

GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY

for contract electroplating

Issued: 01/01/2017

1. General

- 1.1 The following terms and conditions apply only in dealings with entrepreneurs and form the basis of all our quotations, orders, deliveries and services.
- 1.2 Where mention is made in these terms and conditions of the "written" form when giving notices or declarations to the user, this means text form (email, letter, fax, etc.) as specified in Section 126b of the German Civil Code (BGB).
- 1.3 Other terms and conditions are recognised only where these coincide with our terms and conditions or where, in individual cases, they have expressly been made the basis of the respective contract or service by us or we have subsequently agreed to them.

2. Quotations

- 2.1 Our quotations are always non-binding. In cases of doubt, a contract is not formed until and unless we issue a written order confirmation, and the scope and substance of the contract is limited to that set out in the confirmation. Individual contractual agreements remain unaffected.
- 2.2 Any guide prices stated are not to be considered as quotations and form the basis of the contract only if agreed. The prices in our quotation are binding for a maximum period of four months before the order is placed.
- 2.3 Quotations in conjunction with systems may not be made accessible to third parties without our consent.

3. Prices and payment terms

- 3.1 Our prices are stated in euros ex works and are strictly net with no cash discounts or other deductions, excluding packaging, freight and insurance plus the relevant statutory value added tax. Cash discounts are granted only where expressly agreed with the contracting parties. The prices apply solely to parts that have been designed and manufactured appropriately for processing. For any further work required, such as removing paint, oil, grease, tar or old metal plating, or for the retrospective introduction of openings into hollow parts and the creation of inspection reports, we will charge the additional fees agreed with the client in advance or, if no such agreement is in place, prices that are equitable in accordance with Section 315 BGB.
- 3.2 If cost factors (production material, energy, operating materials, pay, etc.) that have an impact on pricing change significantly, i.e. by more than 5%, in the time between the conclusion of the contract and the date specified in the contract for delivery, we have the right to request that the client agree to new, reasonable prices as an amendment to the prices in the quotation in order to offset these cost increases. This applies only when four months have elapsed since the conclusion of the contract. If agreement cannot be reached, we and the customer have the right to withdraw from the contract. In the event of a reduction in the cost factors mentioned in Sentence 1, the customer has, *mutatis mutandis*, the right to request the agreement of a corresponding price reduction and, where agreement is not reached, the right to withdraw from the contract.
- 3.3 Unless expressly agreed otherwise, payments are to be made following delivery within eight days of receipt of our invoice with no deductions for cash discounts. In the event of default on payment, we will charge interest on arrears at a rate of nine percentage points above the base rate (Sections 286, 288 (2) BGB) without prejudice to any other rights.
- 3.4 The client has a right to offset its claims against unpaid amounts only if its claim is uncontested or has been determined by a court of law.

4. Delivery

- 4.1 Unless otherwise agreed, the delivery period commences when the order confirmation is received; in the event of later supply by the client of the materials to be processed, it commences at this point at the earliest.
- 4.2 If delivery is delayed as a result of unforeseeable circumstances affecting us, upstream suppliers or subcontractors, such as force majeure, strikes, shortages of raw materials, business disruptions or power outages, the client has the right to withdraw from the contract after granting a reasonable extension period. Section 323 (2) BGB remains unaffected. If delivery is impossible for us as a result of the above-mentioned circumstances, we shall be released from our obligation to deliver. If delivery can no longer reasonably be accepted as a result of these circumstances, we have the right to refuse to deliver. The client has no right to claim compensation insofar as we are not responsible for these circumstances.

- 4.3 If, following a written reminder, the client is in default in respect of its obligation to provide materials or cooperate in some other way, we have the right, after setting a final written deadline of a further 14 days, to withdraw from the contract and claim damages in lieu of performance.
- 4.4 Partial deliveries are permitted provided they are reasonably acceptable for the client in the individual case. This shall be deemed reasonably acceptable if the contractor's interest in the change is greater than or at least equal to the customer's interest in the agreed performance of services remaining unchanged.
- 4.5 Deliveries are ex works excluding packaging.

- 4.6 Risk as it applies to items belonging to the client that are to be processed by us is deemed to pass to the client when these items leave our premises, however at the latest when they are handed to the logistics company or carrier. In respect of transit damage, the contractor is liable only in the case of intent or gross negligence. This does not apply where the parties fail to give notice of or clarify any salient points before the contract was concluded. Liability for ordinary or minor negligence is excluded unless it involves the breach of material obligations under the contract within the meaning of decisions by the German Federal Court of Justice. Material obligations under the contract are deemed to be those where their fulfilment is an essential feature of the performance of the contract and where our adherence to those obligations is a matter on which the customer may rely. This does not apply where the parties fail to give notice of or clarify any salient points before the contract was concluded.
- 4.7 If the goods to be processed are collected by us at the client's request, the transit risk is borne by the client. The client is at liberty to insure against such risks. With regard to the liability of the contractor for transit damage, we refer explicitly to Point 4.06, Sentences 2 and 3.
- 4.8 The above provisions also apply where we have agreed not to charge for delivery.
- 4.9 If the goods are ready for shipping, but dispatch or acceptance is delayed for reasons beyond our control, risk passes to the client on receipt of the notice that the goods are ready for shipping.
- 4.10 The route, type of packaging and means of transport are at our discretion but without guarantee that the method selected will be the fastest and/or cheapest. The customer's preferences will be taken into account as far as reasonable. Where we also act as the logistics company, our deliveries are additionally subject to the Standard Terms & Conditions of German Freight Forwarders.
- 4.11 Goods notified as ready for shipping must be retrieved by the client without delay but at the latest after the expiry of a reasonable response period. If they are not retrieved, we have the right to store the goods at our fair discretion and at the client's cost and risk and to invoice the goods as delivered ex works.
- 4.12 If shipping or delivery of the goods is delayed at the request or instigation of the client, we reserve the right to charge storage fees amounting to 1% of the invoice amount for each month or part thereof commencing one month after notification that the goods are ready for shipping. The total amount of storage fees charged shall not exceed 5% of the invoice amount unless we are able to demonstrate that higher charges were incurred. The client is entitled to demonstrate that no storage costs at all were incurred or that they were considerably lower than the above flat rate.
- 4.13 No liability is accepted for any waiting time, provided this remains reasonable and does not exceed a week, unless collection and delivery dates have been confirmed by us as binding.
- 4.14 Insurance policies against transit damage are taken out only by order of and at the expense of the client.
- 4.15 If processed goods are returned to us for reasons beyond our control, the client shall bear the risk up to the point of receipt by us.
- 4.16 Surface-treated parts are packed only to the extent the materials to be processed were packed, the customer has requested return packaging and the packaging materials are reusable. Where packaging is additionally requested after surface treatment, this will be charged separately, and any returned packaging materials will not be accepted.

5. Claims for defects

- 5.1 All disclaimers given in these terms and conditions do not apply to liability for damages resulting from injury to life, limb or health caused by, at least, negligent breach of duty by us or intentional or negligent breach of duty by one of our legal representatives or a person employed by us in performance of an obligation. We offer a warranty for our services only under the following provisions and only to the benefit of the client as the initial recipient. It is not permitted to assign claims for defects to third parties unless customer interests in the ability to assign those claims outweigh our interests in not assigning them.
- 5.2 We guarantee professional surface treatments in terms of both materials and workmanship in keeping with the recognised rules of engineering, the applicable DIN standards or – where applicable – other appropriate standards, i.e. EN or ISO standards. Due to the nature of electroplating and chemical processes and due to quality differences in the raw materials, some deviations compared to the sample which formed the basis of the order are unavoidable.
- 5.3 Any parts surface-treated by us that exhibit defects will be reworked by us at no charge.
- 5.4 The contracting party's claims for defects expire one year after the commencement of the statutory limitation period; this period is deemed to be extended by an additional time period to accommodate the time typically required to detect the defects

in the object of the contract subject of the complaint. The period defined above does not apply in cases governed by Sections 438 (1) No. 2 and Section 634a (1) No. 2 BGB. On receipt, the goods supplied must be inspected for faults without delay where this is feasible in the course of ordinary business operations. Obvious defects must be reported to us immediately afterwards in writing. The obligation to inspect incoming products remains unaffected even if type samples have been supplied. Where defects are not immediately detectable, the same applies within the specified period once the defect is discovered.

- 5.5 If complaints are not received within the allotted time or not in the proper manner, the goods are considered to have been accepted by businesspeople as defined in the German Commercial Code (HGB).
- 5.6 Items provided to us for processing must be delivered with a delivery note or a precise written list showing quantities and the total weight. Information concerning the gross weight, however important this may be to the client, is non-binding on us. Any missing parts will be replaced by us only if the delivery was documented by a delivery note signed by us or can otherwise be proven and if risk for the missing parts had passed to us. For small and mass-produced components, no liability is accepted for rejects and volume shortfalls of up to 3% of the total quantity delivered unless this is caused by gross negligence or intent by us, our representatives or persons employed by us in performance of an obligation, or unless otherwise agreed.
- 5.7 In the event that remedial performance is unsuccessful or if the vendor refuses to provide a replacement delivery or reworked goods or if remedial performance cannot reasonably be accepted, the client is granted the right, at its option, either to reduce the purchase price or remuneration or to withdraw from the contract and claim damages as set out under Point 5.08. Rework is considered to have failed if, after the second unsuccessful attempt, there is no difference in the result in particular in regard to the nature of the goods or the defect or other circumstances.
- 5.8 Within the context of the contractual right to claim for defects, the contractor is liable for damages only in the event of intent or gross negligence – including intent and gross negligence on the part of its representatives and persons employed by it in performance of an obligation – unless otherwise provided for below, except for damages resulting from injury to life, limb or health. Liability for ordinary or minor negligence is excluded unless it involves the breach of material obligations under the contract within the meaning of decisions by the German Federal Court of Justice. Material obligations under the contract are deemed to be those where their fulfilment is an essential feature of the performance of the contract and where our adherence to those obligations is a matter on which the customer may rely. Where the above disclaimer does not apply due to a breach of material obligations under the contract, the contractor is liable only to the extent that the damage is typical for the contract and was foreseeable at the time the contract was concluded. No further claims by the client will be entertained. The above limitations and exclusions of liability do not apply where the parties fail to give notice of or clarify any salient points before the contract was concluded. The contractor's liability under the German Product Liability Act remains unaffected. Contractual penalties will not be recognised.
- 5.9 Defects in a partial delivery do not entitle the client to withdraw from the contract unless the defect in a partial delivery is so considerable that the client has no interest in accepting further partial deliveries.
- 5.10 The warranty applies only to use under normal business and climate conditions within the Federal Republic of Germany. If the goods are intended for use in particular conditions of which we were not made aware in advance and, as a result, these particular conditions were not an integral part of the contractual agreement, we cannot provide a warranty for such conditions. No claims will be accepted for defects which have been subject to attempted repair by a third party and where reworking has thereby been rendered more difficult by the user, provided that the user did not have a reasonable opportunity to remedy the defect prior to this.
- 5.11 Where the characteristics of the goods regarding visual appearance, layer thickness, corrosion resistance and coefficients of friction are warranted, the warranty is subject to the condition that the goods have not yet been installed. Warranted characteristics are subject to the condition that the goods are properly handled by the contracting party, in particular by way of appropriate transport, storage, sorting and packaging processes. If the contracting party wishes to make a claim on the basis of warranted characteristics, it must be able to prove that the goods were handled appropriately.
- 5.12 The materials to be processed must be free of casting skin, sand, tinder, carbon, burned-in grease, weld slag, graphite and paint; there must be no pores, contraction cavities, cracks, lamination, etc.; threads must have sufficient undercut. If this is not the case, we have the right to refuse to process the materials or to withdraw from the contract. If the client nevertheless insists that we process the materials, or if the materials supplied to us for surface treatment are, for reasons not apparent to us, not technologically suitable for such surface treatment, we cannot assume any warranty for a particular dimensional accuracy, adhesive strength, colour fastness or the corrosion-preventing properties of the coating where any defects are due to the unsuitability of the material and not to gross negligence or intent on our part or that of our representatives or the persons employed by us in performance of an obligation. In addition, no warranty for adhesive strength will be assumed if, after the surface treatment, the material has been shaped even if electroplated samples have been successfully shaped without the electroplating layer flaking and the client insists on the processing despite being notified of the risk of the electroplating layer flaking.
- 5.13 If the goods intended for surface treatment or a suitable sample of the material thereof is not made available to us for testing purposes before the start of processing for a sufficiently long period as defined by us in accordance with Section 315 BGB, however for a period of six weeks at a minimum, we cannot accept any liability for corrosion damage unless caused by intent or gross negligence by us, our representatives or the persons employed by us in performance of an obligation. If, in individual cases, a customer specifies a delivery date which does not permit us to carry out short-term tests or other chemical and/or mechanical analyses or to generate test protocols or inspection certificates due to time constraints, and if the customer insists, despite corresponding prior notice by us, that we perform the surface treatment without carrying out such short-term tests or other chemical and/or mechanical analyses and without generating test protocols or inspection certificates, we refuse to accept any liability for damage occurring as a result of a lack of testing by us except in cases of intent or gross negligence.
- 5.14 Hollow components are electroplated on the outer surface only unless treatment of the interior has specifically been agreed. Corrosion occurring immediately on the untreated surfaces does not provide any grounds for complaint. Surface-treated materials are susceptible to condensation and friction corrosion. They must be packaged, stored and transported appropriately.
- 5.15 The client must specify the minimum layer thickness at a measuring point to be agreed and must use appropriate measures to prevent damage to the surface due to chemical or mechanical influences. We accept liability for weather damage and any damage that may later occur as a result of residues from the treatment process exuding at a later time from laminations and other inaccessible cavities only in cases of intent and gross negligence by us, our representatives or the persons employed by us in performance of an obligation. If the client considers it necessary to take measures to prevent or reverse hydrogen embrittlement, we will do so only if specifically requested; we accept no liability here except in cases of intent and gross negligence. The above limitations and exclusions of liability do not apply where the parties fail to give notice of or clarify any salient points before the contract was concluded.
- 6. Limitations of liability beyond liability for defects**
- In the event of damage not covered by Point 5.08, the contractor's liability is likewise limited as defined under Point 5.08 except in the event of damage resulting from injury to life, limb or health. These limitations of liability also do not apply where the parties fail to give notice of or clarify any salient points before the contract was concluded. Contractual penalties will not be recognised.
- 7. Security interest**
- 7.1 The items processed by us are subject to a contractor's right of retention in accordance with German law. Independently of this, the client confers on us a contractual right of retention over the items entrusted to us for surface treatment for the purpose of securing our claim under the order placed with us. This contractual right of retention is also deemed to apply in respect of outstanding payments from previous orders or performance, unless the contracting parties have agreed otherwise, provided there is some circumstance that inherently connects the subject matter of those previous orders to the current order. If the surface-treated parts are returned to the client before full payment has been made, the client hereby agrees that we are to retain a property right in those parts delivered in proportion of the value of the outstanding payment to the value of the parts delivered as security for our claims to payment and that the client is to keep the parts on our behalf in lieu of a transfer of title. The same applies *mutatis mutandis* to the reversionary interests of the client in respect of items entrusted to us for the purpose of surface treatment where such items have been supplied to the client by a third party who has retained title to those items. We reserve the right to negate the retention of title. The rights of the client to regain title from a third party to whom the client had previously, as collateral, assigned title to the items entrusted to us for the purpose of surface treatment are hereby transferred to us. We hereby accept this transfer.
- 7.2 The client is not entitled to pledge or assign any items over which we have a right of retention or which are in our possession by way of collateral. However, the client may sell the goods or process them in the way of normal business unless it has already effectively assigned the claim against its contracting party to a third party. If the goods in which we have collateral are processed by the client to form or form part of a new, movable item, this is done on our behalf and to our benefit but without any liability accruing to us. We hereby grant the client joint ownership of the new item in proportion of the value of the new item less the value of our performance to the value of the new item. The client must keep the new item with the due care of a prudent businessperson and at no cost to us.
- 7.3 In the case where, through joining, combining or mixing the items of our collateral with other movable items to form a new unitary item, the client gains sole or joint ownership of this item, as security for our claims it will transfer this right of ownership to us in proportion of the value of our collateral goods to the value of the other item and will at the same time agree to keep the new item for us in the proper manner and at no cost to us.

- 7.4 In the event that the goods processed by us and in which we retain a collateral interest or the new item made therefrom is sold, the client undertakes to inform the purchaser that we retain a collateral interest in the item.
- 7.5 To assure our claim to outstanding payments, the client hereby transfers to us all rights – including to future claims arising from the resale or further processing of the goods assigned to us with ancillary rights – in the value of the goods. We hereby accept this transfer.
- 7.6 The client is hereby empowered to collect from third parties any claims on our behalf resulting from the resale or further processing. At our request, the client shall demonstrate these claims individually and disclose to third-party purchasers the fact of the assignment while requesting them to pay to us any amounts up to the value of our claims. We are also ourselves entitled at any time to notify the purchaser of the fact of the assignment and to collect the amounts outstanding. However, we will not request the client to collect the outstanding amounts or disclose the fact of the assignment, and we will not collect the outstanding amounts ourselves or make the fact of the assignment known, as long as the client meets its payment obligations to us in the proper manner.
- 7.7 The client is required to notify us without delay of any enforcement measures by a third party affecting our security interests.
- 7.8 The client is required to take out adequate insurance cover against fire and theft to the extent possible for the items of our collateral and to assign any claims against the insurance company and/or the perpetrator of the damage to us at our request.
- 7.9 At the client's request, we undertake to release the collateral provided in accordance with the above provisions to the extent that its value exceeds the claims to be secured by more than 10%.
- 7.10 In the event that third parties should make a claim to the items of our collateral, the client hereby undertakes to make all the necessary documents available to us immediately and to reimburse us for all costs of intervention, provided the intervention is successful and final enforcement against the third parties as the party liable to pay the costs of the action has proved unsuccessful.
- 7.11 All our claims, including those arising from other contractual agreements and those where a payment extension has been granted, fall due immediately from the point that the client culpably falls into arrears on other not insignificant liabilities owed to us, ceases to make payments, becomes insolvent or if bankruptcy proceedings are initiated against it or if such proceedings are closed due to lack of assets.
In such cases, we reserve the right to refuse to supply outstanding deliveries and services and to grant the client a reasonable grace period in which it may make partial payments for partial deliveries/performance or provide collateral, at its option. After the grace period has expired without the issue being resolved, we have the right to withdraw from the contract.

8. Place of performance and court of jurisdiction

- 8.1 Where the client is a businessperson, a legal entity under public law or special fund under public law, the court of jurisdiction for both contracting parties is the registered office of the contractor. The place of performance is our registered office except in the case of warranty claims or claims in connection with the rescinding of a contract.
- 8.2 The laws of the Federal Republic of Germany apply to the exclusion of all foreign jurisdictions and unified international law relating to the sale of goods.
The German version of any contract is considered binding.

9. Employees

The contractual partner is not permitted to solicit our employees where this could be objected to under competition legislation, i.e. if this would amount to a violation of Section 4 (4) of the German Act against Unfair Competition (UWG). Our contractual partner bears the burden of proof for demonstrating that no objectionable circumstances exist under competition legislation, in particular within the meaning of Section 4 (4) UWG. Where the contractual partner is unable to provide such evidence, it is required to pay us a reasonable contractual penalty, which we may define in accordance with Section 315 BGB. The contractual partner is, however, entitled to request that a court verify the reasonableness of the contractual penalty.
The contractual penalty shall amount to at least half the monthly net salary of the solicited employee for every month until the normal period of notice of the employee would have elapsed.

10. Severability

If any of the above provisions of these terms and conditions should be invalid, ineffective or unenforceable for any reason, the validity of the remaining provisions and the underlying contract remain unaffected.