

General Terms of Delivery and Payment of TROMPETER GUSS CHEMNITZ GmbH

Our deliveries and services are subject to the following terms only. Other terms of the customer will not be accepted, even if we are aware of them and execute the delivery unconditionally. Our terms are not applicable to customers as per § 13 BGB. They are also applicable to all future business with the customer in current business relations. All agreements concerning the execution of this contract between the customer and us are to be documented in writing in the contract. Changes and supplements to this contract have to be documented in writing.

1. Conclusion of Contract, Scope of delivery

- a) Our offer is subject to confirmation, provided that our acknowledgement of order does not mention otherwise or we have not mentioned something else in writing. A contract will only be deemed concluded, if we have confirmed the order in writing or we have already executed the order.
- b) The specifications such as sketches, drawings, weight and dimensions stated in the brochures and catalogues are standard approximate values, provided they are not explicitly mentioned as binding.
- c) We reserve proprietary rights and copyright on sketches, brochures, calculations as well as other documents,- it is not allowed to show them to a third party. Especially, as far as written documents marked as “confidential” are concerned; our explicitly written permission is necessary, before the customer gives them to a third party.

2. Prices and Terms of Payment

- a) Our prices are ex works; packing, freight, postage, insurance and the prevailing VAT excluded.
- b) If costs concerning the order change considerably after the conclusion of order, the two parties of the contract will agree upon an adjustment.
- c) Payment must be executed immediately without discount provided the two parties have not made any other agreements.
- d) The customer is only allowed to withhold or offset payment, because of counterclaims, if any undisputed or legal claims of payment exist.
- e) Even if we have delivered partly defective goods the customer is obliged to pay for the indisputably faultless goods, unless the part delivery is uninteresting to him.
- f) As payment we accept discountable and properly taxpaid bills of exchange, provided that this has been explicitly agreed upon in advance. Credits for bills of exchange and cheques will be made subject to receipt, according to the prevailing value on that date after deduction of expenses.
- g) If we are obliged to deliver in advance, but after conclusion of contract we have been informed of circumstances that might endanger us of not being paid due to customer's lack of potential, we will have the right to order legal claim as per Clause 9 (agreed Reservation of Title) and to order the customer not to resell and process the goods and to return the goods or to transfer the collateral property of the delivered goods at customer's costs and to cancel the right of confiscation under the Clause 9, Paragraph h).
- h) If the mentioned cases arise the customer allows us immediately to enter his company to take the delivered goods. Returning of the goods does only mean withdrawal from contract, if we explicitly declare it.
- h) In case of default in payment we will have the right to discontinue fulfilling our obligations after having informed the customer in writing, until we will have received the payment. After having fixed an appropriate deadline we will – in this case - also be allowed to withdraw from the contract.

3) Delivery Period

- a) Delivery deadlines start with our acknowledgement of order, however not before all execution details have been agreed upon by both the parties and not before we have received all other prerequisites which have to be fulfilled by the purchaser; the same applies to delivery schedules. Deliveries and partial deliveries before the expiry of delivery deadline are permitted, provided this is not unacceptable to the customer. Day of delivery is the day we inform the customer that the goods are ready for despatch, otherwise, the despatch day. If nothing else has been agreed upon or the condition of contract does not mention anything else the time of despatch we have stated is always nonbinding.
- b) Agreed delivery deadlines and delivery dates will be prolonged respectively postponed by the period of time that the customer has delayed meeting his obligations. If the customer has delayed accepting the goods or if he is at fault failing to inform his obligations we will have the right to claim damages caused to us including possible additional charges. In this case, if the goods accidentally get lost or lose value it will be the customer's fault from the moment he has delayed accepting goods.
- c) If we are delayed the customer is allowed to fix an appropriate period of grace and to declare explicitly that he will not accept our service later than this deadline. After the deadline has expired he will be allowed to withdraw from the contract.
- d) If we demand, the customer is obliged to inform within an appropriate period of time whether he will withdraw from the contract and /or claim damages instead of accepting the goods or if he insists on the delivery.

4) Sequential Deliveries, Long-term Contracts and Purchase Cancellation

- a) Permanent contracts can be cancelled with 6 months notice at the end of month.
- b) For long-term contracts (contracts with a duration of more than 12 months and permanent contracts): If a substantial change of cost for wages, materials or energy occurs after the first four weeks of coming into force of the contract, each partner has the right to demand an appropriate price adjustment under consideration of these factors.
- c) Our prices are calculated on the basis of ordered quantity. If no binding quantities are agreed our calculation will be based on the agreed target quantity. If the ordered quantity or target quantity is falls short, we will have the right to raise the price per unit accordingly. If the customer orders more, and we have agreed, he is allowed to request an appropriate price reduction provided that he has notified this in writing, at least 2 months prior to the agreed date of delivery. The extent of reduction or increase will be determined on the basis of our calculation.
- d) Customers with consignment contracts have to order binding quantities at least 3 months before date of delivery, unless agreed otherwise. Additional costs caused by a customer's delayed order or a later change of order with respect to time or quantity are at customer's expense; based on our calculation.
- e) In the case of sequential production a delivery of 10 % more or less, of the ordered quantity, is allowed due to special casting process reasons.
- f) According to the quantity the total price will change.

5) Force Majeure and other Conflicts

- a) Force majeure, labour disputes, lock outs and government actions entitle us to postpone delivery by the period of time the conflicts takes place and an appropriate

start-up time or to withdraw from the contract in total or partial for the part of delivery that has not yet been executed.

- b) Unexpected circumstances such as breakdown scrap and re-work which make it - despite reasonable efforts - impossible for us to deliver on time is to be seen as force majeure. We have to provide evidence.

6) Test Method, Acceptance

- a) If acceptance is agreed, scope and terms have to be fixed with signing of contract.
- b) Unless it is fixed, the acceptance will be made according to our scope and our standard terms. The same applies to tests of first samples.

7) Dimensions, Weight, Quantity

- a) Deviations from dimension, weight and quantity as per standards permitted in trade, relevant DIN regulations and casting requirements are permitted. Specifications of dimension and weight quoted in our offers and order acknowledgements are not guarantee of quality.
- b) For calculation the delivery weights and quantity established by us are valid.

8) Despatch and Passing of Risk

- a) If nothing else has been agreed in writing our delivery terms are “ex works” (Incoterm 2000). This is valid even if we have agreed to pay forwarding charges.
- b) In as much as the customer explicitly requests transportation insurance, we will insure the delivery, however, at customer’s expense.
- c) Goods that have been declared ready for despatch must be collected immediately after the customer has been informed, otherwise we will despatch the goods as per our decision or store the goods at customer’s costs according to standard forwarders rates and at customer’s risk. We are even allowed to do the latter, if having agreed to despatch the goods we are not in the position to despatch goods due to none of our own fault. One week from the day the goods have been stored the goods are considered to have been despatched.
- d) If the customer has not given specific directive we will choose the means of transport and transport route.
- e) Upon handing over of the goods to railway, forwarding agent, carrier, one week from the day the goods have been stored, resp., however, latest when the goods have left our plant or stock the risk passes to the customer, even if we have undertaken the delivery.

9) Reservation of Title

- a) All delivered goods remain our property (conditional goods) until all payments have been fulfilled, including also the respective balance payments we are entitled to receive through the business relation. This applies even if payments have been made for special balance of payments. If the customer faces payment default we are entitled to demand the customer to return the delivered goods at customer’s own expenses. This is immaterial, even if the customer as applied or opened bankruptcy proceedings, as a result of which we are not permitted to demand the return of the goods.
- b) Taking back goods, claiming proprietary, respectively, does only mean withdrawal from the contract if we explicitly state this.

- c) Machining and finishing of the delivered goods are always made for us by the customer. If the conditional goods are machined or inseparably assembled with other objects that do not belong to us we will become co-owners of the new object proportional to the value of the product and of the other machined or assembled object at the time of machining.
- d) If our ownership expires through assembly and fixing the customer transfers his proprietary rights of the new object to us, to the extent of the value of the conditional goods and he stocks them for us free of charge. The co-ownership resulting from this are conditional goods as per Paragraph a).
- e) The customer is allowed to sell the conditional goods in usual business, as per his general business conditions, as long as, he has not delayed, transferred the balance payments, resulting from resale according to Paragraphs f) and g), to us. The customer is not allowed to deal with the conditional goods in any other way.
- f) The customer's balances of payment resulting from resale of the reserved goods have already been ceded to us by now. They serve to the same extent as assurance as the conditional goods.
- g) If the customer sells reconditioned goods together with other goods that have not been delivered by us, the claims resulting from the resale has to be settled according to our calculations/our invoice for the sold conditional goods. If goods of which we are co-owners according to paragraph b) are sold, balance of payment must be transferred amounting to these co-owner shares.
- h) The customer is entitled to confiscate demands from sales according to Paragraphs e) and f) until we revoke it. We will have the right to revoke in cases declared in Clause 9, if the customer has delayed payment, if bankruptcy proceedings have been applied or no payments are made. In these cases, the customer is obliged immediately to inform us of the ceded demands and the defaulter, to give us all information necessary for confiscation, to place the respective documents at our disposal and to inform the defaulter of the cession. The customer is in no case allowed to cede the claims.
- i) If the value of existing securities exceeds the secured demands by more than 20 % in total, we are obliged to release securities as per our choice. The customer is obliged to inform us immediately of distraint or other interferences by a third party.

10. Deficiency Liability

- a) We are liable for the faultless production of the parts delivered by us according to the agreed technical delivery specifications. The customer is responsible for the appropriate design especially with regards to the intended purpose under consideration of possible safety regulations, choice of material and necessary test methods, correctness and completeness of technical delivery specifications and the technical documents and sketches given to us, as well as, the execution of the machining facilities, even if we propose modification which is accepted by the customer. In addition, the customer is responsible that due to his statement as to proprietary rights or other rights of a third party is not violated. The time of passing of risk is decisive for condition of goods according to the contract.
- b) We are not liable for irrelevant deviations from the agreed quality, for irrelevant reduction of usability, as well as, for defects that occur due to unsuitable or improper use, faulty assembly, start-up, respectively, and normal wear. In addition we are not liable for improper modifications or repair works undertaken by the customer or a third party and the consequences resulting from that.
- c) Deficiencies have to be claimed immediately after receipt of goods at destination, hidden deficiencies have to be claimed immediately after detection by the customer in writing.

- d) If acceptance or first sample test according to Clause 6 has been agreed, deficiencies which could have been ascertained here cannot be reprimanded.
- e) We have to be given the opportunity to ascertain the complained deficiencies. In urgent cases, if operational safety is endangered or if disproportionately high damages for the customer have to be warded off we have to ascertain the complained deficiencies immediately. If demanded the faulty goods have to be returned to us. If the customer does not meet these obligations or if he modifies the faulty goods without our approval, he loses possible rights due to the deficiencies.
- f) If complaint has been made in time and if it is justified we will repair the faulty goods to our choice or we will supply faultless replacement.
- g) In case we do not fulfil the warranty commitments or if we do not fulfil the warranty within an appropriate period of time or if the repair first unsuccessful, the customer can set a last written deadline, during which period we will have to meet our obligations. A deadline is not necessary if it was unacceptable to the customer. If the deadline expires unsuccessfully the customer may choose to demand a price reduction, to cancel the contract or to rectify the goods by himself or let a third party rectify the goods at our cost and risk. If the goods have been rectified successfully by the customer or a third party all customer's claims will be settled by reimbursement of his incurred costs.
- h) Customer's claims concerning any costs necessary for rectification resulting from the fact that the goods - after having been supplied - had to be taken to another place are excluded, in as much as they increase the costs, even if the shipment is a legal handling.
- i) The customer only has legal rights of recourse against us, in as much as, the customer has made no arrangements furthermore than the legal claim of damages with his customer.
- j) The customer has no further claims as per Clause 13.
- k) The customer is obliged to prove any deficiencies.

11. Order-related Production Facilities, Pouring of Parts

- a) Order-related production facilities such as pattern, templates, core-boxes, dies, casting tools, devices and control gauges, placed at our disposal by the customer must be sent to us free of charge. The compliance of the facilities placed at our disposal with the contractual specifications or supplied sketches or samples will only be checked only if an explicit agreement exists. We are allowed to modify the production facilities furnished us by the customer, only if it is essential from the point of view of casting method and if the workpiece is unaltered.
- b) Modification, maintenance and replacement of his production facilities are at customer's expenses.
- c) The production facilities will be used and stored carefully and treated as our own facilities. The customer is responsible for the insurance of his production facilities. We will not be liable for accidental loss or deterioration of the production facilities. We can return at customer's expense and risk customer's production facilities that are no longer needed by us or, if the customer does not pick up the production facilities within an appropriate deadline set by us, store it at standard costs and destroy it after an appropriate deadline and notification.
- d) Order related production facilities which have been produced or procured by us on behalf of the customer will remain our property even after invoicing of proportionate costs. They will be stored by us for the period of 3 years from the last pouring. If it is agreed contrary to S. 1, that the customer will become owner of the production facilities, he will become owner after payment of the agreed price, respectively. The

transfer of the equipment substitutes our obligation to store the equipment. The storing agreement can be canceled by the customer 2 years from transfer of property at the earliest, if no important reason exists.

- e) Claims resulting out of copyright or commercial legal ownership rights can only be asserted by the customer if he indicates us of the existence of such rights and if he explicitly reserves these rights.
- f) If scrap occurs during the initial use of the facilities the customer has to provide us with another production facility or he has to pay for replacement.
- g) Parts to be cast by us must be delivered by the customer in good dimensional quality and in a perfect condition. Scrap parts waste must be replaced by the customer, at customer's expense.

12. Confidentiality

- a) Each party of the contract will use all documents (including samples, patterns, and specifications) and information received through the business relation, only for the mutually pursued object and will keep documents and information strictly confidential from third parties and consider as one's own, if the counterpart to the contract describes them as confidential or is obviously interested in keeping them confidential.
- b) This obligation starts with the first receipt of documents or information and it will end 36 months from end of business relation.

13. General Limitation of Liability

- a) As far as nothing else happens, any further customer claims on us are not valid, even if legal argument, particularly because of breach of duties of the obligation and of illegal action may arise.
- b) This limitation of liability does not apply as far as we are strictly liable, e.g. as per the product liability rule, intent, gross negligence of legal representatives or leading employees as well as careless breach of substantial contractual duties. If we have carelessly neglected substantial contractual duties we are only liable for the damage which is typical for the contract and which could intentionally been predicted – except for cases in which our legal representatives or leading employees have acted with intent or gross negligence. In addition it does not apply for damages resulting from injuries of life, body or health and due to lack of guaranteed condition, if and as far as the guarantee has as its object to insure the customer against damages that have not been caused to the delivered goods themselves.
- c) As far as our liability is excluded or restricted this is also valid for our employee's, official's, worker's, legal representative's and auxiliary person's liability.
- d) Compensation and claims for deficiencies, which the customer is legally entitled to, expires one year from receipt of goods by the customer. This does not apply as far as §438 Paragraph 1 Clause 2 (buildings and objects which are usually used in buildings) and §479 Paragraph I (right of recourse) of BGB stipulates longer deadlines as well as in cases of violations of life, body or health, of supplier's intentional or gross negligent breach of duties and of a fraudulently hidden defect. Legal rules concerning constraints in period of limitation, constraint and restart of deadlines remain unaffected. Legal statutory period of limitation applies for claims for damages according to law of product liability. Legal statutory period of limitation also applies for cases of intentional or gross negligent breach of duties.

14. Place of Fulfilment and Court of Jurisdiction

- a) As far as the customer is a dealer, any disputes arising hereunder will be settled before a competent Chemnitz Court of Law. However, we are entitled to take the customer to court in customer's headquarters, as well.
- b) As far as acknowledgement of order does not mention otherwise the place of fulfillment of our services is headquarters of our works. Place of payment obligations is Chemnitz.

15. Applicable Law

Privity of contract between the parties are exclusively based upon German law to the exclusion of the UN – Conventions Relating to a Uniform Law on the International Sale of Goods (UNCITRAL/CISG)

16. Severability

If individual terms of these terms of delivery and payment are partly or totally invalid or void by law, the contractual partners are obliged to agree upon a settlement through which, the whole purpose of the invalid or void by law term does not affect the whole contract.

17. Partnership Clause

For all compensation payments, especially the amount of compensation for damages, the contractual partner's economic status, kind, extent and time of business relation, as well as, the value of goods should be considered appropriately and in good faith.