

General Terms and Conditions of GMAK Kaltformteile GmbH & Co. KG



§ 1 Scope

These Terms and Conditions of Sale apply to companies, legal entities under public law and special funds under public law. Our deliveries are made exclusively on the basis of the following conditions. Our terms and conditions of sale apply exclusively. Supplementary terms and conditions of the Purchaser which deviate from these conditions or are unfavourable to us shall not become part of the contract even if we do not object to them separately or execute the order without reservation in the knowledge of the general contractual terms and conditions of the Purchaser.

2.1. Our offers are subject to change and non-binding unless we have expressly designated them as binding in writing. Declarations of acceptance and orders of the Purchaser, insofar as they are to be qualified as an offer according to § 145 BGB (German Civil Code), shall only become binding through our written order confirmation. We will aim to accept the Purchaser's orders within 5 working days from receipt of the order.

2.2. The documents belonging to our offer within the meaning of 2.1. such as (but not limited to) illustrations, drawings etc. as well as the dimensions and weights resulting therefrom are only approximate unless we have expressly designated them as binding in writing. The same applies to indications of use. We reserve the right to customary tolerances within the scope of what is reasonable for the Purchaser.

2.3. We reserve the property rights and copyrights to all documents provided to the Purchaser in connection with the placing of the order, such as (but not limited to) drawings, etc. These documents shall not be made accessible to third parties unless we give our written consent to do so. Insofar as we do not accept the Purchaser's offer within the period specified in section 2.1, these documents shall be returned to us without delay.

§ 3 Long-term and call-off contracts, price adjustment

3.1. Contracts without a specified term (indefinite contracts) can be terminated by either Party with 6 months' notice.

3.2. If, in the case of long-term contracts (contracts with a term of more than twelve months and indefinite contracts), a significant change in wage, material or other costs occurs, each contracting party shall be entitled to demand an appropriate adjustment of the price taking these factors into account. If the target quantity is exceeded by or fallen short of +/- 25%, the partners are required to adjust the unit price accordingly. In the case of delivery contracts on the basis of call-off, binding quantities are to be communicated to us by call-off at least 4 months before the delivery date, unless otherwise agreed. Changes must be discussed with our sales department and clarified in case of emergency. Possible additional costs caused by a delayed call-off or a change at short notice with regard to time or quantity by the Purchaser shall be borne by the Purchaser.

§ 4 Prices and terms of payment

4.1. Unless expressly agreed otherwise in writing, our prices are ex works excluding packaging and plus VAT at the applicable rate. Costs of packaging will be shown separately in our invoices.

4.2. The purchase price shall be paid within 14 days after delivery with 2% discount or after 30 days net. Default interest will be charged at the statutory rates. We reserve the right to claim proven higher damages for delay.

§ 5 Offsetting and rights of retention

The Purchaser shall only be entitled to set-off in the event that his counterclaims have been finally adjudicated upon by the courts or are undisputed. The Purchaser shall only be entitled to exercise a right of retention insofar as his counterclaim is based on the same contractual relationship.

§ 6 Delivery period

6.1. Delivery times are generally non-binding and approximate, unless we have expressly stated them as binding. In case of doubt, the delivery period shall begin upon dispatch of the order confirmation by us.

6.2. The observance of deadlines for deliveries shall be subject to the timely receipt of all documents to be provided by the Purchaser, necessary approvals and releases, in particular of plans, as well as the observance of the agreed terms of payment and other obligations by the Purchaser. If these prerequisites are not fulfilled in time, the deadlines shall be extended accordingly; this shall not apply if we are responsible for the delay.

6.3. At our request, the Purchaser is obliged to declare within a reasonable period of time whether he will withdraw from the contract due to the delay in delivery or insist on delivery.

6.4. We are entitled to make partial deliveries as well as short or excess deliveries of up to approx. 10%. Excess or short quantities of 20% in the case of custom-made products do not cause a claim for return or non-delivery of the missing quantity.

§ 7 Transfer of risk

7.1. Delivery shall be “ex works” in accordance with Incoterms 2020, unless we have expressly agreed otherwise with the Purchaser. The risk of accidental loss and accidental deterioration of the item delivered by us shall therefore pass to the Purchaser upon handover to or collection by the transport person, unless we have expressly assumed in writing the dispatch or assembly of the delivery item. This also applies if partial deliveries are made.

7.2. If the delivery is delayed for reasons for which the Purchaser is responsible or if the Purchaser is in default of acceptance for other reasons, the risk shall pass to the Purchaser at the time of the beginning of default of acceptance.

§ 8 Force majeure

Force majeure, labour disputes, strikes, riots, official measures, failure of our suppliers to deliver and other unforeseeable, unavoidable and serious events shall release us from our obligation to perform for the duration of the disruption and to the extent of their effect. This shall also apply if these events occur at a time when we are in default, unless the default was caused intentionally or by gross negligence. We shall be obliged to provide the necessary information without delay within the bounds of what is reasonable and to adjust our obligations to the changed circumstances in good faith.

§ 9 Retention of title

9.1. We retain title to the delivered item until full payment of all claims arising from the delivery contract. This shall also apply to all future deliveries, even if we do not always expressly refer to this. We are entitled to take back the goods if the Purchaser acts in breach of contract.

9.2. As long as the ownership has not yet passed to him, the Purchaser is obliged to treat the goods with care, in particular (but not limited to) he is obliged to insure them at his own expense against theft, fire and water damage at their replacement value. As long as ownership has not yet been transferred, the Purchaser must inform us immediately if the delivered item is seized or exposed to other interventions by third parties. Insofar as the third party is not in a position to reimburse us for the court and out-of-court costs of an action pursuant to 771 of the German Code of Civil Procedure (ZPO), the Purchaser shall be liable for the loss incurred by us.

9.3. The Purchaser shall be entitled to resell the reserved goods in the normal course of business. The Purchaser hereby assigns to us the claims against the customer arising from the resale of the goods subject to retention of title in the amount of the final invoice amount agreed with us (including VAT). This assignment shall apply regardless of whether the goods have been resold without or after processing. The Purchaser shall remain authorized to collect the claim even after the assignment. Our authority to collect the claim ourselves remains unaffected by this. However, we shall not collect the claim as long as the Purchaser meets his payment obligations from the proceeds collected, is not in default of payment and, in particular, no application for the opening of insolvency proceedings has been filed or there is no cessation of payments.

9.4. The processing or transformation of the goods by the Purchaser shall always be in our name and on our behalf. In this case, the expectant right of the Purchaser to the goods shall continue in the transformed item. If the goods are processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of our goods to the other processed objects at the time of processing. The same shall apply in the event of commingling. If the commingling takes place in such a way that the item of the Purchaser is to be regarded as the

main item, it shall be deemed agreed that the Purchaser shall only transfer co-ownership on a pro rata basis and shall keep the sole ownership or co-ownership thus created for us. In order to secure our claims against the Purchaser, the Purchaser also assigns to us such claims as accrue to it against a third party as a result of the connection of the reserved goods with a real property; we hereby accept this assignment.

9.5. We undertake to release the securities to which we are entitled at the request of the Purchaser insofar as their value exceeds the claims to be secured by more than 20%.

§ 10. Warranty

10.1. The statutory provisions shall apply to the rights of the Purchaser in the event of material defects and legal defects, unless otherwise stipulated below. Warranty claims of the Purchaser require that the Purchaser has complied with its inspection and complaint obligations pursuant to § 377 HGB (German Commercial Code). In doing so, he shall inspect the delivery for any defects without delay, but no later than one week after receipt, and then notify us if such defects are found.

10.2. Claims for defects shall become statute-barred 12 months after delivery of the goods by us.

10.3. We shall only be liable for compliance with objective requirements for the goods if and insofar as no agreement on quality has been made between the Purchaser and us. The subjective requirements to be complied with take precedence over the objective requirements to be complied with. The quality of the goods to be complied with shall be governed exclusively by the agreed technical delivery specifications. If we have to deliver according to drawings, specifications, samples, etc. of the Purchaser, the Purchaser shall assume the risk of suitability for the intended use. Decisive for the contractual condition of the goods is the time of the transfer of risk according to § 7.

10.4. If an acceptance of the goods or an initial sample inspection has been agreed, the notification of defects shall be excluded which the Purchaser could have detected in the course of a careful acceptance or initial sample inspection.

10.5. We provide no warranty for material defects caused by unsuitable or improper use, faulty assembly or commissioning by the Purchaser or third parties, normal wear and

tear, incorrect dimensioning (insofar as the development of the parts did not lie with us), faulty or improper handling such as extreme soiling, incorrect joining or improper storage, nor for the consequences of improper modifications or repair work carried out by the Purchaser or third parties without our consent. The same applies to wear and tear.

10.6. We shall be given the opportunity to determine the defect complained of. Upon request, a sufficient number of defective goods shall be returned to us for inspection in a cost-efficient and reasonable manner; we shall bear the transport costs if the complaint proves to be correct. If necessary, the Purchaser shall actively participate in the investigations and, if required, provide special testing equipment and facilities free of charge. The contracting parties shall inform each other of the results. If the Purchaser does not comply with these obligations or makes changes to the goods subject to complaint without our consent, he shall lose his claims for material defects. In the event of a justified notification of defects within the time limit, we shall, at our discretion, either repair the defective goods or supply a defect free replacement. If we do not meet these obligations or do not meet them in accordance with the contract within a reasonable time, the Purchaser may set us a final deadline in writing within which we must meet our obligations. After the unsuccessful expiry of this period, the Purchaser may demand a reduction of the purchase price, withdraw from the contract or carry out the necessary rectification himself or have it carried out by a third party at our expense and risk. Reimbursement of costs is excluded insofar as the expenses increase because the goods have been taken to another location after our delivery, unless this corresponds to the intended use of the goods. Separate agreements shall be made with us regarding the determination and allocation of costs of the Purchaser's expenses due to material defects, which must be based on the Purchaser's actual share of the costs and the reasonableness of the expenses and enable us to verify the reimbursement claimed by the Purchaser. We shall in no case bear installation or removal costs within the scope of subsequent performance if and to the extent that the defectiveness of the goods was known to the Purchaser at the time of installation or remained unknown to the Purchaser due to gross negligence.

10.7. Sufficient validation in the original unit must be carried out by the Purchaser itself. Material defects are excluded if they could have been detected during proper validation.

10.8. If the Purchaser requests that a complaint be processed by means of an 8D report or in any other way, the expiry of a processing period set by the Purchaser shall in no case lead to an implied acknowledgement of the complaint.

10.9. We shall not bear any costs for field actions unless these are carried out due to mandatory legal provisions (e.g. service actions) and are necessary.

§ 11. Other claims, liability

11.1. Unless otherwise provided in these Terms and Conditions of Sale, including the following provisions, we shall be liable for the breach of contractual and noncontractual obligations in accordance with the statutory provisions.

11.2. We shall be liable for damages - irrespective of the legal grounds - within the scope of fault-based liability, in particular (but not limited to) due to impossibility, delay, defective or incorrect delivery, breach of contract, breach of duties during contractual negotiations and tort in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs, insignificant breach of duty), only a) for damages resulting from injury to life, body and health, b) for damages arising from the breach of an essential contractual obligation (obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.

11.3. The limitations of liability resulting from clause 11.2 shall also apply against third parties as well as in the event of breaches of duty by persons (also in their favour) for whose fault we are responsible in accordance with the statutory provisions. They do not apply insofar as a defect has been fraudulently concealed or a guarantee for the quality of the goods has been assumed and for claims of the Purchaser under the German Product Liability Act ("Produkthaftungsgesetz").

11.4. The Purchaser may only withdraw from or terminate the contract due to a breach of duty

which does not consist of a defect if we culpably breached our duty. The Purchaser shall not be entitled to termination unless otherwise provided by these Terms and Conditions of sale. In all other respects, the statutory requirements and legal consequences shall apply.

11.5. In any case, our liability shall be limited to the amount of the respective coverage sum of our product liability insurance, insofar as no statutory liability exists. If desired, a corresponding proof of product liability insurance can be submitted to the Purchaser.

§ 12. Confidentiality

Each contracting party shall use all documents (such as but not limited to samples, drawings, models, data, etc.) and knowledge which it obtains 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. The obligation does not apply to documents and knowledge which are generally known or which were already known to the contracting party at the time of receipt without the contracting party being obliged to maintain secrecy.

§ 13. Tools

13.1. Tools manufactured by us or on our behalf remain our property. This shall also apply if the Purchaser makes payment for the tools in whole or in part. The costs of their manufacture are invoiced separately from the product price with the initial sample submission. The tool costs offered and charged by us are pro rata costs for tools required for specific articles. The costs of maintenance and proper storage as well as the risk of damage to or destruction of the production tools shall be borne by us. We shall be responsible for the manufacture of replacement production tools that have become necessary as a result of wear and tear. Our tools are subject to normal and constant wear and tear. If the Purchaser suspends or terminates the cooperation prior to the completion of the tools, Purchaser's obligation for reimbursement of (full or partial) costs shall become due with immediate effect.

13.2. If it is expressly agreed that the tools shall become the property of the Purchaser, the Purchaser acknowledges that considerable

development know how from us is embodied in the samples and means of production (tools, molds, gauges, etc.) which he has commissioned and that we have a special interest in confidentiality in this respect. For this reason, it is agreed that the Purchaser shall have no claim for the surrender of the samples and means of production, irrespective of the legal grounds, at any time, even if the Purchaser has assumed the tool cost in full and/or the supply relationship has ended. In the event of insolvency or inability to deliver by us, the Purchaser shall be entitled to demand the surrender of the tools. In the event that payment of the tooling costs has not been made in full, the Purchaser shall only be entitled to demand the return of the tools upon full payment.

§ 14. Project cancellation

In the event that a project is cancelled for reasons for which we are not responsible and no series delivery is made as a result, the Purchaser shall bear all project costs incurred in the development and manufacture of the product up to the time of notification of the cancellation of the project.

§ 15. Other

15.1. The law of the Federal Republic of Germany shall apply, excluding the conflict of laws rules and the United Nations Convention on Contracts for the International Sale of Goods (CISG).

15.2. The place of performance is our registered office.

15.3. If the Purchaser is a merchant, a legal entity under public law or a special fund under public law, the exclusive place of jurisdiction for all disputes arising from the contractual relationship shall be our registered office. We are also entitled to initiate legal proceedings at the principal place of business of the customer.

15.4. All agreements made between the parties for the purpose of executing this contract are set out in writing in this contract.

15.5. Should any provision of these Terms and Conditions and the further agreements made be or become invalid, this shall not affect the validity of the remaining terms and conditions. The contracting parties shall be obliged to replace the invalid provision with a provision that comes as close as possible to the economic purpose of the invalid provision. The same applies according to the regulatory gaps.