

## **General Terms and Conditions of Formenttechnik Bayreuth GmbH**

### **1. General information**

The following general terms and conditions shall govern all offers and order acceptances as well as all deliveries made by us. They also apply to all future business relations between us and the purchaser. Any terms and conditions other than these, in particular the purchaser's terms of purchase, shall not apply, even if they are not expressly rejected in another form. Upon acceptance of the goods at the latest, the purchaser renounces the application of its own business conditions, even if they claim exclusivity. Verbal agreements or warranties are invalid without our written confirmation. Your contract partner is Formenttechnik Bayreuth GmbH, Ritter-von-Eitzenberger-Straße 14, 95448 Bayreuth, Germany, represented by the managing directors Mr. Wolfgang Schläger and Mr. Jürgen Ziegler. We are recorded in the commercial register of the registry court Bayreuth under the number HRB 1140. These General Terms and Conditions apply to entrepreneurs. According to section 14 of the German Civil Code (Bürgerliches Gesetzbuch, BGB), an entrepreneur is a natural or legal person or a partnership with legal personality who or which, when entering into a legal transaction, acts in exercise of his or its trade, business or profession.

### **2. Prices and conclusion of contract**

- (1) As long and insofar as we have not agreed otherwise with our customer, our prices are net in Euro, always ex works, excluding packaging, plus the then applicable value added tax.
- (2) If no fixed price agreement has been made, we reserve the right to carry out reasonable price changes resulting from changes in wage, material and distribution costs for deliveries that are effected three or more months after conclusion of the contract.
- (3) Following a request from our customer, we prepare a non-binding offer and submit it to the customer. The customer may then accept the offer in writing. As long and insofar as we have submitted a target price offer, our customer cannot yet place an order on this offer because, in this case, a preliminary technical clarification is necessary that leads to a revised offer.

### **3. Technical changes**

- (1) Until delivery, we reserve the right to make technical changes to the products sold by us which increase or preserve their value and do not degrade their function.
- (2) Unless explicitly agreed otherwise, we shall be entitled to determine technical performance characteristics or dimensions of deliveries within the tolerances customary in the trade. The inclusion of such tolerances is considered agreed upon.
- (3) In the case of changes that are necessary or requested by our customer, or in the case of modifications to technical and functional specifications, drawings, data and parts lists, we shall calculate the additional expenditure and inform the customer about the possible additional charges as well as a possible delay in delivery.

### **4. Technical specifications of the customer**

- (1) Technical documents which are sent to us by our customer are marked by us as order data on the basis of the order number and form part of the order. We will roughly check this information for accuracy and completeness, but we shall assume no liability for documents which are not transmitted correctly or completely.
- (2) We shall take the technical data and/or product descriptions transmitted to us by our customer as well as the product characteristics as the basis for the manufacture and delivery of the contract products.
- (3) Insofar as we have to deliver products based on drawings and/or using parts provided by the purchaser, the latter must guarantee that this does not infringe proprietary rights of third parties. The

purchaser must notify us of existing proprietary rights and any other rights known to him. The purchaser shall indemnify us for all claims of third parties and shall compensate us for the damage caused to us.

(4) As long and insofar that we have manufactured tools according to the specifications of our customers, that these tools have been accepted and that the measuring samples have been manufactured, the measurement has been carried out and the tool has been corrected, objections and complaints can only be raised if a guaranteed output quantity has been defined in the contract documents and this quantity has not yet been reached, or if the customer can prove that the defect has existed before the acceptance. As long and insofar the alleged defect relates to a shortfall in the guaranteed output quantity, the customer shall bear the burden of proof with regard to the current output quantity.

## **5. Call-off orders**

(1) In the case of placed call-off orders, we shall be entitled to demand a binding statement no later than three months after the issuance and existence of an order confirmation, provided that the completion or acceptance dates are not fixed.

(2) In the case of placed call-off orders, we shall be entitled to deliver and invoice the total order quantity no later than twelve months after the order has been placed, unless explicitly agreed otherwise.

(3) Insofar as the purchaser does not comply with this request within a period of three weeks after receipt, we are entitled to set a final deadline of at least two weeks and to withdraw from the contract and/or to claim damages for non-performance after expiry of the deadline.

## **6. Payment arrangements**

(1) The terms of payment are established in the written order documents. Unless otherwise agreed, payments shall be due immediately upon receipt of the invoice, strictly net without deductions.

(2) If the invoice amount is not paid by our customer within ten days from the invoice date, the customer is in default. From the start of the default, we shall be entitled to demand default interest at the rate of nine percentage points above the base interest rate of the European Central Bank. We expressly reserve the right to claim higher damages due to a delay in payment.

(3) In the event of a delay in payment by the purchaser, we may also demand the immediate payment of all outstanding claims irrespective of the agreed payment terms and/or withdraw from all existing delivery contracts – including those for which there are no payment delays – or, at our choice, claim damages for non-performance.

(4) We shall not be obliged to accept bills of exchange or checks as payment. If they are accepted, this is done only on account of performance.

(5) As a matter of principle, all payments shall be credited to the oldest debt, regardless of any other terms of the buyer. Partial deliveries and partial services may be invoiced separately.

## **7. Defense of uncertainty**

(1) We shall be entitled to refuse performance if, after conclusion of the contract, it becomes apparent to us that our entitlement to consideration is jeopardized by the purchaser's inability to perform. This right to refuse performance is not applicable if consideration is rendered or security is given for it.

(2) We shall also be entitled to specify a reasonable period in which the purchaser must, at his choice, render consideration or provide security reciprocally and simultaneously against performance. If this period ends without result, we shall be entitled to revoke the contract.

## **8. Transfer of risks/shipping**

(1) If the goods are sent to the purchaser at his request, the risk of accidental loss or accidental deterioration of the goods shall pass to the purchaser upon dispatch, but not later than upon leaving our

plant/warehouse. This applies regardless of whether the goods are shipped from the place of performance and regardless of which party bears the freight charges. The purchased/ordered goods are only insured at the written request of the purchaser; in such a case, our purchaser bears the costs and has to communicate the risks to be insured.

(2) Unless otherwise specified in writing, we choose the mode and route of transport as well as the packaging.

### **9. Terms of Delivery**

(1) Delivery times are specified by us to our best knowledge and are not binding; nevertheless, we will endeavor to comply with them. In the case of events of force majeure, breakdowns, lack of workers, energy or raw material, strikes or in the case of any other events that are beyond our control, the delivery date shall be postponed by the duration of the hindrance and its effects. If no binding deadlines have been explicitly agreed, the delivery shall be due at the earliest one month after expiry of the non-binding delivery date.

(2) We are allowed to make partial deliveries at any time. Reasonable deviations from ordered quantities by up to plus/minus ten percent are permissible. The purchase price will be adjusted accordingly.

(3) In the event that we are culpably in delay with the performance of our services, our customer shall be entitled to the relevant legal rights.

### **10. Default in acceptance**

(1) If the purchaser does not accept individual deliveries or partial deliveries or refuses to accept them, we may set the purchaser an appropriate deadline for acceptance. If the customer then does not accept the goods within the set time limit, we shall be entitled to withdraw from the contract or to claim damages for non-performance. If the purchaser defaults in acceptance, the risk of accidental loss or accidental deterioration of the sales item shall pass to the purchaser at the time at which it defaults in acceptance or in payment.

(2) In the case just described, the purchaser shall compensate us for the entire damage, including transport costs. In this event, we may either choose to prove our damage or – without proof – to claim as compensation a flat rate of 30 percent of the net value of the non-accepted delivery plus the cash expenses incurred to us. The amount of compensation shall be fixed at a higher or lower rate if we prove that the damage has been higher or the customer demonstrates that it has been less.

### **11. Retention of title**

(1) We shall retain title to all goods delivered by us until full payment of all claims arising from the delivery contract has been received. This shall also apply to all future deliveries, even if we do not constantly and expressly refer to this fact. We shall be entitled to take back the product delivered by us if the purchaser acts in breach of contract.

(2) As long as ownership has not been transferred to it, our purchaser is obliged to treat the product delivered by us with care. In particular, it is obliged to insure it sufficiently at the new value at its own expense against theft, fire and water damage. If any maintenance or inspection work is required, the purchaser shall perform such work in due time at its own expense. As long as ownership has not been transferred to it, the purchaser must notify us immediately in writing if the delivered item is seized or subjected to other interventions by third parties. Insofar as the third party is not able to reimburse us for the judicial and extrajudicial costs of a lawsuit pursuant to section 771 of the German Code of Civil Procedure (Zivilprozessordnung, ZPO), the purchaser shall be liable for the loss we incur.

(3) The purchaser shall be authorized to resell the goods subject to retention of title as part of its ordinary commercial operations. It shall assign to us right now, in the amount of the final invoice amount agreed with us (including value added tax), the receivables against the buyer generated by the resale of the goods subject to retention of title. This assignment shall apply regardless of whether the contract product has been resold without or after processing. Our purchaser remains authorized

to collect the receivables even after the assignment. Our authority to collect the receivables ourselves is not affected by this. We shall, however, not collect the receivables as long as our purchaser meets all existing payment obligations to us from the revenues it receives, as long as it is not in default in payment and as long as, in particular, no application for opening insolvency proceedings has been filed or payments are not suspended.

(4) Any processing, treatment or remodeling of the contract product by our purchaser is always carried out in our name and on our behalf. In this case, the reversionary interest of the purchaser in the contract product will continue in the transformed item. If the contract product is processed with other items not belonging to us, we acquire co-ownership of the new item in the ratio of the objective value of our contract product to the other processed items at the time of processing. The same shall apply in the case of intermixture. If the intermixture takes place in such a way that the item of the purchaser is to be regarded as the main item, it is agreed that the purchaser transfers proportionate co-ownership to us and shall hold the resulting sole or co-ownership for us. In order to secure our receivables against the purchaser, the latter also assigns those receivables to us which accrue to it by the combination of the goods subject to retention of title with real estate against a third party. We accept this assignment right now.

(5) We undertake to release the securities that are due to us when the purchaser so requests insofar as and as long as their value exceeds the receivables to be secured by more than 20 percent.

## **12. Liability for defects**

(1) A special purpose of use for the subject matter of the contract shall only be deemed to have been agreed if an express written agreement is concluded between us and the purchaser.

(2) If such an agreement has not been made, we shall guarantee that the subject matter of the contract is suitable for the customary use and its quality is usual in things of the same kind and the buyer may expect this quality in view of the type of the thing.

(3) Properties are only assured by us if we confirm them in writing. A mere reference to technical standards solely serves as a more detailed product and service description and does not constitute an agreement on the suitability of the goods which goes beyond the customary use of the subject matter of the contract.

(4) The warranty claims of the purchaser in general presuppose that the latter has duly met his obligations to inspect and report the defect according to section 377 of the German Commercial Code (Handelsgesetzbuch, HGB). Hidden defects must be reported to us in writing without delay, but no later than within five days after their discovery.

(5) The purchaser shall not be entitled to process goods that have been reported as defective unless we have given our prior consent. In the event of further processing, all claims which arise due to the reported defects or as a result of further processing are excluded.

(6) In any case of a properly reported defect or any other breach of duty for which we can be held responsible, we shall be entitled and obliged to cure the reported defect or breach of duty by subsequent performance. The purchaser is only then entitled to demand a reduction of price or to rescind the contract or to claim damages in lieu of performance when two attempts at remedy have failed despite having been granted an appropriate grace period. We shall only be obliged to provide compensation for damages under the condition of sentence 2.

(7) Claims for defects become statute-barred in twelve months after delivery of the products to our purchaser. The statutory limitation period shall apply to damage claims in the case of intent and gross negligence and in the case of injuries to life, limb and health which are based on an intentional or negligent breach of duty on the part of the user. Insofar as the law stipulates longer limitation periods according to section 438 paragraph 1 sentence 2 of the German Civil Code (buildings and things for buildings), section 479 paragraph 1 of the German Civil Code (recourse claims) and section 634a paragraph 1 sentence 2 of the German Civil Code (building defects), these limitation periods apply.

(8) Claims for defects shall not be permitted in case of an insignificant deviation from the agreed quality, in case of an insignificant impairment of usability, in case of natural wear and tear and in the event of damages which, after the transfer of risks, result from faulty or negligent handling, excessive strain, unsuitable operating materials or inadequate construction works, unsuitable construction sites or special external influences which are not stipulated by the contract. If the purchaser or a third party improperly carries out repair work or modifications, there shall be no claims for defects for these measures and the consequences thereof. If we manufacture goods according to the purchaser's drawing, we shall only be liable for the execution in accordance with the drawing.

(9) Claims of the purchaser which relate to expenses required to cure defects, in particular transport costs, tolls, working costs and material costs, are excluded insofar as the expenses increase due to the fact that the goods delivered by us have subsequently been transported to a place other than the branch office of the purchaser, unless the shipment complies with their intended use.

(10) After the completion, maintenance, correction and/or repair of parts manufactured with a tool, the purchaser undertakes to measure these parts according to the valid component drawing and to release them for serial production only after its approval. If our customer disregards this obligation, all claims for any damages resulting from serial production shall be excluded and cannot be asserted on us.

### **13. General limitations of liability**

We exclude our liability for minor negligent breaches of duty insofar as these do not relate to guarantees or to damages resulting from the injury to life, limb or health or insofar as claims are asserted under the German Product Liability Act (Produkthaftungsgesetz, ProdHaftG). Furthermore, the liability for the breach of essential contractual obligations – that is to say, duties whose fulfillment make the proper execution of the contract possible in the first place and on whose observation the customer can regularly rely – shall remain unaffected. The same shall apply to breaches of duty by persons whom we use to perform our obligations.

### **14. Retention/Offsetting**

The exercise of a right of retention or the offsetting of counterclaims of the purchaser against claims to which we are entitled is excluded unless they relate to claims that have been recognized by declaratory judgment, that have been expressly acknowledged by us or that are ready for a decision.

### **15. Factoring**

Without having reported this to us and having received our consent to do so first, the purchaser shall not be entitled to assign receivables that fall under our extended and expanded right to retain title (cf. section 10 above) to a factor or to commission such a company to collect them.

### **16. Assignment**

We shall be entitled to assign our receivables.

### **17. Industrial property rights**

We reserve all copyrights and other industrial property rights in the designs, drawings and models created by us. The designs and drawings which have been created by us, as well as the designs and drawings which have been made available to us by our customer, but have been reworked by us, may not be used by our customer without our express written consent. In particular, the customer shall not be entitled to make available to third parties any designs, calculations, drawings and other business documents that have been created by us. We own the copyright for all images and graphics used by us. The same applies to the performance descriptions, functional specifications and other detailed product descriptions we have developed.

**18. Place of performance – Applicable law – Jurisdiction**

(1) The place of performance for all liabilities arising in connection with our deliveries is Bayreuth.

(2) These General Terms and Conditions, the contracts concluded with us and the entire legal relationship with us shall be governed by the law of the Federal Republic of Germany, excluding the application of the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980.

(3) The exclusive jurisdiction for all disputes concerning these General Terms and Conditions and their inclusion in the respective contract as well as for the contracts concluded with us is the court responsible for our registered office in Bayreuth.

**19. Privacy policy**

In accordance with the provisions of the German Federal Data Protection Act (Bundesdatenschutzgesetz, BDSG), we point out that we store and process all customer and supplier-related data by means of electronic data processing systems. We shall be entitled to forward the data sent to us to the persons and companies required for the rendering of services insofar as this is necessary for the delivery of the goods. Personal data that has been transmitted to us will only be stored until the purpose for which it was entrusted to us has been fulfilled. Insofar as retention periods relating to commercial or tax law must be observed, the storage time for particular data may amount up to ten years. If the consent to the storage of the personal data does no longer exist or the data has become inaccurate, we shall, upon receiving a corresponding instruction, arrange for the data to be deleted, corrected or blocked in compliance with the legal provisions. Upon request, we will provide information free of charge about all personal data that we have stored about our customers. For questions regarding the collection, processing or use of the personal data as well as for information about and correction, blocking or deletion of the data, please send an email to [info@formenttechnik-bayreuth.de](mailto:info@formenttechnik-bayreuth.de).