer is in delay according to § 286 (2) No. 2 BGB (German Law). The legal Consequences are according to § 288 BGB (German Law).

d) The customer is only entitled to withhold or counterbalance payments because of whatever counterclaims, if there are undisputed or legally enforceable payment claims.

e) If we have delivered partly defective goods, the customer is nevertheless obliged to pay for the indisputably faultless goods, except the part delivery is of no interest for him.

f) We accept discountable and duly tax-paid bills of exchange on account of payment, if this before has been stipulated expressly. Credit notes of bills of exchange and cheques will be made subject to the arrival net of the expenses and with value date of the day, on which we receive the countervalue.

g) If we are committed to make advanced deliveries or payments and after the conclusion of the contract we become aware of circumstances, according to that our payment claim is endangered by the lack of the ability-to-pay of the customer, we can, apart from our statutory claim, because of the retention of ownership, stipulated in number 10, prohibit the resale and processing of the delivered goods and demand their return or the transfer of the indirect possession of the delivered goods on expense of the customer and revoke the direct debiting service under the condition of number 10 subparagraph h). The customer already now entitles us to enter his enterprise in the said cases and to pick up the delivered goods. In the redemption of the goods there only is a rescission of contract, if we declare this expressly. Nevertheless we are also entitled to make become due and payable immediately any and all outstanding unpaid invoices and those manufacturing accumulated until the lack of ability-to-pay becomes known.

h) If there is a default in payment, we can suspend after a written notice the performance until the receipt of the payments. After setting a reasonable period of time in this case we are also entitled to a withdrawal.

i) We shall have the right to set off any claims which the customer may have against us against all claims which we have against the customer.

In addition, we shall be entitled to set off any claims which we may have against the customer against all claims which the customer may have, for whatever legal reasons, against companies in which Georgsmarienhütte Holding GmbH has a majority shareholding, either directly or indirectly.

The current group of companies in the sense of paragraph 2 above, in which Georgsmarienhütte Holding GmbH has a majority shareholding, either directly or indirectly, can be viewed in the internet under [http:// www. georgsmarienhuettenholding.de](http://www.georgsmarienhuettenholding.de). On request, the customer can obtain information at any time on the group of companies in the sense of paragraph 2 above.

3. Period of delivery

a) The periods of delivery begin with our confirmation of order, but not before all details of the execution have been clarified and all the other conditions, which have to be fulfilled from the customer, are in, this is correspondingly valid for the delivery dates. Deliveries before the expiration of the period of delivery and part deliveries are permitted, if this is not unreasonable for the customer. Delivery dates are always given as the date of the ready-for-shipment note, otherwise the day of sending. If nothing else was agreed on or nothing else results from the contractual relationship, then our indicated period of delivery is not binding.

b) Agreed target delivery periods and dates prolong or postpone without prejudice of our rights because of delay of the customer for the period, which the customer is overdue with his obligations. If the customer gets in default in acceptance or if he offences any other duties to co-operate, we are entitled to demand the arising damage, including possible additional expenditures. In this case the risk of accidental sinking or accidental deterioration of the good passes on to the customer in the moment, in which he gets in default in acceptance.

c) If we get in delay, the customer can give us an appropriate extension of time with an expressly declaration, that he will refuse to take delivery after the expiration of this

extension and withdraw from the contract after the expiration as far as an execution is of no interest for him.

d) The customer is obliged to declare during an appropriate time on request, if he will withdraw from the contract because of the delay of delivery and/or if he demands compensation in damages instead of performance or if he insists on the delivery.

4. Serial delivery, long-term- and call-off purchase agreements

a) Unlimited agreements are redeemable with a time limit of 6 months to the end of the month.

b) If during long-term agreements occur (agreements with a currency of more than 12 months and unlimited agreements) after the period of the first four weeks an essential alteration in the labour, material or costs of energy, every contractual partner is entitled to demand an appropriate adjustment of the price under consideration of these factors.

c) Our prices are calculated on basis of the agreed order quantities. If no binding order quantities have been agreed on, our cost estimating depends on the agreed target quantity. If the order quantity or target quantity was underrun, we are entitled to raise appropriately the price per piece. If the customer exceeds the quantity with our permission, than he can demand an appropriate reduction of price, if he indicates that in writing at least 2 months before the agreed date of delivery. The amount of the reduction or raising has to be determined on basis of our cost estimating.

d) At call-off delivery agreements, if nothing else was agreed on, binding quantities have to be notified to us by call-off at least 3 months prior to the date of delivery. Additional costs, which have been caused by the customer through a delayed call-off or by subsequent alterations of the call-off regarding the time or quantity shall be chargeable to the customer and our cost estimating is decisive.

e) At serial delivery an additional or short delivery up to 10 % in relation to the order quantity is permitted because of the characteristic feature of the casting process.

f) According to their scope changes the overall price.

5. Force majeure and other business disruptions

a) Events as force majeure, industrial disputes, lockout and official actions entitle us to postpone the delivery for the time of the disruption and an appropriate start-up period or to withdraw partly or totally from the agreement because of the not fulfilled part.

b) Force majeure is equate to unexpected circumstances, e. g. equipment failure, defective units and rework, which make impossible a punctual delivery in spite of reasonable efforts, we shall present the prove for it.

6. Testing procedure, taking delivery

a) If the taking delivery is stipulated, at the same time the volume and the conditions until the conclusion of the contract have to be determined.

b) If this has not taken place, the taking delivery shall be made in our usual extent and according to our usual conditions. The same goes for the first exam of the sample.

7. Dimensions, weights, piece numbers

a) The deviations in dimension, weight and piece numbers in the limit of customary tolerances, relevant DIN-regulation and casting technical requirements are permitted. Details of dimensions and weights in our offers and confirmations of orders are no quality guarantees.

b) For the calculation the delivery weight and piece numbers, that we determined, are decisive.

8. Shipping and passage of risk

a) If nothing else was stipulated in writing, as commercial terms are valid „ex works, (Incoterms 2000). This is also valid, if we obliged ourselves to take over the cost of transport.

b) Only on express request of the customer we will cover the delivery by a transportation insurance, the costs for it pays the customer.

c) Goods, which have been announced ready for shipment, have to be taken over immediately, otherwise we are entitled to ship them of our choice or to stock them to the usual forwarding costs and on risk of the customer, last we can also do, if the shipment paid by us could not be executed without our fault. One week after the beginning of the storage, the goods are considered as delivered.

d) For lack of special instructions the choice of transport and transport routes will be made according to our judgement.

e) With the delivery to the railway, the forwarder or carrier respectively one week after the beginning of the storage, but at the latest with the leaving of the production facility or storage, the risk passes on to the customer, even in case we have taken over the delivery.

9. Reservation of ownership

a) All delivered goods remain our property (conditional commodity) until all debt claims, specially including the respective balance claims, we are entitled to because of our business relationship, have been satisfied. This is still valid, if payments have been made for specially marked claims. If the customer gets in default in payment, we are entitled to demand recover possession of the delivered goods. The customer will pay the costs for it. This is not valid in case of applied or opened proceeding of insolvency of the customer, because of which we are not entitled to demand immediate recover possession of the delivered goods.

b) The taking back of the goods, respectively in the claiming of the reservation of ownership is only a rescission from the contract, if we declare it expressly.

c) The treatment and processing of the delivered goods will always be made by the customer. If the conditional commodity will be processed or connected with other objects, which do not belong to us, we acquire the joint ownership of the new good in relation of the invoice value of the object to the other treated or processed objects, which are in process at the moment.

d) If our ownership expires through connection or mixture, then the customer transmits already now his property rights of the new inventory or the object in the volume of the invoice value and hold it free of charge in safe custody for us. The arising joint properties are considered as conditional commodity in the meaning of subparagraph a).

e) The customer can only sell the conditional commodity in the usual business and to his usual general terms and conditions of trade, provided that the claims of the resale will be transmitted to us according to subparagraph f) and g). He is not entitled to other dispositions about the conditional commodity.

f) The claims of the customer from the resale of the conditional commodity shall be assigned to us already now.

They serve for covering in the same scope as the conditional commodity.

g) If the conditional commodity will be resold by the customer together with other goods, which have not been delivered by us, the assignment of the claim from the resale is only valid for the amount of our invoice value of the already resold conditional commodity. At the resale of goods, in which we have joint ownership according to subparagraph b), the assignment of the claim is valid in the amount of that joint ownership.

h) Until our revocation the customer is entitled to collect claims out of the resale according to subparagraph e) and f). We have the right to revoke in the cases mentioned in number 9, if the customer gets in default in payment, made an application for the opening of a process of insolvency or he has to announce immediately the assigned claims and their debtors, has to give all information necessary for the collection, hand over the documents, which go with them and inform the debtors about the assignment. In no case the customer is entitled to assign the claims.

i) If the value of the existing collateral securities exceeds the secured claims altogether more than 20%, we are in so far obliged to release securities according to our choice. The customer has to inform us immediately about an attachment or other infringements by thirds.

j) We are entitled to let third companies by subcontract produce goods, we have to deliver, and entrust the manufacturing facilities of the customer to the third company for the purpose of production.

k) Claims out of copyright or protection of industrial property rights can be asserted by the customer in so far, that he points the existence of them out and reserves them expressly.

10. Liability for defects

a) We are liable for the perfect production of the parts delivered by us in accordance with the agreed technical delivery instructions. The customer is responsible specially in respect of the planned purpose for the proper construction under observation of possible safety regulation, the choice of the material and test procedures, correctness and completeness of the technical delivery instructions and of the technical documents and drawings given to us as well as for the execution of the provided manufacturing facilities, and even in case, we suggest any alterations, which find his approval. Further the customer vouches for the fact, that industrial property rights and other rights of third parties will not be infringed because of his information. Decisive for the contractual condition of the good is the moment of the passage of risk.

b) We are not liable for the just insignificant deviation of the agreed condition, if there is a just insignificant reduction of the usability as well as for defects, which have been caused by improper or unsuitable utilisation, defective assembly, respectively setting into operation and usual wastage. If the customer or a third party carries out improper alterations or repairs, we will not vouch for them and the consequences thereof.

c) The customer has to give written notice of defects immediately after the arrival of the good at the final destination, and of hidden defects immediately after the discovery of the defect.

d) At agreed taken delivery or testing procedure according to subparagraph 6 the notice of defects is excluded, which could have been discovered on this occasion

e) We must have the opportunity to find out the noticed defect. In urgent cases of endangering the operating safety or to protect against disproportionately big damages of the customer, we have to determine the noticed defect immediately. Rejected goods have to be send back immediately on request. If the customer does not fulfil this obligation or carries out any alterations at the rejected goods without our prior approval, he loses his possible rights because of redhibitory defect.

f) If the customer's complaints are justified and at due date, we according to our choice rectify the defects or deliver perfect substitute goods (re-performance)

g) If we do not fulfil our warranty or not in an appropriate time or if the re-performance is not successful, the customer can fix a last time limit, in which we have to fulfil our obligations. There will be no need for fixing a time limit, if it is unreasonable for the customer. After a unsuccessful expiration of the time limit the customer on his choice can demand an abatement of the purchase price, withdraw from the contract or the necessary rectification will be made by himself or by a third party at our expense and risk. If the rectification has been carried out successfully by himself or a third party, all claims of the customer would be paid in settlement of claim through the reimbursement of the expenses, which arose.

h) Claims of the customer because of the necessary expenses for the purpose of the re-performance, which arise out of the fact, that the good will be brought to a different place after the delivery, are excluded, if not the transport is in accordance to the intended use.

i) Legal rights of recourse exist just in so far, as the customer did not agree on any stipulations apart from the legal claims in case of a customer's complaint.

k) Further claims of the customer are excluded in accordance with subparagraph 13.

l) The prove of a defect is incumbent upon the customer.

11. Manufacturing facilities related to the order, parts to pour in

a) Manufacturing facilities related to the order as models, pattern, core boxes, chill forms, casting tools, devices and checking devices, which will be put at disposal by the customer, must be send to us for free. The correspondence of the manufacturing

facilities provided by the customer with the contractual specifications or drawings and pattern given to us, shall only be controlled because of express stipulations. We are allowed to vary the provided manufacturing facilities, if this seems to be necessary because of casting technical reasons and the work piece will not be changed through the variation.

b) The expenses for the variation, repair and substitution of his manufacturing facilities bears the customer.

c) We will treat and keep the manufacturing facilities with the same care, we use on our own matters. We are not liable for the accidental deterioration or decline of the manufacturing facility. Manufacturing facilities, which we do not need anymore, can be send back to the customer at his expense and risk or, if the customer does not comply with our request to collect them in an appropriate time limit, we will keep them to the usual costs and after fixing an appropriate time limit and advising we will destroy them.

d) Manufacturing facilities related to the order, which have been produced or purchased by us on order of the customer, remain our property even after invoicing of prorated costs. We will keep them for the time of three years after the last casting.

If it was stipulated deviating from paragraph 1, that the customer becomes the owner of the manufacturing facilities, the ownership passes on to him after the payment of the stipulated price respectively of the prorated costs. The delivery will be substituted by our duty to preserve. The custody relationship can be cancelled at the earliest two years after the passage of ownership, as far as there is no important reason.

e) The customer can only assert claims of copyright or protection of industrial property rights in so far, as he points out their existence and reserves them expressly.

f) If during the utilisation of a just once usable manufacturing facility there is produced spoilage, either the customer has to provide a new manufacturing facility or he shall bear the costs of substitute facility.

g) Parts, which have to be poured in by us must be delivered by the customer coming up to requested dimensions and in perfect condition. For parts, which become useless through spoilage, the customer has to deliver replacement for free.

12. Confidentiality

a) Every contractual party will use all documents (pattern, model and particulars count as part of it) and knowledge, which they get out of the business relationship, only for common purposes and will maintain them secret against thirds with the same care as corresponding own documents and knowledge, if the other contractual partner describes them as confidential or has a obvious interest in their secrecy.

b) This obligation begins with the first receipt of the documents or knowledge and expires 36 months after the termination of the business relationship.

13. General limitation of liability

a) As far as nothing else turns out in the following, other and further claims of the customer against us, for whatever legal justification, are excluded specially because of the violation of the duties out of the obligatory relation and out of unlawful act.

b) This limitation of liability does not exist, as far as the liability is compelling, e.g. according to the Law of product liability, in case of intention, gross negligence of the legal representatives as well as culpable violation of fundamental contractual duties. In case of culpable violation of fundamental contractual duties we are only liable - except in cases of intention or gross negligence of our legal representatives or executive employees - for the typical for the contract, reasonably foreseeable damage. Also it is not valid for damages out of the injury of life, of body or health and in case of the lack of a guaranteed quality, if and as far as the objective of the guarantee is to cover the customer against damages, which did not result from the delivered good itself.

c) As far as our liability is excluded or limited, this is also valid for the personal liability of nonman employees, employees, collaborators, legal representatives and persons employed in performing an obligation.

Claims for damages and redhibitory defects, which the customer is entitled to against us, will be struck by the statute of limitations one year after the delivery of the goods to the customer. This is not valid, if the law in §§ 438 section 1 no. 2 (buildings and objects, which are usually used in buildings) and 479 section 1 (Right of recourse) German Civil Code lays down longer time limits. The legal prescription regulation is valid even in case of intentional and gross negligent violation of duties.

14. Place of fulfilment and jurisdiction

a) If the customer is a businessman, the place of jurisdiction is Elze. But we are entitled to proceed against a person at the court of his headquarters.

b) If nothing else results from our confirmation of order, the place of fulfilment for our performance is the place of our supplier. For financial obligations is the place of fulfilment Elze.

15. Applicable right

The legal relationship between the parties shall be subject to the exclusive jurisdiction of German Law under exclusion of the UN Sales Law agreement (UNCITRAL/CISG).

16. Partial invalidity

If any provision of these terms and conditions shall be totally or partly invalid or unenforceable, the contractual partners oblige themselves to agree to a settlement, by which the meaning and purpose of the invalid or unenforceable provision will be obtained to the extent possible.

17. Clause of partnership

At all replacement payments, specially at the measure of damages, shall in good faith be considered appropriately the economical condition of the contractual partner, type, extent and duration of the business relationship as well as the value of the good.