

# General Terms and Conditions of the PARTZSCH Group

\* The original German text shall be the governing version.

## I. General provisions

1. Legal relations between Supplier and Purchaser in connection with supplies and/or services of the Supplier (hereinafter referred to as „Supplies“) shall be solely governed by our sales terms and delivery conditions accepted by the Purchaser when placing the order. This also applies to future business if the Terms and Conditions have been communicated to the Purchaser when confirming an order even if there is no express reference to them.
2. In case of placing an order contrary to our Terms and Conditions, our Terms and Conditions apply even if we do not object. Terms and Conditions of the Purchaser only apply if we expressly agree in writing and only to the extent agreed. The scope of delivery shall be determined by the mutual agreed written declarations.
3. In accordance with § 33 of the German Federal Data Protection Law we must point out that data provided by our customers are stored and processed in our IT systems insofar as this is necessary for the proper handling of business transactions.
4. The Supplier herewith reserves any industrial property rights and/or copyrights pertaining to its cost estimates, drawings and other documents (hereinafter referred to as „documents“). The documents shall not be made accessible to third parties without the Supplier's prior consent and shall, upon request, be returned without undue delay to the Supplier if the contract is not awarded to the Supplier. Sentences 1 and 2 shall apply mutatis mutandis to the Purchaser's documents; these may, however, be made accessible to those third parties to whom the Supplier has rightfully subcontracted supplies.
5. Partial deliveries are allowed, unless they are unreasonable to accept for the Purchaser.
6. The term „claim for damages“ used in the present delivery conditions also includes claims for indemnification for useless expenditure.

## II. Offers and contract conclusion

1. Our offers are non-binding insofar as they do not explicitly state that they are binding.
2. The order signed by the customer is a binding offer. We can accept this offer within two weeks by sending a confirmation of order, by sending the goods ordered or by beginning to provide the service within the same period.
3. All information concerning our goods and services and especially the images, drawings, weights dimensions and performance data contained in our offers and printed material are average values to be considered as approximations. They are not guaranteed quality characteristics but rather descriptions or designations of the goods. Insofar as no limitations on permissible deviations are explicitly defined and described as such in the order confirmation, such deviations as are usual in the market sector shall be permissible in all cases.

## III. Prices, terms of payment, and set-off

1. Only the prices specified in our order confirmation are definitive. Additional services shall be invoiced separately.
2. We are entitled to assign claims resulting from our business relationships.
3. Prices are ex works and excluding packaging; value added tax shall be added at the then applicable rate, unless something else is explicitly agreed with the customer.
4. If the Supplier is also responsible for assembly or erection and unless otherwise agreed, the Purchaser shall pay the agreed remuneration and any incidental costs required e. g. for traveling and transport as well as allowances.
5. In case of delay of payment caused by the Purchaser, all claims become due immediately.
6. All payments with debt discharging effect have to be made to the account owned by Coface Finanz GmbH, Isaac-Fulda-Allee 1, 55124 Mainz. We have assigned our current and future claims resulting from our business relationships to this company. We have also assigned our retention of title to this company.
7. The Purchaser is not entitled to set-off claims unless the claims are undisputed or established as final and absolute.

## IV. Retention of title

1. The items pertaining to the Supplies („Retained Goods“) shall remain the Supplier's property until each and every claim the Supplier has against the Purchaser on account of the business relationship has been fulfilled. If the combined value of the Supplier's security interests exceeds the value of all secured claims by more than 20 %, the Supplier shall release a corresponding part of the security interest if so requested by the Purchaser; the Supplier shall be entitled to choose which security interest it wishes to release.
2. For the duration of the retention of title, the Purchaser may not pledge the Retained Goods or use them as security, and resale shall be possible only for resellers in the ordinary course of their business and only on condition that the reseller receives payment from its customer or makes the transfer of property to the customer dependent upon the customer fulfilling its obligation to effect payment.
3. Should Purchaser resell Retained Goods, it assigns to the Supplier, already today, all claims it will have against its customers out of the resale, including any collateral rights and all balance claims, as security, without any subsequent declarations to this effect being necessary. If the Retained Goods are sold on together with other items and no individual price has been agreed with respect to the Retained Goods, Purchaser shall assign to the Supplier such fraction of the total price claim as is attributable to the price of the Retained Goods invoiced by Supplier.
4. a) Purchaser may process, amalgamate or combine Retained Goods with other items.  
4. b) Already today, Supplier and Purchaser agree that if Retained Goods are combined or amalgamated with other items that are not the property of Supplier, Supplier shall acquire co-ownership in the new item in proportion of the value of the Retained Goods combined or amalgamated to the other items at the time of combination or amalgamation. In this respect, the new items are considered as Retained Goods.  
4. c) The provisions on the assignment of claims according to No. 3 above shall also apply to the new item. The assignment, however, shall only apply to the amount corresponding to the value invoiced by Supplier for the Retained Goods that have been processed, combined or amalgamated.  
4. d) Where Purchaser combines Retained Goods with real estate or movable goods, it shall, without any further declaration being necessary to this effect, also assign to Supplier as security its claim to consideration for the combination, including all collateral rights for the prorata amount of the value the combined Retained Goods have on the other combined items at the time of the combination.
5. Until further notice, Purchaser may collect assigned claims relating to the resale.

Supplier is entitled to withdraw Purchaser's permission to collect funds for good reason, including, but not limited to delayed payment, suspension of payments, start of insolvency proceedings, protest or justified indications for over-indebtedness pending insolvency of Purchaser. In addition, Supplier may, upon expiry of an adequate period of notice disclose the assignment, realize the claims assigned and demand that Purchaser informs its customer of the assignment.

6. The Purchaser shall inform the Supplier forthwith of any seizure or other act of intervention by third parties. If a reasonable interest can be proven, Purchaser shall, without undue delay, provide Supplier with the information and/or documents necessary to assert the claims it has against its customers.

7. Where the Purchaser fails to fulfill its duties, fails to make payment due, or otherwise violates its obligations the Supplier shall be entitled to rescind the contract and take back the Retained Goods in the case of continued failure following expiry of a reasonable remedy period set by the Supplier; the statutory provisions providing that a remedy period is not needed shall be unaffected. The Purchaser shall be obliged to return the Retained Goods. The fact that the Supplier takes back Retained Goods and/or exercises the retention of title, or has the Retained Goods seized shall not be construed to constitute a rescission of the contract, unless the Supplier so expressly declares.

## V. Periods for deliveries; delay

1. Times set for supplies shall only be binding if all documents to be furnished by the Purchaser, necessary permits and approvals, especially concerning plans, are received in time and if agreed terms of payment and other obligations of the Purchaser are fulfilled. If these conditions are not fulfilled in time, times set shall be extended reasonably; this shall not apply if the Supplier is responsible for the delay.
2. If non-observance of the times set is due to
  - a) force majeure, such as mobilization, war, terror attacks, rebellion or similar events (e. g. strike or lockout);
  - b) virus attacks or other attacks on the Supplier's IT systems occurring despite protective measures were in place that complied with the principles of proper care;
  - c) hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or to other circumstances for which Supplier is not responsible; or
  - d) the fact that Supplier does not receive its own supplies in due time or in due form such times shall be extended accordingly.
3. Purchaser's claims for damages due to delayed supplies as well as claims for damages in lieu of performance are excluded in all cases of delayed supplies, even upon expiry of a time set to the Supplier to effect the supplies. This shall not apply in cases of liability based on intent, gross negligence, or due to loss of life, bodily injury or damage to health. Rescission of the contract by the Purchaser based on statute is limited to cases where the Supplier is responsible for the delay. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser.
4. At the Supplier's request, the Purchaser shall declare within a reasonable period of time whether it, due to the delayed supplies, rescinds the contract or insists on the delivery of the supplies.
5. If dispatch or delivery, due to Purchaser's request, is delayed by more than one month after notification of the readiness for dispatch was given, the Purchaser may be charged, for every additional month commenced, storage costs of 0.5 % of the price of the items of the supplies, but in no case more than a total of 5 %. The parties to the contract may prove that higher or, as the case may be, lower storage costs have been incurred.

## VI. Passing of risk

1. Even where delivery has been agreed freight free, the risk shall pass to the Purchaser as follows:
  - a) If the delivery does not include assembly or erection, at the time when it is shipped or picked up by the carrier. Upon the Purchaser's request, the Supplier shall insure the delivery against the usual risks of transport at the Purchaser's expense.
  - b) If the delivery includes assembly or erection, at the day of taking over in the Purchaser's own works or, if so agreed, after a successful trial run.
2. The risk shall pass to the Purchaser if dispatch, delivery, the start or performance of assembly or erection, the taking over in the Purchaser's own works, or the trial run is delayed for reasons for which the Purchaser is responsible or if the Purchaser has otherwise failed to accept the supplies.

## VII. Assembly services

Unless otherwise agreed in written form, assembly and erection shall be subject to the following provisions:

1. Purchaser shall provide at its own expense and in due time:
  - a) ancillary work outside the Supplier's scope, including the necessary skilled and unskilled labor, construction materials and tools;
  - b) the equipment and materials necessary for assembly and commissioning such as scaffolds, lifting equipment and other devices;
  - c) suitable dry and lockable rooms of sufficient size adjacent to the site for the storage of machine parts, apparatus, materials, tools, etc. and adequate working, furthermore, the Purchaser shall take all measures it would take for the protection of its own possessions to protect the possessions of the Supplier and of the erection personnel at the site;
  - d) protective clothing and protective devices needed due to particular conditions prevailing on the specific site.
2. Prior to assembly or erection, the materials and equipment necessary for the work to start must be available on the site of assembly or erection and any preparatory work must have advanced to such a degree that assembly or erection can be started as agreed and carried out without interruption.
3. If assembly, erection or commissioning is delayed due to circumstances for which the Supplier is not responsible, the Purchaser shall bear the reasonable costs incurred for idle times and any additional traveling expenditure of the Supplier or the erection personnel.
4. The Purchaser shall attest to the hours worked by the erection personnel towards the Supplier at weekly intervals and the Purchaser shall immediately confirm in written form if assembly, erection or commissioning has been completed.
5. If, after completion, the Supplier demands acceptance of the supplies, the Purchaser shall comply therewith within a period of two weeks. The same consequences as upon acceptance arise if and when the Purchaser lets the two-week period expire or the supplies are put to use after completion of agreed test phases, if any.

## VIII. Receiving supplies

The Purchaser shall not refuse to receive supplies due to minor defects.

#### **IX. Warranty and reprimand**

In accordance with §377 HGB (German Commercial Code), the customer is obliged to examine the delivered goods carefully for their completeness and good condition immediately upon receipt. The customer must raise claims for defects immediately in writing. The receipt of a written notice (also by fax or email) shall be definitive.

The Supplier shall be liable for defects as to quality as follows:

1. Defective parts or defective services shall be, at the Supplier's discretion, repaired, replaced or provided again free of charge, provided that the reason for the defect had already existed at the time when the risk passed.
2. Claims for repair or replacement are subject to a statute of limitations of 12 months calculated from the start of the statutory statute of limitations; the same shall apply mutatis mutandis in the case of rescission and reduction. This shall not apply where longer periods are prescribed by law according to Sec. 438 para.1 No. 2 (buildings and things used for a building), Sec. 479 para. 1 (right of recourse), and Sec. 634a para. 1 No. 2 (defects of a building) German Civil Code („Bürgerliches Gesetzbuch“), in the case of intent, fraudulent concealment of the Defect or non-compliance with guaranteed characteristics („Beschaffheitsgarantie“). The legal provisions regarding suspension of the statute of limitations („Ablaufhemmung“, „Hemmung“) and recommencement of limitation periods shall be unaffected.
3. In the case of notification of a defect, the Purchaser may withhold payments to an amount that is in a reasonable proportion to the defect. The Purchaser, however, may withhold payments only if the subject-matter of the notification of the defect involved is justified and incontestable. The Purchaser has no right to withhold payments to the extent that its claim of a defect is time-barred. Unjustified notifications of defect shall entitle the Supplier to demand reimbursement of its expenses by the Purchaser.
4. The Supplier shall be given the opportunity to repair or to replace the defective good („Nacherfüllung“) within a reasonable period of time.
5. If repair or replacement is unsuccessful, the Purchaser is entitled to rescind the contract or reduce the remuneration; any claims for damages the Purchaser may have according to No. 10 shall be unaffected.
6. There shall be no claims based on defect in cases of insignificant deviations from the agreed quality, of only minor impairment of usability, of natural wear and tear, or damage arising after the passing of risk from faulty or negligent handling, excessive strain, unsuitable equipment, or claims based on particular external influences not assumed under the contract. Claims based on defects attributable to improper modifications or repair work carried out by the Purchaser or third parties and the consequences thereof are likewise excluded.
7. The Purchaser shall have no claim for damages based on defects. This shall not apply to the extent that a defect has been fraudulently concealed, the guaranteed characteristics are not complied with, in the case of loss of life, bodily injury or damage to health, and/or intentionally or grossly negligent breach of contract on the part of the Supplier. The above provisions do not imply a change in the burden of proof to the detriment of the Purchaser. Any other or additional claims of the Purchaser exceeding the claims provided for in this article, based on a defect, are excluded.

#### **X. Extended lien on movable goods**

1. Due to claims under the contract, we are entitled to a lien on the customer's objects which are in our possession as a result of the contract. Such lien can also be asserted on the basis of claims in respect of previously performed services, spare parts deliveries and other services, insofar as they are associated with the objects concerned. The lien only applies to other claims arising from the business relationship insofar as these are undisputed or have been established in law.
2. If the objects are not collected within 4 weeks after their collection has been requested, we are entitled to charge appropriate storage costs upon the expiry of this grace period. If the collection is not carried out at the latest 3 months after the request for collection, an obligation to continue to store them and any liability for careless damage or destruction shall expire. The customer shall be sent a warning that the objects will be sold 1 month before the expiry of the grace period. Upon the expiry of the said grace period we are entitled to sell the objects at their market value to cover our claims. The customer shall be reimbursed with any additional proceeds.

#### **XI. Production according to customer instructions**

1. In case of production according to customer drawings, samples and other instructions, we provide no guarantee and accept no liability for the functionality of the product or for other defects insofar as these circumstances are due to the customer's instructions.
2. The customer shall release us from possible third party claims against us, including product liability claims, for damages caused by the product unless we have caused such damage deliberately or through gross negligence ourselves.
3. The customer accepts liability towards us that the goods produced and supplied in accordance with his instructions do not violate any third party protection rights. Should protection rights be asserted against us, we are entitled, without any legal examination of such possible claims and after consulting with the customer, to rescind from the contract unless such third party withdraws his assertion of protection rights in a written declaration to us within 8 days. The customer must reimburse us for damages we may have incurred by the assertion of such protection rights. In case of rescission, the work previously performed by us must be remunerated. Further rights in accordance with the legal provisions shall remain unaffected.
4. Such moulds, tools and construction drawings as we have produced to carry out the order are exclusively our property. The customer is not entitled to claims upon them, even if he participates in the costs for the production of moulds, tools and construction documents unless other arrangements have been explicitly agreed.

#### **XII. Conditional performance**

1. The performance of this contract is conditional upon that no hindrances attributable to German, US or otherwise applicable national, EU or international rules of foreign trade law or any embargos or other sanctions exist.
2. The Purchaser shall provide any information and documents required for export, transport and import purposes.

#### **XIII. Impossibility of performance; adaptation of contract**

1. To the extent that delivery is impossible, the Purchaser is entitled to claim damages, unless the Supplier is not responsible for the impossibility. The Purchaser's claim for damages is, however, limited to an amount of 10 % of the value of the part of the supplies which, owing to the impossibility, cannot be put to the intended use. This limitation shall not apply in the case of liability based on intent, gross negligence or loss of life, bodily injury or damage to health; this does not imply a change in the burden of proof to the detriment

of the Purchaser. The Purchaser's right to rescind the contract shall be unaffected.

2. Where events within the meaning of article V No. 2 (a) to (c) substantially change the economic importance or the contents of the supplies or considerably affect the Supplier's business, the contract shall be adapted taking into account the principles of reasonableness and good faith. To the extent this is not justifiable for economic reasons, the Supplier shall have the right to rescind the contract. The same applies if required export permits are not granted or cannot be used. If the Supplier intends to exercise its right to rescind the contract, it shall notify the Purchaser thereof without undue delay after having realized the repercussions of the event; this shall also apply even where an extension of the delivery period has previously been agreed with the Purchaser.

#### **XIV. Other claims for damages**

1. Unless otherwise provided for in the present GL, the Purchaser has no claim for damages based on whatever legal reason, including infringement of duties arising in connection with the contract or tort.
2. This does not apply if liability is based on:
  - a) intent;
  - b) gross negligence on the part of the owners, legal representatives or executives;
  - c) fraud;
  - d) failure to comply with a guarantee granted;
  - e) negligent injury to life, limb or health; or
  - f) negligent breach of a fundamental condition of contract („wesentliche Vertragspflichten“).However, claims for damages arising from a breach of a fundamental condition of contract shall be limited to the foreseeable damage which is intrinsic to the contract, provided that no other of the above case applies.
3. The above provision does not imply a change in the burden of proof to the detriment of the Purchaser.

#### **XV. Venue and applicable law**

1. Sole venue for all disputes arising directly or indirectly out of the contract shall be at our choice our place of business or Mainz.
2. This contract and its interpretation shall be governed by German law, to the exclusion of the United Nations Convention on contracts for the International-Sale of Goods (CISG).

#### **XVI. Severability clause**

The legal invalidity of one or more provisions of this Agreement in no way affects the validity of the remaining provisions. This shall not apply if it would be unreasonably onerous for one of the parties to be obligated to continue the contract.

Döbeln, March 2017