Gontermann-Peipers GmbH, Hauptstraße 20, 57074 Siegen/Germany
General Terms and Conditions of Delivery and Payment for Foundry Products
(Version May 1st, 2024)

Scope of application and form

Our deliveries and services shall only be provided on the basis of the following terms and conditions. Terms and Conditions of the customer or third parties shall not apply, even if we do not separately object to their validity in individual cases. Even if we refer to a letter that contains or refers to the terms and conditions of the customer or a third party, this shall not constitute agreement with the validity of those terms and conditions.

Our terms and conditions do not apply to consumers within the meaning of § 13 of the German Civil Code (BGB). The Terms and Conditions shall only apply if the customer is an entrepreneur (§ 14 BGB), a legal entity under public law or a special fund under public law. They shall also apply to all future transactions with the customer arising from the current business relationship. Individual agreements (e.g. framework supply agreements, quality assurance agreements) and details in our order confirmation shall take precedence over the Terms and Conditions. In case of doubt, trade clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce in Paris (ICC) in the version valid at the time of conclusion of the contract.

Legally relevant declarations and notifications by the customer in relation to the contract (e.g. setting of deadlines, notification of defects, cancellation or reduction) must be made in writing. Written form within the meaning of these Terms and Conditions includes written and text form (e.g. letter, e-mail, fax). Statutory formal requirements and further evidence, in particular in the event of doubts about the legitimisation of the declaring party, shall remain unaffected.

1. Conclusion of contract, delivery volume

a) Our offer is free and non-binding, unless otherwise stated in the order confirmation or unless we have expressly declared otherwise in writing. A contract is only concluded if we have confirmed an order in writing or if we fulfil the order.

b) The information contained in brochures, catalogues and product descriptions, such as illustrations, drawings, weights and dimensions, chemical analyses, mechanical properties, microstructure and hardness etc. are standard industry values, unless they are expressly designated as binding. They are not guaranteed characteristics, but descriptions or characterisations of the delivery or service. Customary deviations and deviations that occur due to legal regulations or represent technical improvements, as well as the replacement of components with equivalent parts, are permitted, provided they do not impair the usability for the contractually intended purpose.

c) We reserve the right of title or copyright to all offers and cost estimates submitted by us as well as drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and aids made available to the customer. The customer may not make these items accessible to third parties, disclose them, use them himself or through third parties or reproduce them without our express consent. At our request, he must return these items to us in full and destroy any copies made and provide proof of their destruction if they are no longer required by him in the ordinary course of business or if negotiations do not lead to the conclusion of a contract. Excluded from this is the storage of electronically provided data for the purpose of normal data backup.

2. Pricing and payment conditions

a) Our prices apply ex works plus packaging, freight, postage, insurance and statutory VAT, unless otherwise stated.

b) If order-related costs change significantly after conclusion of the contract, the contracting parties shall agree on an adjustment.

c) Invoice amounts are to be paid promptly and in full without any discount, unless otherwise agreed in writing. The date of receipt by us shall be decisive for the date of payment. Payment by cheque is excluded unless agreed separately in individual cases. If the customer fails to pay by the due date, interest of 5% p.a. shall be charged on the outstanding amounts from the due date; the right to claim higher interest charges and further damages in the event of default shall remain unaffected.

d) The customer shall only be entitled to withhold or offset payments due to any claims to the extent that there are undisputed or legally established payment claims or such claims arise from the same order under which the delivery in question was made.

e) If we have delivered partially defective goods, the customer shall nevertheless be obliged to make payment for the undisputedly defect-free goods. However, the customer shall be entitled to retain a reasonable part of the purchase price in relation to the defect.

f) If we are obliged to make advance payment and if, after conclusion of the contract, we become aware of circumstances according to which our payment claim is in danger due to the customer's inability to pay, we may, in addition to the statutory claims, demand advance payment and the provision of security and, on the basis of the retention of title agreed in clause 9, prohibit the resale and processing of the delivered goods and demand their return or the transfer of indirect possession of the delivered goods at the customer's expense and revoke the collection authorisation under the conditions of clause 9 lit. h). The customer hereby authorises us to enter his company in the aforementioned cases and to collect the delivered goods.

g) In the event of default in payment, we may, following written notification, suspend fulfilment of our obligations until receipt of payment. After setting a reasonable deadline, unless the setting of a deadline is dispensable for legal reasons, we shall also be entitled to withdraw from the contract in this case.

3. Delivery time and delay

a) The delivery period shall be agreed individually or specified by us upon acceptance of the order. Delivery periods shall commence with our order confirmation, but not before all details of execution have been clarified and all other requirements by the customer have been fulfilled; the same shall apply to delivery dates. Deliveries before expiry of the delivery period and part deliveries are permissible, provided this is not unacceptable for the customer. The date of delivery shall be the date of notification of readiness for dispatch, otherwise the date of shipment. Unless otherwise agreed or unless otherwise stated in the contractual relationship, the delivery time stated by us is always non-binding.

b) Agreed delivery periods and dates shall be extended or postponed by the period by which the customer is in arrears with his obligations, without affecting our rights resulting from the customer's default. If the customer is in default of acceptance or culpably violates other obligations to co-operate, we shall be entitled to demand compensation for the damage incurred by us, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the purchased item shall also pass to the customer at the point in time at which the customer is in default of acceptance.

c) The start of our delay in delivery shall be determined in accordance with the legal provisions. In any case, however, a reminder from the customer is required. If we are in default, the customer may set a reasonable grace period with the express declaration that he will refuse to accept the service after expiry of this period and withdraw from the contract after its expiry.

4. Series deliveries, long-term and call-off contracts

a) Open-ended contracts can be cancelled with a notice period of 6 months effective to the end of the month.

b) There is an extraordinary right of cancellation for such contracts if there is good cause. This includes in particular the opening of insolvency proceedings against the assets of a contractual partner or its rejection due to lack of assets or the filing of an insolvency application by the other contractual partner. Otherwise, § 314 BGB applies, with the proviso that a warning must be issued at least in text form in order to have legal effect.

c) Our prices are calculated on the basis of the agreed order quantities. If no binding order quantities have been agreed, our calculation shall be based on the agreed target quantities. If, with our consent, the order quantity is undercut or exceeded by more than 20 per cent or the target quantity by more than 20 per cent, the contracting parties hereby undertake to make an appropriate price adjustment. The contractual partner must be notified in writing of the need for adjustment no later than 2 months after the agreement has been given or after the shortfall or overrun has become known. The amount of the price reduction or increase is to be determined at our discretion by disclosing our calculation bases or other appropriate documentation.

d) In the case of call-off delivery contracts, unless otherwise agreed, binding quantities must be called off in writing at least 3 months before the delivery date. Additional costs caused by a delayed call-off or subsequent changes to the call-off in terms of time or quantity by the customer shall be borne by the customer.

e) In the case of series production, an excess or short delivery of up to 10 % compared to the order quantity is permissible due to the special features of the foundry process. The total price shall change accordingly.

5. Force majeure and other hindrances

We shall not be liable for impossibility of delivery or for delays in delivery insofar as these are caused by force majeure or other events unforeseeable at the time of conclusion of the contract (e.g. operational disruptions of any kind, difficulties in procuring materials or energy, transport delays, strikes, lawful lockouts, shortages of labour, energy or raw materials, difficulties in obtaining the necessary official permits, pandemics or epidemics, official measures or the failure of suppliers to deliver or to deliver correctly or on time despite a congruent hedging transaction concluded by us) for which we are not responsible. If such events make delivery or performance significantly more difficult or impossible for us and the hindrance is not only of a temporary nature, we are entitled to withdraw from the contract. In the event of hindrances of a temporary nature, the delivery or performance periods shall be extended or the delivery or performance dates shall be postponed by the period of the hindrance plus a reasonable start-up period. If the customer cannot reasonably be expected to accept the delivery or service as a result of the delay, he may withdraw from the contract by immediate written declaration to us.

6. Testing procedure, acceptance

a) If acceptance has been agreed, the conditions and scope must be defined at the same time until the contract is concluded.

b) If this does not occur, acceptance shall take place to the extent and under the conditions usual for us. The same applies to first sample inspections.

7. Sizes, weights, quantities

a) Deviations in size, weight and quantity within the scope of customary tolerances, relevant EU and DIN regulations and technical foundry requirements are permissible.

b) The delivery weights and quantities determined by us shall be binding for the calculation.

8. Dispatch and transfer of risk

a) The Incoterms 2020 shall apply.

b) Unless otherwise agreed in writing, the delivery clause shall be "FCA" (Incoterms 2020). This shall also apply if we have committed to bear the transport costs.

c) Goods notified as ready for delivery must be accepted immediately, otherwise we shall be entitled to deliver them at our own discretion or to store them at the usual freight forwarding costs and at the customer's risk. We shall also be entitled to do the above if the delivery we have accepted cannot be carried out without any fault on our side.

d) In the absence of special instructions, the choice of the mode and route of transport shall be at our own choice.

9. Retention of title

a) All delivered goods shall remain our property (goods under retention of title) until all present and future claims, in particular also the respective balance claims to which we are entitled from the business relationship, have been fulfilled. This shall also apply if payments are made on specially designated claims.

If the customer is in default of payment, we are entitled to demand the return of the

delivered goods. The costs for this shall be borne by the customer. This shall not apply if insolvency proceedings have been applied for or instituted against the customer, on the basis of which we are not entitled to demand the immediate return of the delivered goods.

b) Taking back the products or claiming retention of title shall only represent a cancellation of the contract if we expressly declare such cancellation.

The customer shall always process the delivered products on our behalf. If the products subject to retention of title are processed or inseparably combined with other items not belonging to us, we shall acquire co-ownership of the new item in the proportion of the invoice value of the goods to the other processed or combined items at the time of processing.

c) If our ownership expires as a result of combining or mixing, the customer hereby transfers to us the ownership rights to which he is entitled to the new stock or item to the extent of the invoice value of the reserved products and shall store them for us free of charge. The resulting co-ownership rights shall be deemed to be retention of title products within the meaning of lit. a).

d) The customer may only sell the products subject to retention of title in the ordinary business transactions at his normal terms and conditions and as long as he is not in default, provided that the claims from the resale are transferred to us in accordance with lit. f) and g). He is not authorised to dispose of the retention of title product in any other way.

f) The customer's claims arising from the resale of the retention of title products are hereby assigned to us. We accept the assignment. They shall serve as security to the same extent as the retention of title products.

g) If the reserved goods are sold by the customer together with other products not supplied by us, the assignment of the claim from the resale shall only apply to the amount of our invoice value of the respective products sold subject to retention of title. In the case of the sale of products in which we have co-ownership shares pursuant to lit. c), the assignment of the claim shall apply in the amount of these co-ownership shares.

h) The customer is authorised to collect claims from the sale in accordance with lit. e) and f) until our revocation. We shall have the right of cancellation if the customer is in default of payment, an application for the opening of insolvency proceedings has been filed or payments have been suspended. In these cases, the customer is obliged to inform us immediately of the assigned claims and their debtors, to provide all information necessary for collection, to hand over the associated documents and to inform the debtors of the assignment.

i) The customer is not authorised to assign the claims under any circumstances.

j) If the value of the existing securities exceeds the secured claims by more than 10% in total, we shall be obliged to release securities of our choice to this extent. The customer must inform us immediately of any seizure or other impairment by third parties.

10. Liability for defects

a) We shall be liable for the faultless production of the products supplied by us in accordance with the agreed technical delivery specifications. In particular with regard to the purpose of use intended, the customer shall be responsible for proper design in compliance with any safety regulations, selection of the material and the necessary test procedures, correctness and completeness of the technical delivery specifications and the technical documents and drawings provided to us as well as for the design of the production equipment provided. This design responsibility of the customer is not limited by suggestions made by us to reduce costs and which the customer adopts after technical examination by release. Furthermore, the customer is responsible for ensuring that industrial property rights or other rights of third parties are not infringed due to his specifications. The time of the transfer of risk is decisive for the contractual condition of the products.

b) We shall not be liable for only insignificant deviations from the agreed quality, for only insignificant impairment of usability and for defects caused by unsuitable or improper use, incorrect assembly or commissioning and normal wear and tear. If the customer or third parties carry out improper modifications or repair work, we are also not liable for these and the resulting consequences.

c) Material defects must be reported by the customer in writing immediately after receipt of the product at the place of destination, hidden defects immediately after discovery of the defect.

d) In the case of agreed acceptance, the notification of defects that could have been detected in the process is excluded.

e) We must be given the opportunity to ascertain the defect complained of. In urgent cases where operational safety is jeopardised or in order to prevent disproportionate damage to the customer, we must immediately ascertain the notified defect. Rejected goods must be returned to us immediately upon request. If the customer does not fulfil these obligations or makes changes to the products already complained about without our consent, he loses any rights due to material defects.

f) In the event of a legitimate, timely notification of defects, we shall, at our choice, repair the rejected goods or deliver a faultless replacement (subsequent fulfilment).

g) If we do not fulfil our warranty obligations or do not do so within a reasonable period of time or if the rectification of defects is initially unsuccessful, the customer may set a final deadline in writing within which we must fulfil our obligations. A deadline need not be set if it would be unacceptable for the customer. After the unsuccessful expiry of this period, the customer may, at his own choice, demand a reduction in the price, withdraw from the contract or carry out the necessary repair work himself or have it carried out by a third party at our expense and risk. If the repair has been successfully carried out by the customer or a third party, all warranty claims of the customer shall be settled with reimbursement of the necessary costs incurred by him.

h) Claims of the customer for expenses incurred for the purpose of subsequent fulfilment resulting from the fact that the products are transported to another location after delivery are excluded insofar as they increase the expenses, unless the transport corresponds to the intended use.

i) The customer's statutory rights of regress against us shall only exist insofar as the customer has not made any agreements with his customer that go beyond the statutory claims for defects.

j) Further claims of the customer are excluded in accordance with Clause 13.

11. Order-related production equipment, parts to be cast in

a) Order-related production equipment such as models, templates, core boxes, moulds, casting tools, devices and control gauges provided by the customer must be sent to us free of charge. The conformity of the production equipment provided by the customer with the contractual specifications or drawings or samples provided to us shall only be checked by us on the basis of express agreements. We may modify production equipment provided by the customer if this appears necessary to us for technical casting reasons and the workpiece is not changed as a result.

b) The customer shall bear the costs for the modification, maintenance and replacement of its production facilities.

c) The production equipment shall be treated and stored by us with the care that we use in our own affairs. We shall not be liable for accidental loss or deterioration of the production equipment. We are not obliged to take out insurance. We may return any of the customer's production equipment no longer required by us at the customer's expense and risk or, if the customer does not comply with our request to collect it within a reasonable period of time, we may store it at our usual cost and destroy it after setting a reasonable deadline and issuing a warning.

d) Order-related production equipment manufactured or procured by us on behalf of the customer shall remain our property, even if pro rata costs are charged. They shall be stored by us for a period of 3 years after the last casting.

If, in deviation from sentence 1 of this section, it is agreed that the customer shall become the owner of the equipment, ownership shall pass to the customer upon payment of the agreed price or share of the costs. The transfer of the equipment is replaced by our duty of safekeeping. The storage agreement can be cancelled by the customer at the earliest two years after the transfer of ownership, provided there is no good cause. Clause 11 lit. c) shall apply accordingly.

e) The customer may only assert claims arising from copyright or industrial property rights insofar as he informs us of the existence of such rights and expressly reserves them.

f) If rejects occur when using a production device that can only be used once, the customer must either provide a new production device or bear the costs of the replacement device.

g) Parts to be cast in by us must be delivered by the customer in perfect condition and within the correct dimensions. Parts that become unusable due to rejects must be replaced by the customer free of charge.

12. Confidentiality

a) Each contracting party shall use all documents (including samples, models and data) and knowledge obtained from the business relationship only for the jointly pursued purposes and shall keep them secret from third parties with the same care as its own corresponding documents and knowledge if the other contracting party designates them as confidential or has an obvious interest in keeping them secret.

b) This obligation begins from the first receipt of the documents or knowledge and ends 5 years after the end of the business relationship.

13. General limitation of liability, limitation period

a) Unless otherwise stated in these terms and conditions, including the following provisions, we shall be liable in the event of a breach of contractual and non-contractual obligations in accordance with the legal provisions.

b) We shall be liable for damages - irrespective of the legal reason - within the context of fault-based liability in cases of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in our own affairs; insignificant breach of duty), only

aa) for damages resulting from injury to life, body or health,

bb) for damages arising from the breach of an essential contractual obligation (obligation whose fulfilment is essential for the proper execution of the contract and on whose compliance the contractual partner regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damageThe limitations of liability resulting from lit. b shall also apply to third parties and in the event of breaches of duty by persons (including in their favour) whose fault we are responsible for in accordance with statutory provisions. They shall not apply if a defect has been wilfully concealed or a guarantee has been given for the quality of the goods and for claims of the customer under the Product Liability Act.

c) The customer may only withdraw from or terminate the contract due to a breach of duty that does not consist of a defect if we are responsible for the breach of duty. A free right of cancellation of the customer (in particular in accordance with §§ 650, 648 BGB) is excluded, except in the case of Clause 4 lit. a). Otherwise, the legal requirements and legal consequences shall apply.´

d) Notwithstanding § 438 Para. 1 No. 3 BGB, the general time limitation period for claims arising from material defects and defects of title is one year from delivery. If acceptance has been agreed, the time limitation period shall commence upon acceptance.

e) If the products is a building or an item that has been used for a building in accordance with its normal use and has caused its defectiveness (building material), the limitation period is 5 years from delivery in accordance with the statutory regulation (§ 438 Para. 1 No. 2 BGB). Other special statutory provisions on the limitation period (in particular § 438 Para. 1 No. 1, § 445b BGB) remain unaffected.

The above limitation periods of the law on the sale of goods shall also apply to contractual and non-contractual claims for damages of the customer based on a defect of the goods, unless the application of the regular statutory limitation period (Sections 195, 199 BGB) would lead to a shorter limitation period in individual cases. Claims for damages by the Purchaser pursuant to Clause 13 lit. b sentence 1 and sentence 2(aa) and pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

14. Place of fulfilment and jurisdiction

a) If the customer is a commercial person within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - also international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be our registered office in Siegen. However, we are also entitled to sue the customer at the court of his registered office.

b) Unless otherwise stated in the order confirmation, the place of fulfilment for our services shall be the location of our supplying plant. The place of fulfilment for payment obligations is Siegen.

15. Applicable law

The relationship between us and the customer shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

16. Severability clause

Should individual provisions of these Terms and Conditions of Delivery and Payment be invalid or void in whole or in part, the contracting parties are obliged to agree on a provision that largely fulfils the meaning and purpose of the invalid or void provision.

17. Partnership clause

The economic circumstances of the contracting parties, the type, extent and duration of the business relationship and the value of the products should also be taken into account appropriately in good faith in all compensation payments, in particular in the amount of compensation.