

General Terms and Conditions of
Druckguss Westfalen GmbH & Co. Kommanditgesellschaft)
(Conditions of sale, delivery and payment for metal castings)

1. General/concluding contracts

- a) We only conclude delivery contracts on the following conditions.
- b) Our offers are subject to confirmation. The mutual written declarations are authoritative with regard to the scope of delivery of the service. Subsequent amendments and alterations must be made in writing.
- c) We do not recognize any differently worded conditions or terms deviating from our conditions issued by the ordering party, even if we have become aware of the ordering party's conditions and proceed with delivery without reservation, unless we have recognised such conditions in writing.
- d) Our General Terms and Conditions apply only to entrepreneurs (pursuant to Section 14 (1) German Civil Code); they also apply to all future business transactions with the ordering party resulting from the on-going business relationship.

2. Prices

- a) Our prices are to be understood ex works, excluding packaging and value added tax.
- b) If the order-related costs undergo material alterations after conclusion of the contract, the contracting parties are obliged to reach agreement on adjusting the prices.

3. Delivery and acceptance obligations

- a) Delivery periods begin as soon as the details of executing the order have been clarified and the ordering party has fulfilled all prerequisites. Unless agreed otherwise, the delivery day is the day of shipment. However, if shipment should be delayed for reasons for which we are not responsible, the day on which the goods are made available for shipment is deemed to be the delivery day. Partial deliveries are permitted unless in conflict with an obvious interest of the ordering party.
- b) If we are prevented by making punctual delivery by Force Majeure or unforeseeable circumstances for which we are not responsible, such as official directives, unrest or the non-appearance of deliveries from our subcontractors, the delivery time is extended by the duration of the hindrance. If the hindrance lasts for longer than three months, both we and the ordering party can withdraw from the still not completed part of the contract to the exclusion of any damages claims.
- c) If we should default in delivery, the ordering party is entitled to set us an appropriate period of grace and to withdraw from the contract if the period of grace should expire in vain. In the event of normal or minor negligence on our part, claims for compensation instead of the service are limited to the typical, predictable damage for the particular contract.
- d) In the case of call orders without specifically agreed delivery time, production batch size and acceptance dates, we can demand a corresponding binding stipulation to this effect at the latest three months after the order has been confirmed, insofar as nothing else has been agreed in writing. If the ordering party fails to comply within three weeks, we are entitled to set a two-week period of grace. If the period of grace should expire in vain, we are entitled to withdraw from the contract and demand compensation.

- e) If the ordering party wants us to carry out necessary tests, agreement must be reached on the type and scope of testing. If this does not happen at the latest on concluding the contract, the ordering party shall have to pay the resulting costs.
- f) If a delivery is made on the basis of a sample produced by us, the ordering party shall inspect and release this sample in our factory immediately after being notified that the sample is complete. If the sample is not inspected and released for reasons for which the ordering party is responsible, in spite of being set a period of grace, we are entitled to send the sample or take it into storage at the costs and risk of the ordering party; the sample is thus deemed to have been released.

4. Shipment and transfer of risk

- a) Risk is transferred to the ordering party when the goods leave our factory (ex works).
- b) If shipment is delayed for reasons for which the ordering party is responsible, risk is transferred on the day of making the goods available for shipment.

5. Dimensions, weights and delivery quantities

- a) The DIN and EN standards apply with regard to dimensional accuracy. Otherwise we comply with the weights and dimensions stated in our offers and order confirmations to the best of our knowledge. However, these are not guaranteed properties. Slight deviations, in particular greater or lesser weights resulting from the casting process, do not entitle the ordering party to make complaints and warranty claims, unless agreed otherwise.
- b) Given the special aspects of the metal casting procedure, deviations in up to 10% in quantity more than or less than the order quantity are possible in the case of mass production.

6. Warranty claims

- a) Warranty claims from the commercial ordering party can only be asserted on condition that the commercial ordering party has correctly fulfilled his inspection and reprimanding obligations pursuant to Section 377 German Commercial Code. Other entrepreneurs must inform us of apparent faults within 14 days of receiving the goods, otherwise the ordering party's warranty claims become null and void. Any reprimands must be submitted in writing, specifying the details of the fault.
- b) We must be given an opportunity to inspect the reprimanded faults on site. Corresponding inspection by us must take place straight away insofar as the ordering party is interested in settling the matter immediately.
- c) Warranty claims are not justified in cases of only minor deviations in the properties or only immaterial impairment of use.
- d) All our specifications are only technical descriptions and do not constitute a guarantee, unless agreed otherwise.
- e) Insofar as the goods show a fault for which we are responsible, we are entitled to repair the fault or make a replacement delivery, in our choice.
- f) If the ordering party unjustifiably makes a complaint for reasons for which we are not responsible regarding a fault for which we are responsible, we are entitled to invoice the ordering party for the appropriate expense incurred by us to ascertain and/or repair the fault.

- g) We can invoice the ordering party for the additional costs involved in subsequent performance, particularly transport, shipping and handling costs, labour and material costs, insofar as the costs have been increased by bringing the delivered item to another location than the delivery address, unless such removal fulfils the intended use stipulated in the purpose that is prerequisite to the contract.
- h) Recourse claims of the ordering party on purchasing consumer goods (Section 478 German Civil Code) are excluded with regard to the ordering party's agreement with his customers going over and beyond the customers' statutory warranty claims. The ordering party shall inform us in good time about his customer's warranty claims so that we are in a position to choose whether we fulfil the customer's claims instead of the ordering party's claims.
- i) Warranty claims are struck by the statute of limitations already 12 months after delivery, unless we have concealed the faults with gross negligence, wilful intent or maliciously. This period of limitations also applies to claims from any guarantees given by us or binding on us, unless stated otherwise therein. The statutory periods for recourse claims pursuant to Section 478 German Civil Code remain unaffected; the same also applies to longer statutory periods of limitation, as for the production of building structures and delivery of goods used for a building structure in accordance with their normal use, and causing the faulty nature thereof. These limitation periods also apply to collateral damage, unless this is claimed under liability in tort. If subsequent fulfilment becomes necessary because of a faulty delivery, the period of limitations is only inhibited until subsequent performance and not restarted again.
- j) Before the ordering party can assert further claims or rights (withdrawal, reduction, damages or compensation) firstly we must be granted an appropriate period of grace to give us an opportunity for subsequent fulfilment, unless we have given a differently worded guarantee. If subsequent fulfilment should fail in spite of at least two subsequent fulfilment attempts, if we refuse subsequent fulfilment, if subsequent fulfilment is not possible or if the ordering party cannot be reasonably expected to accept subsequent fulfilment, the ordering party can withdraw from the contract or reduce the remuneration. Figure 7 of these General Terms and Conditions applies to claims for damages and compensation.
- k) Otherwise the following also applies to claims for warranties of title:
 - (1) Unless agreed otherwise, we are only obliged to provide the deliveries in the country of the delivery address free of third-party rights
 - (2) In the event of any violation of third-party industrial property rights for which we are responsible, we can either obtain an adequate right of use for the agreed or presumed use at our costs and make this available to the ordering party, or change the delivered goods in such a way that the industrial property rights are not violated or replace the delivered goods, insofar as this does not impair the agreed and presumed use of the delivered goods. If this is not possible, if we refuse subsequent fulfilment or if subsequent fulfilment should fail, the ordering party is entitled to the statutory claims and rights. Figure 7 applies to damages and compensations claims.
- l) If the ordering party has been sent selection samples for inspection, we are only liable for the delivery being executed in accordance with the selection sample, taking account of any possible corrections.

7. Compensation

- a) The assertion of damages or compensation claims (referred to hereinafter as "damages") because of faults in the delivery goods (warranty claims) is ruled out insofar as we cannot proceed with subsequent fulfilment for reasons for which we are not responsible. The assertion of damages claims for faults and corresponding collateral damage based on the delivery of faulty goods always presumes that we have caused the fault with wilful intent, gross negligence or through negligent material breach of duty, unless agreed otherwise. The same also applies to the assertion of damages claims for violation of a durability guarantee given by us or for us (Section 443 (2) German Civil Code).
- b) Otherwise, damages or compensation claims ("damages") of the ordering party are ruled out for any legal reasons whatsoever, particularly for breach of duty from/in the context of the contractual relationship, through our fault before or during conclusion of the contract and from liability in tort. This does not apply to claims pursuant to Sections 1, 4 Product Liability Law, in the case of wilful intent or gross negligence, personal injuries to life, limb or health, assumption of a guarantee for the presence of a property (property guarantee) or in the case of negligent material breach of duty on our part. Under no circumstances are we liable over and beyond the statutory claims. In the event of minor negligence on our part, our liability is limited to the typical predictable damage. Changes to the burden of proof are not associated with these provisions in paragraphs a) and b).
- c) Insofar as our liability is excluded or limited, this also applies to the personal liability of our employees, workers, representatives and vicarious agents.
- d) The period of limitations for claims between supplier and ordering party is based on Figure 6 (i), unless this refers to claims from producer liability pursuant to Section 823 et seq. German Civil Code or under the Product Liability Law. This period of limitations applies in particular to collateral fault damage.
- e) If we undertake the contractual obligation to test our products for the presence of certain characteristics and properties, we are liable for damage caused by our failure to comply with the ordering party's testing instructions.

8. Conditions of payment

- a) Invoices for due amounts are to be paid free of cost within 30 days of the invoice date (date of receipt). Drafts and cheques are only accepted on account of performance, if at all. The costs incurred by drafts and cheques shall be paid by the ordering party.
- b) Costs for workpiece-related models and production equipment pursuant to Figure 10 b) must always be paid in advance, unless agreed otherwise.
- c) The ordering party may only offset such receivables against our own as are undisputed or legally recognized. The ordering party is only entitled to exercise any withholding rights or right to refuse performance if the same prerequisites are fulfilled in the case of the ordering party's counter-claims or at least made credible in the case of faults in the supplied goods (e.g. by written confirmation from a neutral place or body) and also when the counter-claim refers to the same contractual relationship.
- d) If the ordering party defaults in payment, we are entitled to charge interest amounting to 8% p.a. over the basic interest rate.

9. Reservation of ownership

- a) We reserve ownership of the supplied items until receipt of all payments resulting from the business relationship with the ordering party or, if the ordering party maintains a current account with us, until the recognized balance has been paid. In the case of conduct of the ordering party in breach of the contract, particularly default in payment after being set a period of grace, we are entitled to recover the supplied goods. This does not apply insofar as the ordering party has already filed for insolvency proceedings or insolvency proceedings have been initiated, with the result that we are not allowed to immediately recover the supplied items. After recovery of the supplied items, we are entitled to proceed with utilization; the corresponding revenues are to be imputed to the ordering party's liabilities after deducting appropriate administration costs. The utilization provisions of the Insolvency Code remain unaffected.
- b) The ordering party is obliged to treat the delivered goods with due care and attention. In particular, the ordering party is obliged to insure the delivered goods at his own costs against fire, water and theft with adequate replacement value cover. If any maintenance and inspection work should be necessary, the ordering party must proceed accordingly in good time at his own costs.
- c) In the case of seizure or any other kind of third-party intervention, the ordering party shall inform us in writing straightaway. The ordering party is liable to us for costs incurred in court and out of court through any resulting court action pursuant to Section 771 Code of Civil Procedure (third-party objection claim).
- d) The ordering party is entitled to resell the delivered item in correct business transactions; however, he already assigns to us now at this point in time all receivables up to the invoice total of our receivables (including value added tax) accruing to him on his customers or third parties from the resale, regardless of whether the delivery item has been resold without or after processing. The assigned receivable also refers to an acknowledged balance respectively to the "causal" balance in the case of insolvency on the part of the ordering party's customer.

The ordering party remains entitled to collect this receivable even after assignment. However, we are entitled to collect the receivable ourselves if the ordering party no longer fulfils his payment obligations from the received proceeds, defaults in payment or has applied to open insolvency proceeding or a corresponding application has been made or the suspension of payments applies. In these cases, we can demand that the ordering party informs us of the assigned receivables and their debtor, provides all information required for collection, hands over the corresponding documents and informs the debtor (third party) of such assignment. However, we cannot collect the receivable if this conflicts with the Insolvency Code.
- e) The processing or alteration of the supplied item by the ordering party is always carried out on our behalf. If the supplied item is processed together with other items that do not belong to us, we acquire co-ownership of the new product in the ratio of the value of the supplied item to the other processed items at the point in time of processing. Otherwise the product resulting from processing is subject to the same provisions as for the conditionally supplied items.
- f) If the delivered item is inseparably combined with items that belong to us, we acquire co-ownership of the new product in the ratio of the value of the supplied item to the other combined items at the point in time of being combined. If such combination takes place in such a way that the ordering

party's product is deemed to be the principle product, it is agreed that the ordering party assigns proportional co-ownership to us. The ordering party takes the resulting property or co-owned property into safekeeping for us.

- g) The ordering party also assigns to us the receivables serving as collateral for those receivables against him accrued against a third party by combining the supplied item with a plot of land.
- h) We are obliged to release collateral to which the ordering party is entitled at his request insofar as the value of his collateral exceeds the value of the corresponding receivables by more than 25%. It is up to us to choose which items of collateral are released.

10. Workpiece-related models and production equipment

- a) Insofar as the ordering party provides us with models or production equipment (e.g. casting moulds), these shall be sent to us free of charge. We can insist that the ordering party collects such equipment again at any time. If he fails to comply with such a request within three months, we are entitled to send the equipment to him at his own costs. The costs for upkeep and any requested changes shall be paid by the ordering party.

The ordering party is liable for technically correct design and execution of the equipment in accordance with the production purpose; however, we are entitled to make alterations resulting from the casting process. Without special agreements, we are not obliged to review compliance of the provided equipment with enclosed drawings or samples.

- b) Insofar as we have produced or procured workpiece-related models or production equipment at the ordering party's request, the ordering party shall refund us with the corresponding costs. Insofar as the full costs have not been charged, the ordering party shall also pay the remaining costs if he fails to accept the quantities announced on concluding the contract. The models and production equipment produced or procured by us remain our property; they shall be used only for deliveries to the ordering party during the term of the agreement. We are not obliged to keep such items any longer after 3 years have expired since the last delivery.

If on the other hand agreement is reached that the ordering party owns the equipment, the equipment becomes his property on payment of the purchase price. Handing over the equipment is replaced by our obligation to keep the equipment. The ordering party can give notice to terminate the corresponding relationship at the earliest 2 years after the transfer of ownership, unless agreed otherwise.

- c) We shall treat all models and production equipment with the same due care and attention that we use for our own property. At the request of the ordering party, we are obliged to insure his models and equipment at his costs. Compensation claims for collateral damage are excluded under the prerequisites stated in Figures 6 (c) and 7.
- d) If deliveries made on the basis of drawings or other details specified by the ordering party result in the breach of third-party industrial property rights, the ordering party shall indemnify us from all claims. Our drawings and documents handed over to the ordering party, together with our suggestions for advantageous design and production of the castings, must not be revealed to third parties and we can demand the return of such documents at any time. Any licence claims from the ordering party based on industrial property rights to submitted models and production equipment or models and production

equipment produced or procured on his behalf are excluded insofar as used by us in accordance with the contract.

- e) Special agreements are necessary when using disposable models (e.g. made of polystyrene foam).

11. Parts for integral casting

- a) Parts intended for integral casting are to be delivered free of costs; they must be dimensionally accurate and ready for integral casting. Any necessary machining costs must be paid by the ordering party.
- b) The number of parts for integral casting must exceed the number of ordered castings to an appropriate extent.

12. Place of fulfilment and jurisdiction, governing law

The place of jurisdiction is our business address, insofar as the ordering party is an entrepreneur; this also applies to draft and cheque commitments. However, we are also entitled to take legal action against the ordering party at his business address.

as of August 2002

These General Terms and Conditions are recommended by the

German Association of Metal Foundries e.V.

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