

General terms of sale, delivery and payment of MITRAS MATERIALS GmbH (State 1 January 2021)

I. Application

1. Orders are binding only upon order confirmation by the supplier. Any modifications and complements have to be made in writing. All offers are without obligation unless they are designated as firm quotation.
2. In case of regular business relations these terms are also valid for any future agreements in which no explicit reference is made thereto provided the orderer has received them with a prior order confirmed by the supplier.
3. The general terms of the orderer are not valid unless they have explicitly been recognized by the supplier.
4. In case any individual clauses are or become invalid this does not affect the other terms.

II. Prices

1. In doubt prices are valid ex works exclusive freight, customs duties, additional importation fees and packaging plus legal value-added tax.
2. In case important cost factors change considerably after submission of the quotation or after the order confirmation until delivery the supplier and the orderer will make an arrangement concerning adaptation of prices and share of the costs of operating funds.
3. In case the price agreed depends upon the weight of the parts the definite price results from the weight of the released outturn samples.
4. As to new orders (= follow-up orders) the supplier is not bound to prior prices.

III. Obligation of delivery and acceptance

1. Delivery periods start upon reception of all documents required for execution of the order, of the down payment and the timely placing at disposal of materials as far as this was agreed upon. The delivery period is considered observed upon notification about readiness for shipment if the dispatch was delayed or rendered impossible without fault on the part of the supplier.
2. If a delivery period agreed is not respected due to the supplier's own fault the orderer is, provided the supplier did not act with gross negligence or intent, entitled upon expiration of an appropriate additional period of time and under exclusion of any further claims to claim compensation for damage resulting from delay or to cancel the contract. Compensation for damage resulting from delay is limited to 5 % maximum of the part of delivery which was not executed in compliance with the contract. Cancellation of the agreement is excluded if the orderer is in delay of acceptance. The purchaser reserves proof of higher loss.
3. Appropriate partial deliveries as well as reasonable divergences from the quantities ordered up to plus / minus 10 % are admissible.
4. In case of make-and-hold orders without agreement of terms, batch sizes and acceptance dates the supplier may demand binding determination thereof three months upon order confirmation at the latest. In case the orderer does not comply with this request within three weeks the supplier is entitled to set an additional two-week period of time and upon expiration of this period he is entitled to cancel the agreement and/or demand compensation for damages.
5. In case the orderer does not comply with his obligations of acceptance the supplier is not bound to the regulations concerning emergency sale without affecting any other rights. The supplier may sell the delivery item in the open market upon prior notification to the customer.
6. Any incident caused by force majeure entitles the supplier to postpone delivery by the duration of the hindrance and by a reasonable start-up period or to cancel the agreement completely or partially because of the part not fulfilled yet. Strike, lockout or unforeseeable unavoidable circumstances such as operating trouble which make timely delivery impossible for the supplier in spite of reasonable effort are treated as equivalent to force majeure; the supplier has to produce evidence thereof. This is also valid in case the hindrances mentioned above occur during a delay or with a subcontractor. The orderer may require the supplier to state within two weeks whether the supplier wishes to cancel the agreement or to deliver within an reasonable additional period of time. If the supplier does not make such statement the orderer is entitled to cancel the part of the contract which was not fulfilled. The supplier will immediately notify the orderer if a case of force majeure as stated in paragraph 1 occurs. The supplier is obliged to keep impairments for the customer as slight as possible, if necessary by releasing the moulds for the duration of the hindrance.

IV. Packaging, shipment, passing of risk and delay of acceptance

1. If not agreed upon otherwise the supplier chooses packaging, mode of dispatch and routing.
2. Also in case of carriage paid the risk passes to the orderer as soon as the shipment leaves the supplier's works. In case of delays of shipment caused by the orderer the risk already passes to the orderer upon notification of readiness for shipment.
3. Upon written request of the orderer the goods will be insured against the risks designated by the orderer and at the orderer's expense.

V. Reservation of ownership

1. Deliveries remain the ownership of the supplier until all claims of the supplier against the orderer will be fulfilled, also in case the purchase price for specially designed claims has been paid. In case of outstanding invoice the ownership reserved of the deliveries (reserved goods) is considered as security for the balance invoice of the supplier. If liability of the supplier arising out of a bill of exchange is legally founded regarding

payment of the purchase price, the reservation of ownership will not expire before payment of the bill of exchange by the orderer as the drawee.

2. Treatment or processing by the orderer is effected under exclusion of acquisition of ownership according to § 950 Civil Code upon order of the supplier; the supplier becomes co-owner of the goods thus produced in function of the ratio of the invoiced net amount of the supplier's goods to the invoiced net amount of the goods to be treated or processed which, being reserved goods, serve as security for the claims of the supplier according to paragraph 1.
3. In case of processing (adjunction/intermixture) with other goods not belonging to the supplier by the orderer the provisions of §§ 947, 948 Civil Code are valid with the result that the co-ownership share of the supplier of the new goods is now being considered reserved goods in the meaning of these terms.
4. The orderer may resell reserved goods only in the ordinary course of business and provided the orderer also agrees upon reservation of ownership according to paragraphs 1 – 3 with his customers. The orderer is not entitled to dispose in any other way of the reserved goods, in particular such as pledging and security by transfer of ownership.
5. In case of resale the orderer relinquishes, already at this point until fulfillment of all claims of the supplier, all claims arising from resale and all other justified claims in relation to his customers including all secondary rights to the supplier. Upon the supplier's request the orderer is obliged to immediately give all information to the supplier and to remit all documents which are necessary for enforcement of the supplier's rights in relation to the orderer's customers.
6. In case the reserved goods are resold by the orderer after processing according to paragraph 2 and/or 3 together with other goods not belonging to the supplier, the assignment of the purchase-money claim according to paragraph 5 is only valid to the amount of the invoice value of the supplier's reserved goods.
7. In case the value of the securities existing for the supplier exceed the supplier's total claims by more than 10 %, the supplier is insofar obliged to release securities at the supplier's option upon the orderer's request.
8. The supplier must immediately be notified of any pledgings or confiscation of reserved goods from third parties. Cost of intervention arising therefrom are in any case at the orderer's expense unless the cost is paid by third parties.
9. If pursuant to the provisions above the supplier makes use of his reservation of ownership by taking back the reserved goods, the supplier will be entitled to resell the goods in the open market or to sell them by public auction. Enforcement of reservation of ownership and especially claim for possession constitute cancellation of the agreement. Taking back of reserved goods is effected at the amount of the proceeds obtained, however to the amount of the contract prices agreed upon at the most. Further claims of compensation for damages, especially the loss of profit incurred, remain reserved.

VI. Liability for defects of quality

1. The outturn samples, which the supplier delivers to the orderer for examination upon the orderer's request are authoritative for quality and execution of the products. Reference to technical standards serves as specification and must not be interpreted as warranty of quality.
2. If the supplier has advised the orderer outside his contractual obligation the supplier is liable for functioning and suitability of the delivery item only in case of explicit prior warranty.
3. Notifications of defects have to be made immediately in writing. In case of latent defects notification is to be made immediately upon ascertainment thereof. In either case all warranty claims become statute-barred twelve months upon passing of risk, unless otherwise agreed. As far as the law preemptorily stipulates longer terms according to § 438 clause 1 no. 2 Civil Code, 479 clause 1 Civil Code and § 634 a clause 1 no. 2 Civil Code these are valid.
4. In case of well-founded notification of defects – the outturn samples released by the orderer in writing determining the quality and execution to be expected – the supplier is obliged of subsequent remedying of defect. If the supplier does not fulfill this obligation within a reasonable term or if subsequent correction fails despite repeated attempts the orderer is entitled to reduce the purchase price or to cancel the agreement. Further claims, especially claims for reimbursement of expenses for damages because of defects or claims for consequential damage because of defects do only exist within the regulations under VII. Replaced parts have to be sent back to the supplier not prepaid upon the supplier's request.
5. High-handed subsequent treatment and inappropriate handling result in loss of all warranty claims. Only for moves to prevent extreme damage or in case of delay of remedying the defects on part of the supplier the orderer is entitled to remedy defects upon prior notification to the supplier and to claim recompensation for reasonable expenses.
6. Wear and tear because of contractual use do not result in any warranty claims.
7. Claims under a right of recourse according to §§ 478, 479 Civil Code do only exist if the recourse by the user was justified and only to the legal extent, however, they do not exist for arrangements on accommodating terms which were not agreed upon with the supplier. Moreover claims under a right of recourse require the compliance with the own duties of the party entitled to recourse, especially observance of the requirements to give notice of defects.

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VII. General limitations of liability

In all cases deviating from above-mentioned terms in which the supplier is under the obligation of recompensation for damages or expenses because of contractual or legal claims, the supplier is liable only insofar as he, his executives or persons employed in performing an obligation for the supplier can be charged with intent, gross negligence or critical or physical injury or impairment of health. Liability independent of fault according to the product liability law as well as liability for fulfillment of a quality warranty are not affected. Liability for culpable breach of essential contractual obligations is not affected either; liability is, however, limited to the foreseeable damage arising from this type of contract except for the cases in S 1. Shifting the burden of proof to the disadvantage of the orderer is not connected with the regulations above.

VIII. Terms of payment

1. All payments have to be made in € (EURO) exclusively to the supplier.
2. If not agreed upon otherwise the purchase price for deliveries or other performances is payable within 30 days upon date of invoice without any deduction. Condition for allowing a cash discount is the payment of all undisputed invoices which were due earlier. Cash discount is not allowed for possible payments by bill of exchange.
3. If the date of payment agreed upon is exceeded, interests amounting to the legal rate of interest of 8 per cent more than the respective basic rate of interest of the European Central Bank will be charged unless the supplier bears proof of higher loss. The orderer reserves bearing proof of lower loss.
4. Rejection of cheques or bills of exchange remains reserved. Cheques and bills of exchange eligible for rediscount are only accepted by way of provisional performance, all expenses in relation hereto have to be paid by the orderer.
5. The orderer may only set off or enforce a right of retention if his demands are undisputed or declared to be final and absolute.
6. Persistent non-observance of terms of payment or any circumstances justifying reasonable doubt concerning the orderer's credit position result in immediate maturity of all claims of the supplier. In this case the supplier is also entitled to claim payment in advance for outstanding deliveries and to cancel the agreement upon unsuccessful expiration of a reasonable period of time.

IX. Moulds (tools)

1. The price for moulds also includes the cost for single sampling but not the cost for examination and processing devices or modifications arranged for by the orderer. Expenses for further samplings for which the orderer is responsible are payable by the orderer.
2. If not agreed upon otherwise, the supplier is and remains owner of the moulds produced for the orderer by the supplier or by a third party engaged by the supplier. The moulds will only be used for orders of the orderer as long as the orderer fulfills his obligations of payment and acceptance. The supplier is obliged to replace these moulds free of charge only if these are required for providing an output quantity warranted to the orderer. The supplier's obligation of safekeeping them expires two years upon the last delivery of parts from the mould and upon prior notification to the orderer.
3. If it has agreed upon that the orderer becomes the owner of the moulds the ownership thereof will pass to the orderer upon complete payment of the purchase price. Delivery of the moulds to the orderer is replaced by safekeeping for the benefit of the orderer. The supplier is entitled to exclusive possession of the moulds until cancellation of the agreement, independent of the orderer's legal claim for possession and of the useful life of the moulds. The supplier has to mark the moulds as third party's property and to insure them upon the orderer's request at the orderer's expenses.

4. For moulds owned by the orderer according to paragraph 3 and/or for moulds made available by the orderer by way of lending the supplier's liability is limited to the duty of care observed in his own affairs concerning safekeeping and maintenance. The cost for maintenance and insurance is at the orderer's expense. The supplier's obligations expire in case the orderer does not collect the moulds within a reasonable term upon settlement of the order and corresponding notification by the supplier. As long as the orderer has not completely fulfilled his contractual obligations the supplier has a right of retention of the moulds in any case.

X. Delivery of materials

1. In case the orderer supplies materials these are to be delivered at his expense and risk in due time and perfect quality with a reasonable extra quantity of at least 5 %.
2. If these conditions are not complied with the term of delivery is extended appropriately. Except in cases of force majeure the orderer also pays the extra cost arising from interruptions of production.

XI. Commercial right of protection and legal imperfection in title

1. If the supplier has to supply according to drawings, models, samples or using parts made available by the orderer, it is the orderer's responsibility that any protective rights of third parties in the country of destination of the goods are not violated hereby. The supplier will refer the orderer to any protective rights known to the supplier. The orderer has to indemnify the supplier from claims of third parties and to pay recompensation for damage caused. In case the supplier's production or delivery is forbidden by a third party referring to a protective right of the third party, the supplier is entitled – without examination of the legal situation – to stop work until clarification of the legal situation by the orderer and the third party. In case further execution of the order is not acceptable to the supplier any more because of the delay the supplier is entitled to cancel the agreement.
2. Drawings and samples made available to the supplier which did not lead to an order will be sent back upon request; otherwise the supplier is entitled to destroy them three months upon submission of the quotation. This obligation is valid correspondingly for the orderer. The party entitled to destruction has to inform the contractual partner about its intention of destruction in due time before.
3. The supplier is entitled to copyright and possibly commercial protective rights, especially all rights of use and exploitation, for any models, moulds and devices, sketches and drawings designed by the supplier or by third parties on the supplier's order.
4. In case there are other imperfections in title, stipulation no. VI is correspondingly valid for these.

XII. Place of performance and place of litigation

1. In case the orderer is a merchant, a juristic person under public law or a special fund under public law, the place of performance for payments and the place of litigation for both parties and for all present and future claims arising from the business relations is Weiden in der Oberpfalz. We are entitled to sue the orderer also at the court of the orderer's legal domicile.
2. In case one or several provisions of these general terms of trade are not valid the validity of the other provisions and of the contract as a whole remains unaffected. The invalid provision is superseded by the legal position.
3. German law is valid exclusively. Reference to the Agreement of the United Nations dated 11 April 1980 concerning contracts on national purchase of goods (BGBl 1989 p. 586) for the Federal Republic of Germany (BGBl 1990 p. 1477) is excluded.