

General Terms of Sale and Delivery of Formtechnik Osterode GmbH & Co. KG

01 July 2009

Scope

The below General Terms of Sale and Delivery apply exclusively to entrepreneurs, legal persons under public law, or separate funds under public law.

I. Application

1. Orders shall become binding only with their explicit acknowledgement by the supplier. All changes and amendments are to be made in writing. All offers are subject to change unless declared binding.
2. With regard to continuous business relations, these General Terms of Sale and Delivery also apply to future business activities without the need to be explicitly referred to if they were forwarded to the orderer on the occasion of a past order acknowledged by the supplier.
3. The orderer's own General Terms of Sale and Delivery do not apply unless explicitly accepted by the supplier.
4. Should any individual provision or future provision to the above terms and conditions and the contract be or become void, illegal or unenforceable, the validity of the remaining provisions hereof shall in no way be affected.

II. Prices

1. All prices are ex works and exclude freight, customs, additional import duties and packing and will be added the value-added tax as prescribed by the law.
2. If considerable changes occur to cost factors after offer communication and order acknowledgment but before delivery, supplier and orderer shall agree upon the adjustment of prices and cost sharing regarding the moulds.
3. If the parties have agreed that the prices are subject to the weight of the parts, the final price shall result from the weight of the approved and released initial samples.
4. New orders granted to the supplier (= follow-up orders) shall not be bound and subject to previous prices.

III. Duty of Delivery and Acceptance

1. Delivery periods and deadlines come into effect after receipt of all documents necessary for order execution, of the advance payment and of the in-time material staging as far as such was agreed upon. The delivery schedule is considered as adhered to when readiness for dispatch is communicated but shipment is delayed or becomes impossible without the supplier being responsible for such delay or impossibility.
2. If an agreed upon delivery deadline cannot be adhered to due to the supplier's fault, the orderer may, if the delay was not caused deliberately or due to gross negligence by the supplier, claim compensation for loss occasioned by delay or withdraw from the contract after the expiry of an appropriate extension time and to the exclusion of further claims. The compensation for loss occasioned by delay is limited to a maximum of 5% of the part of the delivery which has not been carried out as set forth in the contract. Withdrawal from the contract is excluded if the orderer himself is in default of acceptance. The orderer reserves the right to establish a higher damage claim.
3. Appropriate partial deliveries as well as reasonable deviations of between plus and minus 10% from the ordered quantities are allowed.
4. For call-off orders without agreement on transit times, production lot sizes and collection dates, the supplier can request a binding specification three months after order acknowledgement. If the orderer fails to satisfy the request within the following three weeks, the supplier can grant a further two-week extension and can withdraw from the contract and/or claim damages at the expiry of such extension.
5. If the orderer does not fulfill his obligation to take delivery, the supplier shall without prejudice to other rights be released from the provisions regarding self-help sale and may privately sell the delivery items after previous information of the orderer.
6. Acts of God entitle the supplier to postpone delivery by the duration of the impediment plus an appropriate lead time or to entirely or partly withdraw from the contract for reason of the non-fulfilled part of the contract. Acts of God can be strikes, lockouts or unpredictable, inevitable conditions such as operational disruptions, which make punctual delivery impossible despite the supplier's best efforts. It is the supplier's duty to give evidence of the impossibility to deliver. This also applies if the above mentioned impediments occur during a delay or at a sub-supplier. Upon request of the orderer, the supplier shall decide within two weeks whether he wishes to withdraw from the contract or deliver within an appropriate extension period. If the supplier fails to communicate his decision, the orderer may withdraw from the non-fulfilled part of the contract. The supplier shall inform the orderer immediately of the occurrence of an Act of God as set forth above. He shall keep impairment on the orderer to a minimum, for example, by surrendering the moulds for as long as the impediment persists.

IV. Packing, Shipment, Passing of Risk and Default of Acceptance

1. Unless otherwise agreed, the supplier chooses the type of packing, shipment and transport route.
2. The risk passes to the orderer when the consignment leaves the manufacturing plant. This also applies if the carriage is paid. If the dispatch of the goods is delayed due to orderer's fault, the risk passes as soon as the orderer is communicated readiness for dispatch.
3. Upon the orderer's written request, the goods shall be insured at his cost against the by him indicated risks.

V. Reservation of Title

1. The goods delivered remain the supplier's property until full payment of all outstanding accounts by the orderer even if the purchase price of specific invoices has been paid. All property reserved from unsettled invoices (reserved goods subject to retention of title) shall be considered as security for the supplier's payment balance request. If payment of the purchase price entails a supplier liability via bill of exchange, the reservation of title persists until the bill has been honored by the orderer as drawee.

2. Handling and processing by the orderer excludes acquisition of ownership as set forth in § 950 BGB (German Civil Code) at the order of the supplier. The supplier shall, per ratio of the net invoice value of his goods and the net invoice value of the goods to be handled or processed, become co-proprietor of the goods thus manufactured and reserved to secure the supplier's claims as set forth in paragraph 1.
3. Processing (connecting/combining) of the products with other products not belonging to the supplier at or by the orderer is subject to the provisions as set forth in §§ 947, 948 BGB. The supplier's share in property of the new item shall then be considered as reserved in the sense of these conditions.
4. The orderer is allowed to resell the reserved goods only in the course of normal business and at the condition that he in turn arranges for a reservation of title as set forth in paragraphs 1 to 3 with his customers. The orderer is not allowed to stipulate other provisions concerning the reserved goods, in particular with regard to mortgaging and security transfers of title.
5. With regard to cases of resale, the orderer as of now shall transfer all accounts receivable and other rightful claims towards his customers arising from the resale to the supplier. Upon request of the supplier, the orderer shall immediately forward all information and documents which the supplier requires for the assertion of his claims towards the orderer's customers.
6. If the orderer resells the reserved goods after processing as set forth in paragraphs 2 and/or 3 together with other goods which do not belong to the supplier, the transfer of the purchase price can be enforced as set forth in paragraph 5 to the total of the invoice value of the supplier's reserved goods only.
7. If the value of the current supplier securities exceeds his total claims by more than 10%, the supplier shall, upon request of the orderer, release the securities at the supplier's option.
8. Seizure or confiscation of the reserved goods by third parties are to be immediately communicated to the supplier. Intervention costs arising thereof unless paid by third parties shall be borne by the orderer.
9. If the supplier in conformity with above provisions makes use of this reservation of title by taking back the reserved goods, he shall have the right to directly sell or auction the goods. The assertion of the reservation of title and in particular the request to surrender the goods represent a withdrawal from the contract. The reserved goods are taken back to the amount of the profit earned but no more than the agreed upon delivery prices. We reserve the right to assert further claims for damage and in particular for lost profit.

VI. Liability for Material Defects

1. Decisive for quality and make of the products are the type samples which the supplier shall, upon request, make available to the orderer for inspection. The indication of technical standards is for the technical specification and not to be interpreted as a guarantee for product properties.
2. If the supplier has given advice to the orderer which is not included in the contract, he can be held liable for the functionality and appropriateness of the delivery object only with if such has been agreed upon explicitly beforehand.
3. Defects are to be asserted immediately and in writing. Latent defects are to be asserted immediately upon their identification. In both cases all claims of the orderer based on defects shall, unless otherwise agreed, become time-barred twelve months after the passing of the risk. If the law as in § 438 par. 1 no. 2 BGB, 479 par. 1 BGB and § 634a par. 1 no. 2 BGB enforces longer periods, they shall prevail and be applicable.
4. If the notice of defects is justified – whereas the type samples released by the orderer determine the quality and make to be expected –, the supplier is to undertake remedial action. If he fails to fulfill such obligation within an appropriate period of time or if reworks prove unsuccessful despite repeated efforts, the orderer shall have the right to reduce the purchase price or to withdraw from the contract. Further claims especially such for the reimbursement of expenses or damages due to the defects or their consequences are subject to the provisions as in VII. Replaced parts are to be returned freight forward to the supplier.
5. Unauthorized reworks and improper treatment result in the loss of all claims for defects. Only for the prevention of disproportional damage or if the supplier delays defect elimination and after having informed the supplier beforehand shall the orderer be entitled to carry out reworks and to ask compensation for the however reasonable costs involved.
6. Wear and tear caused by the contractually stipulated use shall not result in any warranty claims.
7. Recourse claims as set forth in §§ 478, 479 BGB brought forward by the consumer shall be considered only if justified and within the framework of the law but not for ex gratia payments not coordinated with the supplier, and imply the observance of the proper duties of the recourse claimant and in particular the observance of the complaint obligations.

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VII. General Restriction on Liability

In all cases which oblige the supplier to compensate for damage or expenses despite their deviation from the above conditions and due to contractual and legal basis for claim, the supplier shall be liable only if he and the executives and persons employed by him are guilty of malicious intent, gross negligence or harm to life, body or health. The liability without fault as set forth in the Product Liability Act as well as the liability for the fulfillment of a guaranteed quality shall remain unaffected. The liability for culpable breach of essential duties set forth in the contract shall also remain unaffected. The liability shall, however, be restricted to damage which is foreseeable and typical for this type of contract with the exception of what has been said in sentence 1. The above provisions do not imply a reversal of the burden of proof to the disadvantage of the orderer.

VIII. Terms of Payment

1. All payments shall be made in € (EURO) and exclusively to the supplier.
2. Unless otherwise agreed, the purchase price for deliveries and other services shall be paid minus a 2% discount within 14 days or net without further deductions within 30 days from the invoice date. The discount shall be granted only if all previously due and undisputed invoices have been paid. No discount is granted if payment is effected via bill of exchange.
3. If the customer delays payment beyond the date agreed upon, he shall pay interest amounting to 8 percent above the respective base rate of the ECB unless the supplier cannot give evidence of a higher damage. The orderer reserves the right to give evidence of a lesser damage.
4. The supplier reserves the right to refuse cheques or bills of exchange. Cheques and rediscountable bills of exchange are accepted only on account of performance and all other costs arising thereof shall be borne by the orderer.
5. The orderer may offset or assert retention rights only if his claims are found undisputed and legally binding.
6. Any enduring non-observance of payment terms or conditions which give reasons to doubt the creditworthiness of the orderer result in an immediate maturity of all outstanding debts to the supplier. The supplier shall in such case be entitled to request advance payment for outstanding deliveries and to withdraw from the contract after unsuccessful expiry of an appropriately extended period of grace.

IX. Moulds (Tools)

1. The price for moulds includes the costs for one-time sampling but not the costs for test and processing devices or for modifications caused by the orderer. All costs for further sampling caused by the supplier shall also be borne by him.
2. Unless agreed otherwise, the supplier shall remain the owner of the moulds manufactured by him or by a contracted third party. The moulds shall be exclusively used for the orders of the orderer as long as the orderer fulfills his payment and acceptance obligations. The supplier is obliged to replace the moulds free of charge only if they are required for the fulfillment of an output quantity guaranteed to the orderer. The supplier shall be released from his storage duties two years after the last parts delivery from the moulds and after having informed the orderer accordingly.
3. If mutually agreed that the moulds are to become the property of the orderer, the latter shall be transferred ownership after payment of their total purchase price. The handing over of the moulds to the orderer shall be substituted for by their storage in favor of the orderer. The supplier has, until termination of the contract, the exclusive property right on the moulds notwithstanding the orderer's legal claim for return and the life of the moulds. The supplier shall mark the moulds as third-party property and insure such property on request and at the expense of the orderer.
4. If the moulds are owned by the orderer as in par. 3 and/or if they are made available by him on loan, the supplier's liability with regard to maintenance and

insurance shall be the same as for his own property. The orderer carries the costs for maintenance and insurance. The obligations of the supplier end if the orderer does not collect the moulds within an appropriate period of time after the execution of the order and after the supplier's explicit request for collection. The supplier shall have the right of retention of the moulds as long as the orderer has not entirely fulfilled his contractual obligations.

X. Material Provision

1. If material is provided by the orderer, they are to be supplied at his own costs and risk with an appropriate surplus of at least 5% on time and in immaculate condition.
2. If above prerequisites are not fulfilled, the delivery time will be extended accordingly. With the exception of Acts of God, the orderer shall bear the additional costs arising thereof also for production interruptions.

XI. Industrial Property Rights and Defects of Title

1. If the supplier is to produce according to drawings, models, samples or by using parts provided by the orderer, the orderer guarantees that such production does not infringe third-party property rights in the country of destination of the goods. The supplier shall inform the orderer on rights known to him. The orderer shall indemnify the supplier from all claims asserted by third parties and to compensate for the damage caused. If a third party prohibits the production or delivery under reference to a by him owned property right, the supplier may, without verification of the legal situation, stop all jobs until the orderer and the third party concerned have clarified their legal standings. If due to the delay the supplier can no longer be reasonably expected to continue the order, he shall have the right to withdraw from the contract.
2. Drawings and samples which were forwarded to the supplier but have not led to an order will be returned on request. Otherwise he shall have the right to destroy them three months after submission of the quote. The same shall apply to the orderer. The party entitled to destroy the documents is to inform the partner to the contract in a timely manner of the intention to destroy the documents.
3. The supplier is entitled to the copyright and industrial property rights and in particular to all rights of use and exploitation of the models, moulds and rigs, drafts and drawings created by him or third parties contracted by him.
4. No. VI applies to all other defects of title.

XII. Place of Performance and Venue

1. Place of performance shall be the location of the supplier plant.
2. Venue for all legal action shall follow the choice of the supplier and may be either the location of his main office or that of the orderer. This includes legal disputes regarding certificates, bills of exchange or cheques.
3. All legal relations and actions are subject to the laws of the Federal Republic of Germany. Any application of the United Nations Conventions on Contracts for the International Sale of Goods of 11 April 1980 (BGBl 1989 p. 586) to the Federal Republic of Germany (BGBl 1990 p. 1477) is excluded.

The German version of the General Terms of Sale and Delivery shall have legal priority over the English one