

## General Terms and Conditions of Sale, Delivery and Payment

### I Scope of Validity

1. These Conditions of Sale, Delivery and Payment apply to business owners, legal entities under public law and special funds under public law.
2. Our deliveries and services are provided exclusively on the basis of the terms and conditions below.
3. The business terms and conditions of the partner, unless expressly recognised by us, have no validity.

### II Scope of Supply and Services

1. Offers are always without obligation.
2. Our written acknowledgement of order shall be authoritative for the scope of delivery, even if such acknowledgement of order is contradictory to the Buyer's purchase order, unless we accept the Buyer's terms and conditions explicitly and in writing.
3. All personal statements, statements by phone or wire or statements made by a representative of ours as well as collateral agreements must be confirmed in writing by the supplier to be legally binding.

### III Prices, Long-term and call contracts

1. Our prices are in Euro, exclusive of turnover tax, packing, freight, carriage and insurance, unless otherwise agreed, and are only valid for the requested quantity. Packing will be charged at cost-price and not be taken back.
2. Prices are based on the costing basis applicable on the day of our offer or our acknowledgement of order. If this costing basis changes before delivery of the goods due to cost increases for wages, materials and other cost factors, we reserve the right to revise our agreed prices. It shall be permissible to charge the prices valid on the invoicing date, unless fixed prices have been agreed.
3. III, 2 is also valid for long-term contracts (contracts with a term of more than 6 months) and call contracts.
4. Where a binding order quantity is not agreed, our calculation will be based on the non-binding order quantity expected by the partner for a specific period of time (target quantity). Where the partner purchases less than the target quantity, we are entitled to increase the unit price by an appropriate amount.
5. In the case of call supply contracts, unless otherwise agreed, binding quantities are to be notified to us by call not less than 3 months before the delivery date. Any additional costs caused by our partner through late calling or subsequent amendments to the call in respect of time or quantity are to be borne by the partner; in this respect our calculation will prevail.

### IV Transfer of Risk and Dispatch

1. Once shipment has left our work or is ready for dispatch within the agreed delivery time or placed at the Buyer's disposal the risk for goods is transferred to the Buyer.
2. Dispatch will be effected on sole account and at sole risk of Buyer. Failing explicit instructions for dispatch, dispatch will be made to the best of our judgement but without any obligation for us to choose the cheapest way of transport.
3. Goods which are notified as being ready for dispatch are to be taken over immediately by the partner. We are otherwise entitled, at our option, to dispatch them or to store them at the cost and risk of the partner.

### V Delivery Quantities and Times

1. It is not possible to adhere exactly to the number of pieces. Deviations of about 10 % (up and down) are allowed not only with respect to the total order quantity but also with respect to partial shipments.
2. Partial deliveries are allowed.
3. All statements about times of delivery are approximate. The period of delivery begins upon receipt and clarification of all documents. It is considered to be adhered to, if shipment is effected or ready for despatch within the period of delivery quoted.
4. A reasonable prolongation of the period of delivery arises if the delivery is delayed due to unforeseen or extraordinary events in our or in our suppliers' works, i.e. all causes and events including authorities' measures as well as strikes and lock-outs which disrupt the supply of basic materials, production and despatch. If the trouble lasts more than 1 month or if there are shut-downs either by us or by our suppliers and in case of war, mobilization, riot or occupation by foreign powers we are entitled to withdraw from this contract in part or in total without any indemnity for the Buyer. The latter is still obliged to accept the goods even if they are delayed due to the above mentioned reasons.
5. We reserve the right to deliver only on condition that we have enough labour, material, electricity and other forms of energy at the required time. The "Force Majeure clause" shall apply.
6. Unless specifically agreed otherwise, we grant a period of 3 months from date of order for material call-offs. If this period is exceeded we are entitled to either charge for the goods or to cancel the order. The call-off for each partial shipment should arrive in time to ensure production within the contract period.

### VI Confidentiality

1. Each of the contracting partners will use all documents (which will also include samples, models and data) and information received by them under the business relationship only for the contractual purpose, and maintain secrecy in respect of third parties with the same due care as applied to their own documents and information, where the other partner describes them as confidential or has an obvious interest in maintaining secrecy in respect of such documents or information.  
This obligation commences on receipt of the first documents or information and ends 36 months after the end of the business relationship.
2. The obligation does not apply to documents and information which are generally known, or which were already known to the contracting partner on receipt and where the contracting partner was not under obligation of secrecy, or where they are subsequently conveyed by a third party who is authorised to pass on such documents or information, or where the documents or information are developed by the receiving contract partner without exploitation of documents or information of the other contracting partner.

### VII Tooling, Drawings and specifications

1. If a special tool has to be installed for the realization of an order, the amount charged to the customer represents only a part of the full costs of tooling. By payment of this share of the tooling costs the customer does not acquire any title to this tool either in whole or in part. This tool remains the sole property of OEKAMETALL. Where shares of tooling costs are amortized, such amortization will only be effective for the first 3 years of delivery, counting from the day of the first delivery. Any remaining share of tooling costs borne by the customer after this period will no longer be amortized.
2. Where one of the contract partners makes available to the other drawings or technical documents relating to the goods to be supplied, or to the manufacture of such goods, to the other partner, these remain the property of the contract partner submitting them.
3. Manufacturing costs for samples and production materials (tools, moulds, templates, etc.) will, unless otherwise agreed, be invoiced separately from the goods to be supplied. This also applies to production materials which have to be replaced as a result of wear and tear.
4. Where, during the period of manufacture of samples or production materials, the partner abandons or terminates the co-operation, all manufacturing costs incurred up to that time will be borne by that partner.

### VIII Material defects, Complaints

1. The quality of the goods is determined exclusively by the agreed technical supply specifications. In the event of our having to supply in accordance with drawings, specifications, samples and the like provided by our partner, the latter will take over the risk of fitness for the intended use. The condition of the goods in accordance with the contract is determined as at the time of transfer of risk.
2. Any material defects in respect of any defect deriving from unsuitable or improper use, defective assembly or operation by the partner or third parties, normal wear and tear, defective or negligent handling, will also be excluded as the consequences of unsuitable modifications or repairs undertaken by the partner or third parties without our approval.  
The same shall apply to defects which only reduce the value of the goods or their fitness for their intended use to an insignificant extent.
3. Claims for material defects shall become statute-barred at the time stipulated by law, unless otherwise agreed.
4. Where it is agreed that the goods are to be accepted after completion or that initial samples are to be tested, notification of defects which could have been discovered by the partner under careful acceptance or testing of initial samples is excluded.
5. We must be given the opportunity of assessing the notified defect. The goods complained of must be returned to us immediately; we will take over the transport costs where the notice of defect is justified. In the event of the partner failing to observe these obligations, or carrying out modifications of the goods which are complained of without our consent, he will lose any claims for material defects.
6. In the event of notice of defect which is justified and made at the due and proper time, we will, at our choice, make improvements to the goods complained of or supply a replacement free of defect.
7. In the event of our failing to meet these obligations, or failing to do so within a reasonable time in accordance with the terms of the contract, the partner may set in writing a final deadline within which we must fulfil our obligations. In the event of this period expiring without result, the partner may demand reduction of the price, withdraw from the contract or himself carry out, or have the necessary subsequent improvement carried out by a third party at our cost and risk. There shall be no reimbursement of costs if the expenses increase because the goods have been brought to another place after delivery by us, unless this means that the goods are being used as they were intended to be.
8. The partner has statutory rights of recourse against us only in so far as the partner has not reached any agreements with its customer which go beyond the statutory claims for defects. In addition, VIII 7, last sentence, applies accordingly to the scope of the rights of recourse.
9. Complaints about quality, weight, number of pieces etc. must be made in writing immediately on discovery irrespective of earlier legal notice but within 8 days of receipt of goods.

10. Complaints regarding the properties of materials will only be accepted if they are accepted as justified by our raw material supplying plants.
11. Complaints about the faultless quality of the goods can only be accepted if more than 5% of the delivered goods show provable defects.
12. In case of justified complaints, we will at our discretion make up the missing/defective quantity, compensate the Buyer by a new delivery or issue a credit note for the amount concerned. Further claims such as modification or diminution, reimbursement for defects or costs incurred for processing, penalty for delay or claim for damages on grounds of consequential damage are excluded.
13. We use only tested and approved materials (acc. to DIN standards) and assume that the compatibility of the substances filled into our materials will be tested by the Buyer, because we decline any liability to it.

#### **IX Other claims, liability**

1. Unless otherwise specified below, any additional or more extensive claims by the partner against us are excluded. This shall apply in particular to claims for damages for a breach of duties arising from the obligation or from unlawful acts. We are therefore not liable for any damage not deriving from the delivered goods themselves. We are in particular not liable for any loss of profit or other financial losses by the partner.
2. The limitations of liability indicated above do not apply in the case of specific intent, gross negligence on the part of our legal representatives or senior employees, and in the event of culpable violation of significant contractual obligations. In the event of culpable violation of significant contractual obligations we are liable - other than in cases of specific intent or gross negligence on the part of our legal representatives or senior employees - only for standard contractual loss, or loss which might reasonably have been expected.
3. The limitation of liability is also not applicable in those cases where there is liability in accordance with product liability laws in the case of defects in goods supplied for private use. It is also not applicable in case of injury of life, body or health and in the absence of guaranteed characteristics, if, and insofar as the object of the guarantee was to cover the partner against any losses not deriving from the goods supplied themselves.
4. Insofar as our liability is excluded or limited, this is also applicable to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.
5. The legal provisions relating to burden of proof are not affected by this.

#### **X Title to Resignation by the Supplier**

Delivery is made under the precondition of the buyer's absolute creditworthiness. If after having signed the contract, the supplier receives information, that the credit cannot be granted up to the amount of order or that there are any doubts in this respect, i.e. considerable worsening of the buyer's financial situation, suspension of payment, receivership, bankruptcy, retirement from business or transfer of business the supplier has the right to demand payment in advance or some guarantee to either withdraw from the contract, to claim for damages because of non-performance or to demand cash payment although other terms of payment had been agreed. This also applies if the buyer pawns his stocks, outstanding debts or goods purchased, or orders goods as a security for other creditors or if he does not meet his obligation to pay in spite of reminders. The supplier has at least the same rights towards the Buyer as the creditor towards a debtor in default.

#### **XI Retention of Title**

1. The title to all goods supplied is retained by the supplier until the total invoice amount has been paid and all further claims have been duly satisfied. Besides, all goods remain the property of the supplier until all claims of the supplier against the purchaser have been settled. This retention of title is also valid particularly for an existing balance to the debit of the buyer out of the current account business.
2. The processing by the buyer of the goods under proprietary rights of the supplier is always effected by order of OEKAMETALL, but without any liability for us. This excludes the application of article 950 of the German Civil Code. In cases where the articles 947, 948 of the German Civil Code apply, the buyer resigns his title to ownership or partial ownership in our favour and becomes depository. The new goods then replace the goods under proprietary rights. Should the case arise that the transfer of property in our favour cannot be obtained, the buyer's claims from article 951 are made over to OEKAMETALL. In all cases relating to clause 2 any rights of a third party to other parts of the new goods remain unaffected.
3. The customer has only the right to sell the goods under proprietary rights within the scope of the usual business transaction and may not pawn them or convey them as a guarantee. He has to ward off as effectively as possible all impairments of our rights by a third party and has to advise us without delay.
4. The customer transfers to us as a guarantee all his claims to the resale of goods under proprietary rights - no matter in what condition - and all additional rights. Even if we do not make use of our permanent rights to claim payment at any time, the customer is entitled and obliged to do so and has to remit us the amount without delay. The customer is obliged to advise his debtor on request of the transfer of the claim, to provide all required information and to place all documents about the claim at our disposal.
5. If the value transferred to us as guarantee (transfer of claims and transfer of title) exceeds our claims by more than 25 %, we shall be obliged, at our discretion, to transfer claims back and/or to grant a partial ownership in the amount concerned, if so requested by the customer.

#### **XII Terms of Payment**

1. Our general terms of payment are: "30 days net from date of invoice". We reserve the right to negotiate special terms of payment for deliveries abroad or for buyers unknown to us. The term of payment starts on the day of dispatch, or of readiness for dispatch.
2. Bills of exchange are only accepted if they can be discounted, and only in lieu of payment: they can be returned at any time before they become due, and cash payment demanded instead. The costs for discounting, collection etc. shall be borne by the Buyer.
3. Non-compliance with our terms of payment or insecurity about payment entitle us to terminate the purchase contract without notice. It also entitles us to claim immediate cash payment of our full credit balance, subject to claims to damages, and to demand advance cash payment before continuing the delivery.
4. If the payment terms are not met, we shall be entitled to bill interest on arrears at the rate charged to us by the bank for current account overdrafts, but at a minimum of 8 percentage points above the base interest rate of the European Central Bank at the time.
5. In the event of any delay in payment we may, after giving notice in writing to the partner, suspend our obligations until payments have been received.
6. Where we have indisputably supplied goods which are partly defective, our partner is nevertheless obliged to pay for the non-defective part, unless partial delivery is of no use to him. In other respects the partner may only set off payment against counter-claims which have been determined by final judgement or are not disputed.
7. If it becomes apparent after conclusion of the contract that our claim to payment is at risk owing to the partner's lack of adequate financial capacity, we shall be able to refuse performance and to set the partner a reasonable deadline within which it must make payment or provide security concurrently with delivery. If the partner refuses to do so or the deadline expires without result, we shall be entitled to withdraw from the contract and demand damages.

#### **XIII Place of Performance and of Jurisdiction**

1. The place of performance and of jurisdiction for all disputes arising hereunder is Bamberg. We can also choose at our discretion the buyer's place of jurisdiction.
2. The contract relationship is subject to German law. The invalidity of one or more provisions of the contract does not affect the validity of contract for the Buyer. The Buyer's rights arising from the contract are not transferrable.
3. Application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Sales Convention") is excluded.

#### **XIV General**

In the event that individual parts of these General Terms and Conditions of Purchase should be void or become invalid, this shall not affect the validity of any other provision.