

# General Terms and Conditions of Payment and Delivery of Isseburg Guß und Bearbeitung GmbH

(Date: November 1, 2002)

Goods and services are supplied by us only on the basis of the following conditions. Alternative terms and conditions of the ordering party shall not apply even if we have been notified of them and execute the delivery without reservation. Our terms and conditions do not apply with respect to consumers within the meaning of §13 German Civil Code (BGB). They also apply to all future transactions with the ordering party from the current business relationship. All agreements concluded between us and the ordering party for the purpose of executing this contract are to be documented in writing in this contract. All changes and supplements to the contract must be made in writing.

## 1. Conclusion of the Contract, Scope of Delivery

- a) Our offer is subject to confirmation unless alternative arrangements are stipulated in the order confirmation or we have explicitly submitted an alternative written declaration. A contract is only concluded if we have confirmed an order in writing or if we execute the order.
- b) The details contained in brochures and catalogues, such as illustrations, drawings, details of weights and dimensions, are only approximate values that are customary within the industry, unless these are explicitly designated as being binding.
- c) We remain the holders of the proprietary rights and copyrights to illustrations, brochures, calculations and other documents; these may not be made available to third parties. This applies in particular to such written documents which are designated „confidential“; before their forwarding to third parties the ordering party requires our express written consent.

## 2. Pricing and Terms of Payment

- a) Unless agreed separately, our prices as stated ex-works and are exclusive of packaging, freight, postage, insurance and value-added tax at the current rate.
- b) Insofar as after conclusion of the contract the order-related costs change to a significant extent, the parties to the contract shall come to an agreement on their adjustment.
- c) Unless otherwise agreed, our invoices are due for payment immediately without deduction.
- d) The ordering party is only entitled to retain or set off payments due to counterclaims insofar as the claims are undisputed or legally established.
- e) Insofar as we have delivered goods which are partly faulty, the ordering party is nevertheless obliged to effect payment for the goods which are indisputably free of defects unless the partial delivery is of no interest to the ordering party.
- f) We accept discountable and duly taxed bills of exchange on account of payment if this has been expressly agreed beforehand. Credit notes against bills of exchange and cheques are issued subject to receipt and minus disbursements at the value on the day on which we are able to access the exchange value.
- g) If we are obliged to deliver in advance and, after the contract is signed, we become aware of circumstances which jeopardise our claim to payment due to a failure in performance on the part of the customer we may, in addition to legal claims, under the reservation of title agreed under point 9, prohibit the resale and processing of the goods supplied and demand their return or the transfer of direct ownership of the goods supplied at the customer's cost, and cancel the direct debit mandate under the provisions of point 9 letter h). The customer authorises us now to access its business and collect the goods supplied in such cases. If goods are taken back, the contract is cancelled only if we state this expressly.
- h) If payment is late, we may, following written notification, cease fulfilment of our obligations until payment is received. Following an appropriate deadline we are also, in this case, entitled to withdraw from the contract.

## 3. Delivery Period

- a) Delivery deadlines begin when our commission is confirmed, but not until all the details of implementation have been clarified and all the customer's other requirements which are to be met are available; this applies equally to delivery periods. Deliveries prior to the delivery period and part deliveries are permitted provided this is not unacceptable to the customer. The delivery day is the day on which readiness for despatch is notified, or the day of despatch. Unless otherwise agreed or arising from the contractual relationship, the delivery time we state is non-binding.
- b) Agreed delivery deadlines and periods are extended or postponed if the customer is in default without prejudice to our rights at the point at which the customer falls behind with its obligations. If the customer is in default of acceptance or culpably breaches other obligations to cooperate, we are entitled to claim any losses we incur, including any additional costs. In this case, the risk of accidental loss or accidental degradation of the item purchased transfers to the customer at the point at which the customer falls into default of acceptance.
- c) If we fall into arrears, the customer may define an appropriate period of grace with the express statement that, following this period, it will not accept delivery and will withdraw from the contract.
- d) The customer must, at our request, state within an appropriate period of time whether, as a result of the delay in delivery, it will withdraw from the contract and/or request compensation for damages instead of delivery, or insist on delivery.

## 4. Serial Delivery, Long-term and Call-off Contracts

- a) Contracts for an unlimited period may be terminated with a period of 6 months to the end of the month.
- b) If, under long-terms contracts (contracts with a duration of more than 12 months and contracts for an unlimited period), there is a significant change in salary, materials and energy costs after the first four months, either of the parties to the contract is entitled to request that prices be adjusted taking these factors into account.
- c) Our prices are calculated on the basis of the agreed order volumes. If no binding order volumes are agreed, our calculation will comply with the agreed target quantity. If the final order quantity or target quantity falls short, we are entitled to increase the price per unit accordingly. If the customer exceeds the quantity with our agreement, it may request an appropriate reduction in the price provided it does so in writing at least 2 months prior to the agreed delivery deadline. The level of the reduction or increase

will be ascertained according to our bases of calculation.

- d) Under call-off supply contracts, binding quantities must be called off at least 3 months prior to the delivery deadlines unless otherwise agreed. Additional costs caused by the customer due to late call-off or subsequent changes to the call-off in terms of time or quantity shall be met by the customer, in which case our calculation is definitive.
- e) In the case of serial production, over or under delivery up to 10% compared with the volume ordered is permitted due to the special features of the casting process.
- f) The total price will change depending on the scope of the order.

## 5. Force majeure and other Hindrances

- a) Events of force majeure, industrial action, lock-out and government measures entitle us to postpone delivery and appropriate lead times for the duration of the hindrance, or withdraw fully or in part from the contract due to the part of the contract not met.
- b) Equivalent to force majeure are unforeseen circumstances e.g. business disruptions, rejects and reworking which render it impossible for us to deliver on time despite all reasonable efforts; we must provide evidence of this.

## 6. Testing Process, Acceptance

- a) If acceptance is agreed, the scope and terms must be set out at the same time before the contract is agreed.
- b) If this is not the case, acceptance will be to our standard scope and under our standard conditions. This applies equally to tests on initial samples.

## 7. Dimensions, Weights and Units

- a) Deviations in dimensions, weight and unit sizes are permitted within standard tolerances, relevant DIN stipulations and casting requirements. Details of dimensions and weights in our proposals and order confirmations are no guarantee of actual condition.
- b) For calculation purposes, the delivery weights and unit sizes stated by us are definitive.

## 8. Despatch and Transfer of Risk

- a) Unless otherwise agreed in writing, the delivery clause is „ex-works“ (Incoterms 2000). This applies equally where we have agreed to take over the costs of carriage.
- b) We will cover delivery with transport insurance only at the customer's express wish; all costs incurred as a result shall be paid by the customer.
- c) Goods ready for despatch must be accepted immediately, otherwise we are entitled to choose to despatch them at standard costs or to store them at the customer's risk; we are also entitled to store them if despatch cannot be completed through no fault of our own. Goods shall be deemed to have been delivered after one week of storage.
- d) If not specifically indicated, the choice of transport method and route shall be at our discretion.
- e) Risk is transferred to the customer when goods are passed to the railway, transport company or freight forwarder or one week after the start of storage, and at the latest when goods leave the factory or storage, including where we have assumed delivery.

## 9. Reservation of Title

- a) All supplied goods remain our property (retained goods) until all claims have been met, in particular payment balances to which we are entitled on the basis of the business relationship. This applies equally to payments against specially designated amounts due. If the customer falls into payment arrears, we are entitled to request withdrawal of the goods delivered. The customer shall pay the costs of this. This does not apply where the customer has applied for, or initiated, insolvency proceedings since we are in this case not entitled to reclaim the goods supplied immediately.
- b) If goods are taken back, or the reservation of title is enforced, the contract is cancelled only if we state this expressly.
- c) The customer always finishes and processes the goods supplied on our behalf. If the retained goods are processed or irreversibly associated with other items that do not belong to us, then we acquire co-ownership on the new item in relation to the value of the invoice value of the goods to the other processed mixed goods at the time of processing.
- d) If our ownership expires as a result of combining or mixing, the customer hereby transfers ownership rights to us for the new item or product to the level of the invoice value of the retained goods and shall hold them in custody on our behalf at no charge. The ensuing rights of co-ownership are deemed to be retained goods as defined under a).
- e) The customer may sell retained goods only in the normal course of business and under its usual terms of business as long as it is not in arrears, and provided that outstanding payments from onward sales are forwarded to us in accordance with f) and g).
- f) The customer is not entitled to dispose of retained goods in any other way.
- g) The buyer's payment claims from the onward sale of the retained goods must be assigned to us now. They serve as security to the same extent as the retained goods.
- g) If the customer sells retained goods with other goods not supplied by ourselves, payment claims are assigned only to the invoice value of the relevant retained goods sold. Where goods in which we have co-ownership shares in accordance with b) are sold, payment claims are assigned to the level of these co-ownership shares.
- h) The customer is entitled to collect payments owing from sale in accordance with e) and f) until we revoke this right. We have the right of revocation in the cases sta-

ted under point 9 if the customer falls into payment arrears, an application has been submitted to initiate insolvency proceedings or if payments have been suspended. In such cases, the customer must immediately provide details to us of payment claims assigned and their debtors, all debts to be recovered, associated documentation, and advise debtors of the transfer. Under no circumstances is the customer authorised to assign payment claims.

i) If the total value of existing securities exceeds secured payment claims by more than 20%, we are obliged to release the securities of our choice. The customer must inform us immediately of any distraint or other hindrance by third parties.

#### **10. Liability for Defects**

a) We guarantee the fault-free manufacture of the parts we supply in accordance with the agreed technical delivery specifications. The customer is responsible in particular for appropriate construction given the intended use, taking into account any safety provisions, selection of the base materials and necessary test procedures, the accuracy and completeness of the technical delivery specifications and the technical documents and drawings supplied, as well as construction of the production facilities provided, including where amendments are suggested by ourselves and which it approves. The customer is additionally responsible for ensuring that trademark or other rights of third parties are not breached by its specifications. The contractual condition of goods is defined at the point where the risk is transferred.

b) We are not liable for insignificant deviations from the condition agreed where usability is only slightly impaired or for defects arising from unauthorised or improper use, incorrect assembly or commissioning and normal wear and tear. Neither are we liable for incorrect modifications and commissioning by the customer or third parties, and the consequences of this.

c) The customer must report defects in writing immediately on receipt of the goods at the destination, and report concealed defects as soon as they are discovered.

d) Defects which should have been established during the final acceptance or testing of initial samples in accordance with point 6 are excluded

e) We are to be given the opportunity to establish the defects reported. We are obliged to establish defects reported immediately in urgent cases which endanger operational safety or to prevent disproportionate extensive damage to the customer. Rejected goods must be returned to us on request. If the customer fails to comply with these obligations, or carries out modifications to goods already reported as defective without our permission, it loses all rights arising from defects. f) Where reports of defects are received in good time and are justified, we may elect either to repair the goods, or supply a defect-free replacement (subsequent performance).

g) If we fail to comply, or do not comply within an appropriate period, with our warranty obligations, or if the repair is initially unsuccessful, the customer may submit a final deadline in writing by which we must meet our obligations. No deadline is required if this would be unreasonable for the customer. If the deadline expires with a successful solution, the customer may elect to request a reduction in the price, withdraw from the contract or carry out the necessary repairs itself or have them carried out by third parties at our cost and risk. If the customer or a third party completes repairs successfully, all the customer's claims are deemed to have been met once all necessary costs incurred by it have been reimbursed.

h) Claims on the part of the customer for necessary costs for the purposes of repair incurred because the goods were taken to a different location following delivery are excluded where they increase costs, unless the said transfer complies with normal use.

i) The customer has statutory rights of recourse against us only insofar as the customer has not reached any agreements with its customer which go beyond the statutory claims for defects.

j) Further claims on the part of the customer are excluded in accordance with section 13.

k) The customer is required to provide evidence of any defect.

#### **11. Order-related Production Equipment, Parts for Casting**

a) Production-related equipment such as models, patterns, core boxes, moulds, casting tools, appliances and gauges provided by the customer must be sent to us at no cost. We will check compliance of production equipment provided by the customer with the contractual specifications or drawings or samples provided to us only with express agreement. We may modify production equipment provided by the customer if we deem this necessary for casting technology reasons, and this does not change the component.

b) The customer must bear the cost of such modification, maintenance and replacement of its production equipment.

c) We will handle and store production equipment with the same care applied in our own business. We are not liable for the accidental loss or degradation of production equipment. We may return the seller's production equipment no longer required by us at the buyer's cost and risk or, if the buyer fails to comply with our request to collect equipment within an appropriate period, store it at standard costs under threat of destruction following an appropriate deadline.

d) Order-related production equipment manufactured by us on the customer's instruction shall remain our property even if the customer is invoiced a share of the costs. We shall retain said equipment for a period of 3 years from the final casting. If, notwithstanding clause 1, it is agreed that the buyer owns the equipment, ownership is transferred to it on payment of the price or proportion of costs agreed. Instead of handing the equipment over to the customer, we will be obliged to keep it safe. The customer may terminate the storage arrangement at the earliest two years following transfer of ownership unless there is major reason for doing so.

e) The customer may enforce claims relating to copyright or intellectual property rights only if it points out such rights to us and expressly reserves the right to assert them.

f) If rejects are produced when using production equipment which can only be used

once, the customer must either provide new production equipment or bear the costs of replacement equipment.

g) The customer must supply parts to be used by us for casting in the correct dimensions and in perfect condition. The customer must supply replacements free of charge if parts become unusable due to rejects.

#### **12. Confidentiality**

a) All parties to the contract will use all documents received as part of the business relationship (including samples, models and data) and information only for mutual objectives, and maintain secrecy in respect of third parties with the same due care as applied to its own documents and information where the other party to the contract describes them as confidential or has an obvious interest in keeping them confidential.

b) This obligation begins on receipt of the first documents or information, and ends 36 months following termination of the business relationship.

#### **13. General Limit of Liability**

a) Unless specified otherwise below, other claims and claims of a wider scope against us on the part of the customer, on any legal grounds whatsoever, and in particular based on a breach of obligations and unauthorised action, are excluded.

b) This limit of liability does not apply in the case of mandatory liability e.g. in accordance with the Product Liability Act, in the case of wilful intent, gross negligence on the part of legal representatives or executive employees or in the case of culpable breach of fundamental contractual obligations. In the case of culpable breach of fundamental contractual obligations we are liable - except in cases of wilful intent or gross negligence on the part of our legal representatives or executive employees - only for damage typical of this type of contract which can be reasonably foreseen. Neither does this limit to liability apply to damages arising from injury to life, body and health and in the case of the absence of a guaranteed condition, where and insofar as the said guarantee has the specific purpose of covering the customer against damage not arising from the goods supplied themselves.

c) To the extent that our liability is excluded or limited, this applies equally to the personal liability of our employees, workers, personnel, legal representatives and vicarious agents.

d) The customer's entitlement to claim compensation for damage and defects expires one year following delivery of the goods to the buyer. This does not apply where the law under §§ 438 para 1 no. 2 (Construction and items generally used in construction) and 479 para 1 (Right of recourse) of the Civil Code prescribes longer periods, and in cases of injury to life, body and health, in the case of wilful or grossly negligent breach of obligations on the part of the supplier and where a defect is concealed fraudulently. This does not affect legal regulations governing suspension, expiry and commencement of time periods. Legal statutes of limitation apply in the case of claims for damages under the Product Liability Act. These legal statutes of limitation also apply in the case of wilful or grossly negligent breach of obligations.

#### **14. Place of Fulfilment and Court of Jurisdiction**

a) If the customer is a trader, the court of jurisdiction is Bocholt. We are, however, entitled to bring action against the customer at the court in the city where its registered office is located,

b) Unless otherwise stated in the order confirmation, the place of performance for our services is the location of our supply plant. The place of performance for payment obligations is Isselburg.

#### **15. Applicable Legislation**

Legal relations between the parties shall be governed solely by German law to the exclusion of the UN Uniform Law on the International Sale of Goods (UNCITRAL/CISG).

#### **16. Partial Invalidity**

Should individual provisions of these terms of supply and payment become wholly or partially ineffective or invalid, the parties to the contract undertake to agree a regulation which largely achieves the meaning and purpose of the ineffective or invalid provision.

#### **17. Partnership Clause**

In the case of all indemnification payments, in particular in terms of the level of compensation, appropriate attention should be paid, in good faith, to the contractual parties' economic circumstances, the nature, scope and length of the business relationship, and the value of the goods