

FRITZ WINTER EISENGIESSEREI GmbH & Co. KG

General Terms of Sales and Delivery for Foundry Products



1. Scope; Form

Goods and services will be supplied by us only in conformance with the terms and conditions named in the following. Other terms and conditions specified by Customer shall not apply even though we may have been notified of them, and delivery may be made without reservation. Our Terms and Conditions shall not apply to consumers within the meaning of Art. 13 BGB. They shall similarly apply to any future day-to-day business transacted with Customer. Any and all agreements regarding the implementation of a contract made between us and Customer shall be laid down in the contract in question. Contract modifications and amendments shall be laid down in writing.

2 Contract Conclusion and Scope

a) Offers made by us will not be binding unless specified differently in an order confirmation or in an express written declaration made by us. A contract may be regarded as established only after we have issued a written confirmation or begun executing it.

b) Unless expressly designated as binding, any information quoted in prospectuses and catalogues, including photographs, drawings, weights, and measures will be approximations in conformance with common practice in the industry.

c) We reserve all proprietary rights in photographs, prospectuses, cost estimates, and other documents. Documentation may not be disclosed to third persons. This holds particularly true for written documents expressly marked as "Confidential", which may not be disclosed to third persons without our express written consent.

3 Prices; Terms of Payment

a) Our prices will be quoted ex works, plus packaging, freight, postage, insurance, and VAT at the current rate.

b) In the event of any material change occurring in order-related costs after a contract has been concluded, parties will agree on an adjustment.

c) In the absence of agreements to the contrary, our invoices shall be paid promptly and in full.

d) Customer shall be entitled to withhold or offset payments against any claims which Customer may have only to the extent justified by undisputed or legally enforceable claims.

e) If any of the articles delivered by us should prove defective, Customer shall nevertheless be obligated to pay for any articles that are indisputably free from defects unless the resultant incomplete consignment should be of no interest.

f) Should we be obligated to make advance deliveries, and should we become aware after a contract has been concluded that payment of our claims is endangered by lack of funds on the part of Customer, we will, in addition to asserting our lawful claims based on our right to retain ownership in the products delivered laid down in Art. 10, prohibit Customer from selling or processing the goods delivered, demand that either the goods themselves or indirect possession of them be returned to us at the expense of Customer, and cancel any direct debit transfer provided that the conditions named in Art. 9 Par. h) apply. In such cases, Customer hereby providentially grants permission for us to enter its premises and retrieve the goods delivered by us. Repossession of goods will be equivalent to the cancellation of the relevant contract only if so stated by us.

g) After due written notice, we will be entitled to suspend the execution of a contract in the event of payment delays until payment has been received. After setting a reasonable time limit for compliance, we will be entitled to withdraw from the contract in such an instance.

4 Delivery Terms

a) Starting from the date of our order confirmation, the term of delivery will begin only after all issues relating to the execution of the contract have been clarified and any other conditions to be met by Customer have been complied with; mutatis mutandis the same holds true for delivery deadlines. Deliveries in advance of set deadlines and partial deliveries shall be admissible unless this is not acceptable to Customer. The date of delivery shall be the day on which a consignment is reported ready for shipment or, alternatively, the day on which it is shipped. In the absence of agreements and contractual specifications to the contrary, any delivery schedules quoted by us shall not be binding.

b) Without prejudice to our rights relating to any delay in performance on the part of Customer, the dates and terms named in agreed delivery schedules shall be deferred and/or extended for as long as Customer fails to fulfil its obligations. In the event of Customer failing to accept delivery or culpably failing to fulfil any obligation to cooperate, we shall be entitled to claim compensation for any resultant loss including unscheduled expenditures. In such instances, liability for any risk of accidental destruction or damage of the consignment in question shall pass to Customer from the point in time at which Customer fails to accept delivery.

c) In the event of any default on our part, Customer may grant a reasonable respite, expressly stating at the same time that acceptance of the goods or services to be delivered will be rejected after the expiry of said term, after which Customer shall be entitled to withdraw from the contract.

d) At our request, Customer shall be obligated to state within a reasonable term whether it is intended to withdraw from the contract because of the delay in delivery and/or to claim damages in lieu of performance, or, alternatively, to insist on delivery.

5 Serial Deliveries, Long-term and Call-off Contracts

a) Undermated contracts may be terminated at six months' notice to take effect at the end of the month.

b) In the event of the cost of labour, material, or energy changing to any material extent after the first four weeks of a long-term contract (meaning contracts with a term of 12 months or more and undermated contracts), both partners may demand that prices be reformulated within reasonable limits to allow for these changes.

c) Our prices will be fixed based on agreed order volumes. In the absence of binding agreements on order volumes, they will be based on agreed target volumes. Should actual orders fall short of agreed order or target volumes, we will be entitled to increase unit prices within reasonable limits. In the event of agreed volumes being exceeded at Customer's orders and with our consent, Customer may demand that prices be reduced within reasonable limits, provided that this intention is declared in writing no less than 2 months before the agreed delivery date. Actual price increases or decreases will be determined based on our costing data.

d) In the absence of agreements to the contrary, Customer shall be obligated to submit call orders under a delivery contract no later than 3 months before the date of delivery, precisely specifying the quantities involved. Any additional expenses caused by delays in order placement or by subsequent changes by Customer in the timing or quantity specified in the call-up shall be borne by Customer in the amount invoiced by us.

e) In serial-delivery contracts, increasing or decreasing deliveries by as much as 10% above or below the volume originally ordered shall be admissible in view of the special features of the casting process.

f) Overall prices will change to reflect total quantities.

6 Force Majeure; Other Obstacles

a) In the event of force majeure, industrial disputes, lockouts, or official interventions, we shall be entitled to defer delivery while such obstructions persist as well as for a reasonable start-up time afterward; alternatively, we may withdraw from the relevant contract in whole or in part because of such partial default.

b) Similar to force majeure, unforeseen circumstances such as, for instance, production disruptions, rejects, and rework may make it impossible for us to deliver on time despite all reasonable efforts; any such occurrence will be documented by us.

c) In case of any restrictions in foreign trade we are entitled to put our deliveries on hold wholly or partially, or to terminate the contract in whole without notice period.

d) All cases described under a) to c) do not justify recourse or claims of any kind.

7 Inspection; Acceptance

a) In the event of an acceptance test having been agreed upon, the scope and conditions of such a test shall be defined by the time a contract is concluded.

b) In the absence of such an agreement, the acceptance test will be conducted within the scope and under the conditions commonly applied by us. The same applies to initial sample inspections.

8 Dimensions, Weights, Volumes

a) Dimension, weight, and volume nonconformances shall be admissible within the limits set by customary tolerances, relevant DIN regulations, and the technical parameters of the casting process. Any specifications of weights and dimensions made in our quotations and order confirmations do not constitute quality guarantees.

b) Invoices will be made out based on weights and quantities established by us.

9 Shipment; Passage of Risk

a) In the absence of written agreements to the contrary, all deliveries will be made "ex works" (Incoterms 2000), even if we have undertaken to bear the cost of transport.

b) The Purchaser shall indemnify us from the take-back and recovery requirements of § 15 Para. 3 VerpackG. In order to comply with the take-back and recycling obligation, the Purchaser may also commission third parties in accordance with § 35 VerpackG.

c) We will take out transport insurance for deliveries only at Customer's express request; any related expenses will be borne by Customer.

d) Consignments reported ready for shipment shall be accepted immediately; should this not be the case, we may at our discretion either ship such consignments immediately or put them into storage at Customer's expense and risk, at normal haulage industry rates. The last-named option will be open to us even if it should prove impossible to ship a consignment in conformance with our obligations through no fault of our own. Consignments shall be deemed to have been delivered one week after they have been stored in a warehouse.

e) In the absence of specific instructions, transport media and transport routes will be chosen by us at our discretion.

f) Even if we have undertaken to handle the transport of a consignment, the associated risks will pass to Customer when it is handed over to a railway or haulage or forwarding company and/or one week after it has been first stored in a warehouse or, at the very latest, when it leaves our premises or the storage facility.

10 Reservation of Ownership

a) All goods delivered will remain our property (conditional goods) until all claims resulting from the business relationship in question have been settled, including especially any claims outstanding from previous transactions. The above also applies to payments made to settle specifically designated claims. In the event of Customer's payments being delayed, we may demand the return of any goods delivered at Customer's expense. The above shall not apply, however, in the event of insolvency proceedings having been filed or opened against Customer, in which instance we would not be entitled to the immediate return of our goods.

b) Any repossession of goods and/or assertion of our right of ownership does not imply our withdrawal from the contract in question, unless such withdrawal is explicitly declared by us.

c) Customer will process any goods supplied in our name only. In the event of conditional goods being integrated in a product together with other goods, we thereby acquire a share in the products thus generated in proportion to the invoice value of our goods relative to the invoice value of the other objects included in the product at the time of manufacture.

d) In the event of our right of ownership expiring because the goods delivered have been amalgamated or blended with others, Customer hereby agrees providentially to transfer to us his right of ownership in the newly-generated article in proportion to the invoice value of our conditional goods, and to keep said articles safe for us without charge. The articles in which we thus may acquire rights of co-ownership shall be regarded as conditional goods within the meaning of Par. a).

e) Customer may sell conditional goods only in the normal course of business, provided that Customer is not in default with any payments, and provided that titles in any claims resulting from such resale is transferred to us in conformance with Par. f) and g). Customer shall not be entitled to dispose of conditional goods in any other way.

f) Customer provisionally agrees to assign any claims from such resale of conditional goods to us. Such claims may be used as collateral to the same extent as conditional goods.

g) In the event of conditional goods being sold by Customer together with other goods not supplied by us, any claims from such resale shall be assigned to us only in the amount of the invoice value of the conditional goods actually sold. Should goods be sold in which we retain a share in conformance with Par. b), claims shall be assigned in proportion to the value of said share.

h) Customer shall be entitled to collect any amounts outstanding from sales under Par. e) and f) unless and until we raise an objection. In the cases enumerated in Art. 3, we shall be entitled to object to such collection if any payments due from Customer are delayed, insolvency proceedings have been instituted against Customer, or Customer has suspended payment. In these cases, Customer shall without further delay inform us about any assigned claims and their debtors, including all details necessary for collection, hand over all relevant documents, and inform debtors about the assignment of the amounts due from them. Customer shall not be entitled to dispose of such claims in any other way.

i) If the value of the collateral should exceed the total value of the relevant claims by more than 20%, we shall be obligated to release certain portions of the collateral at our discretion. Customer shall report immediately any case of collateral being impounded or otherwise distrained by third persons.

11 Liability for Defects

a) We hereby warrant that any components supplied by us will be free from defects as defined in any engineering specifications included in the contract by reference. It will be Customer's responsibility to ensure that products are properly designed, that relevant safety regulations are observed, that relevant materials and test procedures are properly selected, and that engineering specifications and the engineering documents and drawings handed over to us are free from errors and omissions, particularly with regard to their intended use. Furthermore, Customer shall be responsible for the serviceability of any manufacturing equipment provided, even in the event of any modifications proposed by us being implemented with Customer's approval. Lastly, Customer hereby warrants that no proprietary or other rights held by third persons will be infringed by Customer's information. Product conformability with contractual requirements shall be definitely established at the time of risk passage.

b) We will not be liable for inconsiderable nonconformances with agreed workmanship requirements, inconsiderable impairment of a product's fitness for use, or any defects arising through unsuitable or inexperienced treatment, faulty assembly and/or commissioning, or the effect of natural wear and tear. In the event of products being inexpertly manipulated or repaired either by Customer or by third persons, we will not be liable for any of the defects named above nor for their resultant consequences.

c) Customer shall give written notice of any obvious defects immediately after goods have been received at their destination, while hidden defects shall be reported immediately after their discovery.

d) Any agreement on acceptance or initial sample inspections as per Art. 7 automatically precludes subsequent complaints about defects that might have been detected in such inspections.

e) We must be given an opportunity to verify any defects reported by Customer. In urgent cases, i.e. whenever the operational safety of the product is in jeopardy, or Customer is threatened by extensive harm, any defects claimed shall be verified by us without delay. Any defective goods shall be returned to us immediately on request. Should Customer fail to comply with these obligations, or should any goods previously reported as defective be modified by Customer in any way, Customer's right to claim damages for defects shall be forfeited.

f) Having verified a defect reported on time, we may, at our discretion, either repair the products in question or supply replacements that are free from defects.

g) Should we fail to comply with our warranty obligations either entirely or within a reasonable time, or should our repair efforts remain unsuccessful for the time being, Customer may as a last resort set a term of grace for us to comply with our obligations. Setting a term of grace may be omitted if it should prove unacceptable to Customer. After the term has expired without avail, Customer may, at his discretion, opt to demand a price reduction, to withdraw from the contract, to have the products repaired in-house, or to commission a third party to effect the necessary repairs at our own cost and risk. Once repairs have been effected successfully either by Customer or a third party, Customer shall not be entitled to any further claims once relevant expenditures have

been reimbursed by us. Reduction of the price and/or reimbursement of the costs of after-working shall be limited to a maximum of the value of the defective cast parts and, for the event of raw cast parts without processing being supplied, the value of the raw cast parts.

h) Any claims by Customer regarding the reimbursement of expenditures arising in conjunction with the repair of defects because the products in question have to be transported to another location shall be inadmissible inasmuch as the expenditure total will be increased thereby, unless said transport is conformable with the contractual use of the product.

i) Customer's claims for indemnification against us shall be admissible only inasmuch as no agreement extending the legal scope of indemnification has been made between Customer and the original equipment manufacturer.

j) As provided in Art. 13, no further liability will be accepted.

k) Customer shall be responsible for demonstrating the presence of a defect.

12 Order-related Manufacturing Equipment; Cast-in Parts

a) Order-related manufacturing equipment, including without limitation patterns, templates, core boxes, moulds, casting tools, rigs, and gauges provided by Customer shall be shipped to us free of charge. We will inspect any manufacturing equipment supplied by Customer for compliance with contractual specifications, drawings or patterns only if this has been expressly agreed. Manufacturing equipment provided by Customer may be modified by us if this appears necessary for technical reasons, and if no product modification is entailed.

b) Customer shall bear the expense of modifying, servicing, and replacing such manufacturing equipment.

c) Manufacturing equipment provided by Customer will be treated and kept by us with the same care we apply to our own equipment. We will not be liable, however, for accidental destruction or deterioration of such equipment. Any manufacturing equipment provided by Customer that is no longer required by us may either return to Customer at Customer's expense and risk or, if Customer fails to respond to our request to retrieve such equipment within a reasonable term, retain such equipment for a reasonable period of time at Customer's expense and destroy it after due written notice.

d) Order-related manufacturing equipment made or procured by us at Customer's request will remain our property even after the cost has been invoiced pro rata. Such equipment will be retained by us for a period of 3 years after the last casting has been made. If it has been agreed that, departing from Par. 1, said equipment should become the property of Customer, the latter will assume ownership of said equipment as soon as the agreed price and/or share in the first cost has been paid. In this case, our obligation to keep said equipment safe will stand in lieu of a formal transfer. In the absence of good and sufficient reasons to the contrary, Customer may terminate this safekeeping agreement no earlier than two years after the transfer of ownership. Upon request by Orderer, we shall be obliged to insure the models and production devices provided by Orderer at the latter's expense.

e) Customer may make claims relating to copyright or proprietary rights only if we have been previously notified by Customer of the existence of such rights, and if such rights have been expressly reserved by Customer.

f) In the event of rejects appearing in the output of a piece of manufacturing equipment that can only be used once, Customer shall either provide a replacement or assume the cost of its procurement.

g) Parts to be cast in by us in a mould shall be dimensionally accurate and free from defects when supplied by Customer. Parts that can no longer be used because of production rejects shall be replaced by Customer free of charge.

13 Confidentiality

a) Both parties agree to use any and all documents (including without limitation patterns, samples, and data) and knowhow resulting from their business relationship only and exclusively in pursuit of the common purpose. Whenever a party designates any information as confidential or shows an apparent interest in keeping such information secret, the other party shall be obligated to exercise the same caution as it would exercise in keeping its own documents and knowhow confidential.

b) The above obligation shall enter into force on the date on which said documentation or knowhow is first disclosed, terminating 36 months after the end of the business relationship.

14 Limitation of Liability

a) Without prejudice to any provisions to the contrary laid down in the following, we hereby disclaim liability for any claims Customer may make against us for whatever legal

reason, particularly claims relating to the non-performance of obligations and to unlawful acts.

b) The above limitation shall not apply whenever liability is mandatory, e.g. in cases falling under the Product Liability Act, in cases of wilful or gross negligence on the part of our statutory representatives or executives, or in cases of culpable non-performance of major contractual obligations. Except in cases of wilful or gross negligence on the part of our statutory representatives and executives, we shall be liable for culpable nonperformance of major contractual obligations only inasmuch as the resultant damage is typical of the contract in question and foreseeable within reason. This limitation of liability is not applicable to any life, body, or health injuries nor to quality defects whenever the relevant guarantee aims to protect Customer from damage to some object other than the goods delivered.

c) Any liability exemptions and limitations shall equally apply to personal claims against our employees, associates, statutory representatives, and agents.

d) Any claims for compensation for damages and defects to which Customer may be entitled will expire one year after the resultant products have been delivered to the buyer. This provision does not apply in cases where the law prescribes longer terms such as Art. 438 Sub-paragraph 1.2 BGB (buildings and objects commonly used in buildings) and Art. 479 Par. 1 BGB (indemnification claims); in cases involving injury to life, body, or health; in cases of wilful or gross negligence on the part of the supplier; and in cases of malicious silence with regard to a defect. Any legal regulations covering the suspension and recommencement of terms shall remain unaffected by the above. Claims for damages under the Product Liability Act shall be covered by the statute of limitations. The same holds true for cases of wilful and gross negligence.

15 Place of Fulfilment and Jurisdiction

a) Contracts concluded with an independent business shall be settled by court having jurisdiction over the supplier's place of business. As an alternative, we may institute proceedings against Customer at the court of its business location.

b) Unless shown differently in an order confirmation, the place of fulfilment for our part of the contract shall be the location of our production facilities. The place of fulfilment for any payments due shall be the supplier's head office.

16 Governing Law

All contractual relations between the parties to this contract shall be interpreted solely under the laws of the Federal Republic of Germany, any application of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG) being expressly excluded.

17 Enforceability

In the event of one or more of the provisions of these Terms and Conditions of Payment and Delivery being or becoming unenforceable or void in whole or in part, both parties hereby undertake to agree on a provision which comes as close as possible to the meaning and purpose of the provision that has become unenforceable or void.

18 Partnership

Any amount paid in compensation, particularly in damages, should be determined bona fide in consideration of the economic situation of both parties, the nature, scope, and duration of the business relationship, and the value of the goods involved.