

General Conditions of Sale (GCS) of Wildauer Schmiede- und Kurbelwellentechnik GmbH

1. Applicability

(1) These General Conditions of Sale (GCS) apply to all our business relationships with the customer. They apply in particular to contracts for the sale and/or delivery of movable property, regardless of whether or not we manufacture these ourselves, or purchase them from suppliers or sub-contractors. However, they only apply when the customer is a business owner within the meaning of Section 14 of the German Civil Code (Bürgerliches Gesetzbuch – "BGB"), a legal entity under public law or a public fund.

(2) Our GCS apply exclusively even when we unconditionally accept an order with knowledge of the terms and conditions of the customer, provide services or directly or indirectly refer to a letter etc. which contain the customer's or a third party's terms and conditions of business. Conflicting, differing or supplementary terms of business of the customer will only be accepted by us when we expressly accept their applicability in writing.

(3) Our GCS apply in their relevant current format as a framework agreement (Section 305, paragraph 3 BGB) as well as for future offers and contracts concerning the sale and/or delivery of movable property with the same customer, so that we are not required to refer to them on each individual occasion; we will promptly notify the customer in the event of changes to our GCS.

2. Offer, Conclusion of contract

(1) Our offers are not binding, to the extent that it is not expressly stated to the contrary in the offer.

(2) Offers and orders of the customer will only be deemed accepted further to our express prior written consent (order confirmation). Our failure to respond to any such offer or order does not constitute acceptance.

(3) All consents to conclude, alter or terminate contracts must be in writing. Communication by fax or email is sufficient to comply with the requirement to be in writing under these GCS.

(4) Any public statements by us, in particular in relation to advertisements or labelling, do not constitute a description of the products or any guarantee.

(5) In cases of doubt, the version of Incoterms in force at the time of conclusion of the contract shall apply for the interpretation of commercial clauses.

3. Documents provided by us

(1) Title, copyright and other intellectual property rights in all documents, materials and other objects provided by us to the customer (e.g. offers, catalogues, price lists, cost estimates, plans, drawings, illustrations, calculations, product descriptions and specifications, samples, models and other physical and/or electronic documents, information and objects) are retained by us.

(2) In relation to the above-mentioned items, the customer is not permitted to disclose the items or their content to third parties, nor to use, reproduce or alter them without our prior written consent. The customer may only use them exclusively for the purposes of the contract and at our request return them to us in full and destroy (or delete) any existing copies (including electronic copies), to the extent that such copies are no longer required for the customer's day to day business or pursuant to statutory retention requirements. The customer is required at our request to confirm the return and destruction/deletion or to explain which of the above-named documents, materials or objects are to be retained and for what reasons.

4. Prices, value added tax

(1) The prices stated in the order confirmation apply. Statutory value added tax is not included. This will be included additionally and separately in the invoice at the legally applicable rate as at the date of the invoice.

(2) We retain the right to alter prices as necessary where two months or later following the conclusion of the contract we incur unavoidable cost increases or decreases, in particular as a result of wage settlements, changes in the price of materials or changes to the price of energy or the introduction or alteration of public taxes or duties. We will provide evidence of these to the customer on request.

(3) When invoicing for deliveries from one EU Member State to another, the value added tax rules of the 6th EC Directive in its current applicable form apply, in so far as this does not contradict national law.

5. Payment terms

(1) The customer must pay the agreed price within 30 days of receipt of the invoice. Receipt in our account is determinative for the date of payment. Cheques are only valid as payment following their irrevocable redemption.

(2) Discounts are only valid by prior express written agreement.

(3) Where we are liable for advance performance and following the conclusion of the contract a material deterioration in the assets of the customer occurs which endangers payment of the purchase price, in particular where the customer ceases payments or an application to commence insolvency proceedings over the assets of the customer is made, we may refuse delivery until payment of the purchase price is effected or security is provided. Should the customer fail to make payment or provide security within a reasonable period of time we are entitled to withdraw from the contract and any claims for compensation on the part of the customer are excluded.

(4) This shall not affect the statutory regulations on default of payment.

(5) In so far as the contract provides for the provision of a letter of credit, we are not obliged to fulfil the contract prior to its receipt.

6. Set-off and right of retention (Group set-off clause)

(1) The customer has the right of set-off only where its counterclaims are legally established or undisputed. The customer is only entitled to exercise its right of retention where its counterclaim relates to the same contractual relationship.

(2) We are entitled to set off any existing claims that we may have against the customer, against all claims which the customer makes against us. We are further entitled to set off any existing claims which we may have against the customer against any claims which the customer, on whatever legal basis, may have against businesses which directly or indirectly hold a majority interest in the Georgsmarienhütte Holding GmbH (holding private limited company). The current group of companies can be viewed on the internet at www.gmh-gruppe.de. The customer is entitled to receive information about the group of companies upon request at any time.

7. Comprehensive retention of title

(1) The following agreed retention of title protects the security of all current and future claims against the customer arising from the existing supply relationship between the contracting partners (including any claims on account relating to the limited current account relationship arising from the supply relationship).

(2) All goods delivered by us to the customer remain our property until payment is made in full of all secured claims. Both the goods and all other goods superseding them pursuant to this clause shall hereinafter be referred to as "reserved goods".

(3) The customer shall hold the reserved goods for us at no charge.

(4) The customer is entitled to process and sell the reserved goods in normal business dealings up to the point of instigation of recovery proceedings (paragraph 9). Pledges and transfers by way of security are not permitted.

(5) Should the reserved goods be processed by the seller, this is done in our name and on our account as manufacturer and we immediately acquire ownership or, if the processing of material from many owners occurs or if the value of the processed goods is higher than the value of the reserved goods, joint-ownership (fractional ownership) in the newly created goods in proportion to the value of the reserved goods against the newly created goods. In the event that no such acquisition of ownership by us occurs, then the customer hereby transfers its future ownership or, in the aforementioned relationship, joint ownership in the newly created goods to us as security. If the reserved goods are combined or inseparably incorporated into other goods so as to become one single object and if one of the other goods is regarded as the main object, the customer, insofar as it is the owner of the main object, hereby transfers co-ownership of the single object in the proportion specified in Sentence 1.

(6) In the case of the further sale of the reserved goods the customer hereby assigns to us by way of security the resulting claim against the purchaser – in the case of joint ownership by the customer of the reserved goods proportionately according to the proportion of joint ownership. This further applies to other claims which result from the retained goods, i.e. insurance claims or tort claims in cases of loss or destruction. We revocably authorise the customer to collect claims assigned to the customer in the customer's own name. We may only revoke this authorisation in the case of an enforcement event.

(7) Should third parties seize the reserved goods, in particular through levy of execution, the customer will immediately advise such parties of our ownership and inform us of the seizure, in order to enable us to enforce our rights of ownership. Where the legal or out-of-court expenses incurred by us in this context cannot be recovered from the third party, the customer will be liable for these.

(8) We will release the reserved goods or goods or claims superseding them upon request at our discretion, provided that their value exceeds the secured claims by more than 50%.

(9) In the event that we withdraw from the contract due to a material breach of contractual duty on the part of the customer – in particular non-payment – we are entitled to demand restitution of the reserved goods.

(10) In so far as we are entitled to take back the reserved goods, the customer must allow us and our representatives irrevocable access to its business premises during normal business opening hours and allow their removal.

(11) We are entitled to assign our claims in respect of goods and services provided for the purposes of financing.

8. Tools, apparatus

(1) All tools and apparatus used for the finishing of the forged components remain our property.

(2) In the case of client-specific tools, for which the customer has assumed the cost in whole or in part, these will be used by us only for deliveries to the customer.

(3) Tools will be kept for a period of three years following the last request of the customer. After the elapse of three years we will give the customer the opportunity to comment on the further use of the tools within six weeks. Should the customer fail to respond, we will be entitled to deal with the tools as we consider appropriate, in particular to destroy them.

9. Dates and periods of time for delivery

(1) Dates and times of delivery are only binding on us where they have expressly been agreed as binding.

(2) Periods of time for delivery commence on the date of our acceptance of order, however, not before full clarification of all details of the order. The same applies to delivery dates.

(3) All delivery dates and times are subject to unforeseeable production disruption and to the correct and timely delivery of the necessary materials by our suppliers, unless this is due to our mistake.

(4) If the customer does not comply with its contractual obligations – including obligations to cooperate or additional obligations – in a timely manner, we are entitled to move our delivery dates and times in relation to the requirements of our production cycle. Our rights in respect of default of the customer remain unaffected.

(5) The date of dispatch ex works shall be determinative for compliance with delivery periods or delivery dates.

(6) We are entitled to provide part-deliveries.

(7) In the case of our default we are liable for damages for delay which can be proved by the customer pursuant to the provisions of clause 13. We will promptly notify the customer about the anticipated duration of the delay to the delivery.

(8) In the event of non-compliance with the delivery period or date the customer will only be entitled to exercise its rights under Sections 281 and 323 of the German Civil Code where the customer has previously provided us with a reasonable delivery deadline. This must, in so far as it deviates from Sections 281 and 323 of the German Civil Code, be combined with a declaration that it will reject acceptance of performance once the deadline has expired.

10. Size, weight, quality

Deviations in size, weight, quantity and quality are permissible pursuant to DIN or standard practice. Weights will be determined on our calibrated scales and are determinative for the purposes of invoicing. Proof of weight shall be demonstrated by production of the weight report. In so far as individual weighing is not customary, the total weight of the shipment will apply. Differences between the complete and individual weights will be allocated proportionately to the individual weights.

11. Packing and packing costs

(1) In so far as commercially customary, we deliver goods packaged. The type of packaging is chosen by us. The costs are met by the customer.

(2) The return of packaging, protective and transport materials will not be accepted.

(3) Packaging which exceeds that required for the purposes of transportation, e.g. additional special protection for example for a prolonged period of storage require an express agreement.

12. Shipping, transfer of risk

(1) Unless expressly agreed otherwise, we will appoint the shipper or carrier.

(2) Risk in the goods passes to the customer when the goods are passed to the shipper or carrier and at the latest at the time they leave the factory.

(3) Should the loading or shipment of the goods be delayed for any reason for which the customer is responsible, then we are entitled to send the goods in the cheapest manner available and at the cost and risk of the customer and to note the goods as delivered in the invoice. This applies also where goods which have been reported as ready for shipping are not requested within a reasonable period of time. The statutory provisions relating to default of acceptance are not affected.

(4) In the event of damage in transit, the customer must take immediate steps to establish the facts of the situation and notify us of it.

13. Claims for defects

(1) Goods will comply with the contract when at the time of the transfer of risk they do not deviate at all, or significantly from the agreed specification. The conformity with contract and absence of defects of our goods is measured exclusively with respect to the express agreements as to quality and quantity of the ordered goods. Liability for a specific operational purpose or a particular suitability will only be accepted to the extent that this has been expressly agreed in advance; otherwise the risk relating to suitability and use lies solely with the customer. We accept no liability for deterioration or loss incurred by inappropriate handling of the goods following the transfer of risk.

(2) The content of the agreed specification and any explicitly agreed purpose do not constitute a guarantee. Acceptance of a guarantee requires express written agreement.

(3) The customer must inspect goods immediately upon their receipt. Claims for defects will only exist if defects are notified immediately in writing, any hidden defects must be asserted immediately upon their discovery. After acceptance has occurred, notice of any defect which should have been detected during acceptance shall be excluded.

(4) In the event of defects the customer must immediately give us the opportunity to inspect the disputed goods. At our request the disputed goods or a sample of them are to be available at our cost. In the event of unjustified notifications of defects, we reserve the right to hold the customer liable for freight and handling costs as well as the costs of inspection.

(5) In the event of a defect in a product, we will at our option and taking into account the requirements of the customer rectify this either through delivery of a replacement or provide a repair. Should we not be able to successfully rectify the defect within a reasonable period of time, the customer is entitled to set us a reasonable deadline for rectification and upon unsuccessful expiry of this to reduce the purchase price or to withdraw from the contract, in which case no further claims will exist. This does not affect the provisions of clause 13.

(6) We can refuse to rectify the defect when this would involve the incurring of disproportionate costs. Costs will generally be considered disproportionate where the direct costs of rectification including any necessary expenses exceed 150% of the invoice price (excluding value added tax) of the relevant goods.

(7) In the context of rectification, we will not be liable for costs incurred in the installation and removal of the defective goods, nor for the costs of a self-repair of the defect, in so far as the necessary requirements for this have not been met. We will not be liable for expenses incurred in moving the purchased goods to a place other than the place of delivery.

(8) The limitation period for claims arising from product and legal defects will end, except in the case of intent, upon the expiry of one year following delivery. Where acceptance has been agreed, the limitation period will commence upon acceptance.

(9) Claims pursuant to the customer's right of recourse under Section 478 of the German Civil Code are limited to the legal scope of claims for defects by third parties against the customer and are conditional upon the customer meeting its obligation to notify defects to us pursuant to Section 377 of the German Commercial Code.

14. General limitations of liability

(1) In so far as not stated otherwise in these GCS, including the following provisions, our liability in respect of a breach of contractual and non-contractual duties will be determined according to the relevant applicable legal provisions.

(2) We shall only be liable for damages, irrespective of the legal basis, resulting from wilfulness and gross negligence. In the case of simple negligence we will only be liable for

- damages arising due to death, personal injury or damage to health
- damages arising due to material breach of a contractual duty (being a duty required for the proper performance of the contract and which is regularly relied on and to be relied upon by the other contracting part); in this case our liability is limited to payment of foreseeable, typically occurring damages.

(3) The restrictions on liability under paragraph 2 will not apply to the extent that we have fraudulently concealed a defect. This also applies to our strict liability pursuant to the law on product liability.

(4) In relation to a breach of duty not arising from a defect, the customer may only withdraw from or terminate the contract when we are responsible for the breach of duty. A no fault right of termination by the customer (in particular pursuant to Sections 651 and 649 of the German Civil Code) is excluded. In all other respects the statutory provisions and legal consequences apply.

(5) To the extent that our liability for damages is excluded or limited, this applies equally to the personal liability for damages of our employees, workers, representatives and agents.

(6) To the extent that we have entered an express written agreement to provide a guarantee (Section 443 of the German Civil Code), any claims thereunder will be governed exclusively by the terms of the guarantee.

15. Proof of export

If a customer resident outside of the Federal Republic of Germany (external customer) or an external customer's representative collects the goods and transports or sends them to the external territory, the customer must provide us with evidence of the requisite certificate for tax purposes. Should this evidence not be provided, the customer must pay value added tax at the rate applicable within the Federal Republic of Germany as set out in the invoice.

16. Force majeure

In the case of force majeure the contractual obligations of both parties shall be suspended. The time periods and dates for the fulfilment of contractual duties shall be delayed accordingly. Situations of force majeure shall include circumstances outside of the control of the contractual parties, as well as unforeseen events such as war, revolutions, strikes, lack of fuel or energy supply, natural catastrophes, unacceptable weather conditions, acts of government, traffic accidents, export or import bans, fires, explosions, floods, accidents, sabotage, civil unrest, riots, delays in import/customs clearance, damage or loss during transportation or storage as well as failure to deliver by subcontractors, in so far as such failure to deliver is caused by a ground for force majeure as set out above.

17. Applicable law

The business relationship between us and the customer is governed exclusively by the law of the Federal Republic of Germany to the exclusion of all international and supranational (contractual) jurisdictions, in particular the United Nations Convention on Contracts for the International Sale of Goods.

18. Place of performance

Place of performance for our delivery obligation and place of performance for the payment obligation of the customer is the place that we deliver to.

19. Jurisdiction

The Court of Cottbus at our place of domicile has exclusive jurisdiction for all disputes arising directly or indirectly from the business relationship. We are also entitled to claim against the customer at its usual place of jurisdiction. Mandatory legal requirements concerning exclusive jurisdiction are unaffected by this provision.