

# General Terms and Conditions of Supply

for German Companies in the Tubular Glass Division of the Geresheimer Group (Status: October 2012)

## 1. Offer and creation of contract

- 1) These Terms and Conditions of Supply govern all commercial transactions between us (hereinafter also referred to as the "Seller") and our customer (hereinafter referred to as the "Customer"), even if they are not mentioned in subsequent contracts. They apply only towards entrepreneurs within the meaning of section 310 (1) of the German Civil Code (Bürgerliches Gesetzbuch – BGB).
- 2) Contrary, additional or deviating customer terms do not become part of the contract unless we have expressly consented to their validity. These Terms and Conditions of Supply apply even if we unconditionally carry out a delivery to the Customer in knowledge of its contrary or deviating terms. Silence on our part towards declarations of the Customer will not be construed as consent to such a declaration.
- 3) Our offers are subject to change without prior notice. The contract is created only through our order confirmation unless a written contract has otherwise already been entered into or the order has been carried out by us without confirmation.
- 4) All agreements entered into between us and the Customer for the purpose of execution of this contract is recorded in writing in this contract.
- 5) We retain title and copyright to illustrations, drawings, calculations and other documents. This applies in particular to written documents described as "confidential". Before they are divulged to third parties, the Customer must obtain our express written consent.

## 2. Scope of performance obligation

- 1) The scope of performance is decided by our written order confirmation. If the order is carried out by us without confirmation, the scope of performance is based on the details stated in the transport documents.
- 2) We are entitled to make part deliveries if
  - the part delivery is usable by the Customer for the contractually stipulated purpose
  - delivery of the remaining goods on order is guaranteed and
  - the Customer does not thereby incur additional expenses or costs (unless the Seller declares that it is prepared to pay such costs).Invoices issued for part deliveries are payable independent of full delivery.
- 3) Delivery variances are permitted up to ten per cent above or below the agreed quantity.
- 4) Customary production-related variances in dimensions, content, weight and colour tone are permitted. Statements by the Seller with regard to the object of delivery or performance (e.g. about dimensions, weights, tolerances and technical data) are only approximate unless usability for the contractually stipulated purpose requires exact conformity.
- 5) If an order placed by the Customer is rescinded by it without justification, we are entitled – without prejudice to our right to claim higher actual damages – to demand fifteen per cent of the selling price for the costs incurred in processing the order and for loss of profit. The Customer is entitled to produce proof that the actual damage is less.
- 6) In the absence of a written agreement to the contrary, all deliveries are made "Free Carrier (FCA) [named place of delivery: address of the relevant Geresheimer plant], INCOTERMS® 2010".
- 7) If samples or patterns supplied to us are lost or damaged, we do not pay compensation.
- 8) Regardless of any existing warranty claims, goods delivered by us must be promptly accepted by the Customer even if they display minor defects.

## 3. Delivery time

- 1) Delivery times and dates stated by the Seller are in all cases only approximate and therefore non-binding unless a fixed time or date is expressly promised or agreed in writing. If dispatch of the goods to the Customer is agreed, delivery times and dates refer to the time of handover to the carrier, forwarding agent or other third party commissioned to carry out transportation. Any binding delivery times or dates in accordance with sentence 1, second half-sentence affect only the time when default arises and, in the absence of special additional provisions, will not be regarded as constituting a fixed-date deal.
- 2) The start of the delivery time stated by us is conditional on clarification of all technical questions and complete provision of the documentation, approvals and releases to be obtained by the Customer. If the Customer has to provide moulds, armouring parts or other supplies, the delivery time starts only after they are received.
- 3) Fulfilment of our delivery obligation is furthermore conditional on timely and orderly fulfilment of the Customer's obligations. The plea of contractual non-performance is unaffected by this.
- 4) The delivery time is deemed to be met if, before the time runs out, the goods have left the relevant production plant or we have notified their readiness for dispatch. This is subject to correct and timely self-delivery.
- 5) Default on our part is deemed to arise in accordance with the statutory provisions of the law. In each case, however, a written reminder by the Customer is required. In the case of non-binding delivery times and dates, the Customer is entitled four weeks after expiry of the deadline to make a written demand to us for delivery within a reasonable period. On expiry of the reasonable period we are deemed to be in default.
- 6) If the Customer is in default with acceptance or culpably breaches other duties of cooperation, we are entitled to demand compensation for the damage thereby incurred by us, including any additional expenses (e.g. storage costs). Further claims and rights are unaffected by this.
- 7) The Seller is not liable for impossibility of delivery or delivery delays caused by force majeure or other events which were not foreseeable on completion of contract and are outside its control (e.g. business disruptions of any kind, difficulties with material or energy procurement, transport delays, strikes, legal lockouts, lack of workers, energy or raw materials, difficulties in obtaining the necessary official approvals, measures by the public authorities or (pre-)suppliers' non-delivery or failure to make correct and timely delivery. If such events make performance or delivery impossible or materially difficult for the Seller and the hindrance is of more than a temporary nature, the Seller is entitled to withdraw from the contract. In the event of hindrances of a temporary nature the delivery times or dates are extended by the period of the hindrance plus a reasonable restart period. If, as the result of a delay in excess of at least one month, the Customer cannot reasonably be expected to accept delivery, it may withdraw from the contract by means of a prompt written declaration to the Seller.

## 4. Passing of risk

- 1) The risk of accidental destruction or deterioration of the goods passes at the latest when the goods are handed over to the person carrying out transportation or leave our warehouse for the purpose of dispatch. This applies even if part deliveries are made or we have made further undertakings, e.g. to make payment of transportation costs. At the Customer's request we will take out transport insurance at the Customer's expense covering the goods against risks designated by the Customer.
- 2) If dispatch or handover within the meaning of paragraph 1 is delayed due to circumstances whose cause is attributable to the Customer, the risk passes to the Customer from the time when the goods are ready for dispatch and the Seller has notified this to the Customer.
- 3) If the Customer is in default with acceptance, the risk of accidental destruction or deterioration of the goods passes to the Customer at the latest when default arises.

## 5. Call-off contracts

If we enter into a call-off contract with the Customer, i.e. a contract for fixed quantities of goods whose delivery is to take place over a defined period on request by the Customer,

possibly in partial quantities, we are entitled to produce the entire quantity agreed. In the case of call-off contracts without agreed call-off dates, the goods will be called off in approximately equal quantities at the end of each month. If the Customer does not call off the goods in time, we will – after unsuccessful expiry of a reasonable period of grace set by us – either be entitled to make the entire remaining quantity ready for delivery and demand payment of the remaining purchase price, or withdraw from the contract and, if the Customer has acted culpably, demand damages in lieu of performance.

## 6. Price and payment

- 1) In the absence of a written agreement to the contrary in individual cases, prices are net prices "Free Carrier (FCA) [named place of delivery: address of the relevant Geresheimer plant], INCOTERMS® 2010", excluding packaging and before value-added tax which is added at the statutory rate applicable on the invoice date. If it is agreed in an individual case that the goods will be delivered to the Customer or other locations, the Customer must bear the costs of transportation, packaging and insurance.
- 2) Orders for which fixed prices are not expressly agreed are invoiced in accordance with our price lists as applicable on the relevant delivery date. If the list price applicable on the delivery date is entered in an order form or order confirmation, this does not constitute agreement of a fixed price.
- 3) We reserve the right – after timely notification to the Customer and before delivery of the goods – to increase the price of the goods as required by general price developments outside our control (such as exchange-rate fluctuations, currency regulations, changes in customs duty or major increases in material, energy or production costs) or changes in the relationship with our (pre-)suppliers.
- 4) In the absence of an agreement to the contrary the purchase price is payable within fourteen days of the invoice date without any deduction. The payment date is deemed to be the date on which the purchase price is at our free disposal. Bills of exchange and cheques are accepted only by prior agreement, on account of payment and subject to discountability. All costs incurred for encashment of bills of exchange and cheques and for credit transfers will be borne by the Customer.
- 5) In the case of late payment, the Customer will pay default interest at a rate of eight per cent p.a. above the base rate at the relevant time. The right to claim further damages is not excluded.
- 6) If the payment terms are not observed or circumstances which prejudice the Customer's creditworthiness come to light, such as cessation of payments, insolvency, protesting of bills or judicial enforcement measures, all receivables become payable with immediate effect. In this event we are entitled to make outstanding deliveries only against advance payment or provision of security or, after allowing a period of grace to no effect, to withdraw from the contract and demand damages (e.g. pursuant to sections 323 ff. BGB). Further rights under the applicable law are unaffected.
- 7) The Customer is entitled to offset counterclaims only if they are established by final legal judgment or are undisputed or accepted by us. The Customer furthermore has a right of retention only to the extent that its counterclaim is based on the same contractual relationship.
- 8) At our own election, which may be rescinded at any time, invoices for goods deliveries may be sent by us to the Customer by email as electronic documents such as PDF files (as an alternative to postal delivery of invoices in paper form) in accordance with the tax-law stipulations. If this election is exercised the Seller will send written notification to the Customer, pointing out the legal consequence described below and requesting it to declare its consent to or rejection of such electronic invoicing within three weeks. If the Customer does not provide an express declaration of its rejection by the above deadline it will be deemed to have given its consent.

## 7. Packaging

- 1) In the absence of an express contrary agreement in the order, packaging is carried out at our discretion. Non-returnable packaging must be disposed of by the Customer in an orderly manner at its own expense. If such packaging is reused, the product and company references on it must be obliterated.
- 2) Packaging such as pallets which is intended for reuse and owned by us or third parties remains our property or the property of the relevant third party. It is provided to the Customer only for temporary use in accordance with the intended purpose and must be returned. The Customer is however entitled to exchange such packaging for packaging of an equivalent quality and quantity. In this event, the replacement packaging must be passed on by the Customer free of all charges to us or to the owner of the packaging supplied. If any packaging is not returned to us or the third party cost-free and in a usable condition at the latest within three weeks after delivery, we are entitled to charge the Customer for this at its replacement price less deduction of a "new for old" discount. This discount will not apply if new packaging was used.

## 8. Tools, armouring parts and other supplies to us

- 1) In the absence of an agreement to the contrary, we are and remain the owner of tools (e.g. moulds) which are produced by us – or by a third-party commissioned by us – for the Customer's orders. This applies even if the Customer has paid or shared in the costs for the tools and even if their production is attributable to the Customer's collaboration and instigation.
- 2) If it is agreed that tools for a particular Customer can be used exclusively for orders from this Customer, the Customer will bear all the costs incurred. In other cases, the Customer will bear a share in the tool costs which is to be agreed. In the absence of an agreement about the apportionment of costs the Customer will bear half of the tool costs.
- 3) The Customer is obliged to pay half of its share of the tool costs on order placement and half on receipt of the initial (reference) samples (even if modifications are still required) with no deduction of cash discount. No separate financial compensation will be paid by us for this on termination of the supply relationship.
- 4) Any obligation to use tools exclusively for the Customer's orders applies only as long as the Customer completely fulfils its payment and acceptance obligations towards us. In the event of nonfulfilment of its payment and acceptance obligations within the meaning of sentence 1, the Seller is entitled to use the tools for third-party orders as well, provided that such use is not prevented by the Customer's industrial property rights with regard to the tools.
- 5) In the case of modifications before tool production which are occasioned by the Customer and result in delayed submission of the Customer's initial (reference) samples, the Customer is obliged to reimburse to us the tool costs incurred to date. Costs for subsequent tool modifications occasioned by the Customer will be borne by the Customer.
- 6) If the Customer does not place a binding order for delivery of corresponding goods within six months after production of the tools, the Customer will reimburse to us any difference between the share to be borne by the Customer and the full tool costs.
- 7) In the absence of an agreement to the contrary in individual contracts, we will carefully keep the tools for follow-up orders, take out replacement-value insurance on them against fire damage and be responsible for their maintenance at the Customer's expense. The costs for replacing tools which have become unusable will be borne by us only if we are responsible for this. Our duty to keep the tools will lapse if no further orders are received from the Customer over a period of two years after the last delivery.
- 8) If costs arise for test equipment, jigs and other special equipment, they must be supplied to us by the Customer at its own expense. They remain the property of the Customer.

- 9) If supplies are provided to us by the Customer, it must deliver them "free works" in good time, in perfect condition and in quantities which allow us to work without interruption.
- 10) If the Customer fails to deliver armoured parts in good time or in sufficient quantities, it is obliged to reimburse additional costs thereby incurred. In such cases we reserve the right to stop production and start again later.

#### 9. Industrial property rights

- 1) If we have to deliver in accordance with the Customer's drawings, models or samples, the Customer will guarantee that this does not infringe the industrial property rights of third parties. It must indemnify us against claims by third parties. If production or delivery is interdicted by a third party on the grounds of an industrial property right belonging to it, we will be entitled – without checking the legal position – to stop work and demand reimbursement of the costs incurred.
- 2) Drawings and samples provided to us will be returned on request; we are otherwise entitled to destroy the drawings and samples three months after issuing our offer.

#### 10. Retention of title

- 1) We retain title to the goods until receipt of all payments relating to the existing current-account relationship (business connection) with the Customer; the retention of title applies to the recognised open balance. In the case of breach of contract by the Customer, particularly payment default, we are entitled to demand surrender of the goods and to take them back. If we take the goods back, this does not constitute withdrawal from the contract unless we make a written declaration to that effect. Attachment of the goods by us always constitutes withdrawal from the contract. After taking the goods back we are authorised to dispose of them; the disposal proceeds will be offset against the Customer's accounts payable – after deduction of reasonable disposal costs.
- 2) The Customer is obliged to treat the goods with due care; in particular it is obliged to take out adequate replacement-value insurance for them against fire, water damage and theft at its own expense. If maintenance and servicing work is required, the Customer must carry this out in good time at its own expense.
- 3) In the case of attachment or other intrusions by third parties the Customer must promptly inform us in writing so that we can take legal action in accordance with section 771 of the German Code of Civil Procedure (Zivilprozessordnung – ZPO). If the third party is unable to reimburse us for the court costs and out-of-court costs of an action in accordance with section 771 ZPO, the Customer is liable for the loss incurred by us.
- 4) The Customer is entitled to resell the goods in the normal course of business; it hereby already assigns to us, however, in the final invoice amount of our claim (including value-added tax) all receivables accruing to it from its customers or third parties as the result of resale, regardless of whether the goods were resold after processing or filling. The Customer is authorised to collect these receivables even after their assignment. Our authority to collect them ourselves is unaffected by this. We undertake, however, that we will not collect the receivables as long as the Customer meets its payment obligations from the income received, is not in default with payment and in particular no application is made for the opening of insolvency proceedings and cessation of payment does not occur. If this is the case, however, we may demand that the Customer discloses to us the assigned receivables and the debtors, gives all the information required for collection purposes, hands over the related documents and notifies the assignment to the debtors (third parties). The Customer is not entitled to pledge or assign as security the goods which are subject to retention of title or the assigned receivables.
- 5) Processing or transformation of the goods by the Customer is always carried out on our behalf. If the goods are processed together with other goods which do not belong to us, we acquire joint title to the new object in proportion to the value of the goods (final invoice amount including value-added tax) compared with that of the other objects processed as at the time of processing. For the object created through processing the same otherwise applies as for goods delivered subject to retention of title.
- 6) If the goods are inextricably combined with other goods which do not belong to us, we acquire joint title to the new object in proportion to the value of the goods (final invoice value including value-added tax) compared with that of the goods combined as at the time of combination. If the combination is made in such a way that the Customer's object may be regarded as the principal object, it is deemed to be agreed that the Customer transfers joint title to us proportionally. The sole title or joint title thus created will be kept by the Customer on our behalf.
- 7) We undertake that the securities due to us will be released by us on request to the extent that the realisable value of our securities exceeds by more than ten per cent the value of the receivables to be secured; the choice of securities to be released is up to us.
- 8) If the retention of title governed by this section 10 or the assignment is not effective under the law in whose area of application the goods are located, security equivalent to the retention of title or assignment is deemed to be agreed. If the Customer's cooperation is required in order to create such rights, the Customer must take all measures which are necessary for their establishment and maintenance.

#### 11. Warranty

- 1) The contractually agreed properties of the goods sold (also referred to as "products") are based exclusively on the product specifications released by signature of the Customer and the written agreements. Samples, quality specifications or product instructions submitted by us to the Customer for examination or other statements about suitability for a particular purpose are non-binding and constitute an agreement on the qualities of the products only if expressly described as binding. This applies even if the Customer was advised by us during development.
- 2) Unless expressly agreed in writing, we undertake no guarantee for the quality and finish of the goods supplied by us and no procurement risk (e.g. in accordance with section 276 (1) BGB), in particular no guarantee of quality or durability (e.g. in accordance with section 443 BGB).
- 3) Warranty claims by the Customer are conditional on it having properly fulfilled its duties to carry out checks and report complaints in accordance with section 377 of the German Commercial Code (Handelsgesetzbuch – HGB). In its report to us the Customer must describe the defects in writing.
- 4) In the event of a defect in the goods, the Seller is at its own election entitled to make subsequent performance in the form of a correction of the defect or delivery of new fault-free goods. In the case of correction of the defect or replacement delivery, we are obliged to bear all the expenses required for the purpose of subsequent performance, in particular transportation, travel, labour and material costs, to the extent that these are not increased because the goods are taken to a place other than the place of performance. Payroll and non-payroll expenses claimed by the Customer in this connection will be calculated at cost.
- 5) If subsequent performance fails, the Customer is at its own election entitled to demand rescission of the contract (withdrawal) or a reduction in the purchase price.
- 6) If the deviation from the agreed qualities or impairment of usability is insignificant, no warranty claims will arise. The same applies in the case of defects resulting from normal wear and tear, improper use or improperly carried out modifications or repairs to the goods by the Customer.
- 7) Recourse claims against us may be made by the Customer only if it has not entered into any agreements with its customers extending beyond the warranty claims with mandatory legal force. With regard to the scope of the Customer's recourse claims against us, section 11 paragraph 4 sentences 2 and 3 furthermore applies accordingly.

#### 12. Liability

- 1) Our liability to pay compensation for damages for whatever legal reason is unlimited in the case of wilful intent or fraudulent concealment of a defect by us or to the extent that we have provided a guarantee of quality of the goods. The same applies in the case of injury to life, body or health.
- 2) We are not liable in the case of simple negligence by our executive or controlling bodies, legal representatives, employees or other assistants except in the case of breach of essential contractual duties. An essential contractual duty is an obligation whose fulfilment is essential for orderly execution of the contract, and one in which the contractual partner (Customer) regularly trusts or is entitled to trust. In the case of simple negligence we are otherwise liable, in the event of default in delivery by us, to pay compensation for damages in addition to performance, but limited to a maximum of five per cent of the value of that part of the overall delivery which cannot be used in a timely or contractually agreed manner because of the delay.
- 3) If recourse claims against third parties exist we are liable, in the event of simple negligence in accordance with paragraph 2 above, only after the recourse claims – assigned by us to the Customer for this purpose – have been unsuccessfully pursued by the Customer against third parties or if the Customer cannot reasonably be expected to take direct action against the third party.
- 4) We offer the Customer in individual cases a possibility in the event of damage or loss suffered by it to choose either lower liability by us at the purchase price offered by us for the goods or higher liability by us at a higher purchase price offered by us for the goods (hereinafter referred to as "tariff election"). If in such cases the Customer does not make an explicit tariff election (non-use of tariff election through non-response to the tariff election offered; hereinafter referred to as "non-response") or in the course of such a tariff election chooses lower liability by us at a lower purchase price, our liability for insured risks is limited per claim to the actual insurance pay-outs made by the insurer within the parameters of the insurance policy taken out by us (e.g. public and product liability insurance) unless our liability is already less in accordance with the provisions of this section 12. If in individual cases the Customer chooses higher liability by us at a higher purchase price for the goods, the aforementioned limitation of liability does not apply. The exclusions and limitations of liability otherwise stipulated in this section 12 and the exclusionary circumstances regarding exclusions and limitations of liability are always unaffected (in cases of non-response and in cases of a tariff election explicitly declared by the Customer).
- 5) If and as far as our liability for damages is excluded or limited this also applies with regard to the personal liability of our employees, representatives and assistants.
- 6) The regulations in this item 12 also apply to claims for reimbursement of futile expenses. Further liability for damages or reimbursement of futile expenses is excluded regardless of the legal nature of the claim pursued. This applies in particular to claims for compensation for damages relating to infringement of pre-contractual obligations (e.g. in accordance with section 311 (2) BGB) or relating to other breaches of duty or tortious claims for compensation of material damage (e.g. in accordance with sections 823 ff. BGB). Mandatory statutory legal liability for product defects is unaffected.
- 7) If in accordance with section 12 paragraph 2 we are basically liable to pay compensation for damages, this liability is limited to damage which on completion of contract we foresaw as a possible consequence of breach of contract or might have foreseen as such by exercising normal care. Compensation of indirect damage and consequential damage as the consequence of defects in the object of delivery is payable only if such damage can typically be expected under proper use of the object of delivery.
- 8) In the event of liability for simple negligence the Seller's duty to pay compensation for property damage and consequential financial losses is limited to a maximum amount of EUR 15,000,000 (fifteen million euros) per claim and a maximum amount of EUR 30,000,000 (thirty million euros) for all claims in any insurance year (in accordance with the sums insured under its product liability insurance) even in the case of breach of essential contractual duties.

#### 13. Statute of limitation

- 1) The period of limitation for warranty claims by the Customer is one year unless the defective object of purchase has been used for a building in accordance with the normal way it is used and has resulted in the defectiveness of the building. The aforementioned period of limitation also applies in the case of claims relating to tortious acts based on a defect in the object of purchase. The period of limitation starts on delivery of the object of purchase.
- 2) Our unlimited liability for damages as the result of infringement of a guarantee or as the result of injury to life, body or health, for wilful intent or gross negligence, for defective products (if and to the extent that we are liable for defective products by mandatory statutory provisions) and (subject to the regulation in section 11 paragraph 7) in cases of supplier recourse in accordance with sections 478 and 479 BGB is unaffected. In all of the aforementioned cases the statutory periods of limitation will exclusively apply.
- 3) Comment by us on a warranty claim pursued by the Customer cannot be deemed to constitute entry into negotiations about the claim – or the circumstances on which the claim is based – if the warranty claim is rejected by us in full.

#### 14. General provisions

- 1) All amendments to the contractual agreements entered into, including these General Terms and Conditions of Supply, must be in written form. This also applies for any amendment of the requirement of the written form. For fulfilment of the written form it is sufficient if the document is sent by telefax or a scanned copy of the document is sent in the form of an electronic document such as a PDF file, bearing the signature of one or more persons with authority to represent the relevant party in legal transactions. Transmission by means of telecommunication, particularly e-mail, is otherwise not sufficient.
- 2) If any provision in these General Terms and Conditions of Supply should be or become ineffective, this will not in other regards affect the validity of the General Terms and Conditions of Supply or the contractual agreements entered into.
- 3) In the absence of an agreement to the contrary, the law of the Federal Republic of Germany applies exclusively. The provisions of the United Nations Convention on Contracts for the International Sale of Goods (CISG) are expressly excluded. The preconditions for and effects of retention of title in accordance with section 10 are however subject to the law valid at the relevant location of the goods if and as far as the choice of law made in favour of German law is impermissible.
- 4) The place of performance and exclusive place of jurisdiction including international jurisdiction is the place of our registered offices; we are however alternatively entitled to pursue legal action against the Customer in the court responsible for its place of residence. This also applies to summary proceedings based on documentary evidence and to proceedings relating to bills of exchange and cheques.
- 5) If and to the extent that the Customer is defeated in any legal action against us, it will reimburse to us all necessary and appropriate costs incurred by us in this connection, including attorney fees, court fees, expert costs and travel expenses. The same applies for all costs incurred by us in connection with enforcement or recognition of legal title against the Customer.