

GIF mbH & Co.KG  
Tronjestraße 1  
44319 Dortmund

### **General Terms of Business:**

Valid: March 2012

#### **1. General remarks:**

Our deliveries and services are effected exclusively on the basis of the following terms and conditions. This also applies if during an ongoing business relationship this is no longer expressly stated in future business transactions. Our terms of business will be deemed to have been accepted on taking receipt of our merchandise or services at the latest.

We do not recognize the general terms of business of the ordering party and hereby reject them. Our terms and conditions also apply even if we make a delivery without reservation or accept a payment without reservation while being aware of the ordering party's differing terms and conditions. The terms and conditions of the ordering party shall only come into effect if this is specifically confirmed by us in writing.

Our offers are always subject to confirmation.

In principle, we are entitled to set off all claims which arise because of the business relationship against any claims of the ordering party on us.

Claims made against us may only be assigned with our consent.

#### **2. Prices:**

Our prices are stated net exclusive of value added tax.

The costs of transport and packaging are to be charged separately unless a different agreement is made.

If an order includes the provision of metal materials and semi-finished products and the price of this material increases by more than 5% during the period between the time the order is granted and delivery, we shall be entitled to make a corresponding price adjustment (basis: producer prices of the Federal Statistical Office).

#### **3. Deliveries and passage of risk:**

The delivery period commences in principle as of the date of our order confirmation but not before all the technical and commercial details of the order have been fully clarified.

We are permitted to make partial delivery. Partial deliveries must not be rejected by the ordering party, unless a written agreement to the contrary has been made.

Unless agreed otherwise, the merchandise shall be delivered unpacked and without corrosion

protection. The merchandise shall be unloaded by the ordering party which shall take responsibility for it.

Delivery periods are affected by the delivery situations of our suppliers. If it can be foreseen that an envisaged delivery date cannot be adhered to because of a delay in the deliveries received by us, we shall notify the ordering party to this effect, and the delivery date will then be postponed accordingly.

If collection by the ordering party has been agreed, the delivery period shall end on the date we notify the ordering party of readiness. At this point we shall be entitled to invoice for the merchandise. After notification of readiness is given, the ordering party must immediately collect the merchandise, and if not we shall be entitled to store the merchandise at the cost and risk of the ordering party.

In all deliveries, the risk of damage to or loss of the merchandise passes to the ordering party on leaving our plant.

#### **4. Impediments:**

If the execution of the delivery is jeopardized as a result of events of force majeure, whether suffered by us, our suppliers or the transport sector, the delivery deadline shall be postponed to allow for the duration of this impediment and an appropriate lead time. Force majeure includes events such as strike, lock-out, war, import and export embargoes, shortage of raw materials and fuel, fire, natural disasters, communications breakdowns and disturbances in the transport sector.

#### **5. Duties to examine, duties to give notice of defects and defects:**

The ordering party is to subject the merchandise to a thorough incoming goods inspection immediately after delivery is made. Written notice must be given of obvious or detectable defects within eight calendar days of delivery being effected. The defects forming the basis of a complaint must be documented effectively by photographs and measurement reports. Immediate written notice must be given of any defects found which were not detectable despite careful inspection and the further processing or use of our merchandise must cease immediately. If the form or time limit for notifying defects is not complied with, the merchandise shall be deemed to have been approved despite the defect(s).

The ordering party must immediately make it possible for us to inspect the merchandise which is the subject of the notice of defects. As an alternative, the merchandise must be made available to us at our premises for a more accurate examination.

#### **6. Liability for defects:**

If the merchandise is defective at the time of passage of risk, the ordering party shall have the right to post-performance. Post-performance shall be effected by replacement or repair which shall be decided at our discretion. The statutory provisions on a reduction in the price or withdrawal from the contract shall not be affected.

## **7. General liability:**

We shall not be held liable for compensation, irrespective of legal grounds, and in particular we shall not be held liable for consequential damage such as lost profit, damages on the basis of business interruption, loss of production or loss of use as well as indirect damage. These exclusions do not apply in the following cases:

- in the case of intent or gross negligence,
- in the context of the issue of a contractual guarantee,
- to the extent that liability is compulsory by law,
- in the case of injury to life, physical injury or injury to health,
- in the case of the negligent breach of essential contractual obligations (cardinal obligations); in this case, liability shall be limited to the foreseeable damage which is typical of such contracts.

## **8. Additional provisions applying to contract processing:**

In the case of contract processing, we must be informed of the material specifications of the raw material provided. The raw material must be free from inhomogeneities, flaws and hard inclusions. If the delivered raw material deviates from this specification – particularly as regards the raw dimensions – we are entitled to invoice the additional costs incurred through this (longer machining time, replacement of tools which break down early, etc.) and to lengthen the delivery period correspondingly or withdraw from the contract. In the event of withdrawal from the contract the cost of the work performed up to this time, including the additional costs, is to be reimbursed by the ordering party.

There is a company lien in our favour referring to the material provided to us for machining in respect of all claims arising from the business relationship.

Filings and waste produced become our property.

We do not assume liability for the materials provided by the ordering party as defined in point 7 above.

## **9. Payment and set-off:**

Payment shall be effected by credit transfer to the bank account stated on the invoice without deductions within 14 days following the invoice date at the latest. Other terms of payment shall require a written agreement. The ordering party may only set off uncontested or legally established claims against our claims.

For late payment, interest shall be charged at eight percentage points above the relevant base rate of the European Central Bank.

If after concluding the contract we become aware of circumstances which substantially detract from the creditworthiness of the ordering party, we shall be entitled to call for immediate payment of all our claims resulting from the business relationship with immediate effect and to demand pre-payment of works and deliveries still awaiting further execution. If pre-payment is

not effected within the time limit we have set, we shall be entitled to withdraw from the contract. This withdrawal shall not affect our right to claim for damages.

#### **10. Retention of title:**

We shall retain title to delivered merchandise until all claims from the business relationship have been settled. In the case of business on current account, the retention of title shall secure the recognized credit balance.

The ordering party is entitled to resell the merchandise that is subject to a retention of title as part of normal business, provided it is not in arrears for payments to us. It is not entitled to make other arrangements. The claims arising from resale to third parties shall be assigned to us by the ordering party as of now in the amount of the invoice value of the merchandise under retention of title, irrespective of whether resale takes place without processing or after processing takes place, or is made to one third party or several third parties. The ordering party is entitled to collect debts. However, we reserve the right to revoke this authorization to collect debts for cause, particularly in the event that the ordering party gets into more than minor arrears with respect to us or opens insolvency proceedings into its assets or this is rejected for lack of assets.

Machining and further processing of the merchandise which is subject to a retention of title shall be undertaken by us as the manufacturer without entailing any obligations on us. In the event of processing or joining the merchandise under retention of title to other articles not belonging to us, we shall acquire co-ownership of the new article in the ratio of the invoice value of the merchandise under retention of title to the acquisition price of the other articles at the time of processing or joining. The new article shall be deemed to be merchandise under retention of title within the meaning of the above conditions.

If third parties cause other damage to or seizure of the merchandise which is subject to a retention of title, the ordering party must draw attention to the retention of title and notify us immediately.

#### **11. Limitation period:**

The limitation period for claims based on liability for defects is five years from the statutory start of the limitation period in cases of sec. 438 para. 1 no. 2 and sec. 634a para. 1 no. 2 BGB (German Civil Code), and in all other cases is one year from the statutory start of the limitation period. Should these General Terms of Business not exclude liability for damages, the statutory limitation period shall apply.

#### **12. Place of jurisdiction and performance and applicable law:**

The place of jurisdiction and performance is Dortmund exclusively. In all cases the law of the Federal Republic of Germany shall apply, under exclusion of CISG.