

# General Terms and Conditions of Stelter Zahnradfabrik GmbH

## 1 Definition

- (1) In these General Terms and Conditions (GT&C), the word "entrepreneur" is used within the meaning of section 14 of the German Civil Code [BGB].
- (2) The registered office of Stelter Zahnradfabrik GmbH is located in Bassum.

## 2 Scope of Application

Our GT&C apply exclusively. Terms and conditions of the customer which deviate from our GT&C have no validity.

## 3 Conclusion of the Contract

- (1) We refer to your purchase order placed by telephone, telex, telefax, email or letter and to our promise of delivery, the content of which we confirm on the basis of the following terms and conditions, which shall be accepted as being part of the contract no later than when our goods are taken receipt of. This shall apply even if the purchase order is effected on the basis of an offer which is made by us and is fundamentally understood to be subject to change without notice.

- (2) Agreements deviating from our terms and conditions shall require the written form.

- (3) Contracts for delivery of special materials shall be concluded only on the condition precedent that we are able to procure corresponding quantities from our supplier's works.

## 4 Payment

- (1) The prices are understood to be net ex works or ex warehouse, plus the respective valid value-added tax and packaging costs.

- (2) In the absence of an agreement on price, the market price shall be invoiced. The quantity in units, metres or kilograms which is determined at the supplier's works or at our warehouse shall be authoritative for calculating the price.

- (3) In the case of alloy surcharges, surcharges for covering rising costs or scrap surcharges, the surcharges made known by the supplier's works on the day of delivery shall apply.

- (4) Our invoices shall be due immediately and be settled within 10 days without any deduction.

- (5) All our receivables shall, regardless of agreed periods for payment, be due immediately, if payment terms are not complied with or we become aware of circumstances which are likely to reduce the buyer's credit-worthiness. We shall then also be entitled to make deliveries which are still outstanding conditional upon advance payment, rescind the contract following a reasonable grace period or demand compensatory damages for non-performance. Repossession of goods delivered under retention of title shall be effected at the risk and expense of the buyer. Any credit note to be created concerning the material repossessed by us shall be for the resale price at most. If we bear the transportation costs upon delivery, the credit note shall be reduced by the freight charges fixed by tariff. We shall also be entitled to deduct processing costs, but at least a flat-rate charge of .75.00.

## 5 Set-off / Right of Retention

- (1) Set-off by the customer shall be permissible only in so far as the claims to be set off have been determined with legal finality or have been recognised. In all other cases, set-off shall be excluded.

- (2) Likewise, the customer shall be entitled to a right of retention only in the case of counterclaims which have been determined with legal finality or have been recognised. Furthermore, the customer waives its right to assert a right of retention arising from earlier or other transactions under the current business relationship.

## 6 Delivery / Periods for Delivery

- (1) If the customer is an entrepreneur, the risk of accidental destruction of the goods, in the case of a sale involving carriage of goods, shall pass to the customer at the time of hand-over of the goods to the forwarder, to the carrier or to any other person appointed to deliver the goods.

- (2) Delivery of the goods shall be effected on a carriage unpaid basis and at the expense of the customer. We shall not be obliged to effect transportation insurance.

- (3) Delivery by instalments shall be permissible, with an invoice being issued for each individual instalment. We shall be free to choose the method and means of dispatch.

- (4) Periods for delivery shall be subject to written agreement. Except where otherwise expressly agreed upon, the periods and dates for delivery shall apply only on an approximate basis. They shall commence upon receipt of the letter of acknowledgement and shall always relate to the time of notification of readiness for dispatch.

- (5) If we default on delivery, the buyer shall be obliged to set us a grace period of at least 4 weeks. In so far as notification that the goods are ready for dispatch has not been given by expiration of this grace period, the buyer shall be entitled to rescind the contract.

- (6) Damage claims on account of default in delivery are excluded, except in cases of intent.

- (7) If any other duty under the Contract is breached by slight negligence, or if we default on delivering the goods, our liability shall be limited to the foreseeable, typical, direct average loss. In relation to entrepreneurs, liability shall be excluded in cases of breach of immaterial contractual duties due to slight negligence.

## 7 Duties to Examine and to Lodge any Complaint

- (1) Without undue delay after hand-over, the customer shall examine the goods delivered and lodge any complaint with us in writing, if the goods are defective within the meaning of sections 434 and 435 of the German Civil Code. This shall not apply, if the defect is a hidden defect. The customer shall have the same duty to examine the goods and lodge any complaint in respect of deviations in quantity. If the customer fails to comply with its duty to examine the goods and lodge any complaint, it shall cease to be entitled to derive any rights from defectiveness or from deviation in quantity. This shall not apply, if the customer is a consumer.

- (2) In so far as the customer is an entrepreneur, it shall bear the burden of proving the existence of a defect, the time of discovery of the defect and the timeliness of notification of the defect.

- (3) If the customer is an entrepreneur, any other breach of contract caused by us must be reported by the customer without undue delay upon its discovery, except where we already have, or ought to have, positive knowledge thereof. If the customer fails to comply with this duty to lodge a complaint, it shall not be entitled to derive any rights from such a breach of contract.

## 8 Warranty

- (1) If the item delivered by us displays a defect at the time of hand-over, we shall be entitled to first of all eliminate the defect by rectification or replacement. If rectification or replacement fails following performance, or if supplementary performance is not possible, the customer shall be entitled to rescission, abatement or, where the defect is imputable to us, assertion of compensatory damages.

- (2) If the defect is imputable to us, the customer's claim to damages under section 280 of the German Civil Code shall be limited to compensation for damage to the sold item itself, as well as to losses for which we have expressly assumed in writing a duty of accountability.

- (3) In the event of disruptions in delivery due to force majeure or unforeseeable circumstances (operational disruption, strike or the like), we shall be entitled to defer for a reasonable period the date for delivery. Default shall not occur during the period for delivery which has been extended in such a manner.

- (4) The aforesaid limitations of liability shall equally apply to our agents in contract and agents in tort.

- (5) The aforesaid limitations of liability shall not apply in cases of intent or gross negligence, in cases of injury to the life, body or health of the customer or in cases of claims under the Product Liability Act [Produkthaftungsgesetz].

## 9 Warranty Periods

Claims arising from defectiveness of the goods delivered shall, contrary to section 438, subsection 1, no. 3 of the German Civil Code, become time-barred after one year.

## 10 Retention of Title

- (1) All goods delivered shall remain our property (goods under retention of title) until satisfaction of all receivables, in particular also the respective netted receivable to which we are entitled under the business relationship between us and the customer. This shall also apply to receivables arising in future and conditional receivables and even if payments are made in settlement of specified receivables.

- (2) Re-working and/or processing of the goods which are under retention of title shall be effected for us as the manufacturer within the meaning of section 950 of the German Civil Code [BGB], without placing us under any obligation. The goods re-worked and/or processed shall be deemed to be goods under retention of title within the meaning of subsection 1. If the goods under reservation of title are processed, combined and/or mixed with other items by the customer, we shall be entitled to joint title in the new item on a pro-rata basis in the ratio of the invoiced value of the goods under retention of title in relation to the invoiced value of the other goods used. In case our title becomes extinguished as a result of combining or mixing, the customer transfers to us here and now the rights of title to which it is entitled in the new item, to an extent equal to the invoiced value of the goods under retention of title, and shall hold them in safekeeping for us free of charge. Our rights of joint title shall be deemed to be goods under retention of title within the meaning of subsection 1.

- (3) The customer shall be permitted to sell goods which are under retention of title on condition that they are sold in the ordinary course of business and under the customer's normal terms and conditions, the customer is not in default with its payment obligations in relation to us and the receivables arising from on-selling pass to us in accordance with subsections 4 and 5. The customer shall

not be entitled to make any other disposition over the goods which are under retention of title.

- (4) The customer's receivables arising from on-selling the goods which are under retention of title are assigned to us here and now. We accept this assignment. The receivables shall, to the same extent as the goods under retention of title, serve to secure our claims arising from the business relationship. If the goods under retention of title are sold by the buyer together with other goods not purchased from us, the receivable arising from on-selling shall be assigned in the ratio of the invoiced value of the goods under retention of title in relation to the invoiced value of the other goods. If goods in which we have a co-ownership share as per subsection 2 are sold, a portion equal to our co-ownership share shall be assigned to us.

- (5) The customer shall be entitled to collect receivables arising from on-selling. This authorisation to collect shall become extinguished upon revocation by us, but no later than upon default in payment, upon failure to honour a cheque or upon the filing of a petition for the opening of insolvency proceedings. We shall only make use of our right of revocation, if we become aware of circumstances giving rise to a deterioration in the customer's financial circumstances which jeopardises our payment claim. The customer shall, at our request, immediately inform its customers of the assignment to us and hand over to us the information and documents necessary for collecting the receivables.

- (6) The customer shall, without undue delay, notify us of any attachment or other impairment by third parties. The customer shall bear all costs necessary for lifting the seizure and for recovering the purchase item, in so far as those costs are unable to be collected from third parties.

- (7) If the customer defaults on payment, or if a cheque issued by the customer is not paid, we shall be entitled to repossess the goods which are under retention of title and, where necessary for this purpose, enter the customer's business establishment or warehouse. The same shall apply upon occurrence of other circumstances which indicate that the customer's financial circumstances have materially deteriorated since the conclusion of the contract and which jeopardise our payment claims. Repossession shall not constitute rescission of the contract. Additionally, we shall be entitled to prohibit on-selling, on-processing and removal of the goods under retention of title.

- (8) The customer shall be obliged to separately store and mark the goods which are under retention of title and to treat them diligently.

- (9) If the value of the existing security interests exceeds by more than 20 % in total the receivables secured, the buyer shall be entitled to demand that security interests of our choosing be released to this extent.

## 11 Place of Performance

The place of performance for all services arising from the purchase contract is Bassum.

## 12 Place of Jurisdiction

The exclusive place of jurisdiction for all present and future claims arising from the business relationship with traders who have full merchant status, within the meaning of the German Commercial Code [HGB], is the place where the seller's registered office is situated, Bassum.

## 13 Applicable Law

The legal relations between us and the customer are exclusively subject to German law. The place of jurisdiction as agreed upon under section 11 shall also apply in the case of cross-border deliveries and services, except where another exclusive place of jurisdiction is stipulated by law.

## 14 Data Protection

The customer agrees that the customer data arising by reason of purchase orders may be collected, processed, stored and used by us in connection with carrying out the purchase order and may also be used by us for internal market research purposes and our own marketing purposes. In so far as the customer wishes that its data not be used by us for internal purposes, the customer shall be entitled to at any time lodge a written objection to such use. We shall not use or pass on customer data beyond the scope provided for in sentence 1.

## 15 Severability Clause

- (1) If a stipulation is or becomes ineffective, this shall not affect the effectiveness of the other stipulations of these General Terms and Conditions. In the event of any stipulation being ineffective, an effective stipulation which most closely reflects the intentions pursued with the ineffective stipulation in economic terms shall apply.

- (2) Moreover, the statutory stipulations shall apply.