

# **General Terms and Conditions of Sale**

of Wöhrle GmbH & Co. KG

Stand 09.10.2017

## **1. Scope of Application**

All our proposals, deliveries and other services are subject exclusively to the following Terms as amended from time to time. Our Terms and Conditions of sale shall also extend to any future transactions. General terms and conditions of the buyer that are not explicitly acknowledged by us shall not be binding on us. Our Terms and Conditions of Sale shall be deemed to be applicable even in the event that we carry out the delivery for the benefit of the buyer without reservation and in the knowledge of the existence of terms and conditions of buyer's contradicting or deviating from our terms. Any amendments or changes of the present terms shall be made to be effective in writing. Any or all agreements shall be immediately confirmed in writing by the buyer. Our Terms and Conditions of Sale shall be binding only upon organisations within the meaning of § 310 para. 1 of German Civil Code.

## **2. Proposal**

- a. Our quotations shall be non-binding and subject to alteration without notice.
- b. Customer enquiries or purchase orders that have not been confirmed by us shall not be binding upon us.
- c. If any quotations or order acknowledgements are based on materials such as images and drawings, such materials shall be deemed to be have been given without liability. We reserve the title and copyright to all of such documents. The above-mentioned materials may not be disclosed to third parties except with our prior written consent. Unless expressly identified by us as binding, measurements or weights shall be regarded as approximate values customary in the trade.
- d. We do not supply any parts or articles ( hereinafter referred to as Goods ) for use in aerospace travel nor any Goods which are intended for integration or further processing in the area of aerospace travel. The buyer warrants that parts or Goods delivered or processed by us will not be used in the above- mentioned area of application. Unless confirmed by us in writing prior to the execution of the contract , we assume that the above use is not intended.

**3. Conclusion of Contract and Scope of Delivery**

- a. If any proposal of ours is followed by the buyer's purchase order, the contract shall be deemed to come into effect upon our written order acknowledgement in which the nature and the scope of the performance due is specified. This applies to special contracts and/or purchase orders as well as to blanket contracts and/or purchase orders.
- b. No order acknowledgement will be issued for goods delivered on call or as part deliveries based on framework treaty. In these cases, the nature and scope of the delivery shall be based on the written part delivery schedule or call-off.
- c. We shall be entitled to carry out technical changes and modifications of the Goods provided that such changes and modifications are not in contradiction with the order acknowledgement.

**4. Prices**

- a. Unless otherwise agreed in the order acknowledgement, all our prices are ex works and do not include packing, carriage, transport, postage, insurance, customs duties or the value added tax effective from time to time.
- b. If the buyer subsequently reduces the quantity ordered or the agreed number of call-offs, we shall be entitled to raise the unit price accordingly.
- c. If during the period between the conclusion of the contract and the agreed date of delivery any changes in costs or cost reductions occur, in particular changes that affect the wages and salaries in the metal industry or the costs of the primary materials or the energy or transport costs required for the manufacture of the ordered parts, we shall be entitled to adjust the prices at our reasonable discretion.

**5. Samples and Production Equipment**

- a. The cost of production of samples and production equipment (tools, moulds, templates, etc.) will be charged and shall be paid for separately. The same shall be true for the manufacturing cost of production equipment which has to be replaced due to wear and tear.
- b. If the contract between the parties is terminated during the manufacture of the samples and/ or the production equipment, buyer shall be responsible for any production costs incurred until such time, including the cost of materials.

- c. The means of production remain our property and possession regardless of payment by the contractor. We undertake, however, to retain the production equipment at no cost to buyer for a period of 3 years of the last delivery to buyer. If buyer notifies us prior to the expiry of such period that buyer will place additional orders within the next year, we shall be under obligation to retain the tools for that period of time. Otherwise we shall be entitled to dispose of the means of production at our own discretion.

## **6. Terms of Payment**

- a. All invoices shall become due and payable within 30 days of the date of invoice. We shall give a 2% discount for payments effected within 10 days of the date of invoice. Payment may also be effected by crediting. Bills of exchange and cheques will only be accepted subject to agreement and only if discountable. The buyer shall bear the related bill and discounting charges, if any.
- b. Payments shall be deemed effected only after the relevant amount has been credited to our account.
- c. If it becomes apparent after entering into the contract that our claim for payment is endangered by the buyer's inability to perform, we shall have the right to refuse performance and to set the buyer a reasonable period within which to pay contemporaneously with the delivery or to provide security. If the buyer fails to comply or if the period set expires to no avail we shall be entitled to cancel the contract and to claim damages.
- d. In the event of default in payment we shall be entitled to charge interest on arrears in the amount of 8 percent above the base interest rate effective from time to time. The buyer's obligation to compensate us for any further damage caused by the delay shall not be affected hereby. If the buyer is in default of payment with a claim, all other claims against the purchaser can be made due.
- e. The buyer shall not be entitled to set off any amount unless the buyer's counterclaims have been acknowledged by us or have been judicially determined. The buyer shall have the right of retention only insofar as buyer's counterclaim is based on the same contractual relationship. The buyer shall have no right of retention for partial deliveries in accordance with section 320 para.2 of the German Civil Code (BGB).

## **7. Delivery**

- a. Delivery dates and periods shall be deemed to be approximate dates only and shall not be binding on us unless a delivery date has been explicitly agreed with us in writing. Deliveries shall be subject to our own punctual and faultless receipt of supplies.
- b. Delivery periods begin on the day of our acknowledgement of order. If delivery requires clarification of technical matters or depends on the buyers cooperation, then the delivery period shall be extended accordingly.

- c. Delivery periods and dates shall be deemed to have been met once the Goods have been dispatched from our distribution facility or the buyer has been notified in writing that the Goods are ready for dispatch prior to the expiry of such period.
- d. Delivery dates and delivery periods shall be extended reasonably if the buyer delays or omits any cooperation on its part required or agreed. The same shall apply in the event of force majeure, measures due to labour disputes, including without limitation strike and lock out, default on the part of our suppliers, and unforeseen hindrances beyond our control to the extent that such hindrances have an impact on the completion or delivery of the Goods. The above circumstances shall be deemed to be beyond our control even if they arise during an already existing delay in performance. This is also applicable, if these circumstances occur with sub-suppliers/our own suppliers. If it is foreseeable that, due to the events mentioned above, we will not be in a position to deliver the Goods on the agreed date or within the agreed period, we shall notify the buyer specifying the reasons for the delay and the estimated time of delivery, if possible.

If delivery or performance becomes impossible or unreasonable due to the above events, we shall be deemed released from the obligation to deliver. If the delivery time is extended or if we are released from our obligation to deliver, the buyer shall not be entitled to claim damages for default on our part.

- e. If the buyer, after entering into the contract, requests changes or amendments of the order which make it impossible for us to comply with the deadline for delivery, the delivery time shall be reasonably extended in accordance with such changes or amendments.
- f. We shall have the right to withhold further deliveries until all previous deliveries have been duly paid.

#### **8. Partial Shipments, Deviations from the Ordered Quantity**

- a. We shall be entitled to dispatch part shipments and to issue separate invoices for such part shipments.
- b. In the event of a contract requiring regular deliveries, details regarding the type and volume of the Goods must be given to us in due time. If buyer fails to call off and classify goods even after the lapse of a reasonable extension granted, we shall be entitled either to classify and deliver the goods or to cancel the unperformed part of the contract and claim compensation for any resulting loss.
- c. Deviations from the ordered quantity of up to 10% shall be permissible.

**9. Shipment and Passage of Risk**

- a. Unless otherwise provided we reserve the right to chose the shipping route and the manner of shipment. If requested by the buyer, we will insure the Goods during shipment. The buyer shall bear the costs of shipping and transport insurance.
- b. The packaging of the goods shall comply with the conventional trade practices. The buyer shall bear the costs for such packaging. The buyer will be credited with 75% of the value charged for small load carriers if such items are returned carriage paid and in reusable condition.
- c. If the buyer fails to take over goods notified as ready for dispatch immediately, we shall be entitled to forward such goods at our own discretion and/ or to store such goods at the buyers expense and risk.
- d. The risk shall pass to the buyer as soon as the Goods are handed over to the railway, the forwarder, the carrier, or any other shipping agents, or upon notification that the goods are ready for dispatch, or when the goods are dispatched from the works or the distribution warehouse, whichever is earlier; this shall apply even if we have agreed to effect delivery to the buyer's facility or if the goods are delivered to a consignment warehouse at the buyer's request . Shipping is always carried out on behalf of the buyer.
- e. The buyer shall be under obligation to accept the Goods also in the event that the Goods show an insignificant deviation from the agreed qualities or an insignificant impairment of use.
- f. If shipment is delayed at the buyer's request, we may charge buyer for the costs incurred by us from the storage of the goods.

**10. Default in Delivery and Impossibility of Performance**

- a. In the event of a delay in delivery, cancellation of contract or damages paid in lieu of performance shall be possible only if the buyer has fixed a time limit of not less than 14 working days for performance hereunder, with the threat of rejection. Upon expiry of such time limit the buyer shall, on our request, notify us on whether the buyer insists on the delivery or asserts a claim for damages or cancels the contract. The buyer shall not be entitled to reject delivery or to cancel the contract and/ or claim damages in lieu of performance unless the buyer notifies us within a reasonable period fixed by us for that purpose.

- b. If performance on our part is impossible or delayed, the buyer may cancel the contract only if we are responsible for the breach of obligation.
- c. The buyer shall not be entitled to cancel the contract before performance becomes due or if there is only a minor breach of obligation on our part. Finally, cancellation of the contract shall also be excluded in the event that the buyer is alone or principally responsible for the circumstances which would entitle the buyer to cancel the contract, or if a circumstance for which we are not responsible occurs during a delay in acceptance on the part of the buyer.
- d. Damage claims or claims for reimbursement of expenses due to default and/ or impossibility shall be subject to the provisions in Item 13 hereof.

## **11. Tests**

We subject our Goods to the usual tests, including but not limited to tests for dimensions, material qualities and surface cracks to the extent that such defects can be detected through visual inspection. The costs for the usual inspection shall be included in the unit price. Additional tests or special test procedures, e. g. a 100% hardness test (E.g. Brinell or Rockwell), magnetic crack detection and ultrasonic inspection, shall be agreed on a separate basis. All tests carried out on our part shall be deemed internal controls only. Such tests shall not constitute any quality agreement or quality assurance agreement. Our tests shall not replace any incoming goods inspection on the part of the buyer and shall not release the buyer from the buyer's duty to examine and notify a defect  
12. in accordance with item c hereof.

## **12. Warranty**

- a. The Goods shall comply in all respects with the details given in each separate purchase order and the technical standards agreed in such a purchase order. If it has been agreed that the Goods must comply with the buyer's drawings, specifications, or samples etc., the buyer shall bear the risk of the suitability of the Goods for the intended purpose. The Goods shall be deemed to be in compliance if they are in compliance at the time of passage of risk.
- b. We accept no liability for material defects caused through unsuitable or improper use, incorrect assembly and/ or initial operation on the part of the buyer or third parties, natural wear and tear, incorrect or negligent handling, or improper alterations or maintenance performed by buyer or third parties, or alterations or maintenance performed by the buyer or third parties without our consent.

- c. Any defects of title or material defects, any lack of a warranted quality or durability of the Goods (hereinafter referred to as the Defects) and any over-delivery, under-delivery or incorrect delivery (hereinafter referred to as Deviations) shall be asserted in writing without delay, however not later than within 2 weeks after receipt of the Goods, provided that such Deviations or Defects are immediately noticeable. Defects that are not immediately noticeable shall be asserted by buyer in writing immediately upon detection, however not later than within 6 months of receipt of the Goods. We shall assume no liability for any Deviations or Defects not asserted within the above mentioned periods of time.
- d. If a Defect or Deviation has been asserted within the time limit fixed herein, we shall re- perform at our option either by rectifying such Defect or Deviation or by substitute delivery. We shall bear all expenses related to such re- performance including without limitation costs of work , transport, travel, and materials; provided, however, that such costs are necessary to remove the defects and are not increased by moving the Goods to a location other than the place of performance unless such moving is in compliance with the intended use of the Goods.
- e. Subject to mutual agreement, the buyer shall grant us the amount of time and the opportunity required for rectification of defects or replacement delivery. Otherwise, we shall be released from the liability to pay for any resulting damage. The buyer shall have the right to rectify defects itself or have defects rectified by a third party, demanding from us compensation for expenses thus incurred, only in urgent cases where operating safety is at risk or in order to avoid unreasonably high losses; provided, however, that the buyer shall notify us immediately thereof.
- f. If such subsequent performance fails, the buyer shall be entitled to reduce the purchase price, to cancel the contract in the event of a substantial breach of obligation, and to assert a claim for damages or for reimbursement of expenses in accordance with item 16 hereof.
- g. Unless otherwise provided by the law, claims for defects shall become statute- barred after the expiration of 12 months from the delivery of the Goods.

### **13. Liability**

- a. We shall be liable in accordance with the legal provisions to the extent that the buyer asserts claims for damages or reimbursement of expenses (hereinafter referred to as Damages Claims) for wilful misconduct or gross negligence, including wilful misconduct or gross negligence on the part of our representatives or vicarious agents. We shall also be liable under the law in the event of our culpable fundamental breach of contract, in the event of injury to life, limb or health, and in the event that we have assumed a guarantee.

- b. In case of culpable violation of essential contractual obligations we are liable - except in cases of intent and gross negligence, as well as in cases of injury to life, limb or health or as far as we have taken over a corresponding guarantee - only for the order value. If the value of the order in such a case is not the same as the foreseeable, typical damage or loss, then our liability shall be limited to the foreseeable, typical damage or loss. Claims for reimbursement of expenses shall be limited to the amount of the interest which the buyer has in the performance of the contract.
- c. Insofar as we are liable, our liability shall in any case be limited to the coverage limit of our third party liability insurance or product liability insurance.
- d. Apart from that, our liability for damages - regardless of the legal nature of the asserted claim - is excluded. In particular, we shall not be liable for damages that have not resulted on the delivery item itself, for lost profits, as well as other financial or consequential damages.
- e. Since we do not supply any parts or articles for use in aerospace travel, we shall assume no liability whatsoever resulting from and arising in connection with the unintended use of our parts in that area.
- f. Where our liability is excluded or limited, such exclusion or limitation shall extend to the personal liability of our employees, legal representatives or agents.
- g. The mandatory provisions of the Product Liability Act shall not be affected by the above.

#### **14. Liability for Commission Orders**

- a. If the buyer in the course of wage work or contracts given to us provides us with any materials, material part half-finished products or tooling (hereinafter referred to as Parts), any testing of such Parts shall require an express written agreement, and the buyer shall be responsible for the costs of such testing.
- b. If any Parts provided to us become unfit for use or are damaged due to circumstances beyond our control or force majeure, we shall assume no liability. If any Parts become unfit for use due to defects in material, we shall be entitled to demand the full amount of the remuneration due to us.
- c. If any Parts become unfit for use due to a processing error caused by us, we shall carry out the same work free of charge on a new piece delivered to us carriage paid. Rejects up to an amount of 2% of the total quantity shall be at the cost of the buyer. All further liability shall be subject to the provisions in items 13 and 14.



**15. Reservation of ownership**

- a. The Goods shall remain our property until full payment of all claims resulting from the contract between the buyer and us.
- b. The buyer shall be entitled to resell the Goods in the ordinary course of business. The buyer hereby assigns to us all claims against third parties in the amount of the total invoice amount (including VAT) which accrue to the buyer from the resale of the Goods, regardless of whether the Goods have been resold without or after further processing. The buyer shall retain its right to collect such claims following their assignment. This shall, however, not affect our own right to collect the claims ourselves. We undertake that we will not collect such claims provided that the buyer meets its payments, that the buyer does not default on payment and that no petition in bankruptcy has been filed against the buyer and that the buyer does not suspend payment. If we are entitled to collect the claims independently, the buyer will inform us of the claims assigned and the identity of the debt or and provide us with all information required, including the relevant documentation. The buyer shall be required to safeguard our rights when reselling the Goods on credit.
- c. Any processing or transformation of the Goods by the buyer shall be for our benefit. If the Goods are processed together with items not belonging to us, we shall acquire co-ownership in the resulting new item in proportion with the value of the Goods and the value of such other items processed at the time of processing. If the Goods are commingled inseparably with other items not belonging to us, we shall evaluate our co-ownership in the resulting new item in proportion with the value that the Goods and such other items have at the time of combining. If, due to such commingling, the buyers item becomes the main item, the buyer shall assign us ownership on a pro rata basis. The buyer shall store the resulting property or co-property for our benefit. The new item resulting from processing, commingling, or combining shall be subject to the same provisions as the reserved goods.
- d. In the event of seizure or any other interventions by third parties, the buyer shall inform us immediately in writing so that we can bring an action in accordance with Section 771 ZPO (German Code of Civil Proceedings). If such third party is not able to reimburse us for reasonable judicial and extra-judicial costs resulting from such action, the buyer shall be liable for the loss incurred by us.
- e. We undertake to release any securities due to us at the buyers request to the extent that the realisable value of our securities exceeds the claims to be secured by more than 25%; provided, however, that we shall be entitled to select the securities to be released.
- f. If the jurisdiction in which the Goods are located does not allow reservation of title, we shall be entitled to exercise all other rights that we may have with respect to the Goods. The buyer shall co-operate in all measures which we intend to take for the protection of our title or any other security interest in the Goods.

**16. Infringement of property rights**

In case of production according to a design especially prescribed by the contracting party (drawing, samples or other specific information), the contracting party shall be solely responsible for ensuring that third-party rights, in particular patents, utility models and other intellectual property rights, are not infringed or impaired. If we are claimed by a third party for infringements of property rights in such a case, the contractual partner indemnifies us against all claims and costs arising therefrom.

**17. Confidentiality**

- a. The buyer shall use all documentation (which shall be deemed to include samples, models, and data) and know-how obtained in the course of any transaction between us and the buyer exclusively for joint purposes and shall maintain strict confidentiality with respect to third parties; more specifically, the buyer shall not disclose such documentation and know-how to third parties. Such obligation shall not apply to documentation and know-how which is in the public domain or was known to the buyer at the time of receipt without any breach of the buyer's obligation to maintain secrecy.
- b. If we provide any drawings and/ or technical documentation with regard to the goods to be delivered or the production of such goods, such drawings and/ or technical documentation shall remain our property.

**18. Place of Performance, Place of Jurisdiction, Applicable Law, Final Provisions**

- a. Place of execution is our place of business. If the buyer is a merchant, a legal entity under public law or a special fund under public law, then the exclusive place of jurisdiction for all disputes arising from the contractual relationship is our place of business. However, we shall also be entitled to bring an action at buyer's registered seat. The customer shall bear all fees, costs and expenses incurred in connection with any legally successful prosecution against him outside of Germany.
- b. The laws of the Federal Republic of Germany shall apply under exclusion of the conflict of laws and the United Nations Convention on Contracts for the International Sale of Goods (CISG).
- c. The buyer and we shall assign any rights arising out of this contract only with the consent of the other party.
- d. In the event that any of the provisions contained herein shall be deemed or become invalid, the agreement shall remain in full force and effect as to the remaining provisions. The contracting parties shall replace such invalid provisions by provisions which come as close as possible to the intended economic result of the provision that has become invalid.

- e. Alternative dispute resolution pursuant to article 14 (1) of the ODR regulation and section 36 of VSBG:  
The European Commission provides a platform for online dispute resolution which can be found at <http://ec.europa.eu/consumers/odr>. We are neither obliged nor generally willing to engage in a dispute resolution process conducted by a consumer arbitration body.
  
- f. Production facility = 72218 Wildberg; branch facility = 74238 Krautheim