

**General delivery and payment conditions of the  
Stefan Pfaff Werkzeug- und Formenbau GmbH &  
Co. KG, Röthenbach**

**1. Scope**

- 1.1 These general delivery and payment conditions apply to all of our contracts on deliveries and other services (sales businesses). These conditions are not applicable to our purchasing transactions and contracts with the consumers. The conditions of the customer, which we have not acknowledged in writing, shall not be binding for us, even if we do not expressly object to them.
- 1.2 These conditions are the basis of all future services and deliveries according to paragraph 1.1 in their corresponding current version even if their inclusion is not expressly agreed upon once again.
- 1.3 As far as the "written form" is being requested in these conditions, the written form according to § 126 BGB (German Civil Code), or the electronic form according to § 126a BGB (German Civil Code), or the text form according to § 126b BGB (German Civil Code) are allowed.

**2. Quotation and conclusions**

- 2.1 Our quotations are not binding. Conclusions of contracts and other agreements would only become binding upon our written confirmation. Any information in our quotations and / or order confirmations which are based on an obvious error, in particular the text or calculation, shall not bind us. The important thing is the obviously intended declaration.
- 2.2 We reserve all property rights and copyrights of the quote and attached documents. They are solely intended for the customer.
- 2.3 Ancillary agreements, reservation, modifications, verbal undertakings or amendments of the contract have to be confirmed by us in writing in order to become valid.
- 2.4 The performance specifications of our quotation or the descriptions of performance set out and confirmed in writing by us in our engineering specifications are the basis for our performance.

**3. Delivery times and delays, acts of God**

- 3.1 The delivery time mentioned in the quotation or in the order confirmation shall in any case be excluded. We aim to comply with the indicated delivery times; however, no guarantee can be assumed. Delivery times are only binding confirmation if they are declared so in our offer or order
- 3.2 Delays in delivery which are based on the fact that

the customer asserts change requests compared to the original order are the responsibility of the customer. This also applies if the customer does not comply with his obligation to deliver data in the agreed form in time or if the delivered data are faulty and need to be reworked. If, in such cases, there is a standstill in production, we may demand that the customer bears the incurred downtime costs due to idle times.

- 3.3 In case of acts of God or other unforeseeable exceptional and non-culpable circumstances - e.g. in case of difficulties of material procurements, disruptions of operation, strike, lockout, shortage of means of transportation, authority interventions, shortage of energy supply, terror, war, embargo, etc. also if these difficulties occur at the premises of sub-suppliers the term of delivery would be extended in a reasonable scope if we have been prevented from the timely fulfilment of our obligations.
- 3.4 We are freed from this delivery commitment if our deliveries or services become impossible or unreasonable due to the mentioned conditions. If the delay in delivery lasts for more than 3 months, the customer is entitled to withdraw from the contract. The customer may withdraw from the contract already at an earlier point in time if the delay in delivery is unacceptable for him.
- 3.5 Should the period of delivery be prolonged due to acts of God or should we be exempt from our delivery obligation, this shall not operate to give the customer any compensatory damage claims. We may only refer to the mentioned conditions if we immediately inform the customer about them.

**4. Prices and payments**

- 4.1 Our prices are net prices. The prices are plus VAT at the corresponding legal rate. The prices apply ex site and do not include the cost for freight, unloading, transport and installation, unless, they have been explicitly agreed.
- 4.2 If, in the individual case, in particular advance payment or discount deductions are agreed, the invoices made out by us after having rendered the service are payable with the receipt of the invoice without deduction within 30 days.
- 4.3 If the payment of the customer is received delayed, we are entitled, to demand annual interest rates amounting to 9 percentage points above the base rate from the date on which payment becomes due. If the customer is in default of payment, we can invoice interests amounting to the corresponding bank rates for bank overdrafts, however, at least 9 percentage points above the base rate. We remain the right, to assert other financing costs resulting of the delay of the customer or other delay damages.

4.4 In the case of default in payment, we are entitled to retain the delivery. The customer is not entitled to withhold or offset payments, insofar as the counterclaims are not acknowledged by us or are determined to be legally binding.

## **5. Reservation of proprietary rights**

5.1 All delivered products remain our property until full payment of all outstanding claims from the business relation with the customer (goods subject to reservation). This also applies to accounts receivable arising and incurred in the future, even if payments have been made in respect of specially designated claims. This title retention until outstanding accounts have been paid finally lapses with the settlement of all due accounts receivable recorded in this title retention at the point in time of the payment.

5.2 Treatment and processing of the goods subject to reservation are performed for us as manufacturer in the sense of § 950 of the German Civil Code, without obliging us. The treated and processed goods are deemed as goods subject to reservation in the sense of Item 5.1. If the purchaser manufactures, combines or mixes the goods to which title is retained with other goods, we shall obtain co-ownership in the new goods in proportion to the invoiced price of the goods to which title is retained to the invoiced price of the other used goods. If the title expires due to combining or mixing, the buyer shall immediately transfer his title to the new stock or goods in the invoice amount of the goods subject to retention of title and will keep them safe free of charge for us. Our co-ownership rights shall apply as goods subject to reservation within the meaning of Item 5.1.

5.3 The customer is entitled to resell the products in the proper course of business provided that he is not in default with the payment of the purchase price. He is not authorized to extraordinary disposals such as pledging and collateral assignment to third parties. In the event of resale, the customer already assigns in advance any claims arising against his purchasers and other claims including all unsettled balances from current accounts as security with any auxiliary rights to us.

5.4 The customer is entitled to collect the assigned claims. The collection authorisation expires, if the customer stops his payments, files for bankruptcy or insolvency proceedings are opened, in an out-of-court composition or restructuring proceeding, within a restructuring proceeding according to the Law of stabilisation and restructuring frame (StaRUG) or in other forfeiture of assets. The same applies, if it becomes apparent that our claim for

payment will be endangered by a lack of performance on the part of the customer. In such a case, we demand that the customer informs us about the assigned accounts receivable and the debtors, about all information necessary for the collection of debts, hands over the corresponding documents, and informs the debtor about the assignment.

5.5 It is prohibited to the customer to dispose of the resale of the claim by chattel mortgage or release of covenant -also by the way of claim sale without our prior written consent, unless it concerns an assignment by way of the real factorings which are reported to us and when the factoring proceeds exceed the value of our secured claim.

5.6 The customer shall inform us without undue delay of any seizing or other legal or physical impairment or endangering of the retained goods or any other security right provided to us. The customer shall support all costs that may occur for the annulment of the attachment or the return transportation of the reserved merchandise, so long as the costs are not replaced by third parties.

5.7 We are obliged to retransfer or release the collateral securities upon request of the customer insofar as the value of the securities provided to us exceeds our claim by a total of more than 20 %.

## **6. Transfer of risk and acceptance**

6.1 The product should be accepted upon completion of the performance, if agreed in the contract. This also applies for individually self-contained, partial services.

6.2 With the acceptance, the risk is transferred to the customer.

6.3 If the customer is late in acceptance, the risk is transferred to him as of the moment of delay. The same applies, if an agreed assembly is interrupted for reasons, for which the customer is responsible, and if we have handed over to the custody of the customer the performance effected up to then by mutual agreement.

6.4 As far as no acceptance is required or agreed, the risk will pass onto the customer at the latest with the shipment of the goods or in fact even if there are partial deliveries or if we accepted further performances as per example the shipment costs or transportation and installation.

6.5 Upon request of the customer the consignment will be insured at his cost against theft, breakage, transportation, fire and water damages as well as against other risks that may be insured.

## 7. Weights, dimensions, deviations

- 7.1 Depending on the type of goods we may make delivery over or under the agreed number of items and weights to the extent usual in the commerce and industry.
- 7.2 The DIN tolerances and deviations to the extent usual in the commerce apply for the prescribed dimensions, unless we have agreed deviating quality requirements with the customer

## 8. Liability for material defects and compensation

- 8.1 We will not be responsible that the goods would be suitable for a certain purpose, unless we expressly agreed to this liability.
- 8.2 We assume the liability for material defects for the quality of the design and the execution from the delivery date for the period of 12 months in a way that parts becoming possibly useless or damaged which is demonstrably due to faults in material or workmanship during this term should be replaced or repaired as appropriate as quickly as possible and free of charge.
- 8.3 The liability for material defects does not apply for wearing parts and for such damages, which are caused at the premises of the customer due to natural wear, humidity, excessive heating of the rooms, other temperature or weather conditions, improper handling, brute force, overexertion and use of inappropriate operating resources and lubricants. Observe the maintenance and care instructions of the customer.
- 8.4 Claims for additional fulfilment, compensation, abatement or withdrawal in the sense of §§ 437, 634 of the German Civil Code because of obvious defaults expire with acceptance but at the latest if the customer does not notify them immediately, so within two weeks after handing over.
- 8.5 We shall bear the costs for transportation due to supplementary performance, in particular costs for transport, travel, labour and material to the place to which we have delivered the goods. If the goods are located at another place than the place of delivery, in particular in cases of the resale, we will not be liable to bear any additional costs for transport, road, labour and material costs resulting hereof.
- 8.6 If possible, at our own discretion, the goods should be returned at our costs, if this would be technically possible. If the goods are sent in, the least expensive mode of transportation needs to be chosen, usually by a forwarding agent and not by plane, if this is unacceptable to the customer. Notwithstanding our rights from § 275, para. 2 and 3 of the German Civil Code, we can however refuse subsequent

performance if such performance would only be possible at unreasonable costs.

- 8.7 Instead of repairing, we can also deliver a replacement part at our choice. If we deliver a replacement part, we can demand restitution of the defective item subject to §§ 346 to 348 of the German Civil Code from the customer. If the rectification fails, if we refuse the replacement delivery or if we do not deliver it within a reasonable period, the customer can reduce the remuneration or withdraw from the contract. After the third unsuccessful trial, a rectification is considered as failed, if nothing to the contrary arises based on the nature of the item or the defect, or other circumstances in particular.
- 8.8 Insignificant reasonable variations in the dimensions and performance in particular in case of repeat orders do not allow for authorization complaints, unless the compliance of dimensions and tolerances has been expressly agreed upon. Any technical improvements, as well as necessary technical modifications, shall also be deemed compliant with the contract as long as they do not constitute any deterioration in value.
- 8.9 If the customer prescribes the use of a certain material or if he makes the material to be used available to us, or if he requests a certain type of execution deviating from the usual production, we are not liable for defects and damages resulting hereof and herewith which might occur on our products or lead to defects on the product that needs to be manufactured. We are not liable for parts, materials or other items of equipment which have been produced by the customer or on his behalf.
- 8.10 All claims in respect of material defects expire if the customer performs modifications or interventions on the product himself or causes third parties to perform without our written approval. The guarantee also expires if the customer uses spare parts which have not been released by us, unless the customer proves that the defect would also have occurred when using an original part or a spare part released by us.
- 8.11 All claims in respect of material defects of the customer due to breach of duty, delay, impossibility of performance, positive claim infringement, default at the point of conclusion of the contract, tortious liability and other legal reasons are excluded, insofar as damages or consequential damages, which did not occur on the delivery item itself, have not been caused by us by intentional or grossly negligent action. The limitation of liability applies to the same extent for our performing and vicarious agents.
- 8.12 The exclusion of liability according to Fig. 08.11 does not apply insofar as contract-essential duties are parties violated or if the customer asserts claims for

damages due to the lack of an assured features. However, in these cases, our liability is limited to the typical damage that could be anticipated in the conclusion of the contract.

- 8.13 We are not entitled to refer to the above-mentioned limitations of liability and the one-year warranty period in Fig. 8.2, if we have fraudulently concealed the deficiency or have given a guarantee of the quality of the item. Furthermore, the limitations of liability and the one-year warranty period in Fig. 8.2 do not apply for damages to life, limb or health, for claims according to the product liability law.

## 9. Materials provided by the customer

- 9.1 If the customer makes the material available that has to be processed by us. The remaining material (waste) produced during the material processing and treatment would passing into our ownership without replacement, unless we agree on something different with the customer.
- 9.2 If the material is made available by the customer, we cannot be held liable for any deficiencies which can be traced by to material defects. If we determine any material defects, we will immediately inform the customer and mutually agree upon the further action.

## 10. Copyright

- 10.1 The copyright and the ownership of the design drawings, 3D data, CAM data, electrodes and technology data as well as of all works which are capable of being copyrighted which we render to the customer remains with us. If applicable, the customer receives the electronic design data as 3D data.
- 10.2 Licences and rights of use can be purchased by the customer by means of a separate contract.

## 11. Indemnity obligation of the customer

- 11.1 If the customer requests a certain type of execution or a certain specification of the goods, he has to check beforehand if this might result in copyright or patent infringements or to infringement of the rights of third parties. The customer has to inform us about the result of his examination before concluding the contract. We are not obliged to check without sufficient cause if the a.m. instructions of the customer would infringe the rights of third parties.
- 11.2 If we find out after having concluded the contract that the type of the requested execution or the specification (would) infringe(s) the right of third parties, we are entitled to request the customer to eliminate this obstacle within a suitable period of

time and to discontinue the works until then. If the customer does not fulfil our requirements in spite of an extension of time, we are entitled to retire from the contract and to claim damages.

- 11.3 If we are held liable by third parties in the cases of Fig. 11.1 p. 1 due to the infringement of their rights, the customer has to indemnify us immediately from any such claims of third parties. We can demand a reasonable advance of costs for court legal defence and expert costs as well as any other necessary costs accruing for the defence against claims of third parties from the customer.
- 11.4 The indemnity obligation and the obligation to pay an advance payment also applies if it would be revealed during a legal dispute at a later point in time, that the infringement of the rights of third parties has not taken place. The customer can request that we assign to him the rights of our rights against third parties regarding costs and compensation of damages after having completely performed the indemnity and fulfilment of our claims.

## 12. Exclusion of set-off, contractual penalty

- 12.1 The customer can only set-off the payment of agreed remuneration against accounts receivable from us, if the counter-claim of the customer was either accepted by us or has been declared by judgement. Also, the rights of retention of the customer are excluded.
- 12.2 Contractual penalties are only accepted by us if they are consistent with the content of the contract, which have been set forth in the contract in writing. Contractual penalties in general terms and conditions of the customer are not binding for us in any case.
- 12.3 All contractual penalties include for us the rights according to §§ 339 et seq. of the German Civil Code providing that the party who wants to derive the rights from the promise of contractual penalty has to demonstrate and prove all conditions hereof. Any contractual penalty is chargeable to any claims for compensation. We reserve the right to prove that no or only a minor damage was caused than the contractual penalty specifies and to reduce the contractual penalty accordingly.
- 12.4 If a forfeited contractual penalty is disproportionate, it may be reduced by judgement according to § 343 of the German Civil Code . The § 348 of the German Commercial Code (HGB) is not applicable.

## 13. Extrajudicial settlement

- 13.1 We are unwilling to participate in dispute settlement procedures at a consumer arbitration board. For legal reasons we are also not obliged to participate in

a dispute settlement procedure at a consumer arbitration board

- 13.2 Platform of the EU for extrajudicial online settlement of disputes: <http://ec.europa.eu/consumers/odr/>

#### **14. Severability Clause**

If one or several of the provisions of this contract are or become ineffective beyond the main obligations, the effectiveness of the remaining provisions of this contract shall be unaffected thereby. In such a case, the parties undertake to agree to a new provision, that comes closest to the economic purpose with the invalid provision and which they would have agreed if they had recognized the invalidity of such a provision.

#### **15. Place of jurisdiction, choice of law**

- 15.1 Our headquarters is the place of performance and court of jurisdiction for all disputes resulting of the contractual relationship, insofar as the customer is a registered trader, legal entity of public law or special fund under public law.
- 15.2 Exclusively the law of the Federal Republic of Germany is applicable to the contractual relationship between the parties; the UN Convention on the International Sale of Goods shall be excluded.

Röthenbach, May 1st, 2022

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