

# GTC

## General Terms & Conditions for the Precision Machining Trade

Status: November 1, 2008

### § 1 Application of the terms & conditions

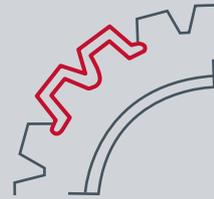
The General Terms & Conditions below are intended exclusively for use in business dealings. The deliveries, services, and offers of the contractor are carried out exclusively on the basis of these terms & conditions. Counter-confirmations of the customer with reference to the customer's terms & conditions of business/purchase are hereby rejected.

### § 2 Offers and contract conclusion

1. Offers contained in prospects, advertisements, etc. – including prices – are subject to change and non-binding. The contractor shall be bound to specially prepared offers for 30 calendar days from the date of the offer.
2. Side agreements, changes, amendments and/or other deviations from these terms & conditions are only valid if the contractor has declared agreement to them. The written form requirement does not apply to subsequent side agreements, changes, and amendments to the order.
3. The contractor is not responsible for information in offers and/or order confirmations of the contractor that are due to an obvious error, i.e. typos or miscalculations. Rather, the explanation that was obviously intended shall apply.
4. The offer documents, drawings, descriptions, specimens, and cost estimates of the contractor may not be disclosed, published, duplicated, or otherwise made accessible to third parties without the consent of the contractor. The documents are to be returned upon request and no copies are to be withheld.

### § 3 Prices, price changes

1. The prices include the legally required value added tax, which is to be stated separately.
2. The prices do not include packaging and freight costs.
3. If more than six months lie between the conclusion of the contract and the agreed and/or actual delivery date then the contractor's prices that applied at the time of the delivery or provision shall apply. The contractor has the right to request negotiations for the setting of the new price in the event of price increases on the part of upstream supplies, increases in wage and transport costs, or other unexpected price increases.



## § 4 Delivery times

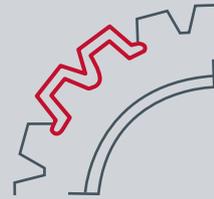
1. The terms of delivery apply subject to receiving correct delivery on time from our own supplier unless the contractor agreed to a binding term of delivery in writing. If a delay in the delivery occurs then the contractor shall immediately provide notification of this upon becoming aware of it.
2. If the delivery or performance is delayed due to a circumstance for which the contractor, its legal representatives, or vicarious agents are responsible then the liability shall be based on the statutory provisions. In the case of slight negligence the liability shall be limited to the foreseeable damage that is typical for this type of contract. This principle applies in particular in cases of force majeure, strike, lockout, official orders, etc., even if these hindrances occur to the contractor's suppliers or their sub-suppliers. The grace period to be set by the customer in the event of the delay in performance in accordance with the statutory provisions is set at two weeks, beginning when the contractor receives notice of the grace period.

## § 5 Dispatch and passing of risk

1. The risk is passed on to the customer as soon as the shipment is handed over to the person carrying out the transport or as soon as the shipment has left the contractor's plant for the purpose of shipping. If the dispatch is delayed at the request of the customer then the risk will be transferred to the customer when notice is provided that it is ready for dispatch.
2. At the customer's request shipments will be insured under the customer's name and on the customer's account.

## § 6 Claims for defects

1. If the contractor's performance or the delivery item are defective then the contractor can choose to either deliver a replacement or correct the defect. Multiple subsequent improvements - normally two - are permitted within an appropriate period.
2. The customer's right to assert claims due to defects expires in all cases in 12 months from the time of the passing of risk, insofar as a longer term is not required by law.
3. Apparent defects in work performance can be asserted after acceptance only if the contractor is notified of them immediately or within two weeks after delivery at the latest. Section 640 Subsection 2 of the BGB (German Civil Code) also applies. Otherwise – in the case of latent defects – the contractor is to be notified of defects in writing immediately upon their discovery for the purpose of obtaining the customer's defect claims (obligation to give notice of defects in accordance with Section 377 of the HGB [German Commercial Code]). The defective objects are to be kept available for inspection by the contractor in the condition in which they were at the time that the defect was detected.



4. Immaterial and reasonable deviations in the dimensions and constructions – particularly in the case of repeat orders – do not justify complaints unless absolute conformity has been expressly agreed. Technical improvements as well as necessary technical changes are also considered to be in accordance with the contract, insofar as they are reasonable and do not represent any worsening of suitability for use.
5. If the contractor's operating or maintenance instructions are not followed, if changes are made to the products, if parts are replaced, or if consumables are used that do not correspond to the original specifications then any warranty lapses if the customer does not disprove a correspondingly substantiated assertion that one of these circumstances caused the defect.
6. Liability for normal wear and tear is excluded.
7. If the supplementary performance is not successful within an appropriate period then the customer can choose between a price reduction or a rescinding of the contract.
8. The provisions above of this paragraph do not apply for the sale of used items. These are supplied to the exclusion of any defect claims.
9. If the contractor remains available to the customer to provide information regarding the use of the product beyond the contractor's legal and contractual obligations then the contractor shall be liable in accordance with § 7 only if there was an agreement reached about special remuneration for this.

## **§ 7 Limitation of liability**

Damage compensation claims against the contractor as well as the contractor's vicarious agents due to positive violation of contractual duty, culpa in contrahendo or tortious act that are not also due to the violation of a main contractual obligation by the contractor are excluded, insofar as the damage was not caused due to deliberate act or gross negligence. This does not apply to damage compensation claims due to defects of contractually required fitness that are to protect the customer against the risk of consequential damages. Damage compensation claims in accordance with the law beyond the liability for defective products as well as liability for injury to life, limb, or health also remain unaffected.

## **§ 8 Retention of title**

1. The contractor shall retain the title to the supplied items (retained items) until satisfaction of all claims of the contractor against the customer. 2. The customer is obligated to notify the contractor of any distrains and to inform the pledgee of the retention of title without delay. The customer does not have the right to sell, give away, pledge, or use the supplied items as security – except in the cases specified in the points below.
3. If the delivery is made for business activities maintained by the customer then the items may be resold within the framework of sound management. In this case the customer's claims against the consumer from the sale shall hereby already be assigned to the contractor. The contractor hereby already accepts the assignments now. In the event of the resale of the items



on credit the customer is to retain the title to the items vis-à-vis the consumer. The customer hereby assigns to the contractor all rights and claims from this retention of title vis-à-vis the consumer.

4. Any adaptation or processing of the retained items by the customer shall be carried out for the contractor free of charge. In the event of the processing, combining, mixing, or blending of the retained items with other goods that are not the property of the contractor, the contractor shall be entitled to the co-ownership share of the new item at the ratio of the factor of the retained items to the other processed goods at the time of the processing, combining, mixing, or blending.

If the customer acquires sole ownership of a new item then the contractual partners agree that the customer shall grant the contractor co-ownership of the new item proportional to the factor of the processed, combined, mixed, or blended retained items and shall keep these safe for the supplier free of charge.

If the retained items are resold together with other goods, regardless of whether or not they have been processed, combined, mixed, or blended, then the assignment in advance agreed upon above in Point 3 shall only apply in the amount of the factor of the retained items that were sold together with the other goods. The contractor hereby already accepts the assignments in this regard as well.

5. If retained items are incorporated into the real estate of a third party by the customer or on the authority of the customer then the customer hereby already assigns to the third party concerned any resulting claims to remuneration with all ancillary rights, including the granting of a debt-securing mortgage to the contractor. The contractor hereby already accepts the assignments.

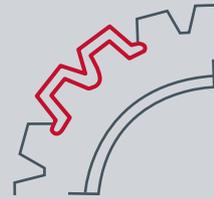
6. If retained items are incorporated into the real estate of the customer as essential elements then the customer hereby already assigns to the contractor any resulting claims with all ancillary rights resulting from a sale of the real estate or of the real estate property rights. The contractor hereby already accepts the assignments.

7. If the value of the securities existing for the contractor in accordance with the provisions above exceeds the value of the contractor's claims – not just temporarily – by more than 20% in total then the contractor is obligated to release the securities of the contractor's choice at the request of the customer.

8. In the event of conduct of the customer in violation of the contract, particularly in the event of default in payment, the seller is has the right to take back the supplied items after providing a warning and a declaration of withdrawal and the customer is obligated to surrender them. If the customer has fulfilled the contract then the contractor is to return the items.

## § 9 Payment

1. Insofar as there are no differing agreements, the contractor's invoices are to be paid in full upon the issuing of the invoice.



The contractor shall deliver COD plus freight and packaging costs for deliveries with a total value of less than €500.00.

2. The contractor expressly reserves the right to refuse acceptance of checks or bills of exchange. They shall only ever be accepted as conditional payment. The customer shall bear any discount charges and bill of exchange charges and these are due immediately.

3. If the contractor becomes aware of circumstances that call the credit-worthiness of the customer into question, in particular if the customer does not honor a check or suspends payments, then the contractor has the right to demand immediate payment of the remaining debt, even if the contractor has accepted checks. In this case the contractor also has the right to demand advance payments or securities.

4. If the customer permanently stops payments and/or there is a filing for insolvency regarding the customer's assets then the contractor also has the right to withdraw from the yet unfulfilled part of the contract. 5. The contractor has the right to offset payments first against the customer's older debts despite any provisions of the customer to the contrary. The contractor shall inform the customer of this type of conducted offsetting.

If costs and interest have already been incurred then the contractor has the right to offset the payment first against these costs, then this interest, and finally the primary debt.

6. If the customer defaults on payment then the contractor has the right to charge the legally applicable default interest. The contractor reserves the right to assert a claim for damages beyond this. In the cases specified above the customer is at liberty to prove that a lesser amount of damage was suffered, which shall then be decisive.

7. The customer is not permitted to offset payments against counterclaims unless they are counterclaims that have been determined without further legal recourse or are not disputed by the contractor.

## **§ 10 Applicable law, legal venue, partial invalidity**

1. These terms & conditions and all legal relations between the contractor and the customer shall be governed by the law of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

2. Insofar as the customer is a businessperson as defined by the German Commercial Code, a legal person under public law, or a special fund under public law, the location of the contractor's registered office shall be the exclusive legal venue for all disputed arising directly or indirectly from the contractual relationship.

3. If a provision of these terms & conditions should be or become invalid, this shall not affect the validity of any of the other provisions or agreements between the contractor and the customer.