

Karl Scharrenbroich GmbH & Co. KG **General Terms and Conditions of Sale and Delivery**

Version October 2012

This English version of our General Terms and Conditions of Sale and Delivery is for information purposes only. In no case whatsoever shall these General Terms and Conditions of Sale and Delivery constitute a part of any contract concluded. When in doubt about meaning and intent of any clause of these General Terms and Conditions of Sale and Delivery the original German version shall have precedence over any other version.

1. General

- 1.1 For all our future deliveries and offers to entrepreneurs, legal entities under public law and special funds under public law in the sense of § 310 Section 1 German Civil Code (*BGB-Bürgerliches Gesetzbuch*) solely the hereinafter mentioned General Terms and Conditions of Sale and Delivery apply. They are deemed to be accepted by the ordering party upon receipt of the first delivery at the latest and are valid for the entire duration of the business relationship.
- 1.2 We herewith contradict to any deviating terms of the ordering party; they even deem to be not accepted when the order is carried out. Any further agreements, especially warranties, modifications and side agreements only apply when they are expressly agreed to in writing by us.
- 1.3 If according to the purchase conditions of the ordering party an objection acc. to Pos. 1.2 is excluded, these General Terms and Conditions of Sale and Delivery as well as the purchase conditions are replaced by legal provisions considering the standardised technical conditions of delivery of DIN 6930.

2. Offers / Orders

- 2.1 Our details and figures presented in brochures, advertisements and any other publications are - also in regards of prices - always subject to confirmation and non-binding. We consider ourselves bound to individually provided offers for a period of 14 days starting from date of offer preparation.
- 2.2 Orders of the ordering party are binding for a period of 14 days. However, the contract is only valid upon our written confirmation of order. If no confirmation of order is sent, the contract is nevertheless deemed to be concluded upon delivery of goods as invoiced.
- 2.3 We are entitled to make product-related modifications on the goods without prior announcement provided that these modifications do not include unreasonable modifica-

tions for the ordering party.

- 2.4 We reserve and retain all property rights and copyrights for drawings, samples, figures, catalogues and any other kind of documents. It is forbidden to submit them to third parties or competitors.

3. Excess or Short Deliveries, Partial Deliveries

- 3.1 The quantity of goods ordered by the ordering party may be exceeded or gone below according to the scope mentioned in DIN 6930, Part 1, Section 3.5.
- 3.2 In case of partial delivery contracts the ordering party is obliged to call off the respective partial delivery in time, specifying type, scope and kind. When the ordering party does not attend to this duty within an appropriate deadline to be set by us, we are entitled to determine and deliver the partial delivery or to rescind from that part of contract not yet fulfilled and claim for compensation.

We are also entitled to ship partial deliveries in reasonable scopes without particular agreement.

- 3.3 Partial deliveries are invoiced separately.
- 3.4 Subsequent reductions of the order quantity or subsequent reduction of the number of items of a partial delivery agreed as well as a reduction of the agreed call-offs will lead to an increase of the unit price and - where necessary - of the agreed proportion of tooling costs.

4. Prices and Payment

- 4.1 All prices are ex works, plus VAT and costs arising from customary packaging of the goods. The ordering party bears all additional costs, especially for shipment and transport insurance, which we only conclude when expressly agreed. The mode of shipment is at our discretion.
- 4.2 In general, tooling costs for the production of the goods ordered by the ordering party are invoiced separately. They have to be paid upon delivery of type sample respectively, when such a type sample has not been requested, upon first shipment of goods.

By paying tooling costs, the ordering party does not acquire any rights to the tools; the tools remain the property and possession of our company. We undertake the obligation to keep these tools for the ordering party for a period of three years starting after the last shipment. In case, the ordering party informs us about orders to be placed within an additional year from then on before this period expires, we shall be obliged to hold the tools in safe custody for this time. Without further information, we shall be entitled to dispose of the tools freely.

- 4.3 All invoices - including invoices for partial deliveries - are **due at the latest on 25. of the month following the delivery** and are payable without discount. Preferably, payments shall be made by bank transfer to the bank account mentioned on the invoice, indicating the invoice number.

- 4.4 For all orders with a contractual delivery time or delivery time requested by the ordering party of more than four months after placing the order, we are entitled to invoice the ordering party with the respective price increases of material and wages in the scope and as a compensation for these price increases arising between order conclusion and delivery.
- 4.5 In case we accept a returning of goods without having any obligation against the ordering party, we are entitled to get a lump sum for costs of 20 % of the respective net invoice amount plus value added tax, unless we are not able to prove that the damage is higher for the ordering party or the ordering party is not able to prove that the damage is lower for us.
- 4.6 In the case of default of payment or reasonable concern over substantial deterioration of the financial position or inability to pay of the ordering party, we are entitled to suspend delivery or, at our own choice, demand the immediate advance payment of all claims – even those not yet due – including deferred claims and claims from bills of exchange, or to demand appropriate collateral. If the ordering party does not comply with the demand for advance payment or collateral security within a reasonable period set by us, we shall be entitled to withdraw from all contracts and to charge the ordering party any costs that have been or will be incurred by us as well as any loss of profit. The rights pursuant to the German Insolvency Code (*Insolvenzverordnung*) shall remain unaffected.
- 4.7 We have the right to assign our claims against the ordering party to a third party.

5. Long-term Contracts / Price Adjustment

- 5.1 Open-ended contracts may be terminated giving 12 months notice.
- 5.2 If a substantial change of the wage, material or energy costs occurs with regard to long-term contracts (contracts with a term of more than 12 months and open-ended contracts), we shall be entitled to make a reasonable price adjustment in due consideration of these factors. At the ordering party's request, we shall provide evidence of these changes.

6. Delivery / Risk Assumption / Terms of Delivery

- 6.1 Our written invoice shall be authoritative for the scope of delivery. The quantities authoritative for the invoice shall be determined ex works before dispatch, unless delivery is made by us from a different location in accordance with the agreement.
- 6.2 The title shall be transferred to the ordering party upon dispatch of the delivery ex works at the latest. The same applies in the case of partial deliveries. If delivery is delayed for reasons attributable to the ordering party, default of acceptance and transfer of the title shall come into effect as soon as we have notified the ordering party of our readiness to deliver.
- 6.3 Terms of delivery are to be agreed upon separately. Any terms of delivery contained in

an offer shall be non-binding. If a term of delivery has been agreed in writing, it shall come into effect on the date of the signing of the contract or – in the case of a telephone or written order – on the date of our confirmation of the order, but not until all technical issues have been clarified and not until we have received any agreed down payment by the ordering party. The term of delivery shall be deemed observed if the goods are dispatched within this period. In any case the observance of the term of delivery by us requires the performance of the contractual obligations by the ordering party. The delivery time shall be deemed observed if the delivery item has left the works or the ordering party has been notified of our readiness to deliver by the expiration of this period.

- 6.4 If on our side or on the side of our own suppliers events should occur that are beyond our control, such as an Act of God, interventions of public authorities, export and/or import bans, industrial action at our own or external facilities, delay or failure of the delivery of essential raw material, materials or parts, mechanical breakdown or power failure, then the term of delivery shall be extended appropriately, even if the delivery is already delayed. The ordering party must be informed of such an event without delay. We shall not be held liable during the period of the aforementioned events or for any damage or consequential damage caused by such events.

The same shall apply if information, acts of co-operation or final product requirements by our ordering party, which are required for the dispatch or delivery of the goods, are received after the confirmation of order has been dispatched.

If through no fault of our own, despite having entered into supply agreements with due diligence and in good time, our own suppliers do not supply us, either in whole or in part, we shall be entitled to withdraw from the contract with the ordering party to this extent. We shall not be held liable for any damage or consequential damage caused by this.

- 6.5 In the case of non-compliance with the terms of delivery, the ordering party shall be entitled to the rights from §§ 281, 323 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) only if it has set an appropriate period of grace for delivery. In the case of partial deliveries, it shall be assumed that the ordering party has an interest in the partial delivery.
- 6.6 If the ordering party defaults on the acceptance of at least one partial delivery, we shall be entitled – after expiration of a period of grace set by us, which shall be two weeks at minimum – to withdraw from the entire contract or from parts thereof, or to claim damages for non-performance with respect to the entire contract or parts thereof. If we claim damages for non-performance, then the damage to be compensated shall be a lump sum at 20% of the purchase price plus any value added tax, unless we prove that the damage is higher or the ordering party proves that the damage is lower.

7. Notice of Defects and Warranty; Recourse/Manufacturer's Regress

- 7.1 Any warranty rights of the ordering party require that the latter has duly attended to its obligations to inspect the delivery items and give notification of any defects pursuant to § 377 of the German Commercial Code (*Handelsgesetzbuch – HGB*). Notification of any apparent defects must be given promptly in writing within 14 days of delivery. Notification of any latent defects must also be given promptly in writing within 12 months of

receipt of the delivery.

If the acceptance of the goods or an initial sampling inspection has been agreed, the notification of defects shall exclude any such defects, which the ordering party could have ascertained during a diligent acceptance or initial sampling inspection.

- 7.2 Warranty claims lapse 12 months after the ordering party has received the delivery of the new goods supplied by us. This shall not apply if longer periods are prescribed by the law according to § 438 Part 1 No. 2 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*) (constructions and construction materials), § 479 par. 1 of the German Civil Code (recourse claims) and § 634 a par. 1 of the German Civil Code (construction defects).
- 7.3 If, despite all care taken, the delivered goods exhibit a defect, which was already existent at the time of transfer of risk, subject to notification of defects within the prescribed period, we shall, at our choice, either repair the goods or supply replacement goods within a reasonable period of grace (supplementary performance). The ordering party is obliged to give us the opportunity to inspect any rejected goods. Recourse claims shall remain unaffected by the preceding provision.
- The right to supplementary performance, however, only exists if, after the defective parts have been deducted from the (partial) delivery quantity, said quantity falls below the minimum quantity threshold set out in DIN 6930, Part 1, par. 3.5.
- 7.4 At our request, the ordering party must return the goods to us in order to remedy any defects. The goods must be complete, correct, packaged and labelled, including the serial and model numbers. Furthermore, a copy of the delivery note must be included and the order confirmation and invoice numbers must be stated. At our choice, we may rectify the defects at the premises of the ordering party.
- 7.5 If the supplementary performance fails, the ordering party may – without prejudice to any claims for compensation – withdraw from the contract or decrease the payment.
- 7.6 here shall be no warranty claims in the case of negligible deviation from the agreed appearance and workmanship, negligible impairment of the usability, natural wear or abrasion and in the case of damage caused after the transfer of risk as a result of incorrect or negligent handling, excessive operational demands, unsuitable equipment, defective construction work, unsuitable founding ground or due to special external influences not contemplated in this contract. If the ordering party or a third party improperly carries out repair works or makes any modifications without our consent, no warranty claims shall be made for such work and/or the resulting consequences.
- 7.7 Any claims of the ordering party for expenses required for the purpose of the supplementary performance, in particular transport, infrastructure, labour and material costs, shall be excluded, if these expenses increase because the goods delivered by us have subsequently been shipped to a location other than the ordering party's place of business, if such shipment is not in accordance with the normal use of the goods.
- 7.8 Any recourse claims of the ordering party against us shall only exist to the extent that the ordering party has not entered into any agreements with its customer(s) that exceed the warranty claims prescribed by law. With regard to the scope of a recourse

claim of the ordering party against us, subparagraph 7.7 shall apply accordingly.

7.9 In the case of fraudulent concealment of a defect or in the case of acceptance of a guarantee for the appearance and workmanship of the goods at the time of the transfer of risk as defined by § 444 of the German Civil Code (*Bürgerliches Gesetzbuch – BGB*), the rights of the ordering party shall be based exclusively on the legal requirements.

8. Liability

8.1 We shall be liable for compensation according to the legal requirements for personal injury and for damage pursuant to the German Product Liability Act (*Produkthaftungsgesetz*).

8.2 With regard to any other damage, we shall be liable exclusively in accordance with the following regulations:

a) Pursuant to the legal requirements, we shall be liable for damage caused by fraudulent behaviour, as well as for damages caused by intent or gross negligence of our legal agents or senior executives.

b) We shall be liable for compensation limited to the amount of foreseeable damage typical for the contract, for damage resulting from the slightly negligent breach of fundamental contractual obligations or material contractual obligations (option 1) and for damage caused by our ordinary vicarious agents through gross negligence or with intent, without breaching fundamental contractual obligations or material contractual obligations (option 2).

Material contractual obligations are obligations, which are necessary to render the due execution of the contract possible; therefore, the contractual partner trusts and is entitled to trust in the execution of said obligations.

c) Within the scope of 8.2 b) option 1 of this section, we shall not be liable for any loss of profit, indirect damage, consequential damage caused by a defect or third-party claims.

8.3 Any comparative negligence of the ordering party, in particular any inadequate co-operation, organisational errors or breach of other secondary obligations, shall reduce the amount of any claim for compensation.

8.4 In each individual case our liability shall be limited to three times the amount invoiced for all deliveries and services that form the basis of the respective order of the ordering party, unless the ordering party provides evidence that the damage is higher.

8.5 In all other cases our liability is excluded.

8.6 The ordering party is obliged to promptly notify us in writing of any damage as defined in the above-mentioned liability provisions or to have such damage documented by us in order to ensure that we are informed as early as possible and, if required, will be able to take mitigation measures together with the ordering party.

9. Retention of Title and Security Interests

- 9.1 We reserve the right to ownership of the goods until all of our claims against the ordering party arising from the business relationship, including all future claims arising from any contracts entered into either at the same time or at a future date, have been settled. This also applies if individual or all of our claims have been incorporated in an open account and the balance has been struck and accepted.
- 9.2 The ordering party is obliged to treat the purchased goods with care until ownership has been transferred completely to the ordering party. In particular, it is obliged to adequately insure the goods against theft, fire and water damage at replacement value at its own expense. If any maintenance or inspection work is required, the ordering party must duly carry out such work at its own expense.
- 9.3 The ordering party shall be entitled to resell the goods subject to retention of title in the due course of business only if, in doing so, it hereby assigns to us any and all claims against its customers or a third party that result from the resale. If goods subject to retention of title are sold either unprocessed or after processing or in combination with §s that are exclusively owned by the ordering party, then the ordering party hereby assigns to us any and all claims resulting from this resale in full. If goods subject to retention of title are resold by the ordering party – after processing/in combination – together with goods that are not owned by the ordering party, then the ordering party hereby assigns to us any and all claims resulting from the resale totalling the value of the goods subject to retention of title, including all ancillary rights, and with a priority over all other claims. We shall accept the assignment.

If there is a genuine or non-genuine current account relationship between the ordering party and the third party, or if such an account is later set up, then the ordering party hereby assigns to us the any and all claims from drawn balances or balances to be drawn in the future, as well as the right to determine the current balance and the right to cancel the current account.

The ordering party shall be authorised to collect these claims even after assignment until cancelled by us. Our right to collect these claims ourselves shall remain unaffected by this; however, we undertake not to collect these claims as long as the ordering party duly fulfils its payment and other obligations. We are entitled to ask the ordering party to disclose to us the assigned claims and their respective debtors, to provide all details required for collection of such claims, to hand over the relevant documents and to notify the debtors of the assignment.

- 9.4 The ordering party shall carry out any treatment or processing of the goods subject to retention of title on our behalf; this shall not incur any obligations on our part. If the goods subject to retention of title are processed, combined, intermingled or mixed with other goods that are not owned by the ordering party, we shall be entitled to the resulting co-ownership share in the new § at the ratio of the value of the goods subject to retention of title to the remaining processed goods at the time of processing, combining, intermingling or mixing. If the ordering party purchases the sole ownership of the new §, then the contractual partners shall agree that the ordering party shall grant us co-ownership of the new § at the ratio of the value of the processed or combined, intermingled or mixed new article and shall hold it in safe custody for us free of charge.

- 9.5 If, in the context of the payment of the purchase price by the ordering party, we become liable on the basis of bills of exchange, then the retention of title as well as the underlying claim resulting from the delivery of goods do not expire until the bill of exchange is cashed by the ordering party as the acceptor.
- 9.6 If the value of the existing securities exceeds the claims to be secured by more than 20 %, then we shall be obliged to release securities at the request of the ordering party.
- 9.7 The ordering party may not pledge or assign as collateral the goods subject to retention of title without our express consent. If our security interests are impaired by a third party, in particular in the case of confiscation or attachment of delivery and/or claims, the ordering party must immediately notify us by sending us the available documentation (such as attachment records etc.) and shall advise the third party of our security interests. The ordering party is obliged to reimburse us for the costs resulting from the defensive measures required as a result of the impairment of our security interests.
- 9.8 We shall be entitled to take back the goods subject to retention of title in case of pending cessation of payment, inability to pay or if we receive information, which indicates a substantial deterioration of the financial situation of the ordering party; the ordering party hereby gives its irrevocable and unconditional approval to us collecting the goods. The same shall apply in the event of compulsory enforcement and objections to bills of exchange or cheques in respect of the ordering party.

10.1 Special Conditions for Processing Contracts

- 10.1 The stipulations of these General Terms and Conditions of Sale and Delivery also apply with the hereinafter mentioned deviations for concluded contracts for services and contracts for work and material.
- 10.2 In case the ordering party provides us with or supplies materials, pieces of materials, semi-finished products or tooling devices for carrying out contracts for services or contracts for work and material, we will treat and machine them carefully and with due diligence. However, we are only obliged to carry out inspections upon express consent and absorption of the inspection costs by the ordering party.

Shall the parts provided or supplied be defective due to material faults, the respective handling costs have to be reimbursed to us.

In case the parts provided or supplied are defective due to improper treatment by us, we undertake to carry out the work free of charge on a new part to be sent to us.

Furthermore the regulations of §§ 7 and 8 apply.

- 10.3 The ordering party solely bears the responsibility regarding content and correctness of documents provided by him to us e.g. drawings, gauges and samples. We are not obliged to check the documents provided to us regarding correctness of contents and infringement of third parties' rights. The ordering party has to release us from any third party's claims, in case the objects which we have produced in accordance with the

documents of the ordering party infringe any third party's rights.

11. Other regulations

- 11.1 Side agreements, modifications and supplements to this contract require written form.
- 11.2 Offsetting against our claims is only permissible in case of undisputed and legally recognized counterclaims. The assertion of rights of retention which are not based on the same contractual relationship is excluded.
- 11.3 Should a regulation of these General Terms and Conditions of Sale and Delivery be totally or partially prove to be invalid, the legal validity of the remaining regulations remains unaffected herefrom.
- 11.4 Place of performance is Overath. Applicable law shall be the substantive law of the Federal Republic of Germany. The regulations of the UN Convention on the International Sales of Goods are excluded. Place of jurisdiction is the competent court responsible for our registered place of business. However, we are entitled to file a lawsuit at any other legal place of jurisdiction. The ordering party has to bear all necessary costs arising from the assertion of our claims abroad.