

# General Terms of Delivery and Payment for casting products of the Stahlguss Gröditz GmbH, Gröditz

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Our supplies and services are subject to the following terms and conditions. Other conditions do not even apply if we are aware of them and execute the order nevertheless unconditionally. Our terms are not valid for customers under §13 German Civil Code. They will remain valid for any further business arising from current business relationships. Any agreement that has been reached between us and the customer in order to fulfill this contract must be submitted in writing. Alterations and additions to this contract are to be made in writing.

## 1. Conclusion of the contract and scope of supply

- a) Our offer is without engagement if nothing else results from the confirmation of order or we did not agree on anything else explicitly in writing. A contract is only reached if we have confirmed the order in writing or if we execute the order.
- b) Details in brochures and catalogues such as illustrations, drawings and details in weight or dimensions are approximations customary in the industry unless they are explicitly mentioned as binding.
- c) We reserve the right of all intellectual property rights of illustrations, brochures, calculations and further documents. They must not be accessible to third parties. This is especially valid for those written documents that are called confidential. Before making these documents accessible to third parties the customer needs an expressly agreed authorisation by us.

## 2. Pricing and terms of payment

- a) Our prices are ex works plus packing and packaging, freight, postage, insurance and the respective statutory value added tax.
- b) Should costs related to the order change drastically, the parties will agree on an adjustment.
- c) Our invoices are to be paid net thirty days upon date of invoice unless otherwise agreed upon. After this period the invoice is overdue according to § 286 paragraph 2 BGB (German Civil Law). Legal consequences are according to § 288 BGB.
- d) The customer is only entitled to withhold or set off payments because of counter claims if there are undisputed or legally enforceable payment claims by the customer.
- e) Should we have supplied partly faulty goods, the customer is nevertheless obliged to pay for the indisputably faultless goods unless this part of the consignment is of no use to the customer.
- f) We accept eligible and properly taxed bills of exchange as a means of payment if this has explicitly been agreed upon before. Credit notes of bills of exchange and cheques are made subject to incoming payment expenses off with value date of the day when we can dispose of the counter value.
- g) Should we be forced to advance, we can enjoin the customer from reselling and processing of the delivered goods and demand the return of the goods or the transfer of indirect possession of the delivered goods at customer's expenses and revoke the authorisation of collection under the condition of subparagraph 10 h) if we become aware of circumstances which endanger our pecuniary claim due to lacking performance of the customer. With this contract the customer entitles us to enter his premises and to collect the supplied goods. The recollection of the goods is a cancellation of the contract only if declared explicitly by us. Nevertheless we are still entitled to demand any receivables and any manufacturing costs that have arisen up to the date when the lacking performance was known and demand immediate payment.
- h) In case of a default in payment we can suspend our obligations upon written notice until receipt of payment. We are even entitled to withdraw from the contract after an appropriate period of time.
- i) We are entitled to offset any claims the customer may have against us to claims we have against the customer.

In addition we are entitled to offset any claims we have against the customer to any claims the customer may have – for whatever legal reasons- against enterprises which Georgsmarienhütte Holding GmbH has a majority shareholding, either directly or indirectly in.

The current group of enterprises in the legal sense of paragraph 2 above, which Georgsmarienhütte Holding GmbH has a majority shareholding in, either directly or indirectly, can be seen on the internet at <http://georgsmarienhuetten-holding.de>. Information on the enterprises can be obtained on request by the customer at any time.

## 3. Time 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 conditions the customer has to fulfill have been fulfilled; this is correspondingly valid for the dates of delivery. Deliveries before the actual delivery time and partial deliveries are permitted unless this is unacceptable for the customer. The day of delivery is the day when the goods are ready for dispatch, otherwise the day of shipment. The time of delivery indicated by us is always non-binding unless agreed upon otherwise or unless something else results from our contractual relationship.
- b) Agreed delivery periods and dates are prolonged or adjourned - irrespective of our rights- due to delay by the customer by exactly the period of time that the customer is overdue. Should the customer be default in acceptance or does he fail otherwise in co-operation we are entitled to demand the damage arising to us including possible additional costs. In this case the accidental fall or the accidental deterioration of the good is transferred to the customer in exactly the point of time when the customer gets in default.
- c) Should we default the customer can grant us an appropriate extension of time with the explicit declaration that he, the customer will refuse the acceptance of our delivery after the expiry of that period of time and he can withdraw from the contract if its execution is of no interest to him.
- d) Within an appropriate period of time customer is obliged to state if he is going to withdraw from the contract or ask for compensation or insists on the delivery.

## 4. Serial deliveries, long-term contracts and contracts on call

- a) Unlimited contracts are to be rescinded from at a six months' notice to the end of the month.
- b) Should major changes in labour-, material- or energy costs occur in long-term contracts (ie contracts with a duration of more than twelve months unlimited contracts) occur either contractual partner is entitled to demand an adjustment of the price under consideration of these factors.
- c) Our prices are made on the basis of the quantities ordered. If no specific quantities are agreed upon, the pricing depends on the targeted quantities agreed upon. Should the ordered quantity or the targeted amount fall below, then we are entitled to raise the price per unit appropriately. Should the customer exceed the amount with our approval, then he is entitled to demand the appropriate reduction in price provided he stated this in writing at least two months before the agreed date of delivery. The amount of the price reduction or –rise is to be calculated on the basis of our pricing system.
- d) For contracts on call we have to be informed about the binding quantities at least three months prior to the date of delivery unless agreed upon otherwise. Additional costs arising from a delayed call or belated alterations regarding the time or the quantity by the customer are at customer's expense and are priced at our pricing system.
- e) An additional- or diminished supply of up to ten per cent of the quantity ordered is permitted with serial production.
- f) The total price is changed according to the volume.

## 5. Force majeure and other business disruptions

- a) Events such as force majeure, labour disputes, lock-outs and official actions entitle us to postpone the delivery for the time of the disruption and an appropriate start-up period or to withdraw from the contract completely or partially because of the not fulfilled part of the contract.
- b) Force majeure is considered equally as unpredictable circumstances such as operating disruptions, waste and secondary processing which makes us fail in delivering on time despite reasonable efforts by us. Proof of this is on our side.

## 6. Testing and acceptance procedure

- a) Should an acceptance procedure be agreed upon, volume and conditions are also to be fixed at contract conclusion.
- b) Should this not happen the acceptance procedure takes place on our usual scale and to our usual conditions. The same procedure applies to checks of initial samples.

## 7. Dimensions, weights and work piece quantities

- a) Deviations in weight, dimension or work piece quantities within the limits of the usual tolerance, relevant DIN-regulations and casting requirements are permitted. Details regarding dimensions and weights in our offers and confirmation of orders are no state guarantee.
- b) The delivery weight and work piece quantities determined by us are relevant for the pricing.

## 8. Dispatch and passing of risk

- a) Our commercial term is ex works (Inco terms 2000) if not agreed upon otherwise. This still applies even if we have accepted the cost of transport.
- b) The delivery will only be covered by a special insurance of transport if explicitly requested by the customer, arising costs are to be borne by the customer.
- c) Any goods which are reported ready for dispatch are to be accepted immediately, otherwise we are entitled to either ship them at our choice or to store them at the usual forwarding costs and at customer's risk. We are even entitled to choose the latter option if the delivery accepted by us cannot be executed but not at our fault. The goods are considered delivered one week after the beginning of the storage.
- d) The kind of transport and the route is chosen by us at our discretion if not instructed clearly.
- e) As soon as the goods have been passed to the railway, the forwarding agent or the freight carrier and one week after the beginning of the storage respectively, at the latest, however, upon dispatch everything happens at customer's risk even if we have accepted delivery.

## 9. Reservation of proprietary rights

- a) Any delivered goods are still owned by us (reserved goods) until any receivables, especially the particular payment balance request which we are entitled to due to our business relationship, are settled. This also applies if payment to specially marked receivables has been made. If the customer is in default in payment we are entitled to reclaim the goods delivered at customer's expenses. This does not apply in case of applied or opened insolvency proceedings due to which we are not entitled to reclaim the delivered goods immediately.
- b) The taking back of the goods respectively the reservation of proprietary rights shall not be considered as a rescission of the contract unless explicitly stated by us.
- c) The processing of the goods delivered is always executed by the customer. Should the reserved goods be processed or connected inseparably with goods not in our possession, we do acquire joint possession of the new product to the extend of our invoice value of the goods compared to the other processed goods.
- d) Should our proprietary rights expire by the proceeding of the goods, the customer transfers his proprietary rights of the new product or item to us as of now to the extend of the invoice value of the reserved goods and the customer is obliged to store them

free of charge for us. The arising joint proprietary rights are treated under the reserved goods under subparagraph a).

e) The customer is only entitled to dispose of the reserved goods in the usual business at his usual terms and conditions and as long as he is not in default provided that the receivables of the disposal are to be assigned to us according to subparagraph f) and g). HE is not entitled to any other disposition of the reserved goods.

f) Customer's receivables of disposing the goods shall be transferred to us as of now. These receivables are treated as a means of safety to the same extent as the reserved goods.

g) Should the reserved goods be disposed of by the customer together with other goods not delivered by us, the receivables of the disposal are to be assigned to us only to the extent of the invoice value of the reserved goods disposed. Should goods that we have joint proprietary rights in be disposed of under subparagraph b), the assignment of the receivables is to the extent of the share of the joint ownership.

h) The customer is entitled to collect receivables from his disposal according to the subparagraphs e) and f) until cancelled by us. We are entitled to cancel in the cases mentioned under paragraph 9, if the customer gets in default in payment, if an application for insolvency proceedings has been made or the customer immediately has to report the assigned receivables and the debtors, to make any necessary details available, to hand over the corresponding documents and to inform the debtors about the assignment. In no case is the customer entitled to assign his receivables.

i) Should the value of the existing collaterals exceed the secured receivables by more than 20 %, we are in so far obliged to release collaterals according to our choice. The customer is to inform us immediately about any garnishment or other interferences by third parties.

j) We are entitled to have third party companies act as sub contractors to produce goods and to entrust the customer's manufacturing facilities to the third party company for the purpose of production.

k) Claims regarding intellectual property rights can only be asserted in so far as he informs us about the existence of these rights and reserves them explicitly.

#### 10. Liability for defects of quality

a) We are liable for the perfect production of the goods delivered by us in accordance with the technical delivery instruction agreed upon. The customer is especially responsible for the proper construction - with respect to the planned purpose of application - considering possible safety regulations, the choice of materials and necessary test procedures, correctness and completeness of the technical delivery instructions and the technical documents and drawings submitted to us-even when alterations suggested by us, find his approval. Furthermore the customer is responsible for the fact that third parties' industrial property rights or other rights will not be violated due to the details given by him. The moment of the passage of risk is decisive for the contractual state of the goods.

b) We are not liable for the slight variation of the condition of the goods, with only slight impairment of the usability. We are also not liable for the defects caused by improper or inappropriate usage, faulty assembly or putting into operation and the usual wear and tear. As well we do not assume responsibility for improper alterations or repair work carried out by the customer or third parties or their consequences.

c) The customer has to give written reproof of defects of quality immediately upon arrival of the goods at destination and he has to give written reproof of hidden defects upon discovery of which.

d) The reproof of defects is excluded if acceptance agreement or the check of initial samples has been agreed upon and the defects could have been discovered during that procedure.

e) We do have the opportunity to assess the defect reproof. This has to be done immediately in case of urgent cases of endangering the operating safety or in order to ward off disproportionately big damages to the customer. Rejected goods are to be returned to us if requested. Should the customer not fulfill these obligations or alter the already rejected goods without our consent, he loses possible rights for defects of quality.

f) If the reproof of defects is justified and in due time, we will mend the goods reproofed-at our choice- or we will deliver faultless replacement (supplementary performance).

g) Should we not - or not in due time - fulfill our warranty performance obligation or should the remedy remain unsuccessful, the customer can set a final deadline to which we have to fulfill our obligations. There is no need to set a final deadline if it is not reasonable to the customer. After an unsuccessful expiry of this deadline the customer may ask for a reduction of the price to his choice, he can rescind from the contractor he can have the necessary remedy executed by himself or by a third party at our expenses and risk. Should the remedy executed by the customer himself or by a third party all customer's claims are compensated with the refund of any cost that have arisen to him.

h) Customer's claims regarding expenses arising from the supplementary performance and the fact that the goods had to be taken to another location are excluded if they increase expenses unless the transfer is in accordance with the intended usage.

i) Customer's legal rights of recourse towards us do exist only in so far as the customer has not made any agreements with his sub purchaser beyond the legal claims of defects.

j) Further customer's claims are excluded in accordance with paragraph 13.

k) The proof of the defect is incumbent upon the customer.

#### 11. Order-related production facilities (equipment), parts that have to be cast integral

a) Order-related production facilities such as archetypes, templates, core boxes, chill moulds, ingot moulds, casting tools, devices and gauges which have been provided by the customer are to be sent to us free of charge. The accordance of the production facilities provided by the customer and the contractual specifications or drawings and patterns submitted to us is only checked by us if explicitly agreed. We may modify production facilities if it seems necessary to us for technical casting reasons and if the part is not altered by this.

b) The cost for the modification, maintenance and the replacement of this production facility is to be borne by the customer.

c) The production facilities are treated and kept with the care that is our custom. We are not liable for an incidental loss of the production facility. We are not obliged to take out insurance.

d) The ownership of order-related production facilities produced or ordered by us on behalf of the customer is transferred to him upon settlement of the agreed price respectively the share of the cost whereupon there is mutual agreement between the contractual parties. The handover of the facilities is replaced by our obligation to keep them safe. The facilities are kept by us for the duration of three years upon the final cast. Facilities by the customer which are no longer required by us can be stored at common customer's expense or sent back to the customer at his request, risk and expense and - after a reasonable deadline and pain of penalties - they can be demolished if the customer does not meet the obligation of collection within a reasonable period of time. The safekeeping agreement can be terminated by the customer at the earliest two years upon transfer of ownership provided that there is no important reason not to do so.

e) Intellectual property rights can only be asserted insofar as he advised us of the existence of these rights and explicitly reserves these rights.

f) Should scrap be generated from the use of production facilities which is usable only once, then the customer has to provide another production facility or bear the cost of a replacement production facility.

g) Parts that are to be cast integral by us have to be delivered to us true to size and in perfect technical condition by the customer. Parts that have become unusable due to scrap have to be replaced by the customer.

#### 12. Confidentiality

a) Each contractual party will use any document( including patterns, models and data) and knowledge acquired within the business relationship only for the common purposes and will keep them secret with the same care as with their own documents and knowledge, if the other partner calls them confidential and has an obvious interest in their secrecy.

b) This obligation starts with the first receipt of the documents and ends 36 months after the termination of the business relationship.

#### 13. General limitation of liability

a) Other and further customer's claims against us are excluded, for whatever legal reason, especially due to violation of the duties of the obligatory relation and due to an unlawful act unless something else arises in the following.

b) This limitation of liability is not valid as far as the liability is compelling such as according to the law of product liability, in case of intention, in case of gross negligence of the legal representatives or senior executives as well as culpable violation of fundamental contractual obligations. In case of culpable violation of fundamental contractual obligations we are only liable for reasonably foreseeable Damages typical for this kind of contract- except for the cases of intention and gross negligence of the legal representatives or senior executives. It is also not valid for damages arising from injury of life, bodily harm or health and for the lack of the quality guaranteed if and as far as it is the purpose of the guarantee to cover the customer against damages not on the goods themselves.

c) As far as our liability is excluded or limited this is also valid for the personal liability of the staff, legal representatives and auxiliary persons. Claims for compensation in damages and claims for defects in quality which the customer is entitled to against us prescribe one year after the delivery of the goods to the customer. This does not apply if the law in §§438 section1 no 2 (buildings and objects normally used in buildings) and §§479 section1 (right of recourse) German Civil Code regulates longer deadlines. The legal deadlines of prescription do also apply in case of intentional and grossly negligent violations of duties.

#### 14. Place of fulfilment and Jurisdiction

a) Mülheim an der Ruhr is place of jurisdiction provided that the customer is a merchant. We are, however, entitled to sue the customer at the court of his headquarters, too.

b) If nothing else is stated in the order acknowledgement, place of fulfilment for our services is the place of our supplier. Mülheim an der Ruhr is the place of fulfilment for financial obligations.

#### 15. Applicable right

The legal relationship between the parties are exclusively subject to the jurisdiction of the German law with exclusion of the UN Commission on International Trade Law (UNCITRAL/CISG).

#### 16. Severability

Should several provisions of these terms and conditions become either partially or completely invalid or void, the contractual partners oblige themselves to agree to a regulation which comes up to the meaning and purpose of the invalid or void regulation to a large extent.

#### 17. Clause of partnership

The economic conditions of the contractual partners, the kind, extent and duration of the business relation as well as the value of the goods shall be considered appropriately at all compensation payments, especially at the amount of the compensation payment bona fide.