

Scope of Validity

- These conditions of sale apply to commercial enterprises, public-law entities and separate accounting entities under public law.
All our deliveries and services are effected without exception on the basis of the terms and conditions set forth below. Business terms and conditions of any contracting party are deemed to be invalid unless expressly acknowledged by us in writing.

General Terms

- Contracting parties undertake to confirm each individual verbal agreement in writing without delay.
- All offers and quotations are deemed to be binding for a period of 14 days, beyond that without engagement. Contractual obligation requires written confirmation of order in all cases.
- Information and illustrations appearing in catalogues and on internet pages are deemed to be approximate values customary in the trade unless expressly specified by us as binding.
Long-term- and Call-off Contracts, Price Adjustment
- Open-end contracts are terminable observing 12 months' notice.
- In the event of long-term contracts (contracts exceeding a term of 12 months or open-end contracts) being affected by essential changes occurring in the cost of labour, materials or energy, each of the contracting parties shall be entitled to demand appropriate adjustment of the price taking those factors into consideration.
- Where no binding order quantity is stipulated, we base our cost estimates on the anticipated non-binding order quantity (inquiry/quote quantity).
Should the contracting party purchase less than the inquiry/quote quantity, we shall be entitled to increase the unit price accordingly. Should the contracting party purchase more than the inquiry/quote quantity, we will reduce the unit price accordingly, provided that the contracting party has announced such additional requirements at least 6 months prior to delivery.
- In the case of call-off delivery contracts, notification of binding quantities must be given to us by effecting call-off at least 4 months prior to the delivery deadline unless otherwise agreed upon.
Additional costs caused by our contracting party through delayed call-off, or due to subsequent changes having been made to call-off as regards time or quantity, will be debited to that party's account, the governing criterion in this case being our cost estimate.

Secrecy and Confidentiality

- Each and every contracting party undertakes to utilize all records (including samples, models and data) received in the course of the business relationship solely for the mutual purposes pursued and to maintain secrecy in respect thereof towards third parties where the other contracting party has indicated the same as private and confidential or has a manifest interest in maintaining the secrecy thereof, applying the same due care and diligence as the contracting party concerned would exercise pertaining to similar records or data of its own.
This obligation enters into force on receipt of the said records or data and ends 36 months after termination of the business relations entered into.
- The said obligation does not apply to records or data that are generally known or were already known to the contractual party on receipt of the same without that party's being obliged to maintain secrecy in respect thereof, or accordingly disclosed to any rightful or legitimate third party for forwarding of the same, or developed by the receiving contractual party without utilization of records or data of the other contracting party subject to secrecy or confidentiality.

Drawings and Descriptions

- Where one of the contracting parties makes drawings or technical data available to the other concerning the merchandise due to be supplied or its manufacture, such material is deemed to remain the property of that party submitting the same.

Obligations of the Ordering Party/Contracting Party

- In placing an order, the contracting party undertakes to carry out independent checking of possible infringement of industrial property rights or copyright and, where applicable, to draw our attention to the fact that the order involves parts effectively protected by third-party property rights or copyright.
- In the event of the merchandise having been manufactured according to any contracting party's drawings, models, designs, labels, brand trademarks or other specifications, that party undertakes to indemnify us against all liability with regard to any infringement of industrial property rights or copyright we might be exposed to due to the merchandise corresponding to such specifications. Such indemnification is deemed to cover all costs and expenses we may inevitably be involved in connected with any third-party claims or legal recourse being made or resorted to.
- Where deliveries are designated for EU member states, the contracting party undertakes to notify us of its VAT number. Otherwise that party will be under obligation to pay, in addition to the stipulated purchase price, the amount of statutory value added tax owed by us in respect of our deliveries.

Export Certification

- Where a contracting party, whose domicile is situated outside the Federal Republic of Germany (extra-territorial purchaser), or that party's authorized representative collects merchandise from us and forwards or dispatches the same to any such outside territory, that party must furnish us with appropriate export certification required for fiscal purposes. Failure to furnish such proof will render that party liable to pay the rate of turnover tax applicable within the Federal Republic of Germany on the invoice amount.

Production Facilities, Samples

- Unless otherwise agreed upon, manufacturing costs in respect of production facilities (tools, jigs and fixtures, gauges, etc.) and samples will be invoiced separately from the merchandise due for delivery.
- Costs in respect of maintenance and proper storage as well as the risk of damage to, or destruction of such production facilities will be borne by us.
- In the event of any contracting party suspending or terminating bonds of cooperation with us while samples or production facilities are undergoing construction, all manufacturing costs incurred up to then will be to the debit of that party's account.
- All production facilities are deemed to remain our property irrespective of any payment or partial payment.

Prices

- Our prices are understood to be in Euros excluding value added tax, packaging, freight, toll charges, postage or insurance.

Terms of Payment

- Our invoices are due and payable by the 15th of the month following delivery without deductions of any kind.
Any other terms of payment require our consent in writing. Where payment deadlines are exceeded, interest on payments in arrears will be charged amounting to 8% above the basic interest rate of the European Central Bank. We expressly reserve the right to accept bills of exchange or cheques; in all cases such acceptance is effected pending full discharge of the debt and is only deemed to have any payment discharging effect after having been honoured. Discounting charges are computed from the date on which the invoice amount falls due and are debited to the account of our contracting party. All guarantees is ruled out for presentation of bills and cheques in due time as well as for the protesting of bills.
- Should we have incontestably delivered partially defective merchandise, our contracting party nevertheless undertakes to effect payment in respect of that part of the consignment that is free from defect unless such partial consignment is of no interest to that party. In other respects the contracting party can only offset counterclaims that have been established by declaratory judgement in court or that are incontestable.
- Where any delay in payment occurs, we may suspend performance of our obligations after having given written notice to the contracting party and continue to do so until payment is received.
- If it becomes apparent, after conclusion of the contract, that our claims for payment are in jeopardy due to the contracting party's lack of ability to effect payment, we may refuse performance and set that party a reasonable deadline, during which period it is required to effect payment on a counter-performance basis against delivery or to provide security. Negative response from the contracting party or failure on its part to meet the said deadline will entitle us to withdraw from the contract and to claim compensation.

Delivery

- DIN EN 10250-1 is deemed to be standard-defining and binding as applied to the execution of the forgings. Where we are called upon to effect delivery in accordance with any contracting party's drawings, specifications, samples, etc., that party assumes risk of suitability for the intended purpose of use (constructional risk). Decisive with regard to the contractual state of the merchandise is the point of time at which passing of risk takes place in pursuance of Clause 34. All deliveries are subject to the reservation of ourselves being supplied with the right material in due time.
- Unless stipulated otherwise, we deliver "ex works". The governing criterion for observance of any period of delivery or delivery deadline is advice given by us of readiness for delivery or collection of the merchandise.
- The period of delivery is deemed to commence upon sending the confirmation of order, however not before complete clarification of all details pertaining thereto, receipt of a letter of credit confirmed by our bank and procurement of any necessary official home or foreign certifications. Where preliminary requirements prevail in pursuance of Clause 56, delivery will extend accordingly.
- Partial deliveries are permissible to a reasonable extent. These are invoiced separately.

Testing

- Customary testing of forgings comprises checking for dimensional accuracy and surface irregularities as far as these can be ascertained by visual inspection. Costs in respect of customary testing are included in the unit price.
The nature and extent of additional tests and test methods that are needed to be applied, e.g. 100% hardness test (e.g. Brinell or Rockwell), crack testing and fault detection applying ultrasonic equipment, etc. must be arranged separately and stated in the drawing of the forgings or in the order and confirmation of order.

Dispatch and Passing of Risk

- Merchandise ready for dispatch on the delivery date must be taken over by the contracting party without delay. Otherwise we shall be entitled to dispatch the same according to our own options or to store the merchandise at the expense and risk of that party.
- In the absence of specific arrangements, means of transportation and the transport route will be selected by us.
- Risk passes to the contracting party on surrender of the consignment to the railway, the forwarding agent or carrier or on commencement of storage – at the latest on exit of the merchandise from the works or warehouse, this also applying in cases where we have assumed delivery ourselves.

Delivery

- If we are able to foresee that the merchandise cannot be delivered by the date stipulated, we will notify the contracting party thereof by telephone or in writing, stating reasons for the delay and quoting, as far as possible, the anticipated delivery date.
- If delivery is delayed due to any circumstance specified in Clause 56 or due to any acts or omissions of the contracting party, reasonable and proportionate extension of the period of delivery will be granted in accordance with the circumstances. This also applies if the furnishing of information, acts of cooperation or final product requisitioning on the part of the contracting party – necessary for dispatch of the merchandise – only materialize after the confirmation of order has been sent out.
- The contracting party is only entitled to withdraw from the contract if we are responsible for non-observance of the delivery deadline and that party has granted us additional respite of reasonable length without this having proved successful.

Reservation of Ownership

- We reserve the right of ownership or title to the delivered merchandise until all claims arising from the business transaction on linking us with the contracting party have been satisfied in full.
- The contracting party is entitled to sell the merchandise in the ordinary course of business as long as it meets its obligations in due time resulting from the business relations entered into with us. However, it may not pledge any of the merchandise subject to reservation or assign the same by way of security. The contracting party undertakes to protect our rights when reselling on credit any of the merchandise subject to reservation.
- In the event of any breach of obligation occurring on the part of the contracting party, in particular default in payment, we shall be entitled to withdraw from the contract and take back the merchandise after having set that party a reasonable deadline to effect performance and this having proved unsuccessful; statutory provisions in respect of dispensability of deadline setting remain unaffected thereby.
The contracting party is under obligation to effect surrender of the merchandise.
We shall be entitled to withdraw from the contract in the event of a petition being filed for the institution of insolvency proceedings in respect of the contracting party's assets.
- The contracting party herewith agrees to assign to us as a means of security all claims and rights resulting from the sale or leasing of goods – where such leasing permission may have been granted to the contracting party – on which we own title. We herewith accept such assignment.
- Any machining or processing of the merchandise subject to reservation undertaken by the contracting party is always deemed to be on our behalf. In the event of any of the merchandise subject to reservation being processed or inseparably intermingled with other objects not belonging to us, we automatically acquire co-ownership of the new product in ratio of the invoice value of the merchandise subject to reservation to such other processed or intermingled objects at the time of processing or intermingling.
If our merchandise is bonded or inseparably intermingled with other movable objects to form a uniform product and such other product is to be regarded as the principal product, the contracting party undertakes to assign to us proportional co-ownership thereof, provided that it owns the said principal product. The contracting party undertakes to maintain ownership or co-ownership at no cost to us. In all other respects, the same applies to products resulting from processing, bonding or intermingling as to that involving merchandise subject to reservation.
- The contracting party undertakes to effect immediate notification to us of any third-party execution or enforcement proceedings affecting the merchandise subject to reservation, claims assigned to us or other means of security, submitting all necessary documentation for intervention. This also applies to all other forms of prejudice.
- In the event of the value of existing security exceeding the secured claims by more than 20 per cent, we are obliged to release means of security according to our own options on request submitted by the contracting party.

Material Defects

- Complaints in respect of defects are only recognized by us if reported by our contracting party in writing within the periods specified below.
Defects detectable by their outward appearance must be reported immediately on receipt of the consignment.
Internal defects not detectable until the forgings are subjected to machining or have been put to use must be reported within 12 months following receipt of the consignment, in which case it must be fully ascertained that they involve our consignment.

According to our own options, defective parts will either be rectified by us, replaced free of charge or credited in the event of subsequent performance having failed. The contracting party may only demand rectification or replacement if such defective parts fall below the small-volume limits laid down in DIN EN 10254. In the event of such rectification or replacement not leading to the success as stipulated by contract, the client will be entitled to rights of rescission or a reduction of the purchase price.

- Reimbursement of costs in respect of after-treatment or additional work is only possible after prior agreement with us.
- We assume no guarantee for material defects caused by the contracting party or any third party due to unsuitable or improper use, incorrect assembly or putting into operation, normal wear and tear, faulty or careless handling in addition to consequences resulting from improper modifications or repairs carried out by the contracting party or any third party without our consent. The same applies to defects merely of immaterial importance in reducing the value or usability of the merchandise.
- Claims in respect of material defects become statute-barred in 12 months. This does not apply where the law stipulates longer periods as mandatory, in particular with regard to defects on a building structure and to goods utilized for a building structure in accordance with their normal use as such and that have caused defectiveness thereof.
- In cases where official acceptance testing of the goods or initial sample testing has been stipulated, notification of such defects is ruled out which the contracting party would have been able to ascertain in performing the said official acceptance testing or initial sample testing with due care.
- We must be given an opportunity of examining the defects thus reported. Merchandise complained about must be returned to us on demand; provided that such complaint is justified, we will assume costs of transportation, these to be agreed upon with us. Should the contracting party fail to meet these obligations or carry out alterations to merchandise complained about without our consent, this will render all claims in respect of material defects null and void.
- Where complaints are justified and reported in due time, we agree to remedy the defects that have arisen or to provide such replacement that is free from defects.
- Should we fail to honour these obligations or not meet the same within a reasonable period of time in accordance with the contract, the contracting party may set us a final deadline in writing, within which period we are required to fulfil our obligations as aforesaid. In the event of the said period expiring without success having been achieved, the contracting party may do either of the following: claim a reduction in price, withdraw from the contract or carry out the necessary repair work himself or have it carried out by others at our expense and risk. Where increased expenses arise due to the merchandise having been dispatched to another destination after being delivered by us, reimbursement of costs is ruled out unless this corresponds to the intended use of the goods according to the terms of the contract.
- Statutory recourse claims against us by a contracting party are deemed to exist only in as far as that party has not made any agreements with its clients extending beyond the statutory warranty claims. In addition, Clause 51, final sentence, applies analogously to the scope of such recourse claims.

Other Claims, Liability

- Unless resulting from the stipulations specified below, all further claims lodged against us any contracting party are ruled out. This applies in particular to compensatory damages involving neglect of duty resulting from relationship under the law of obligations as well as tort. Accordingly, we assume no liability for damages not occurring to the supplied merchandise itself. Above all we are not liable for loss of profit or other financial losses incurred by the contracting party.
- The above limitations on liability do not apply to malice aforethought, gross negligence on the part of our legal representatives or executives or to culpable violation of essential contractual obligations. Where culpable violation of essential obligations occurs – except for instances of malice aforethought or gross negligence on the part of our legal representatives or executives – we only assume liability for damage of a typical contractual nature and sensibly foreseeable.
- Moreover, such limitation on liability does not apply to cases falling under the Product Liability Act involving liability for personal injury and damage to property attaching to privately used objects resulting from defects of the merchandise supplied. Neither does it apply to injuries to life, body or health or to the absence of warranted qualities if and where the specific aim of such warranty has been to guard the contracting party against damages that have not occurred to the supplied merchandise itself.
- In cases where our liability is ruled out or limited, this also applies to the personal liability of our workpeople, employees, staff, legal representatives and vicarious agents.
- Statutory regulations governing burden of proof remain unaffected thereby.

Force Majeure

- The existence of force majeure shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected contractual partner is in default, unless he has caused the default intentionally or through gross negligence. The contractual partners shall be obliged to provide the necessary information without delay within the bounds of what is reasonable and to adjust their obligations to the changed circumstances in good faith. Should these events last for more than 30 days, we shall have the right to withdraw from the contract with immediate effect, without the partner being entitled to claim compensation for any damages or losses arising from this.

A case of force majeure is in particular, but not limited to the following cases: Industrial action, war (declared or not), warlike condition, riot, revolution, rebellion, military or civil coup, insurrection, tumult, riot, blockade, embargo, government order, sabotage, strikes, slowdowns, lockouts, epidemics, fire, floods, storm surge, typhoon, hurricane or other severe weather, earthquake, landslide, lightning, general shortage of energy, in particular gas or base materials, serious transportation accidents or failure of our suppliers to deliver, and other unforeseeable, unavoidable and serious events.

Data Processing

- Pursuant to Sections §§ 26 and 34 of the Federal Data Protection Act (BDSG), we herewith draw attention to the fact that we store data on your company, either ourselves or with third parties, as far as necessary for business purposes and within the scope of the law.

Place of Performance, Legal Venue and Applicable Law

- Unless resulting from stipulations specified in the confirmation of order, our registered office is deemed to be the place of performance.
- Our registered office is deemed to be the legal venue in respect of all disputes, including those involving proceedings arising from bills of exchange and cheques. We are also entitled to file action at the contracting party's place of business.
- The Law of the Federal Republic of Germany applies solely to the contractual relationship.
Application of the United Nations Convention dated 11th April 1980 on Sale-of-Goods Contracts (CISG "Vienna Sales Convention") is ruled out.