

# TERMS AND CONDITIONS

## **Period of validity of the conditions**

The customer agrees with the following terms and conditions by accepting the order of confirmation.

Any condition of the customer is classified as invalid, even if they are not explicit contradicted. Deviation from the terms and conditions must be confirmed in written form.

## **Conclusion of contract**

A contract is certified not until it is confirmed with an order of confirmation from us.

The mailing of offers, price lists, circular letters or general offers are not classified as a binding offer for us in the sense of §145 German Civil Code (BGB).

Conclusions of representatives or travelling staff as well as verbal or telephonic agreements are valid not before we confirm it in written form.

## **Selling price**

Calculation takes place at the day of the shipment or collection to the valid prices. Not predicted changes with raw material costs, wage costs, energy costs or other costs entitle us to adjust our price.

By small orders, we must calculate with minimum amounts, which take the extraordinary charges connected with your execution of your order into account.

## **Shipping method, risk of conveyance**

We supply to our direct customer à-la-carte carriage paid post, carriage paid to every German general cargo depot or carriage paid on every other usual way, but only at a net commodity of 500 Euros.

Consignments are generally ex works. If express dispatch is prescribed (airfreight, express goods), the customer will bear the difference between the expenses for freight and the increased costs.

Carriage and freight charges will be at the expense of the customer. The delivery of rubber-metal compounds, vulcanized sealing frame and yard goods are basically made ex works. A remuneration for a collection by the customer is not been granted. In principle, foreign delivery occurs untaxed and duty unpaid. We are entitled to deliver ex work or ex branch. Goods are delivered at the buyer's risk, irrespective of the place of dispatch. In the event the goods are ready for mailing and should be the dispatch or the acceptance, be delayed for reasons for which we are not responsible, then the risk shall pass to the buyer upon receipt of the notification and that the goods are ready to transmit. At that time, the dispatch counts as made.

## **Fabrication structures and forms**

An immediate deposit is payable if molds or tools are required for the completion of the contract. In accordance with our construction services, these molds or tool produced or supplied by us shall remain our property, if the customer pays the proportionate costs. By request of the customer, he can acquire the tools by payment of the full costs. In this case, the property rights are transferred to the client. By process interruptions of more than 24 months, the client must pay storage costs for the tools. According to the general conditions of sale, a right for delivery only exists if such tools are available. We assume no responsibility for the suitability of molds and tools made available by the buyer. Submitted offers and orders we accepted are in every respect said to be non-binding until the final clarification of usability of the tool. Costs of repair and maintenance as well as the manufacturing risk for the tool shall be borne by the owner.

## **Packaging**

We will not apply charge for disposable packaging made out of paper, cardboard or foil. Packaging is calculated at cost price only if a special package is required. Normal boxes shall be credited at two thirds of their value in the event of postpaid return in a usable condition. For the return of other packages no compensation will be paid. European pallets and lattice boxes are treated in exchange.

## **Delivery**

An obligation to adhere to the agreed delivery and performance periods is only accepted under the prerequisite of undisrupted operation; in particular, cases of force majeure and other disrupting events to us, our suppliers or the transportation companies, e.g. operational or traffic disruptions, fire, floods, shortage of labor, energy or raw materials, strikes, lockouts, or official measures release us from the obligation of punctual delivery or performance and furthermore give us the right to discontinue delivery without subsequent delivery. Claims for damages due to non-fulfillment are excluded. The customer has the statutory right of withdrawal.

If a delay or the impossibility of conditions, which we are accountable, exists, delay damage or compensation cause of non-performance in no way to refund. After allowing 4 weeks of extension, the buyer has the right to cancel the purchase. In the case of orders that are to be fulfilled with multiple deliveries, non-fulfillment, faulty fulfillment or delayed fulfillment of one delivery will not have an influence on other deliveries of the order. Call orders can only be implemented in our manufacture possibilities. Annual orders are divided into 1/12 and with a production reliability of one month prefabricated. Partial deliveries are permitted.

Notice of bankruptcy or insolvency proceedings, execution of a declaration in lieu of an oath incipient financial difficulties, knowledge of considerable worsening or a change of ownership of the customer's financial circumstances occurs give us the right to stop delivery and to refuse fulfillment of current contracts.

We reserve proprietary rights and copyright for cost estimates, first drafts, drawings and other documents; these may only be provided to third parties subject to our approval. Drawings and other documents, which are requested along with quotations, must be returned in every case where an offer is not accepted. In case of delivery of items according to drawings, models samples or other documents provided by the customer, the latter shall ensure that industrial property rights of third parties are not infringed upon. If third parties – in reference to copyrights – do not allow us to manufacture or deliver goods, we will be entitled to stop all activities in this context – without having examined the legal situation – and we will be entitled to claim compensation. The customer undertakes to exempt us immediately from all compensation claims or other claims asserted by third parties in this connection.

If the buyer is required to provide components in connection with the execution of the order, they shall be supplied free plant in the agreed quantity or otherwise in reasonable additional quantity considering a possible waste, with such components being free of charge and free from defects. Insofar as this does not occur, we have the right to charge the expenses caused by this and not to begin or interrupt the production at our discretion.

## **Contractual warranty conditions**

Variations from samples or earlier deliveries, if technical feasible, must be avoided. Significant differences only grant a right of warranty claim. We do not give any guarantee for physical and chemical values. We reserve the right of deviations according to article from up to 10% in either direction.

If production goods are involved, the quantities delivered can be up to 10% over or short of the quantities ordered.

Statements made by the company relating to the delivery and performance of the goods, and on the applications of the goods themselves (e.g. dimensions, weight, hardness, service values) and in advertising materials represent only descriptions or designations and not guaranteed properties. The warranty for defects is excluded, if the complaint is related to an insignificant reduction of value or fitness for use of the delivered goods or the purchase price has not been paid in full. Any detectable fault must be communicated by the buyer in writing or by telex in line with the German commercial regulations (§ 377 HGB), but at the least within 8 days of receipt of the goods. Decisive in each case is the date upon which we receive the complaint.

We take on the responsibility for the duration of 6 months from the receipt of the goods. The entire warranty claim shall be excluded upon the expiry of this term.

We shall remedy essential defects at our discretion by subsequent improvement or by supply of replacement. A right to cancellation or abatement is only given, if according to our decision improvement, replacement delivery cannot be carried out or the time period for the same is not kept.

In the case of failure of improvement or replacement delivery as well as absence of promised characteristics, the customer can demand reduction of payment, or according to his choice, cancellation of the contract. Further claims for damages are excluded in as much as this is admissible by law. Prior to each shipment of goods procured from us, the buyer shall inspect the goods before the usage in every respect for conditions and for flawless quality.

The heading warranty conditions apply analogous for claims of positive contractual infringement or of omission on completion of the contract.

Further claims or other warranty claims on the part of the customer, in particular claims for consequential damages, shall be excluded.

## **Warranty conditions by utilization in accordance with §832 German Civil Code (BGB)**

If the customer claims us from the point of view of unlawful act (§ 832 seq. BGB), the only warranty applicable is the standard written warranty applicable to the particular product on sale, in particular for deadline regulation and limitation of liability.

## **Retention of property**

We retain full title of all delivery goods until the customer has discharged all our payment claims arising from the business relationship with the customer.

Processing and handling is made for us on exclusion of the acquisition of property pursuant to § 950 BGB, without obliging us. If supplied goods are processed, assembled, mixed or blended (§ 947, 948 BGB) with other items that do not belong to us, we shall be granted joint title to the new product in the ratio of the value the goods supplied to the value of the other processed items at the time of processing, assembling, mixing or blending. In terms of these conditions, the new corporeal thing shall be considered a conditional commodity.

The buyer shall herewith already assign to us its claims arising from the resale of the reserved goods to a sum that corresponds to the value of the reserved goods. The previously mentioned shall also apply, if the sale is made with other articles for a total price.

If the buyer installs the reserved goods into premises belonging to a third party as an integral part, the buyer hereby assigns the claim for payment to which he is entitled against the third party or against the person concerned with the amount that corresponds to the value of the reserved goods plus a safety fee of 20%.

Asserting the retention of the title is not considered as cancellation of the contract. Irrespective of the customer's obligation to pay, we are entitled to sell the goods by private contract at best price and to credit the proceeds or to credit the goods at contract price minus premiums accorded, discounts and other allowance and with deduction of a depreciation.

In every case, we are also entitled to deduct our take-back costs amounting to 10% of the original value of goods.

The purchaser may neither dispose of or pledge the reserved goods nor transfer it by way of security. Resellers shall be entitled to sell the goods in the ordinary course of their business as long as they retain title to the goods.

## **Terms of conditions**

Invoices are strictly net, postage free and clear of charges within 14 days of invoice date. If the due date of payment is exceeded, we are entitled to charge interest of 4% p.a. above the respective basic interest rate of the German Central Bank to the gross amount of the due invoice from this point in time. The law of enforcement of further damage caused by default remains unaffected.

Checks shall be treated as cash payment as long as submitted in time, so that they can be honored within the above mentioned payment terms; predated checks will not be accepted as payment.

Invoices of molds and tools are due strictly net for sampling. Possible down payments will be credited. No interest shall be paid on advance payments or payments on account. If receivable of the credit insurer are unsecured, we are entitled to claim advance payment.

New customers are examined separately and with a creditworthiness of worse than 3.5 only supplied with advance payment. We shall at all times be entitled to the assessment as well as cancellation of credits granted – also within the before mentioned payment terms, even after conclusion of a contract. Furthermore, we shall be entitled to demand at any time without giving reasons securities as judged sufficient by us. In case that such are not presented upon our request, our claim shall be due immediately.

The customer may set off or withhold payments only if his counterclaim is undisputed or res judicata.

Any deductions, which are not expressly agreed, are not accepted.

The payments shall be effected at Gundelfingen. Payments to employees or representatives of our company are legally effective only when such persons are in possession of a valid authorization to collect.

## **Invalidity of individual terms**

Possible invalidities of an individual provision of our business terms does not affect the validity of this contract and other conditions. The applicable law shall be exclusively the law of the Federal Republic of Germany to the exclusion of the Universal Law of Purchase.

## **Former conditions of sale**

Our former conditions of sale cease to be in force.

## **Place of jurisdiction and performance**

The sole place of jurisdiction for all claims that may arise is to be Dillingen in the Donau region. Place of performance is Dillingen in the Donau region.

# BAMBERGER

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