



General Terms and Conditions of Sale of Purmetall GmbH & Co. KG

Valid as of 01.10.2015

I. Application, Offers

1. These General Terms and Conditions of Sale shall apply to all current and future contracts and other services and business relationships. We shall not be legally bound by the Terms and Conditions of the Purchaser even if we do not expressly oppose these again after we have received them.
2. Our quotations/tenders shall be without obligation. Agreements, in particular additional verbal agreements, promises, guarantees and other assurances made or given by our sales employees shall only be binding if and when they have been confirmed by us in writing.
3. The data included as part of the offer, such as drawings, illustrations, technical data, references to standards, as well as statements in advertising media, shall not constitute contractually binding information on the nature or quality of the goods, warranted properties/characteristics or guarantees, unless they are expressly described as such in writing.
4. Deviations of the delivered item compared to offers, samples, trials and prior deliveries shall be admissible in accordance with the DIN/EN standards as amended from time to time, or other pertinent technical standards.
5. These terms and conditions shall only apply in the case of transactions with entrepreneurs pursuant to Section 14 of the German Civil Code (BGB).

II. Prices

1. Unless otherwise agreed upon, our prices shall be quoted ex-works including packaging. As a rule, however, prices quoted do not include pallets, wire mesh crates, and other necessary pieces of transport equipment, including returnable containers. In each case value-added tax shall be added as well as possible customs duties, levies and the like.
2. The freight costs for pallets, wire mesh crates, and other necessary pieces of transport equipment which are returned within an appropriate period and in faultless condition will be fully credited to the Purchaser in the amount charged – in the event of damage, the credit will be reduced correspondingly.
3. If the delivery is carried out more than 3 months after conclusion of the contract, we shall be entitled to increase the agreed price in the event that the ruling prices of suppliers, or other costs affecting our goods and services – including public charges – should increase between conclusion of the contract and delivery of the goods; otherwise, the price quoted in the order confirmation shall apply. *Vis-à-vis* persons pursuant to Section 310, paragraph 1, page 1, of the German Civil Code, we are also entitled to raise prices if delivery is carried out within 4 months after conclusion of the contract and the costs affecting our goods and services increase between conclusion of the contract and delivery. The price increase shall become effective as soon as we have informed the Purchaser of the increase in writing.

III. Payment, terms and conditions of payment, set-off

1. Our deliveries and services shall be due and payable in cash using the stated term of payment; in the absence of such specification, net payment shall be due without deductions. Invoices for amounts below EUR 50,00, as well as for assemblies, repairs, moulds and proportions of tooling costs shall each be due immediately and payable net. Cash discounts agreed upon shall always refer only to the invoice value exclusive of freight and shall be conditional upon the fact that all due liabilities of the Purchaser have been settled in full at the time the discount is made.
2. Counterclaims that are disputed by us, or have not been legally asserted by a court of law shall neither entitle the Purchaser to withhold invoiced amounts, in whole or in part, nor to set off such amounts.
3. If the payment term is exceeded, at the latest from the date of default, we shall be entitled to charge interest in the amount of the respective bank rates for overdraft credits, and at least 8 percentage points above the base interest rate. We reserve the right to assert further compensation for the loss caused by the default in payment.
4. If, after conclusion of the contract, it becomes manifest that our claim to payment is at risk, due to a lack of solvency on the part of the Purchaser, we shall be entitled to the rights under Section 321 of the German Civil Code (plea of uncertainty); we shall have the right to execute outstanding deliveries and other services only against advance payment or provision of security. Furthermore, we shall be entitled to demand immediate payment of all claims resulting from the current business relationship that are not yet statute-barred due for payment and to revoke the direct debit authorisation in accordance with item VI. 5. In the event of default of payment, we shall, in addition, be entitled to demand the return of the goods after an appropriate period of grace and to forbid continued sale and processing of goods delivered. Any



repossession of goods does not constitute a withdrawal from the contract. The Purchaser can avert all of these legal consequences through payment or provision of security in the amount of our payment claim at risk. The provisions of the insolvency statute shall remain unaffected by the foregoing arrangements.

5. We shall only accept bills of exchange as payment if expressly agreed in advance. Credit notes for bills of exchange and cheques shall in all cases be deemed subject to receipt. They are issued at the value valid on the date on which we can access the equivalent value. In the event of default of payment, costs incurred through our recourse to borrowing from financial institutions shall be charged.

IV. Delivery periods, execution of deliveries

1. The delivery period begins with the date on which we accept the order, but not before all details relating to the execution of the order have been clarified; it shall be without any obligation at all times for us unless we have explicitly promised a specific time of delivery. Delivery periods and dates shall be deemed adhered to upon timely reporting of readiness for shipment, even if dispatch is held up or rendered impossible due to reasons for which we bear no responsibility.
2. The selection of the plant to be entrusted with delivery of the goods or originating materials shall be at our discretion unless special agreements have been made concerning it. We shall be under no obligation to inform the Purchaser of the name of the plant or warehouse chosen by us.
3. Upon handing over the goods to a forwarding agent or carrier – even if we are obligated to deliver with our own vehicles – at the latest, however, upon departure from the warehouse or the supplying/ manufacturing plant in the case of drop shipment transactions, the risks are transferred to the Purchaser in the case of all transactions – even in the case of pre-paid and free delivery to the buyer's address. The Purchaser shall be entitled to take delivery of the goods immediately after notification of readiness for dispatch.
4. Delivery periods shall be extended to an appropriate extent in the event of measures taken in the context of labour disputes, in particular strikes and lockouts, as well as in the case of unforeseeable hindrances beyond our control, if such hindrances can be proved to have a serious impact on the production or delivery of the ordered item. The same shall apply if such circumstances arise in the case of suppliers.
5. The choice of routing, means of transport and protective arrangements, as well as covered and special carriages is subject to our discretion excluding all liability and will be charged separately. We shall, however, take pertinent wishes of the Purchaser into account whenever possible. Instructions given to us by the Purchaser shall relieve us from all liability, and resultant excess freight and the general obligation and expense of unloading shall be borne by the Purchaser. We shall arrange for insurance coverage only upon the instructions and at the expense of the Purchaser. In the event that the goods are provided in a timely manner, but the Purchaser fails to take delivery of the goods within the time stipulated, the expenses shall be borne by the Purchaser.
In the case of delivery c.i.f., f.o.b., etc. (cf. Incoterms) and free delivery to Rhine harbours, etc., the open and unhindered navigation on the waterways in question shall constitute a prerequisite. Low water surcharges shall be borne by the Purchaser.
6. In the case of delivery in returnable containers, these shall be returned, immediately after discharge, per pre-paid delivery and in good condition. In this case, the Purchaser's risks do not conclude until the containers have arrived back at our premises.
7. The weights shall be established prior to delivery of the goods and shall be decisive for the calculation. We shall be entitled to effect part shipments to a reasonable extent.
8. In the case of call-off orders, we shall be entitled to produce the entire quantity ordered in one lot, or have it produced as such. After the order has been placed, possible alteration wishes can no longer be taken into account, unless such alterations have been explicitly agreed upon. Unless firm written agreements have been made, call-off dates and quantities can only be observed within the scope of our delivery and production capabilities. Should the goods not be called off in accordance within the terms of the contract, we shall be entitled to invoice them as delivered after the lapse of a reasonable grace period and to charge for their storage.

V. Default of delivery/liability

1. Our liability for damages due to slight delays shall be limited to 10% of the delivery's invoice value. If the underlying contract is a "Fixgeschäft" (short selling) pursuant to Section 286, paragraph 2, No. 4 of the German Civil Code (BGB) or of Section 376 of the German Commercial Code (HGB), we shall bear liability in accordance with the statutory provisions. The same shall apply if the Purchaser is entitled to assert a cessation of its interest in the further performance of the contract as a result of default of delivery for which we bear the responsibility. In this case, our liability shall be limited to the foreseeable typical occurrence of damage/loss if the default of delivery is not due to a deliberate breach of the contract for which we could be held responsible; culpability of our representatives or agents shall be attributed to us.
2. In all other cases concerning a delay in delivery the provisions as stipulated in the Limitation of Liability (section 8) shall apply, we shall bear liability vis-à-vis the Purchaser in accordance with the statutory pro-



visions if the default is due to deliberate or grossly negligent breach of the contract for which we are responsible; culpability of our representatives or agents shall be attributed to us. Our liability shall be limited to the foreseeable typical occurrence of damage/loss if the default of delivery is not due to a deliberate breach of the contract for which we could be held responsible.

3. We hereby explicitly inform the Purchaser that delivery delays cannot be ruled out completely. As such, it is due diligence of a prudent business man to maintain adequate inventories, that will ensure continual production even in the event of a delayed delivery.

VI. Reservation of title

1. All goods delivered shall remain our property (conditional commodities) pending fulfilment of all receivables stipulated in the business agreement, irrespective of their legal grounds, including future and conditional claims.
2. Processing and modifying of the conditional commodities shall be carried out on our behalf as manufacturers pursuant to Section 950 of the German Civil Code, without placing us under any obligation. The modified goods shall be deemed to be conditional commodities pursuant to Point VI. 1. Whenever conditional commodities are processed, connected to and co-mingled with other goods by the Purchaser, we shall be entitled to co-ownership of the new item in proportion of the invoice value of the conditional commodities to the invoice value of the other goods used. If our ownership lapses as a result of such connecting or co-mingling, the Purchaser hereby transfers, the ownership rights of the new inventory or item to the extent of the invoice value of the conditional commodities and shall store them for us free of charge. The ensuing rights of co-ownership shall be deemed to be conditional commodities pursuant to Point V. 1.
3. The Purchaser shall only be entitled to sell the conditional commodities in the ordinary course of its business in accordance with its normal terms and conditions and only as long as it is not in default, provided the receivables from the resale are passed to us in accordance with Point V.4. to V.6. The Purchaser shall not be entitled to dispose of the conditional commodities in any other way.
4. The Purchaser's receivables from the resale of the conditional commodities shall be assigned to us here and now. We hereby accept the assignment. Said receivables shall serve as security to the same extent as the conditional commodities. When goods of which we have joint ownership in accordance with Point V. 2. have been resold, we shall be assigned a portion of the receivables thereof equivalent to our joint ownership share.
5. The Purchaser shall be authorised to collect accounts receivable from the resale until revocation by us of such authorisation, with such revocation being admissible at all times. We shall assert our right of revocation only in the cases specified in Point III. Upon our request, the Purchaser shall be committed to inform its customers of the assignment to us – unless we do so ourselves – and to give us the information and documentation necessary for collection.
6. The Purchaser must notify us immediately of any case of garnishment or other interference by third parties.
7. If the value of existing securities exceeds the total receivables secured by more than 50 % in total, we shall to such extent be obligated to release securities at our discretion at the Purchaser's request.

VII. Liability for defects

1. In the event of a justified, immediate complaint, we shall be entitled to remedy the defect at our discretion, or to supply an item free from defects (subsequent performance). In all other cases, the legal regulations shall apply.
2. Expenses relating to remedy of defects or the replacement of an item shall only be borne by us if they are reasonable in each individual case, particularly in relation to the purchase price of the goods. We do not bear expenditure incurred as a result of the goods sold having been taken to a place other than the domicile or branch establishment of the Purchaser, unless such relocation corresponds to the contractual use of the goods.
3. Should the Purchaser fail to provide us with an opportunity to verify the defect, and, in particular, fail to place the goods that are the subject of complaint, or samples thereof, at our disposal, defects cannot be claimed. The Purchaser must report defects, in writing, within 14 days from date of arrival of the goods at the place of destination, but at the latest immediately after discovery of the defect, presenting the full array of proof required to prove the claim.
4. Further claims are excluded. This shall apply, in particular, to claims for compensation for damage which did not occur in the goods themselves (consequential damage)

VIII. General limitation of liability, statute of limitations

1. Due to violation of contractual and non-contractual obligations, in particular due to supervening impossibility, default, culpability during contract negotiations and tort cases, we shall be legally liable – even vis-à-vis our executive staff and other vicarious agents – only in cases of wilful intent and gross negligence



and such liability shall be limited to the damage typical of the contract. These limitations shall not apply in cases of culpable violation of contractual obligations whose fulfilment renders the proper implementation of the contract possible and adherence to which the contracting parties rely upon and can rely upon (cardinal duties/important contractual obligations) or if the achievement of the contract purpose is at risk, in cases of binding liability in accordance with product liability law regarding injury to life, body or health. The same shall apply even if, and to the extent that, we have fraudulently concealed defects in the item or have guaranteed the absence of such. The rules on burden of proof shall remain unaffected thereby.

2. In the absence of a contradictory agreement, contractual claims of the Purchaser against us arising on the occasion of, or in connection with the delivery of the goods, expire one year after the goods have been delivered by the statute of limitations. Our liability with respect to deliberate and grossly negligent violations of duty as well as the expiry of legal action rights shall remain unaffected thereby. In cases of supplementary performance, the statute of limitations shall not start anew.

IX. Copyright

1. We reserve the copyright and all other intellectual and industrial property rights with respect to estimations of costs, drafts, drawings and other data. They shall be made available to third parties only after consultation with us. Drawings and other documents/records relating to tenders shall be returned to us upon request.
2. If we deliver items made in accordance with drawings, models, samples or other data handed provided to us by the Purchaser, said Purchaser shall assume responsibility for ensuring that the intellectual property rights of third parties are not violated. If third parties, forbid us to produce and deliver such items with reference to industrial property rights, we shall – without being under any obligation to examine the legal position – be entitled to discontinue all further activities connected with the production and delivery of said items and, in the event of the Purchaser being at fault, demand compensation. The Purchaser, moreover, undertakes to immediately indemnify us in full from all third-party claims connected with this matter, including legal defence costs and other expenses.

X. Test parts, moulds, tools

1. If the Purchaser has to provide parts for the execution of the order, such parts shall be sent per pre-paid delivery to the works, in the agreed quantity, or otherwise with an appropriate surplus quantity to allow for possible spoilage: The delivery should be in good time, free of charge and free from defects. Failing this, any costs thus incurred and/or any other consequences shall be borne by the Purchaser.
2. The manufacture of test parts, including the costs of moulds and tools, shall be borne by the Purchaser.

XI. Place of fulfilment, place of jurisdiction, applicable law

1. Place of performance for delivery and payment and exclusive place of jurisdiction – if admissible – shall be Oberhausen (Rheinland). We are, however, entitled to bring suit against the Purchaser at its court of jurisdiction.
2. All legal relations between us and the Purchaser shall, in addition to these terms and conditions, be governed exclusively by German law. Application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11.04.1980 shall be excluded.
3. For cross-border deliveries, the sole court of jurisdiction for all disputes arising out of the contractual relationship shall be the corporate seat of our company in the Federal Republic of Germany. We also reserve the right to invoke any other court which is competent by virtue of EuGVÜ or EuGWO.
4. In cases of doubt, the German version of these General Terms and Conditions of Sale shall be deemed the authoritative version.