

# General Terms and Conditions of Business

## I. AREA OF APPLICATION

1. The Terms and Conditions of Business set forth below are applicable to the entire business relationship with our purchasers. The purchaser acknowledges them as binding for the present contract and also for future transactions. Any diverging agreement shall be subject to our written acknowledgement. The purchaser's terms and conditions of purchase will never become a part of the contract.
2. These conditions are only applicable to independent contractors as defined in section 14 of the BGB (*Civil Code*), public-law entities or public-law special funds pursuant to section 310 of the BGB. Independent contractors in the meaning of section 14 of the BGB are natural or juridical persons or partnerships with legal capacity acting in the exercise of their trade or self-employed professional activity when it comes to concluding the legal transaction.

## II. OFFERS, EXTENT OF PERFORMANCE

1. Our offers are non-binding. Oral agreements and agreements by telephone are only binding if we have confirmed them in writing.
2. The documents which belong to our offers, such as pictures and drawings, and indications of measurements or weight are only approximate, unless we have explicitly marked them as binding.
3. The extent of performance is determined by our written order confirmation. If such a confirmation does not exist, our offer is decisive. Side agreements and amendments are only valid if confirmed in writing by us.
4. Our delivery quantities may vary from the ordered quantities by +/- 5%. The relevant additional quantities must be accepted and paid by the purchaser. In the event of delivery of a respective lacking quantity it shall not be possible to assert any claims.
5. Additional material quantities resulting from packaging units must be accepted, unless the material can be used otherwise.

## III. DELIVERY, TIME OF DELIVERY

1. The terms of delivery mentioned in our order confirmations or otherwise agreed upon with a purchaser are decisive. The compliance with these times requires that any materials which are to be supplied by the purchaser are received in due time and the complete information about the production as well as the complete information about the exact specification. If these prerequisites are not made in due time, the period for delivery is extended by the duration of the delay.
2. The period for delivery is deemed as having been complied with, if the consignment has been sent or collected within this period. If the handover is delayed due to reasons for which we are not responsible, the period for delivery is deemed as having been complied with if the completion of the goods or their readiness for dispatch has been reported within the period of delivery.
3. In the event that materials are made available by the purchaser, the purchaser shall be responsible for delivering the material to us not later than two weeks prior to the start of production in an examined, identified, strapped condition and ready for use in an automat, and at its own expense. 2% additional material supply shall be taken into account. If part of the material quantities provided by the purchaser is missing requiring that machinery has to be prepared several times or if technical alterations to the products impede production, we will be entitled to bill the respective additional cost to the purchaser.
4. Partial deliveries are allowed to an extent which is reasonable for the purchaser.
5. If we are impeded from complying with our obligations by unforeseeable extraordinary circumstances, which we could not avert despite taking the care reasonable in the case, regardless of whether the circumstances affect our factory or our suppliers – e. g. disruptions of the operation, interventions by authorities, difficulties with energy-supply – the period for delivery is, if the delivery or performance has not become impossible, extended by the duration of the impediment. If the delivery or performance becomes impossible by the circumstances mentioned above, we are released from our obligation to deliver.
6. The period for delivery is also extended in a reasonable extend in case of strike or lockout. If the delivery or performance becomes impossible we are released from our obligation to deliver. If, in the cases mentioned above, the period for delivery is extended by more than one month, the purchaser is entitled to withdraw from the contract. Claims for damages are excluded. If the aforementioned circumstances affect the buyer, the same legal consequences apply for his obligation to accept the goods. We can only rely on the aforementioned circumstances if we have notified the buyer immediately.
7. In these cases we will return materials handed over to us to the purchaser at the purchaser's expense.
8. If the dispatch or the delivery is delayed upon the purchaser's request, we may, beginning one month after notification of completion or readiness for dispatch, request storage fee in the amount of one half percent of the net amount of the invoice for each month or part thereof. The storage fee is

capped at five percent of the net amount of the invoice, unless we prove higher costs.

## IV. PRICES AND CONDITIONS OF PAYMENT

1. Our prices are valid ex works. We may amend the prices correspondingly, if changes in the prices of materials or changes in wages occur four months after the conclusion of the contract or later.
2. Our invoices are due for payment within eight days of the invoice date, unless agreed otherwise. For development services 30% will be due at the time of awarding the order, 40% when the first sample is delivered, and 30% once the order has been completed.
3. Non-recurring costs such as one-time order costs will be charged immediately upon receipt of the order. 50% of the costs of materials will become due six weeks prior to the delivery of the components. In addition, we are entitled to bill material we bought ourselves to the purchaser in advance if the purchaser is responsible for the delay of production.
4. If in the event of make-and-take or forward orders only part of the agreed quantity is purchased within the agreed period, then we will be entitled to opt for either charging the price applicable to the relevant lot amount for the delivered portion, or delivering the quantity not yet requested and bill it accordingly.
5. In case of deliveries abroad all duties, fees, taxes, costs for technical examinations etc., which accrue outside the Federal Republic of Germany, are to be born by the purchaser. This also applies for the costs of any legalisation of documents, invoices from consulates etc.
6. A set-off with counterclaims or the assertion of rights of retention is admissible in as far as the purchaser's claims are undisputed or determined by a final judgement of a court.
7. We expressly reserve the right to deny cheques or bills of exchange. Acceptance will only be made on account of performance ("erfüllungshalber").

## V. TERMINATION

Cancellation (termination) of an order is only possible in return for payment of the costs incurred up to such date and possible consequential costs (especially reparation costs for machinery; scrapping costs; idle time costs). The cancellation costs will be calculated on the basis of the actual expenses, unless other agreements have been made by way of individual contract.

## VI. RESERVATION OF TITLE

1. We retain title to the goods until full payment has been made for all claims, under our business relationship with the purchaser and until the encashment of all cheques and bills of exchange.
2. The purchaser may sell the goods under reservation in the ordinary course of business. The purchaser hereby assigns to us its claims resulting from the resale of the goods under reservation. We accept the assignment. The purchaser is obliged to notify his customers of the assignment upon our request. Claims and the names of the buyers/debtors of the purchaser have to be made known to us.
3. The purchaser is entitled to collect the claims from the onward sale. In case the purchaser's payments are delayed or if circumstances become known to us which, according to commercial judgment, limit the purchaser's creditworthiness, we are entitled to revoke the permission to collect the claims.
4. Any processing of goods which are subject to a reservation of title is done for us as the producer in the sense of sec. 950 of the BGB. If the goods are joined or interspersed with other goods not belonging to us, we acquire co-ownership in the new goods in the relation of the net invoice price of the goods under reservation to the net invoice value of the other goods used at the time of processing or interspersation.
5. The title in goods which are our property may not be transferred to third parties as security. If third parties access the goods, in particular if they are impounded, the purchaser will make our property in the goods known and inform us immediately and transmit a copy of the protocol of impoundment to us.
6. If the value of the security exceeds the value of our claims by more than 20 %, we are, upon the purchaser's request, insofar obliged to return or release securities according to our choice.

## VII. PACKAGING AND SHIPMENT

1. Shipment will be made ex works in returnable packaging ("Pendelverpackungen") or in packaging made available by the purchaser free of costs. Packaging will be made in accordance with technical requirements and as customary in trade. Where the packaging is provided, we will not grant any warranty for possible damages caused by defective packaging.
2. Special packaging and replacement packaging will be charged at cost price.

## VIII. TRANSFER OF RISK

1. The risk of accidental loss and accidental deterioration of the goods shall pass upon its delivery, in case of shipment upon the delivery of the goods to

the forwarder, carrier or other persons appointed for the execution of the shipment.

2. The same applies to returns, if any, by the purchaser.

3. Shipment insurance will be charged at a rate of 1% of the value of the goods. The insurance will only be taken out on the purchaser's request and at its expense.

## IX. LIABILITY FOR DEFECTS

1. Our deliveries shall be inspected upon receipt for their due condition. The purchaser shall guarantee an incoming goods control pursuant to AQL. Obvious defects may be notified in writing only within two weeks upon receipt of the goods. Otherwise, the assertion of rights for defects is barred. To meet the deadline it will be sufficient to send the notification in time. In any other respect section 377 of the HGB (*Commercial Code*) will not be affected.

2. If the testing of the functional features by way of an electric test (own manufacture level) has not been agreed on the basis of an individual contract, we will only be liable for the compliance with our workmanship standards upon inspection.

3. Rights for defects will be excluded if the purchaser or a third party has conducted alterations to the delivered goods, unless the purchaser proves in connection with the notification of defect that the alterations were not the cause for the defect.

4. In the event of a justified complaint we will remedy the defects as we deem fit either by subsequent improvement (removal of the defect) free of charge or by replacement supply (delivery of an object free of defects). In such a case we will pay the costs for e.g. shipment, travel, work and materials required for the subsequent performance. Should the subsequent improvement or the replacement delivery prove abortive, the purchaser may, if the defect is not merely minor, withdraw from the contract or, in case of minor defects, reduce the purchase price. Any claims for damage remain unaffected.

5. The shipment of the rejected about goods must be made in a workmanlike manner.

6. Only upon written agreement with us, the purchaser will be entitled to remove the defects itself and claim reimbursement of the expenses incurred therefore from us.

7. Subsequent improvement is excluded if there is no notification of defects as required in section 377 of the HGB as well as in section IX. clause 1 above.

8. Claims for damages due to defects are limited as follows:

In case of the slightly negligent violation of non-material contractual obligations we are not liable. Our liability for consequential damages is, except in case of intent, gross negligence or violation of material contractual obligations, excluded. In so far as we are liable for consequential damages, the liability is limited to foreseeable damages not caused by extraordinary circumstances. The aforementioned limitation of liability does not limit the purchaser's claims based on any harm to the body or health attributable to us or in case of the loss of the life of the purchaser or his assistants. Also, the purchaser's claims under the German law on product liability (*Produkthaftungsgesetz*) and claims under a guarantee given by us as well as claims based on the fraudulent concealment of a defect remain unaffected.

## X. EXCLUSION OF LIABILITY/LIMITATIONS OF LIABILITY

1. The purchaser's claims for defect compensation or reimbursement of expenses – regardless of the legal ground therefore – are excluded, provided that the damage is not attributable to a breach of duty committed wilfully or with gross negligence, or the breach of a material contractual obligation by us, our legal representatives or agents. Material contractual obligations are such the fulfilment of which is strictly necessary to allow the performance of the contract in the first place, especially our duty to deliver the goods to be manufactured, as the case may be, including the surrender of the goods and the procurement of title and possession thereto.

2. The damage claims of the purchaser are limited to damages typical to the contract and foreseeable, provided that we, our legal representatives or agents have only acted with slight negligence.

3. Exclusion and/or limitation of liability pursuant to clauses 1 and 2 above will not be applicable to claims under product liability. They will further not be applicable to damages resulting from the injury of life, limb or health of the purchaser based on a negligent or wilful breach of duty by us or on a wilful or negligent breach of duty committed by any of our legal representatives or agents. Likewise, they will not be applicable to the extent in which we concealed the defect with malicious intent or granted a guarantee for the quality of the object.

4. The burden of proof for the facts which are the basis for limitation of liability or an exclusion of liability is upon us.

## XI. PRESCRIPTION

1. The prescription period is

a) for claims for repayment of the remuneration due to withdrawal from the contract or reduction of the contract price: one year as of the delivery of the

goods, but not less than three months of the issue of an effective statement of withdrawal or reduction for duly notified defects;

b) for other claims based on material or legal defects: one year;

c) for other claims for compensation of damages or expenses incurred in vain: two years starting from the date when the ordering party became aware of the circumstances constituting the claim, or should have so become aware in the absence of gross negligence.

Prescription will become effective not later than upon the expiration of the maximum periods established in section 199 of the BGB.

2. For compensation of damages and expense in the cases below, however, the statutory prescription period will always apply: claims under product liability; claims for the injury of life, limb or health of the purchaser attributable to a wilful or negligent breach of duty of any of our legal representatives or agents; moreover, claims based on the fact that we concealed a defect with malicious intent or granted a guarantee for the quality of the object.

3. Subsequent improvement of the delivered goods will neither suspend the original warranty periods, nor will they start from the beginning.

## XII. PROPRIETARY RIGHTS

For goods manufactured according to the purchaser's specifications we will not be liable to the purchaser in the internal relationship if third party proprietary rights are violated. We reserve the right to assert recourse claims against the purchaser. This is also applicable if we participated in the development or developed the goods in accordance with the purchaser's specification insofar as the violation was caused by the purchaser's specifications.

## XIII. GOVERNING LAW, PLACE OF PERFORMANCE AND VENUE

1. The law of the Federal Republic of Germany shall govern. The provisions of the UN Sales Convention shall not be applicable.

2. Place of performance for delivery and payment shall be Delbrück (Germany).

3. Venue for all the disputes arising under the contractual relationship, directly or indirectly, shall be Delbrück (Germany).

**paragon GmbH & Co. KGaA**

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