



General Terms and Conditions of Delivery and Payment for Foundry Products (January 1, 2009)

Goods and services supplied by us shall be exclusively subject to the following terms and conditions. Other terms and conditions specified by the Customer shall not apply even though we may have been notified of them and carry out deliveries to the Customer without reservation. Our terms and conditions shall not apply to consumers as defined by section 13 of the German Civil Code [BGB]. They shall also apply to any future transactions with the Customer that result from a currently existing business relationship. Any and all agreements made between us and the Customer for the purposes of implementing this contract shall be laid down in writing in this contract. Changes and amendments to this contract must be made in writing.

Export Control Clause

The seller shall inform the buyer of the possibility that any goods and services supplied under this contract may be restricted or prohibited by binding or non-binding provisions of national or international law, by official directives or judicial orders including UN resolutions, embargoes, customs regulations, EU/US or government sanction lists, or by any regulation to control the export, transfer, trade or transit of dual-use goods (hereinafter collectively referred to as "Export Law"). The "Leaflet on Export Control" which is published online at the web address http://www.bauer.de/pdf/agb/exportkontrollemerkblatt_de.pdf is part of this contract and shall be accepted and fully complied with by the buyer. The buyer shall require its staff, subcontractors and commercial agents to adhere to the Export Law.

Should there be any delay in deliveries/services caused by the Export Control Law, the delivery date agreed in each case shall be extended by the period of such delay as well as by the time required for resuming the fulfilment of the contract. In case the buyer culpably violates the Export Law, the buyer undertakes to compensate the seller for the loss or damage suffered by him and to indemnify him against any claim for damages and necessary expenses hereby incurred.

1. Conclusion of Contract, Scope of Delivery

- a) Offers made by us will not be binding unless otherwise indicated in the order confirmation or otherwise expressly stated by us in writing. A contract shall only come into being when the order is confirmed by us in writing or when we execute the order.
- b) Unless expressly designated as binding, any information contained in the brochures and catalogues, such as illustrations, drawings, weights and dimensions, are approximate values that are common practice in this line of business.
- c) We shall retain the property rights and copyright to illustrations, brochures, calculations and other documents; these may not be made accessible to third parties. This applies particularly to such written documents that have been designated as being "confidential". The Customer must obtain our express written consent before disclosing them to third parties.

2. Pricing and Terms of Payment

- a) Our prices shall be ex works and exclusive of packaging, freight, postage, insurance and applicable VAT.
- b) In the event of any material change occurring in order-related costs after the contract has been concluded, the parties to the contract will agree on an adjustment.
- c) Unless otherwise agreed, our invoices are payable in full within 30 days.
- d) The Customer shall not be entitled to withhold or set off payments due to any counterclaims, unless these claims for payment are uncontested or legally established.
- e) In case any of the goods delivered by us should be partially defective, the Customer shall still be obligated to effect payment for the goods that are indisputably free from defects, unless such partial delivery should be of no interest to the Customer.

- f) Cheques will be credited to the Customer subject to collection on the day on which the equivalent value becomes available to us.
- g) Should we be obligated to make advance deliveries, and should we become aware after the contract has been concluded that payment of our claims is endangered by a lack of funds on the part of the Customer, we may, in addition to asserting our legal claims, due to the retention of title agreed upon in No. 9, prohibit the resale and processing of the goods delivered, demand that either the goods themselves be returned or that indirect possession of the delivered goods is assigned at the Customer's expense, and revoke any direct debit authorization provided the conditions laid down in No. 9 letter h are fulfilled. As a precautionary measure, the Customer authorises us in the cases specified above to enter its premises and collect the goods delivered. Retraction or seizure of such goods by us does not constitute any withdrawal from the contract, unless expressly stated by us.
- h) In the event of payment arrears by the customer we shall be entitled, after due written notice, to discontinue the performance of our obligations until we have received payment. After having set a reasonable time limit, we shall as well be entitled to withdraw from the contract in such cases.

3. Delivery Times

- a) The respective period of delivery shall begin on the date of our order confirmation, but not before all issues relating to the execution of the order have been clarified and any other conditions to be met by the Customer have been satisfied; the aforementioned shall apply mutatis mutandis to delivery dates. Deliveries in advance of the end of each delivery time as well as partial deliveries shall be admissible to the extent this is not unacceptable to the Customer. The date of delivery shall be the day on which the goods are reported as ready for dispatch or, alternatively, the day on which they are shipped. Unless otherwise agreed and except where the contractual relationship provides otherwise, any delivery times specified by us shall in no case be binding.
- b) Without prejudice to our rights ensuing from any delay in performance on the part of the Customer, the delivery periods and dates agreed upon shall be extended or deferred for as long as the Customer fails to fulfil its obligations. In case the Customer is in default of acceptance or infringes any other obligation to cooperate we shall be entitled to claim compensation for our loss or damage thereby suffered, including any extra expenses. In this case the risk of accidental loss, destruction or deterioration of the goods sold shall as well pass to the Customer from the point in time at which the Customer defaults in accepting the goods delivered.
- c) In the event of any default on our part, the Customer may grant us a reasonable extension.
- d) At our request, the Customer shall be obligated to declare within a reasonable period of time whether to withdraw from the contract due to such default in delivery and/or claim damages in lieu of performance, or, alternatively, to insist on delivery.

4. Serial Deliveries, Long-term and Call-off Contracts

- a) Contracts of unlimited duration may be terminated by giving 6 months' notice to take effect at the end of a full calendar month.
- b) If after the first four weeks of a long-term contract (meaning contracts having a term of 12 months and more as well as contracts of unlimited duration) there occurs a substantial change in the cost of wages, material or energy, each of the contracting parties shall be entitled to demand that prices be reasonably adjusted having regard to these changes.
- c) Our prices will be calculated on the basis of agreed order volumes. In case no binding order volumes have been agreed upon, our calculation shall be based on agreed target volumes. If the volumes ordered by the Customer fall short of the agreed order or target volumes, we shall be entitled to raise the unit prices within reasonable limits. Should the Customer exceed the agreed volumes with our consent, the Customer may demand that prices be reasonably reduced as long as Customer gives written notice thereof no less than 2 months before the delivery date agreed upon. Actual price reductions or increases shall be determined according to the bases of our calculation.
- d) Unless agreed otherwise, the Customer shall be obligated to call off binding quantities under a call-off delivery contract no later than 3 months before the required date of delivery. Any additional expenses caused by the Customer due to any delay in placing call orders or subsequent changes made to the call order regarding time or quantity shall be borne by the Customer; our calculation shall be decisive.
- e) In the case of goods being produced in series, any excess or short delivery of up to +/- 10% in relation to the volume originally ordered shall be permitted in view of the special features of the casting process.
- f) Overall prices shall be adjusted in accordance with total volumes.

5. Force Majeure and other Circumstances

- a) In the event of force majeure, industrial disputes, lockouts and regulatory interventions, we shall be entitled to postpone delivery for the duration of such hindrance as well as for a reasonable start-up period, or we may withdraw from the contract in whole or in part because of such partial default.
- b) Unforeseen circumstances such as breakdowns, lockouts and aftertreatment making it impossible for us, despite all reasonable efforts, to deliver on time shall be deemed to be equal to force majeure events; we shall produce evidence thereof.

6. Test Procedure, Acceptance

- a) In the event of an acceptance test having been agreed upon, both scope and conditions of such test shall be defined until the contract is concluded.
- b) In case they have not been defined, the acceptance test shall take place within the scope and under the conditions commonly applied by us. The same shall apply to initial sample inspections.

7. Dimensions, Weights, Quantities

- a) Discrepancies in dimensions, weights and quantities shall be permitted within the scope of customary tolerances, relevant DIN regulations and technical requirements for the casting process. The dimensions and weights specified in our offers and order confirmations shall not constitute any guarantees of quality.
- b) Weights and quantities of delivery that are established by us shall be decisive for our calculation.

8. Dispatch and Passing of Risk

- a) Unless otherwise agreed in writing, delivery shall be "EXW" (as defined in Incoterms 2000). This shall also apply in cases where we have undertaken to bear the cost of transportation.
- b) We will take out transport insurance for deliveries only at the Customer's explicit request. The costs incurred thereby shall be borne by the Customer.
- c) The Customer is obligated to immediately take delivery of goods that are confirmed as ready for dispatch. Otherwise we are entitled to either dispatch these goods at our own discretion or store them at usual shipping charges and at the Customer's risk; we shall also be entitled to the latter if the dispatch undertaken by ourselves cannot be effected for reasons beyond our control or without our fault. The goods shall be deemed to have been delivered one week after the beginning of the storage period.
- d) In the absence of special agreement, we shall choose the means and route of transportation.
- e) As soon as the goods are transferred to the railway, forwarder or carrier, or one week after the beginning of the storage period, but at the latest when the goods leave the plant or the place of storage, the risk will pass to the Customer. This applies even if we have undertaken to handle the transport.

9. Retention of Title

- a) We shall retain the title to all goods delivered (retained goods) until all claims resulting from the business relationship in question have been settled, including especially any relevant balance claims. This shall also apply to payments made to settle specifically designated claims. In the event of the Customer being in payment arrears we are entitled to demand the return of any goods delivered at Customer's expense. This shall not apply in the event of insolvency proceedings having been filed or opened against the Customer, in which instance we would not be entitled to demand immediate return of the goods delivered.
- b) Any retraction of the goods or assertion of the retention of title on our part does not constitute our withdrawal from the contract, unless expressly stated by us.
- c) The Customer shall treat or process the delivered goods in our name only. In cases where the retained goods are being processed with items not owned by us or inseparably mixed with such items, we acquire co-ownership of the resulting items in proportion of the invoice value of the goods to the value of the other processed or mixed items at the time of processing or mixing.
- d) If our ownership lapses due to combination or mixing, the Customer hereby agrees in advance to transfer to us its entitled ownership rights or title to the new stock or item to the extent of the invoice value of the retained goods, and to hold these goods in safe custody for us free of charge. The co-ownership rights coming into existence later shall be considered as retained goods in the sense of letter a).
- e) The Customer may sell the retained goods only in the normal course of business, applying its usual general terms and conditions of business and as long as the Customer is not in default, provided the claims from the resale are transferred to us according to letters f) and g). The Customer shall not be entitled to other dispositions over the retained goods.
- f) Any claims of Customer arising from the sale of the retained goods are herewith assigned to us already now. Such claims serve as security to the same extent as the retained goods.

- g) In the event of retained goods being sold by the Customer together with other goods not supplied by us, any claims arising from such resale shall be assigned to us only in the amount of the invoice value of the retained goods actually sold. Should goods be sold in which we retain co-ownership shares in the sense of letter c, claims shall be assigned in the amount of these co-ownership shares.
- h) The Customer shall be entitled to collect any amounts outstanding from sales under letters e) and f) unless and until we revoke the authorisation to collect. We shall be authorised to revocation in the cases specified in number 9 if the Customer gets into arrears, if a request to open insolvency proceedings has been made, or in the event of cessation of payments. In these cases the Customer shall be obligated to immediately inform us of the assigned claims and their debtors, to provide us with the information required for collection, to handover all related documents, and to inform the debtors of such assignment. The Customer shall under no circumstances be authorised to assign the claims.
- i) If the nominal value of the existing collateral should exceed the total value of the relevant claims by more than 20%, we shall be obligated to release certain portions of the collateral in accordance with our choice. The Customer shall immediately report any case of collateral being impounded or otherwise distrained by third parties.

10. Liability for Material Defects

- a) We shall be liable for ensuring that the parts delivered by us have been manufactured perfectly in accordance with the agreed technical delivery specifications. It will be the Customer's responsibility to ensure, particularly with regard to the intended use, that the products are properly designed, that relevant safety regulations are observed, that relevant materials and necessary test procedures are properly selected, and that technical delivery specifications and the engineering documents and drawings handed over to us are free from errors and omissions. Furthermore, the Customer shall be responsible for the serviceability of any manufacturing equipment provided, even in the event of any modifications proposed by us being implemented with Customer's approval. Moreover, the Customer hereby warrants that no third party proprietary or other rights will be infringed due to information provided by the Customer. The condition of the goods at the time of passing of risk shall determine whether they are in accordance with the contract.
- b) We shall not be liable for minor discrepancies from the agreed condition, minor impairment of a product's fitness for use, or any defects arising as a result of inappropriate or improper use, faulty assembly or commissioning, and normal wear and tear. In the event of goods being modified or repaired in an inappropriate manner either by the Customer or third persons, we will neither be liable for any of these modifications or repairs nor for the consequences resulting therefrom.
- c) The Customer shall give written notice of any material defects immediately after goods have been received at their destination, while hidden defects shall be notified immediately after being detected.
- d) In case of acceptance or initial sample inspections agreed upon as per No. 6, any notice of defects that might have been detected in such inspections shall be excluded.
- e) We must be given an opportunity to verify any defects notified by the Customer. In urgent cases, i.e. whenever the operational safety is at risk, or Customer is threatened by disproportionately extensive loss or damage, any defects claimed shall be verified by us without delay. Any rejected goods shall be returned to us immediately on request. Should the Customer fail to comply with these obligations or modify the goods already reported as defective without having our consent, the Customer's right to make any claim in respect of material defects shall be forfeited.
- f) Having verified a defect reported on time, we may, at our discretion, either repair the rejected goods or supply replacements that are free from defects (subsequent performance).
- g) Should we fail to meet our warranty obligations either entirely or within a reasonable time, or should the rectification of defects remain unsuccessful for the time being, then the Customer may set in writing a final deadline for us to meet our obligations. Setting a time limit may be omitted if it should prove unacceptable to the Customer. After this term has expired without avail, the Customer may, at his discretion, choose to demand a price reduction, to withdraw from the contract, to have the goods repaired in-house, or to commission a third party to effect the necessary repairs at our own cost and risk. In case the repairs have been effected successfully either by the Customer or a third party, the Customer shall not be entitled to any further claims once the necessary costs incurred by the Customer have been reimbursed by us.
- h) Any claims by the Customer regarding the reimbursement of expenditures required for the purposes of subsequent performance arising from the fact that the goods in question have to be transported to another location after delivery shall be excluded inasmuch as the expenditure total will be increased thereby, unless said transport is conformable with the contractual use of the goods.
- i) The Customer's legal rights of recourse against us shall only exist as far as no other agreements extending the legal scope of claims based on defects have been made between the Customer and its own customer.
- k) Any further claims of the Customer shall be excluded according to No. 13.

l) The Customer shall be responsible for demonstrating the presence of a defect.

11. Order-related Manufacturing Equipment; Cast-in Parts

- a) Order-related manufacturing equipment such as patterns, strickles, core boxes, moulds, casting tools, devices, and master gauges provided by the Customer shall be sent to us free of charge. We shall inspect any manufacturing equipment supplied by the Customer for compliance with contractual specifications or drawings and samples handed over to us only if this has been expressly agreed. Manufacturing equipment provided by the Customer may be modified by us if this appears necessary for casting reasons, and if no work piece modification is entailed.
- b) The Customer shall bear the expense of modifying, maintaining, and replacing its manufacturing equipment.
- c) The manufacturing equipment shall be treated and kept by us with the same care we usually employ in our own affairs. We will not be liable, however, for accidental loss, destruction or deterioration of such equipment. We may return any of the Customer's manufacturing equipment no longer needed by us at Customer's risk and expense, or, if the Customer fails to comply with our request for acceptance within a reasonable term, we may hold such equipment in custody at customary rates, and destroy the same upon due written notice.
- d) Order-related manufacturing equipment which is made or procured by us on behalf of the Customer shall remain our property even if the Customer is invoiced a share of the costs. Such equipment shall be kept in safekeeping by us for a period of 3 years after the last casting has been made. In so far as some other agreement diverging from paragraph 1 is made, stating that the Customer is to become the owner of the equipment, then ownership shall pass to the Customer as soon as the agreed price or share of the price is paid. The hand-over of the equipment shall be replaced by our obligation to keep the equipment in safekeeping. In the absence of good and sufficient reasons to the contrary, the Customer may terminate this safekeeping arrangement no earlier than 2 years after passing of ownership.
- e) The Customer may only assert claims under copyright law or industrial property law if we have been previously notified by Customer of the existence of such rights, and if such rights have been expressly reserved by the Customer.
- f) In the event of rejects being produced when using manufacturing equipment that can only be used once, the Customer shall either provide new manufacturing equipment or assume the cost of replacement equipment.
- g) Parts to be used by us for casting shall have the correct dimensions and must be in perfect condition when supplied by the Customer. The Customer is to supply replacements free of charge if parts become unusable due to rejects.

12. Confidentiality

- a) Both parties agree to use any and all documents (including without limitation samples, patterns, and data) and knowhow resulting from their business relationship only and exclusively in pursuit of the common purpose. Whenever a party designates any information as confidential or shows an apparent interest in keeping such information secret, the other party shall be obligated to exercise the same caution as it would exercise in keeping its own documents and knowhow confidential.
- b) The above obligation shall enter into force on the date on which said documentation or knowhow is first disclosed, terminating 36 months after the end of the business relationship.

13. General Limitation of Liability

- a) Unless the provisions laid down below require otherwise, we hereby disclaim liability for any other and further claims the Customer may assert against us for any cause in law whatsoever, in particular claims for the breach of duty under the obligation or tortious acts.
- b) The above limitation of liability shall not apply whenever liability is mandatory, e.g. in cases falling under the Product Liability Act, in the event of malicious intent or gross negligence on the part of our statutory representatives or executives, or in cases of culpable breach of major contractual obligations. Except in cases of malicious intent or gross negligence on the part of our statutory representatives and executives, we shall be liable for the culpable breach of major contractual obligations only inasmuch as the resulting damages are usually reasonably foreseeable at the time of concluding the contract. Neither shall this limitation of liability apply to any damages arising from death and injury to body and health nor in the absence of any guaranteed condition if and to the extent that the relevant guarantee aims to protect the Customer from any damage to objects other than the goods delivered.
- c) Insofar as we are not liable for claims asserted against us or whenever our liability is limited, this shall equally apply to the personal liability of our salaried staff, employees, associates, statutory representatives, and vicarious agents.

d) Any claims for damages and material defects to which the Customer may be entitled will become statute-barred one year after the goods have been delivered to the buyer. This provision does not apply in case the law prescribes longer terms in sections 438 (1) No. 2 (buildings and objects commonly used in buildings) and 479 (1) (recourse claims) of the German Civil Code [BGB]. The statute of limitations shall also apply to cases of malicious intent and gross negligence.

14. Place of Fulfilment and Jurisdiction

a) Provided the Customer is a registered business, the place of jurisdiction shall be Zittau. However, we shall also be entitled to take legal action against the Customer at the court of its business location.

b) Unless there is something to the contrary in the order confirmation, the place of fulfilment for our part of the contract shall be the location of our production facilities. The place of fulfilment for any payments due shall be Zittau.

15. Governing Law

All legal relations between the parties to this contract shall be governed by German Law only, excluding the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

16. Severability Clause

In the event of one or more of the provisions of these Terms and Conditions of Delivery and Payment being or becoming unenforceable or void in whole or in part, both parties hereby undertake to agree on a provision which comes as close as possible to the meaning and purpose of the provision that has become unenforceable or void.

17. Partnership

Any amount paid in compensation, particularly in damages, should be determined in good faith by considering the economic situation of both parties, the nature, scope, and duration of the business relationship, and the value of the goods involved.

The German Version shall be decisive for the interpretation of these General Terms and Conditions of Delivery and Payment.