



**BREITENBACH**  
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# General terms and conditions of delivery and payment

## 1. Scope of these General Terms and Conditions

Any and all of our deliveries - including services, proposals, consulting and ancillary services - shall only be provided on the basis of the following Terms and Conditions. These Terms and Conditions shall also apply to any and all future deliveries, services or offers, even if these have not been separately agreed upon once again. Any purchasing terms and conditions of the customer or any other pre-formulated general contractual terms and conditions of the customer are herewith rejected. Such terms and conditions shall not become part of the agreement even if we do not once again expressly reject such terms and conditions after receiving such. Any deviating, contrary or amending general terms and conditions of the customer shall only become part of the agreement to the extent that we have expressly agreed to their application. This requirement of our granting consent shall always apply, for example even if we perform delivery without reservation in awareness of the general terms and conditions of the customer.

## 2. Conclusion of the agreement, scope of delivery

a) Our offers are subject to change without notice. Delivery contracts, other covenants and agreements as well as subsidiary agreements, in particular insofar as they deviate from these Terms and Conditions of Delivery and Payment, shall only enter into force upon our written confirmation.

b) The item of delivery and scope of delivery are based solely on our written confirmation of order. Information in brochures and generally formulated technical descriptions are nonbinding. Any reference to standards and technical rules are deemed to constitute a performance specification and not any assurance of properties or quality.

### **3. Pricing**

a) If nothing to the contrary is agreed upon in writing, our prices apply ex works plus packaging and freight costs, respectively applicable value-added tax, insurance and customs duties, any other possible fees, taxes and other public levies.

b) If contract-related costs change significantly within a period six months after conclusion of the agreement, the parties to the agreement shall discuss an adjustment.

### **4. Delivery period**

a) Delivery periods shall commence upon our confirmation of order, but not before all details relating to execution have been clarified and all other conditions to be fulfilled by the customer have been met; the same shall apply accordingly to delivery dates. Deliveries and partial deliveries may be effected before expiry of the delivery period. The date on which readiness to effect shipment is notified shall be deemed to be the date of delivery, and otherwise the date of shipment.

b) Agreed delivery periods and dates presuppose the fulfilment of all contractual obligations by the customer and, notwithstanding our rights arising from the customer's arrears or default, shall be extended or postponed by at least the period by which the customer is in arrears on its obligations.

c) If we are delayed in effecting performance, the customer may set a reasonable grace period and, after the expiry of such period, withdraw from the agreement if the customer is not interested in fulfillment.

### **5. Delivery contracts on call**

If in the case of delivery contracts on call, the goods are not called up or assigned to consignments in due time, we shall be entitled, after setting a grace period in vain, to assign the goods to consignments ourselves and to deliver the goods or to withdraw from the part of the delivery contract that is still in delay.

### **6. Force majeure and other hindrances**

a) Events involving force majeure shall entitle us to postpone delivery for the duration of the hindrance and a reasonable start-up period, or to withdraw from the contract in whole or in part as a result of the part that has not yet been fulfilled. Strikes, lockouts or unforeseen circumstances, e.g. machine breakdowns, disruptions in operations, rejects and subsequent improvement which make it impossible for us to deliver on time despite reasonable efforts shall be deemed to be tantamount to force majeure. We must provide proof hereof. This shall also apply if the aforementioned hindrances occur during a delay or at a subcontractor. The customer shall be notified without undue delay.

b) The customer may call upon us to state within a period of 2 weeks whether we

intend to withdraw from the contract or perform delivery within a reasonable grace period. If we do not state any intention, the customer may withdraw from the part of the agreement that has not been fulfilled.

## **7. Inspection procedure, acceptance**

a) If the customer would like us to perform tests which are needed, the customer must inform us accordingly. The type and scope of the tests shall be agreed by the time that the agreement is concluded.

b) If acceptance is desired, the scope and conditions shall be determined by the time the agreement is concluded. Acceptance shall take place at the expense of the customer without undue delay after notification of readiness for acceptance at the plant effecting delivery. If the goods are not accepted, not accepted on time or not accepted in full, we shall be entitled to dispatch the goods or to store them at the expense and risk of the customer; the goods shall then be deemed to have been accepted.

## **8. Dimensions, weights and quantities**

a) Deviations in dimensions, weights and quantities within the bandwidth of tolerances common in the trade, relevant DIN regulations and technical casting requirements are allowed.

b) The delivery weights and quantities specified by us shall apply in performing the calculation.

## **9. Packaging and loading equipment**

To the extent necessary at our discretion, we shall pack the goods at the expense of the customer in a manner customary in the trade. If we so request, packaging material and loading equipment shall be returned carriage paid without undue delay; a credit note shall be issued based on the re-use value.

## **10. Shipment and transfer of risk**

a) Delivery of goods notified as ready for dispatch must be taken without undue delay, otherwise we shall be entitled to dispatch the goods at our discretion or store them at the expense and risk of the customer; we shall also be entitled to the latter we cannot carry out the dispatch through no fault of our own. The goods shall be deemed to have been delivered one week after commencement of storage.

b) In lieu of special instructions, we shall choose the means and route of transport as we see fit

c) Risk shall be transferred - whereby the commencement of the loading procedure shall apply - to the customer upon handover to the railway, the forwarding agent or the carrier or one week after commencement of storage, but no later than upon leaving the factory or warehouse. This shall also apply if partial consignments are shipped or we perform other services (e.g. delivery or installation).

## **11. Terms and conditions of payment**

a) Our invoices shall be paid without deduction by the 15th of the month following delivery or partial delivery ex works.

b) The customer is only entitled to withhold or offset payments due to any counterclaims, including warranty claims, to the extent that the claims to payment are undisputed or have been established by a court of law or government authority.

c) We accept discountable and duly taxed bills of exchange on account of payment if this has been expressly agreed in advance. Credit notes for bills of exchange and cheques shall be issued subject to receipt less expenses with the value date being the day on which we can dispose of the equivalent value.

d) In the event of late payment, interest shall be charged at the statutory rate, i.e. 9 % above the respective base rate of the European Central Bank.

e) If the terms of payment are not observed or facts become known which give rise to justified doubts as to the creditworthiness of the customer, all our claims, including those for which we have accepted bills of exchange, shall become due immediately. The same shall apply to costs incurred, for services and for work in progress as well as finished goods which have not yet been delivered. In such cases, we shall only be required to perform outstanding deliveries and services against advance payment or provision of collateral and may withdraw from the contract after a reasonable grace period or demand damages for non-performance. Furthermore, we can prohibit the resale and processing of the delivered goods on the basis of the retention of title agreed in section 12 and demand their return or the transfer of indirect possession of the delivered goods at the customer's expense and revoke the collection authorisation in accordance with section 12, letter

f). The customer hereby authorises us to enter its premises in the aforementioned cases and to collect the delivered goods. Taking back the goods shall only be deemed to constitute withdrawal from the agreement if we expressly declare such.

## **12. Retention of title**

a) We shall retain title to all delivered goods (reserved goods) until all claims on the current account have been settled, in particular also the respective balance claims to which we are entitled now or in the future and whatever the legal reason may be. This shall also apply if payments are effected for specially designated claims.

b) The treatment and processing of the reserved goods shall be carried out on our behalf in our capacity as manufacturer within the meaning of § 950 of the German Civil Code without any obligation on our part. The processed goods shall be deemed to be reserved goods within the meaning of letter a). If the reserved goods are processed, combined or mixed with other goods by the customer, we shall be entitled to co-ownership of the new object in the ratio of the invoice value of the reserved goods to the invoice value of the other goods used. If our title expires as a result of combination or mixing, the customer hereby assigns to us the title to which it is entitled to the new stock or item in the ratio of the invoice value of the reserved goods here and now and shall hold the goods in safekeeping for us free of charge. The co-ownership rights resulting therefrom shall be deemed to be reserved goods within the meaning of letter a).

c) The customer may only sell the reserved goods in the ordinary course of business at its normal terms and conditions and, as long as it is not in delay, provided that the

claims from the resale are transferred to us in accordance with letters d) and e). The customer shall not be entitled to dispose of the reserved goods in any other way.

d) The customer's claims arising from the resale of the reserved goods are hereby assigned to us. They serve as security to the same extent as the reserved goods. The same shall apply to other claims which take the place of reserved goods or otherwise come about with regard to the reserved goods such as e.g. insurance claims or tortious claims in the event of loss or destruction. We accept this cession here and now.

e) If the reserved goods are sold by the customer together with other goods not delivered by us, the assignment of the claim from the resale shall only apply to the amount of our invoice value of the reserved goods sold in each case. In the event of the sale of goods in which we have co-ownership shares in accordance with letter b), the assignment of the claim shall apply to the amount of these co-ownership shares.

f) We shall only have the right of revocation in the cases specified in section 11, letter e). Transport costs which accrue in connection with the return of the goods shall be borne by the customer. We may exploit reserved goods that we take back. The proceeds from exploitation shall be netted with those amounts owed to us by the customer after we have deducted a reasonable amount for the costs of exploitation.

g) The customer shall be entitled to collect claims from the sale in accordance with letters c) and d) until our revocation. The customer is not entitled to assign the claims in any case. If we so request, the customer shall be obligated to inform its customers immediately of the assignment to us and to provide us with the information and documents required for collection.

h) If the value of the existing collateral exceeds secured claims by more than 10 % in sum total, we shall be obliged to release collateral as we see fit. We may also select the collateral to be released.

i) The customer shall notify us in writing without undue delay if a petition has been filed for the opening of an insolvency proceeding or if third parties have attempted to seize (e.g. by attachment) goods belonging to us. If the third party is not able to reimburse us in this connection for in-court or out-of-court costs, the customer shall bear liability towards us.

### **13. Defects, delivery of goods that are not in conformity with the agreement**

a) We warrant that the parts supplied by us will be manufactured in perfect condition in accordance with the agreed technical delivery specifications. Tolerances in accordance with DIN ISO 2768 shall apply to non-tolerated dimensions. The decisive factor in determining the contractual condition of the goods shall be the time of transfer of risk.

b) The customer must give notice of defects in writing without undue delay after receipt of the goods at the place of destination, of hidden defects without undue delay after discovery of the defect.

c) In the case of agreed acceptance pursuant to section 7 b), notification of defects

which could have been ascertained in the case of the agreed type of acceptance and proper inspection shall be excluded.

d) We shall be given the opportunity to confirm the defect for which a complaint has been issued.

e) In urgent cases where safety of operations is jeopardised or in order to prevent excessive damage to the customer, we must immediately confirm the notified defect. Goods for which complaints are issued must be returned to us immediately if we so request. If the customer does not comply with these obligations or undertakes changes to the goods for which a complaint has already been issued without our consent, it shall forfeit any possible warranty claims.

f) In the event of justified, timely notification of defects, we shall as we see fit repair the goods for which a complaint has been issued or supply a replacement that is free of defect. This shall not affect our right to refuse to render subsequent performance if the statutory requirements for such have been met. Subsequent performance shall not include dismantling of the defective items or reinstalling it if we were not originally obligated to install the items. Replacement shall be performed in exchange for return of the goods for which a complaint is issued. We reserve the right to always effect replacement in accordance with the reduced value either by effecting new delivery or by crediting the amount in question.

g) If we do not fulfil our warranty obligations or do not fulfil these in accordance with the agreement, the customer shall be entitled to withdraw from the agreement after expiry of a reasonable grace period with regard to the defective delivery item. Any additional claims in particular for compensation or reimbursement for expenses incurred in vain, shall only apply in accordance with section 16, letter c and are otherwise excluded, including in the case of defects.

h) The foregoing provisions shall also apply in the case of delivery of goods other than contractual goods.

## **14. Contract-related production facilities**

a) Contract-related production equipment such as models, templates, core boxes, moulds, casting tools, devices and control gauges provided by the customer shall be sent to us free of charge. The conformity of the production equipment provided by the customer with the contractual specifications or drawings or samples provided to us shall only be checked by us if express agreements are concluded pursuant hereto.

b) We may modify production equipment provided by the customer if such appears necessary to us for technical casting reasons and the workpiece is not modified as a result.

c) The customer shall bear the costs in connection with the modification, maintenance and replacement of its production facilities.

d) The production facilities shall be duly treated and kept up by us exercising the care and diligence which we apply to our own affairs. We are not obligated to take out insurance. We can return the customer's production equipment no longer required by us at the customer's expense and risk or, if the customer does not comply with our

request to collect such production equipment within a reasonable period, destroy such.

e) We shall retain title to contracted-related production equipment manufactured or procured by us on behalf of the customer even if pro-rated costs are invoiced. We shall hold this equipment for a period of 3 years after the last casting. If the customer has paid in full for production equipment in accordance with the agreement, we shall be obligated to provide the customer with title to such production equipment within 2 years.

f) Claims arising from copyright or industrial property rights may only be asserted by the customer if it draws our attention to the existence of such rights and expressly reserves such rights. 15. Copyright protection of the supplier The customer may only use documents and drawings provided to the customer as well as design-related services and proposals for design and manufacture provided by us for the intended purpose and may not make such accessible to third parties or use such in publications without our consent.

## **15. Copyright protection of the supplier**

The customer may only use documents and drawings provided to the customer as well as design-related services and proposals for design and manufacture provided by us for the intended purpose and may not make such accessible to third parties or use such in publications without our consent.

## **16. Liability, damages**

a) In particular with regard to intended use, the customer shall be responsible for proper design, taking into account any possible safety regulations, selection of the material and the necessary test procedures, correctness and completeness of the technical delivery specifications and the technical documents and drawings provided to us, as well as for the design of the production facilities provided, even if changes are proposed by us which the customer approves. Furthermore, the customer is responsible for industrial property rights or other rights of third parties not being violated as a result of information provided or statements made by the customer.

b) If claims are asserted against us by a third party for compensation for damage, the cause of which lies within the domain of responsibility of the customer, the customer shall indemnify and hold us harmless from any such claims.

c) If nothing to the contrary emanates from these Terms and Conditions of Delivery and Payment including the following provisions, we shall bear liability in accordance with statutory provisions in the event of a violation of contractual and non-contractual obligations. We shall bear liability for damages - regardless of the legal reason for such - within the framework of liability for culpability in the event of willful intent and gross negligence. In the event of simple negligence, subject to the reservation of a milder standard of liability under statutory provisions (e.g. for the exercise of diligence in our own matters), we shall only bear liability

- 1) for damage due to injury to life and limb or health impairment,
- 2) for damage emanating from a not insignificant violation of an important contractual obligation (an obligation, fulfillment of which makes the proper execution of the agreement possible in the first place and adherence to which the contractual partner

can and does generally rely on); in this case, however, our liability shall be limited to compensation for foreseeable damage which typically occurs. The limits on liability cited in the foregoing shall also apply in the case of violations of obligations through or to the benefit of persons whose culpability we are responsible for under statutory provisions. These limits shall not apply to the extent that we have maliciously concealed a defect or have assumed a guaranty for the quality of the goods and for claims of the customer under the German Product Liability Act (Produkthaftungsgesetz).

## **17. Statute of limitations (time-barring)**

a) By way of deviation from § 438, section 1, no. 3 of the German Civil Code, the general statute of limitations for claims emanating from material and legal defects is one year beginning with delivery. Any claims shall be time-barred at least 3 months following written rejection by ourselves of a complaint for defects. If acceptance has been agreed upon, the statute of limitations shall commence upon acceptance.

b) If the good is a building or an object that was used for a building in accordance with its intended purpose and has caused the building to be defective (building material), the statute of limitations in accordance with the statutory arrangement shall be 5 years after delivery (§ 438, section 1, no. 2 of the German Civil Code). Nor shall this affect additional special statutory arrangements pertaining to the statute of limitations (in particular § 438, section 1, no. 1, 70, section 3, § 444, § 47971 of the German Civil Code).

c) The time-barring periods under purchasing law stipulated in the foregoing shall also apply to contractual and non-contractual claims to damages on the part of the customer that are based on a defect to the goods unless application of the regular legal statute of limitations (§ 195, § 199 of the German Civil Code) would lead to a shorter time-bar in the individual case.

d) Claims to damages on the part of the customer for damage to life and limb or health impairments and within the framework of liability for culpability in the case of willful intent and gross negligence, malicious concealment of a defect and under the German Product Liability Act (Produkthaftungsgesetz) shall expire solely in accordance with the legal statute of limitations, however.

## **18. Place of performance and legal venue**

a) The place of performance for payments is Siegen, and for all other obligations the location of the plant effecting delivery.

b) The sole legal venue - including international - is Siegen, including for legal action in connection with bills of exchange and cheques. We shall be entitled to take legal action against the customer with the courts having jurisdiction over the customer.

## **19. Governing law**

Solely the law of the Federal Republic of Germany shall apply to all legal relationships between the customer and us. The UN Convention on Contracts for the International Sale of Goods (CISG) is excluded.

## **20. Partial invalidity**



If any individual provisions of the agreement or these Terms and Conditions of Delivery and Payment are or become invalid in whole or in part, this shall not affect the validity of the remaining provisions. In such case, the parties to the agreement shall agree on a provision which comes as close as possible to the provision intended by the invalid provision.

Siegen-Trupbach, 25. January 2024