

General business terms of Siegener Werkzeug- und Härtetechnik GmbH for industrial business in Germany (hereinafter referred to as "Terms and Conditions of Sale") (status: 2020)

Applicability

1. These Terms and Conditions of Sale apply to every (supply) framework agreement (hereinafter "Contract") and all individual contracts and/or orders within the framework of a contract (hereinafter "Individual Contract") with entrepreneurs, legal entities under public law and special funds under public law (hereinafter "Partner").

Our deliveries and services are provided exclusively on the basis of the following terms and conditions.

Terms and conditions of the Partner that are not expressly acknowledged by us shall not apply.

General Conditions

2. The contracting parties shall immediately confirm verbal agreements in detail in writing.
3. Orders only become binding with our order confirmation.
4. The information and illustrations contained in brochures and catalogues are approximate values customary in the industry, unless they have been expressly designated by us as binding.
5. We are entitled to refuse to accept an order if it becomes apparent that our claim for payment under the individual contract would be jeopardised by the partner's inability to pay upon acceptance of the order. This is particularly the case if the creditworthiness of the partner is assessed as poor by Atradius Kreditversicherung, Cologne or a credit limit is refused or another reason within the meaning of Section 321 (1) BGB exists. The same applies, notwithstanding the provision in Clause 25, to the fulfilment of an order to which section 321 paragraph 1 sentence 2 and paragraph 2 BGB also applies.
6. We are also entitled to terminate the contract without notice if there is good cause for doing so. Good cause shall be deemed to exist in particular if, after conclusion of the contract, it becomes apparent that our payment claims under the contract are jeopardised by the partner's inability to pay and the partner fails to provide credible assurance of its ability to pay within a reasonable period of time despite being requested to do so. Statutory cancellation and rescission rights and the rights pursuant to Clauses 25 and 39 shall remain unaffected.
7. In case individual parts of these terms and conditions of sale are or become invalid, this shall not affect the validity of the remaining provisions.

Long-term and call-off contracts, price adjustment

8. Open-ended contracts and contracts with a term of more than one year can be cancelled with a notice period of 3 months.
9. If, in the case of long-term contracts (contracts with a term of more than 12 months and open-ended contracts), there is a significant change in labour, material or energy costs, each contracting party is entitled to demand negotiations on an appropriate adjustment of the price, taking these factors into account.
10. If a binding order quantity has not been agreed, we shall base our calculation on the non-binding order quantity (target quantity) expected by the partner for a specific period.

If the partner purchases less than the target quantity, we are entitled to increase the unit price appropriately.

11. Unless otherwise agreed, in the case of call-off delivery contracts we must be notified of binding quantities by call-off at least 4 weeks before the delivery date.

Additional costs caused by a delayed call-off or subsequent changes to the call-off in terms of time or quantity by our partner shall be borne by the partner, unless the partner is not responsible for the delay or subsequent change; in this respect our calculation shall be decisive.

Confidentiality

12. Each contracting party shall use all documents (including samples, models and data) and knowledge received from the business relationship only for the jointly pursued purposes and shall keep them secret from third parties with the same care as its own corresponding documents and knowledge if the other contracting party designates them as confidential or has an obvious interest in keeping them secret.

This obligation shall commence upon first receipt of the documents or knowledge and shall end 36 months after the end of the business relationship.

13. This obligation shall not apply to documents and knowledge which are generally known or which were already known to the contractual partner upon receipt without the contractual partner being obliged to maintain secrecy, or which are subsequently transmitted by a third party authorised to pass them on, or which are developed by the receiving contractual partner without using documents or knowledge of the other contractual partner which are to be kept secret.

Drawings and Descriptions

14. If one contractual partner provides the other with drawings or technical documents relating to the goods to be delivered or their manufacture, these shall remain the property of the submitting contractual partner.

Samples and means of production

15. Unless otherwise agreed, the manufacturing costs for samples and means of production (tools, devices, templates, etc.) shall be invoiced separately from the goods to be delivered. This also applies to production equipment that has to be replaced due to wear and tear.

16. The costs for maintenance and appropriate storage as well as the risk of damage or destruction of the means of production are borne by us.

17. If the partner suspends or terminates the co-operation during the production period of the samples or production equipment, all production costs incurred up to that point shall be borne by the partner.

18. The means of production shall remain in our possession at least until the delivery contract has been completed, even if the partner has paid for them. Thereafter, the partner shall be entitled to demand the return of the production equipment if an amicable agreement has been reached on the time of return and the partner has fulfilled its contractual obligations in full.

19. We shall store the means of production free of charge for two years after the last delivery to our partner. Thereafter, we shall request our partner in writing to comment on the further utilisation within 6 weeks. Our duty of safekeeping shall end if no statement is made within these 6 weeks or no new order is placed.

20. Customer-related means of production may only be used by us for deliveries to third parties with the prior written consent of our partner.

Prices

21. Our prices are to be understood in Euro excluding VAT, packaging, freight, postage and insurance.

Conditions of Payment

22. All invoices are due within 30 days from date of invoice.

23. If we have indisputably delivered partially defective goods, our partner shall nevertheless be obliged to make payment for the defect-free portion, unless the partial delivery is of no interest to him. In all other respects, the partner may offset claims for compensation for the costs of remedying defects or completion costs; other counterclaims may only be offset if they have been legally established, are ready for judgement or are undisputed. The Partner shall also only have a right of retention or right to refuse performance within these limits.

24. If the target is exceeded, we shall be entitled to charge interest on arrears at the rate charged by the bank for overdraft facilities, but at least nine percentage points above the respective base rate of the European Central Bank.
25. In the event of late payment, we may, after notifying the partner in writing, suspend the fulfilment of our obligations until payment has been received.
26. Bills of exchange and cheques shall only be accepted by agreement and only on account of performance and on condition that they are discountable. Discount charges shall be calculated from the due date of the invoice amount. A guarantee for the timely presentation of bills of exchange and cheques and for the protesting of bills of exchange is excluded.

Delivery

27. Unless otherwise agreed upon we deliver "ex works". Compliance with the delivery date or delivery period shall be determined by our notification of readiness for dispatch or collection.
28. The delivery period shall begin with the dispatch of our order confirmation and shall be extended appropriately if the requirements of Clause 57 are met.
29. At reasonable extent, partial deliveries are permissible. They will be billed separately.
30. Within a tolerance of 10 per cent of the total order quantity, production-related excess or short deliveries are permissible. The total price shall change accordingly.

Despatch and transfer of risk

31. Goods notified as ready for despatch must be accepted by the partner without delay. Otherwise we are entitled to dispatch them at our own discretion or to store them at the partner's expense and risk.
32. In the absence of a special agreement, we shall select the means of transport and the transport route.
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Delay in Delivery

34. If we can foresee that the goods cannot be delivered within the delivery period, we shall inform the partner immediately and in writing, inform him of the reasons for this and, if possible, state the expected delivery date.
35. If the delivery is delayed due to a circumstance listed in Clause 57 or due to an action or omission on the part of the partner, an extension of the delivery period appropriate to the circumstances shall be granted.
36. The partner shall only be entitled to withdraw from an individual contract if we are responsible for non-compliance with the delivery date and the partner has unsuccessfully set a reasonable grace period.

Reservation of title

37. We reserve title to the delivered goods until all claims arising from the business relationship with the partner have been fulfilled.
38. The partner is entitled to sell these goods in the ordinary course of business as long as he fulfils his obligations arising from the business relationship with us in due time. However, he may neither pledge the reserved goods nor assign them as security. He shall be obliged to secure our rights in the event of a credited resale of the reserved goods.
39. In the event of breaches of duty by the partner, in particular default in payment, we shall be entitled to withdraw from the individual contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the partner; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The partner is obliged to surrender the goods.
40. The partner hereby assigns to us as security all claims and rights arising from the sale or, if applicable, the leasing of goods to which we are entitled. We hereby accept the assignment.
41. Any treatment or processing of the reserved goods shall always be carried out by the partner on our behalf. If the reserved goods are processed or inseparably mixed with other items not belonging to

us, we shall acquire co-ownership of the new item in the ratio of the invoice value of the reserved goods to the other processed or mixed items at the time of processing or mixing.

If our goods are combined or inseparably mixed with other movable objects to form a uniform object and if the other object is to be regarded as the main object, the partner shall transfer co-ownership to us on a pro rata basis insofar as the main object belongs to him. The partner shall hold the property or co-ownership for us. In all other respects, the same shall apply to the item created by processing or combining or mixing as to the goods subject to retention of title.

42. The partner must inform us immediately of any enforcement measures taken by third parties against the reserved goods, the claims assigned to us or other securities, handing over the documents necessary for an intervention. This shall also apply to impairments of any other kind.
43. If the value of the existing securities exceeds the secured claims by more than 20 per cent in total, we shall be obliged to release securities of our choice at the partner's request.

Material defects

44. The quality of the goods shall be based exclusively on the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples etc. of our partner, the partner shall assume the risk of suitability for the intended purpose. Decisive for the contractual condition of the goods is the time of the transfer of risk in accordance with Clause 33.

44. a. For our deliveries, we comply with the applicable legal regulations of the European Union and the Federal Republic of Germany, e.g. the REACH Regulation (Regulation EC No. 1907/2006), the Electrical and Electronic Equipment Act (ElektroG) and the Electrical and Electronic Equipment Substances Ordinance (ElektroStoffV) as national implementations of Directives 2002/95/EC (RoHS I) and 2011/65/EU (RoHS II) and Directive 2002/96/EC (WEEE) and the End-of-Life Vehicles Ordinance (AltfahrzeugV) as national implementation of EU Directive 2000/53/EC.

We will inform immediately of any changes to the goods, their deliverability, usability or quality caused in particular by the REACH Regulation and coordinate suitable measures with the partner in individual cases.

45. We shall not be liable for material defects caused by unsuitable or improper use, faulty assembly or commissioning by the partner or third parties, normal wear and tear, faulty or negligent handling, nor for the consequences of improper modifications or repair work carried out by the partner or third parties without our consent. Same applies to defects that only insignificantly reduce the value or suitability of the goods.
46. Unless otherwise agreed, the limitation period for claims for material defects shall be governed by the law.
47. If an acceptance of the goods or an initial sample inspection has been agreed, the notification of defects which the partner could have detected during a careful acceptance or initial sample inspection is excluded.
48. We must be given the opportunity to ascertain the defect complained of. Rejected goods must be returned to us immediately upon request; we shall bear the transport costs if the complaint is justified. If the partner does not fulfil these obligations or makes changes to the goods already complained about without our consent, he shall lose any claims for material defects.
49. In the event of justified, timely notification of defects, we shall, at our discretion, either repair the rejected goods or supply a faultless replacement.
50. If we do not fulfil these obligations or do not fulfil them in accordance with the contract within a reasonable period of time, the partner may set us a final deadline in writing within which we must fulfil our obligations. After the unsuccessful expiry of this period, the partner may demand a reduction in the price, withdraw from the individual purchase contract or carry out the necessary rectification itself or have it carried out by a third party at our expense and risk. Reimbursement of costs is excluded if the expenses increase because the goods have been moved to another location after our delivery, unless this corresponds to the intended use of the goods.

51. The partner's statutory rights of recourse against us shall only exist insofar as the partner has not made any agreements with its customer that go beyond the statutory claims for defects. The last sentence of Section 50 shall apply accordingly to the scope of the rights of recourse.

Other claims, warranty

52. Unless otherwise stated below, other and further claims of the partner against us are excluded. This applies in particular to claims for damages for breach of duties arising from the contractual obligation and from unauthorised action. We shall not be liable for damage that has not occurred to the delivered goods themselves. In particular, we are not liable for loss of profit or other financial losses of the partner.
53. The above limitations of liability shall not apply in the event of wilful intent, gross negligence on the part of our legal representatives or senior executives or in the event of culpable breach of material contractual obligations, i.e. obligations whose fulfilment is essential for the proper performance of the contract and on whose compliance the contractual partner regularly relies and may rely. In the event of culpable breach of material contractual obligations, we shall only be liable - except in cases of intent or gross negligence on the part of our legal representatives or executives - for reasonably foreseeable damage typical of the contract.
54. Furthermore, the limitation of liability shall not apply in cases where liability exists under the Product Liability Act for personal injury or property damage to privately used objects in the event of defects in the delivered goods. It shall also not apply in the event of injury to life, limb or health and in the absence of warranted characteristics, if and insofar as the purpose of the warranty was precisely to protect the partner against damage that did not occur to the delivered goods themselves.
55. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents.
56. The statutory regulations on evidence remain unaffected by this.

Force Majeure

57. Force majeure, labour disputes, unrest, official measures, non-delivery by our suppliers and other unforeseeable, unavoidable and serious events shall release the contractual partners from their performance obligations for the duration of the disruption and to the extent of its effect. This shall also apply if these events occur at a time when the affected contractual partner is in default, unless it has caused the default wilfully or through gross negligence. The contractual partners are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.

Place of fulfilment, place of jurisdiction and applicable law

58. Unless otherwise stated in the order confirmation, our place of business shall be the place of fulfilment.
59. The place of jurisdiction for all legal disputes arising from and in connection with a contract, including in the context of a bill of exchange and cheque process, shall be our registered office. We are also entitled to bring an action at the partner's registered office.
60. The contractual relationship shall be governed exclusively by the law of the Federal Republic of Germany.

The application of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG - "Vienna Sales Convention") is excluded