

## **General Terms of Sale and Delivery** **Werner Schmid GmbH, Fulda**

### **General terms**

1. All of our deliveries, services and offers are undertaken exclusively on the basis of these terms. Our GT&C apply for all contracts with companies, legal persons under public law and public separate estates and thereby also for all future business relationships, even where these are not expressly agreed once more. Our GT&T are deemed to have been accepted at the latest with acceptance of the goods.
2. Terms of the purchaser that are contrary to our terms shall only apply where we expressly agree to their application in writing. Our silence shall always signify rejection of the terms of the purchaser.
3. The contracting parties must immediately confirm verbal agreements in detail and in writing.
4. Insofar as written form is intended or required in these Terms of Sale, text form (§ 126 b of the German Civil Code - BGB) suffices in safeguarding the written form requirement.
5. We reserve the right, also after conclusion of contract, to make technical and design alterations to the delivery items where these are not unreasonable for the purchaser.
6. The claims of the purchaser from the contractual relationship cannot be assigned without our agreement.
7. We are entitled to terminate agreements and individual agreements without notice for good cause.

In particular, good cause is indicated if, after the agreement has been made, it is determined that our claims for payment defined in the agreement are at risk due to the lack of the Partner's performance – sec. 5 paragraph 2 applies accordingly -and the Partner does not credibly assure its performance within a reasonable period of time despite being requested to do so.

The provisions in sections 25, 25 and 39 as well as other statutory cancellation rights and rights of withdrawal remain unaffected.

8. If individual parts of these Terms of Sale are or become invalid, the validity of the remaining provisions is not affected thereby.

### **Offers**

9. Our offers are subject to confirmation and non-binding, where no express period of commitment is stated. The order of the purchaser constitutes a binding offer that we can accept within one week with the sending of an order confirmation or delivery of the goods.
10. We reserve all title and copyrights to cost estimates, drawings, illustrations, calculations and other documents. This also applies for all written documents marked as "confidential". The

forwarding of these to third parties requires our express written authorisation.

11. Our sales employees are not authorised to provide verbal supplementary agreements or assurances that extend beyond the content of the written contract.
12. Stated delivery times are only approximate and non-binding, unless their binding nature has been expressly stated.

## **Prices**

13. Our prices are ex-works, excluding loading and packaging. The prices are without the statutory value-added tax on the day of invoicing. Costs such as any agreed transport or similar insurance (e.g. loading or packaging) shall be borne by the purchaser, subject to other agreement.
14. If more than four months have passed between conclusion of contract and provision of performance, and if the market prices or our production costs have increased by the time of provision of performance, we shall be entitled to increase the price appropriately. If the increased price is 20 % or more above the agreed price, the purchaser shall have the right to withdraw from the contract. This right must be exercised without delay following communication of the increased price.
15. Subsequent reduction of the ordered quantity or subsequent reduction of the number of units with agreed partial delivery as well as reduction of agreed call orders are only permissible with our written agreement and necessitate an increase in the unit price. New orders are not bound to previous prices.
16. We are entitled to make partial deliveries. In the case of partial deliveries, each delivery may be invoiced separately.
17. In the event of no prices being agreed at the time of conclusion of contract, our prices valid on the day of delivery shall apply.

## **Tools (moulds)**

18. Unless otherwise agreed, we are and remain owner of the tools, including where the purchaser has reimbursed the cost of part of the cost for these. Moulds shall only be used for orders of the purchaser, so long as the purchaser meets his payment and acceptance obligations. Our duty to retain the tools shall lapse three years after the last partial delivery from the mould and prior notification of the purchaser. After this we may dispose over the tools as we choose.

## **Terms of payment**

19. Unless otherwise stated in the order confirmation or invoice, the price falls due for payment net (without deduction) 30 days after delivery or notification of completion and receipt of invoice.
20. In the event of the purchaser being in default of payment, we shall be entitled to charge default interest to the amount of 9 percentage points above the basic rate of interest. We shall also be entitled to prove a higher interest loss at any time and to invoice this. In addition, with written

notification of the purchaser we may cease the fulfilment of our obligations until receipt of payment. Further rights and claims are reserved.

21. We reserve the right, through written declaration, to request payment in advance or security to the amount of the invoice value where circumstances subsequently occur or are known to us that endanger our claim. Should the purchaser fail to provide payment in advance or security within a reasonable period of being requested to in writing, we shall be entitled to withdraw from the contract without further notice.
22. The purchaser shall only be entitled to rights of set-off where his counter claims are legally determined, not disputed or recognised by us. The purchaser shall only be entitled to right of retention to the extent that his counter claim regards the same contractual relationship.
23. We are not obliged to accept bills of exchange or cheques. Credits regarding these shall always be subject to redemption (on account of payment, not in lieu of performance); they are undertaken with the value of the day on which we are able to dispose over the exchange value.
24. The purchaser is required to examine statements of account, in particular confirmations of balance, as well as other statements and notifications for their correctness and completeness. Objects to statements of account are to be submitted in writing within one month of receipt; other objections are to be raised without delay. The omission to raise timely objections is deemed to be approval.
25. Contrary to §§ 195, 199 BGB - German Civil Code -, our claims to payment lapse five years after falling due.

### **Delivery time and obstacles to delivery**

26. The delivery period commences with the sending of the order confirmation, however, not before the furnishing of the documents, authorisations and approvals to be obtained by the purchaser and receipt of the agreed payment and clarification of all technical questions.
27. Including where, according to the law, a reminder is sufficient or not required, we shall only fall into default following the passing of a reasonable period of respite stated in writing.
28. Agreed delivery periods are extended in the event of industrial disputes, in particular strikes and lockouts, as well as the occurrence of unforeseen obstacles that lie outside of the sphere of influence, by the duration of the delay. This also applies where the circumstances arise with suppliers and sub-suppliers. The aforementioned circumstances are also not our responsibility where they occur during a pre-existing delay. We shall communicate beginning and ending of such obstacles to the purchaser as swiftly as possible. Where unforeseen obstacles arise that significantly alter the economic significance or content of the performance or have a significant effect upon our operations, and where subsequent impossibility arises for which we are not responsible, the contract shall be amended appropriately. Where this is not economically reasonable, we shall have the right to withdraw wholly or partially from the contract. Claims for compensation do not exist on the part of the purchaser regarding such a withdrawal. Should we wish to avail ourselves of the right to withdrawal, we shall inform the purchaser of this without delay.
29. In the event of delayed delivery, the purchaser may only withdraw from the contract following

the fruitless expiry of a suitable period of grace.

30. Partial deliveries are permissible, so long as the purchaser does not clearly have no interest in them or cannot reasonably be expected to accept them.
31. Production-related excess or short deliveries of up to ten percent relating to the order quantity are permitted, with regard to both overall and partial quantities. The overall price changes according to their scope.

In the case of call orders without agreement of delivery time, batch sizes and acceptance date we may demand a binding statement regarding these at the latest three months after order confirmation. Should the purchaser fail to meet this demand within three weeks, we shall be entitled to set a two-week grace period and, following this, withdraw from the contract and demand compensation.

### **Transfer of risk**

32. Risk is transferred to the purchaser at the latest with the shipment of the goods, in the case of ex-works delivery with provision of the goods on our site or notification of readiness for shipment, including where partial deliveries occur or we have assumed further performance such as shipping costs or transportation and installation.
33. The incoming goods inspection comprises at least the checking of dimensions and material characteristics according to works drawings and checking for surface defects and surface cracking via visual inspection, unless further requirements exist under § 377 HGB or additional inspections and applicable test procedures have been agreed.

### **Retention of title**

34. We retain title to the product until complete payment of all claims from this supply contract has been effected. Retention of title also applies for all claims that we have against the purchaser from our ongoing business relationship (extended retention of title). This also applies where individual or all of our claims are included in a current account and the balance has been established and recognised.
35. The handling and processing or transformation of reserved goods by the purchaser is always undertaken in our name and on our behalf. In this case the expectant right of the purchaser to the purchase goods continues with the transformed goods. If the reserved goods are combined or mixed with other goods, we shall become joint owner of the combined item (goods) at the ratio of the invoice value of the reserved goods to the value of the items (goods) that these had at the time of combining, mixing. Should the purchaser acquire sole ownership in the event of combining, mixing, a joint ownership share is transferred to us from the purchaser already at this point, corresponding to the invoice value of the reserved goods. In cases of processing/transformation of the reserved goods by the purchaser we shall be regarded as manufacturer as per § 950 BGB.

In accordance with this understanding, we shall be regarded as sole owner of the newly manufactured item, respectively acquire joint ownership rights to the aforementioned items to the amount of the value of the invoice amount of the reserved goods. The purchaser shall maintain the sole or joint ownership on our behalf with the diligence of a prudent businessman.

36. The purchaser shall inform us of any access of the reserved goods and assigned claims by third parties without delay. He may only dispose of the reserved goods in the proper course of business dealings on his usual terms and so long as he is not in default. Proper course of business dealing is, in particular, **not**
- a) the pledging and transfer of security of the reserved goods,
  - b) the sale of the reserved goods below cost price or at a dumping price,
  - c) the selling on of the warehouse as a whole,
  - d) the sale of the reserved goods and simultaneous repurchase at a higher price,
  - e) the sale of the reserved goods in the course of the sale and lease back procedure,
  - f) the sale of the reserved goods with simultaneous agreement of the non-assignability of the claim from the resale.

The aforementioned disposal of the reserved goods may only occur where the claims stated in figures 31 to 34 below are transferred to the vendor. The purchase is not entitled to dispose over the reserved goods in any other way.

37. Should the purchaser sell the reserved goods on, he assigns the claims arising from the sale to us already at this point. The assignment applies regardless of whether the item has been sold on without or following processing. If reserved goods are sold of which we are the manufacturer in accordance with § 950 BGB or in which we have joint ownership shares or where these joint ownership shares have been transferred to us by the purchaser, a share of the invoice amount of the reserved goods corresponding to our ownership share is assigned to us already at this point from the claim arising from the sale.

Should the purchaser sell reserved goods together with other goods that we have not supplied, he assigns to us already at this point the claim from the selling-on at the ratio of the invoice value of the other goods sold. Should a third party become sole owner of the reserved goods through combining, mixing or processing, the purchaser assigns to us already at this point all claims to which he is entitled on the basis of his expectant right to the reserved goods in accordance with § 951 BGB. Similarly, the purchaser assigns to us all claims arising from processing or combining of reserved goods (in particular claims for compensation for work, claims from contracts for work and materials and service contracts) against third parties to the amount of the gross invoice amount (= incl. value-added tax) of the reserved goods.

All previously named claims serve as security to the same extent as the reserved goods and are assigned to us already at this point.

38. The purchaser is entitled to collect the aforementioned assigned claims to the amount of the invoice amount of the reserved goods, unless we revoke the collection authorisation in cases in which the purchaser is in default of payment, he has failed to redeem a bill of exchange or he fails to meet his other contractual obligations to us in an orderly manner. If the purchaser becomes insolvent or the assets of the businessman no longer cover the debts (over-indebtedness), the aforementioned collection authorisation shall lapse automatically. This also applies for the case of filing for bankruptcy on the part of the purchaser due to impending insolvency. On our request he shall be obliged to inform his customers of the assignment to us without delay and to provide us with the information and documents required for collection. The purchaser is in no case entitled to further assignment of the claims.

Assignment in the form of factoring is only permitted for the purchaser subject to the prerequisite that this is communicated to us with naming of the factoring bank and the account of the purchaser held there, and that the factoring revenue exceeds the value of our secured claim. Our claim becomes immediately due for payment with the crediting of the factoring revenue.

39. We shall release the security to which we are entitled at the request of the purchaser where its value exceeds the value of the secured claim by more than 20 %. However, we reserve the right to demand the appointment of further security, respectively the reinforcement of existing security by the purchaser within a reasonable period, if circumstances arise or become known that justify an increased risk assessment of the claims against the purchaser.
40. To the extent that the value of goods or items are discussed, this always refers to the invoice value of the goods or item.

### **Liability for defects of delivery**

The type samples that the purchaser presents to us for inspection on request are definitive for quality and design of the products. Specific characteristics of the delivery items and performance of moulds are only an agreed characteristic where this is agreed in writing. The free sizes listed on the drawings of the purchaser are carried out according to DIN ISO 2768 respectively DIN EN ISO 6721-1.

Guarantees and assured characteristics in a legal sense require express written agreement.

In the case of the orderly fulfilment of the duty of the purchaser to examine and give notice of defects in accordance with § 377 HGB we are liable for defects as follows:

41. To the extent that a defect is present in the purchase goods, we shall be entitled to choose between rectification of the defect or delivery of an item free from defects (supplementary performance). Should one of the two or both forms of this supplementary performance prove impossible or unreasonable, we shall be entitled to refuse it. We are to be provided with the opportunity for supplementary performance within a reasonable period of time. Goods subject to complaint are to be returned to us without delay; we assume transport costs where the claim for defect is justified.

Claims for defect do not exist in the case of only minor deviations from the agreed characteristics, minor impairment of usability, natural wear and tear as well as damage caused following the transfer of risk as a result of incorrect or negligent treatment, excessive use, unsuitable fuel, chemical, electro-chemical or electrical influences that the contract does not foresee. If unprofessional maintenance work or alterations have been carried out by the purchaser or third parties, the consequences of this shall also not give rise to a claim for defects.

We may refuse supplementary performance so long as the purchaser fails to meet his payment obligations to us that correspond to the part of performance that is free from defects.

42. Should supplementary performance prove impossible or fail, the purchaser may choose to either reduce the purchase price accordingly or withdraw from the contract in accordance with the statutory conditions; this applies in particular in the case of culpable delay or refusal of supplementary performance. Improvement or replacement delivery are deemed to have failed where two attempts to rectify the defect prove unsuccessful.

43. The above terms also apply in the case of delivery of a different item or a reduced quantity.
44. Recourse claims of the purchaser against us only exist to the extent that he has made no agreement with his customer beyond the statutorily obligatory claims for defects.
45. The costs arising directly from the improvement or replacement delivery shall be borne by us - to the extent that the complaint is justified - the cost of the replacement piece including shipping as well as the reasonable costs of removal and installation. Claims of the purchaser for expenses arising from the supplementary performance, in particular costs of transport, travel, labour and material are excluded where the costs are increased as a result of the delivered item being subsequently brought to a place other than the original place of delivery, unless this corresponds to the intended use of the item.
46. Claims for defect lapse one year after delivery of the goods. This does not apply where the law stipulates longer periods, in particular for defects in a structure and for goods that have been used for a structure in keeping with their regular form of use and that have caused defects in the structure. Clause 1 also does not apply for loss arising from injury to life, limb and health and in the case of intent or gross negligence or other infringement of key contractual obligations (these are obligations, the fulfilment of which renders the orderly implementation of the contract possible in the first place and the observance of which the purchaser can expect to trust in) of our legal representatives or senior employees.
47. Claims from manufacturer recourse are not affected by this section.

### **Limitation of liability**

48. Unless otherwise stated below, other and further claims of the purchaser - regardless of basis and legal grounds - against us are excluded. This applies in particular for claims for compensation for breach of duty from the contractual obligations and liability in tort. We are not liable for loss that has not occurred to the delivered goods themselves. Above all, we are not liable for loss of earnings or other financial loss of the purchaser.
49. The above limitations of liability do not apply for intent, gross negligence of our legal representatives and senior employees as well as culpable breach of key contractual obligations, these are obligations, the fulfilment of which renders the orderly implementation of the contract possible in the first place and the observance of which the purchaser can expect to trust in. In the case of culpable breach of key contractual obligations, we shall only be liable - except in the case of intent or gross negligence of our legal representatives and senior employees - for typical contractual and foreseeable loss.
50. Moreover, the limitation of liability does not apply in cases in which liability exists under product liability law for defects of the goods resulting in personal or material damage to privately used objects. It also does not apply for injury to life, limb or health and the lack of assured characteristics, if and to the extent that this assurance was intended to secure the purchaser against loss not caused to the supplied goods themselves.
51. To the extent that our liability for compensation can be excluded or limited, this also applies with regard to the personal liability for compensation of our staff, employees, co-workers, representatives and agents.

## **Force majeure**

52. Force majeure, labour disputes, riots, military conflicts, terrorist attacks, official measures, absence of deliveries from our suppliers, epidemics and other unforeseeable, unavoidable and severe events relieve the contracting parties from their liability for the duration of the disruption and to the extent of its/their effect. This also applies if these events occur at a point in time in which the concerned contracting party is in default, unless the contracting party caused the delay with intent or gross negligence. Within reasonable bounds, the contracting parties are obligated to immediately provide the necessary information and to adapt their obligations to the altered circumstances in good faith.

## **Place of performance, place of jurisdiction and applicable law**

53. Place of performance is the place of dispatch, i.e. Fulda.

54. Place of jurisdiction is Fulda, so long as the purchaser is a businessman. We are also entitled to take action against the purchaser in courts with jurisdiction for his place of business.

55. The non-uniform law of the Federal Republic of Germany (BGB, HGB) applies for all claims and rights arising from this contract. The application of the terms of the UN Convention on Contracts for the International Sale of Goods (CISG) is expressly excluded.

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