

# General Sales and Delivery Conditions of AGOR GmbH, Hörselgau

## Scope

The following conditions are applicable only to business persons, legal entities under public law or of public utilities.

### I. Applicability

1. Orders become binding only after the supplier has confirmed the order. Variations and additions to the tender shall be made in writing. All offers and tenders are subject to alterations, unless they are explicitly marked as fixed.
2. These terms are valid in respect to on-going business and also future business, even if not expressly referred to, as long as the supplier has been advised of these terms at the occasion of a previously agreed to contract.
3. Any terms of business on the part of the customer are not applicable unless expressly accepted by the supplier.
4. Should a particular term be or become null and void, the remaining terms are unaffected.

### II. Prices

1. Prices are considered to be ex works, excluding freight, customs, import duties and packing, plus VAT, applied at the legally proscribed rate.
2. Should relevant prices vary considerably after posting of the tender or confirmation of the order prior to delivery, customer and supplier shall consult each other and agree to a price variation and apportioning of the costs for forms and tooling.
3. The final price shall be calculated by weight of inspected and released parts if the agreed method of price determination is by weight of parts.
4. The supplier is not bound to previous prices in subsequent orders (follow up orders).

### III. Delivery and Receival

1. Delivery schedules commence with the receipt of all necessary documentation, down payment or the timely provision of materials, if such were agreed to. The supply deadline is considered fulfilled upon receipt of the delivery advice note, even when the actual delivery is delayed or has become impossible as long as the supplier does not cause the delay.
2. If a delivery deadline is not kept due to remiss action by the supplier, but not due to gross negligence or intent, the customer is entitled to seek compensation due to the delay or rescind the contract, excluding further demands of the customer after an appropriate extension. Compensation due to delays is limited to no more than 5 % of the delayed portion of the contracted scheduled delivery. A cancellation of the contract is excluded if the delay is due to acceptance delays by the customer. The customer retains the right to sue for higher damages.
3. Adequate part delivery as well as reasonable variation of order quantities up to plus/minus 10 % shall be deemed acceptable.
4. The supplier may demand a firm commitment to on-call contract periods, manufacturing quantities and delivery schedules three months after receipt of an order at the latest. Should the customer not comply to make such commitments within 3 weeks, the supplier is entitled, after a further extension of two weeks, to withdraw from the contract after expiration of the latest deadline and/or demand compensation.
5. The supplier is not bound by any regulation regarding re-sale and may freely dispose of any items of delivery after prior notification of the customer, regardless of any other rights or regulations governing disposal sales, if the customer fails to duly receive the said items.
6. The supplier may delay delivery because of an act of God for the duration of the difficulties including an appropriate time for a return to normality, or in the case of non-completion of a delivery rescind the contract wholly or in part. As acts of God qualify strikes, lockouts or unforeseeable and unavoidable situations, such as breakdowns, which, notwithstanding all reasonable efforts, render on-time delivery by the supplier impossible; however, the supplier must prove such delays. This also is the case when the aforementioned delays occur after previous delays or when delays occur with a sub-contractor. The customer may request the supplier to declare within two weeks whether a cancellation of the contract or a late delivery is appropriate. If the supplier does not respond to the request the customer may rescind the remaining, not yet completed part of the contract. The supplier shall inform the customer without delay when an Act of God, as defined in clause 1 has occurred. The supplier is obliged to minimize the inconvenience to the customer, if necessary he may have to hand over the forms and tooling for the duration of the obstruction.

### IV. Packing, Despatch, Risk Transfer and Acceptance Delays

1. If not specified differently, the supplier chooses packing, mode of transport and transport route.
2. The transport risk transfers to the customer upon goods leaving the works, even if delivery is free ex works. If the customer delays a delivery, the risk already transfers to the customer after the issue of the despatch advice note.
3. When requested in writing by the customer the goods will be insured at cost to the customer for the risk coverage requested.

### V. Reserved Ownership

1. Deliveries remain the property of the supplier until all claims of the supplier on the customer have been met; even when the purchase price for specially marked claims has been met. For account customers the reserved property rights to the delivered goods (reserved ownership goods) are in force as security for the supplier until the balance has been paid in full. If payments are made by means of a bill of exchange, then reserved ownership is not transferred until the bill of exchange has been cleared.
2. Further processing or treatment of supplied goods by the customer may only be carried out by excluding the ownership rights of the customer according to §950 BGB (Federal common Law of Germany) as contracted by the supplier. The supplier becomes co-owner of the thus produced goods to the proportional value of the net manufacturing cost to the net post-manufacturing processed cost of the thus produced goods, which serve as reserved ownership goods to secure the property claims of the supplier as per clause 1.
3. Further processing (in combination or addition) by the customer with other goods not owned by the supplier, §§947, 948 BGB (Federal common Law of Germany) are applicable, resulting in proportional co-ownership by the supplier in the resulting goods, which are now considered reserved ownership goods.
4. The re-sale of reserved ownership goods by the customer is only permissible as part of normal commercial practise and on condition that the customer reaches an agreement with the supplier regarding reserved ownership goods as defined in clauses 1 to 3. The customer is not entitled to take any other action in respect of reserved ownership goods, in particular pawning, mortgaging or using the goods as security.
5. The customer relinquishes herewith all claims, which may result from the re-sale of goods and all other justifiable claims, including associate rights on his customers to the supplier. The customer is duty-bound to inform the supplier immediately and supply all necessary documentation to secure the rights of the supplier against the customers of the customer.
6. When reserved property is re-sold by the customer after further processing action in combination or addition with other goods, not owned by the supplier, as outlined in clause 2 and 3 above the customer cedes all purchase price claims according to clause 5 to the account value of the reserved ownership goods of the supplier.
7. Should the value of the securities held by the supplier exceed the total billed value of the goods by more than 10 % the supplier must release such securities to a commensurate value; the supplier may nominate the securities to be released.
8. The supplier must be notified without delay of any confiscation or seizure of reserved ownership goods by a third party. All associated costs due to such intervention are to be born by the customer in as much as costs are not born by third parties.
9. Should the supplier, taking action according to the above clauses, make use of his right to take back the reserved ownership goods, the supplier is entitled to an unencumbered sale or auction of said goods. Laying claim to restricted ownership property and in particular the a request of surrender represents a cancellation of the contract. The value of the returned reserved ownership goods shall be as sold or auctioned and no higher than the agreed contract price. Further claims for compensation, in particular compensation for loss of earnings, are reserved.

### VI. Warranty for Material Defects

1. Relevant for the quality and finish of all goods are the extrusion samples, which the customer makes available to the supplier for examination and reference as requested. Any reference to technical standards is an aid to define product quality and is not to be interpreted as a definition of product integrity.
2. When the supplier has advised the customer beyond his contractual obligation, he only warrants the functionality and suitability of the supplied goods after prior express assurance.

3. Defects are to be notified without delay, hidden defects are to be noted immediately after discovery. In either case the warranty only extends to one year after risk transfer, unless agreed to differently or if the statutory limit of § 438 para. 1 clause 2, § 479 para. 1 and § 634a para. 1 clause 2 of the German Common Law (BGB) proscribes longer warranty periods as mandatory.

4. The supplier must re-supply if the warranty claims are found to be justified – in which case the production samples released by the customer determine the expected quality and finish. The customer is entitled to reduce the purchase price or rescind the contract if the supplier does not fulfil his duty to re-supply within a reasonable period or replacements fail repeatedly. Further claims, in particular claims for loss or damages due to defective supplies or subsequent resulting damages are regulated by section VII. Replaced parts are to be returned to the supplier at his request and cost.

5. Unauthorized re-working and improper handling of defective parts result in the loss of any right to claims for compensation due to defective parts. The customer is entitled, after prior consultation with the supplier, to repair defective parts to avoid much larger damage or if the supplier fails to make good the defects and to demand compensation for appropriate costs.

6. Normal wear and tear caused by contractual usage does not imply any rights to make warranty claims.

7. Rights to referred warranty provisions according to §§ 478, 479 of Federal Common Law (BGB) only allow the consumer to make claims within the scope of the legislation and do not regulate the understanding of good will provisions with the supplier and assume that any party with referred warranty rights will duly observe their duty, in particular the duty to report defects.

#### **VII. General Limitations of Liability**

In all cases, which differ from the conditions outlined above, and to which the supplier is obligated by reason of contractual or legal liability to pay compensation or reimbursement, his liability is limited only to cases in which he, his employees or sub-contractors are guilty of culpable intent, gross negligence or injury to life, limb and health. The statutory product warranty is unaffected independent of any blame as well as any liability in respect of the legal fulfilment in regard of any product integrity warranty; as is the liability for culpable negligence of major contractual duties and obligations, which are, however, limited to typical damages as may be predicted in such contract situations, except for cases outlined in clause 1 above. However, the above rule does not imply a reversal of the onus of proof, putting the customer at a disadvantage.

#### **VIII. Payment**

1. Payment is to be made in € (EURO) and is to go solely to the supplier.

2. In the absence of a different arrangement the purchase price for supplies or other services is to be paid applying a discount of 2 % within 14 days, net within 30 days from the billing date. Any discount applied presupposes the due settlement of all undisputed outstanding previous accounts. Any payment made by cheque does not attract a discount.

3. Payments made on accounts in arrear attract an interest charge of 8 percentage points over and above the applicable base rate of the ECB, unless the supplier proves higher damages. The customer may prove lower damages.

4. Payment by cheque or notes of exchange may be refused. If cheques or rediscountable bills of exchange are accepted as due payment all associated bank charges are to be met by the customer.

5. The customer may offset an account or use his right of retention only if his claims are indisputable or established in law.

6. Sustained non-compliance with conditions of payment or circumstances, which raise serious doubts as to the credit worthiness of the customer, will result in claims for all payments becoming due immediately. In this case the supplier is also entitled to demand pre-payment for all outstanding deliveries and even to cancel the contract if an appropriate deadline has not been kept.

#### **IX. Forms (Tooling)**

1. The price for tooling also contains the once-off costs for the making of patterns, but does not contain the costs for test and processing procedures, nor costs incurred by customer initiated alterations. Any further patterns required by the supplier are at his own costs.

2. The supplier has and retains ownership of all tooling made by the supplier for the customer or by a contracted third party, unless agreed to differently. The tooling is only to be used for contracts of the customer for as long as the customer discharges his payment and receival obligations promptly. The supplier is obliged to replace the tooling free of charge only when the required production quantity necessitates its replacement. The supplier's requirement to store the tooling is extinguished two years after the last delivery of parts produced with the said tooling and after the customer has been duly notified.

3. As per contract, forms and tooling become the property of the customer after full payment of their purchase price. The transfer of forms and tooling to the customer is replaced by the storage of the said forms and tooling with the supplier in favour of the customer. Independent of the legal right of surrender the customer has, and the life of the forms and tooling the supplier is entitled to exclusive possession and use of same until the end of the contract period. The supplier must mark forms and tooling as 'outside property' and insure said property at the customer's request and expense.

4. The liability of the supplier in respect of storage and care and maintenance of forms and tooling owned by the customer as per clause 3 above or forms and tooling loaned by the customer to the supplier is restricted to like treatment of proprietary property. Costs incurred in care and maintenance and insurance are the responsibility of the customer. The obligations of the supplier cease when, after completion of the contract and a corresponding request by the supplier, the customer fails to collect the forms and tooling within an appropriate period. The supplier has the right to withhold forms and tooling as long as the customer has not complied with his contractual duties to the fullest extent.

5. Irrespective of the type and scope of the remuneration, the supplier reserves the right of re-purchase for models, moulds, tools and plant that were manufactured or acquired on behalf of the client if they contain specific technical know-how. The repurchase is effected at the actual current market value prevailing at the time.

#### **X. Supply of Materials**

1. When the customer supplies production materials, said materials are to be delivered at the customer's own cost and risk, on time and in good order and in quantities in excess of at least 5 %.

2. If the above provision is not complied with, the delivery deadline shall slip accordingly. The customer has to bear any additional costs, including extra costs incurred due to breaks in production, except in the case of an act of God.

#### **XI. Commercial Protection and Legal Limitation**

1. For all deliveries based on models, patterns or parts supplied by the customer the customer guarantees that the commercial rights of third parties in the country for which the goods are being manufactured are not injured. The supplier will advise the customer of any rights known to him. The customer has to release the supplier from any claims of a third party and pay compensation for any resulting damage. The supplier is entitled to stop all work – without any further examination of the legal position – until the legal position has been clarified by the customer and the third party involved after an injunction covering the supply or production of the goods to protect the commercial rights of the third party has been issued. If the continuation of the contract should become untenable to the supplier, the supplier may rescind the contract.

2. Any drawings and patterns that had been made available to the supplier, but did not eventuate in a contract will be returned if requested; else the supplier is entitled to destroy the same three months after the issue of the quote or tender. The same obligation applies to the customer. The party entitled to dispose by destruction must inform the other party of the intention prior to doing so and in good time.

3. The supplier retains all copyrights and applicable rights to commercial protection, in particular the rights of utilization and exploitation (usufruct) of models, forms, tooling, designs and drawings made by him or for him under contract by a third party.

4. For all other legal product limitations section VI applies.

#### **XII. Production and Legal Venues**

1. The production venue is the works of the supplier.

2. The legal venue, including matters such as deeds, notes of exchange or cheques, is the local court of the supplier or customer by choice of the supplier.

3. Only German law applies. The application of the United Nations convention of 11 April 1980 on contracts for the international sale of goods (BGBl 1989 S. 586) as it applies to the Federal Republic of Germany (BGB 1990 S. 1477) is not valid.