

## **General Terms and Conditions of Payment and Delivery \***

**for the sale of container bodies, container vehicles, tank containers, storage containers, tank equipment and GF moulds  
recommended by the Verband Deutscher Maschinen- und Anlagenbau e.V.  
and the German Association of the Automotive Industry**

To be used for:

1. merchants if the contract is part of the operation of the business;
2. legal bodies of public right and Federal Special Funds under public law.

### **I. Quotation**

The documents pertaining to the quotation; such as illustrations, drawings, weights and dimensions hereby serve as approximate values only, unless expressly described as binding. The supplier reserves the property and copyright for cost estimates, drawings and other documentation, access of which cannot be given to third parties. The supplier is required to make drawings described by the Purchaser as being confidential, and accessible to third parties only with the Purchaser's consent.

### **II. Scope of Delivery**

For the terms of the delivery, the order confirmation of the supplier will be considered binding whenever the supplier does not provide a quotation that specifically provides a time commitment and acceptance date and if a timely order confirmation is not available. Collateral agreements and amendments require the written confirmation of the supplier.

### **III. Price and Payment**

1. In the absence of any specific agreement, the prices are ex works prices including loading at the plant, excluding packaging. The prices are exclusive to any VAT applicable at the actual statutory rate.
2. The purchase price and prices for incidental services shall be due for payment upon the transfer of the object of sale and delivery, or at the time an invoice is submitted.
3. The Purchaser may offset claims against the Seller's claims only if the Purchaser's counterclaim is uncontested and if entitlement has been confirmed by final court decision; a right to withhold payment may be asserted only insofar as it is based on claims under the contract of sale.

### **IV. Terms of Delivery, Delay in Delivery**

1. The terms of delivery are established via agreements made between the parties to the agreement. Observance by the Seller requires that all commercial and technical questions between the parties to the agreement are clarified and that the Purchaser has fulfilled all obligations incumbent on him, such as the production of the required official certifications or approvals or the payment of a down payment. Should this not be the case, the term of delivery is extended accordingly. This provision will not apply to the extent that the Seller is responsible for the delay.
2. Any observance of the terms of delivery term is subject to an appropriate and timely self delivery, e.g., provision of materials by the Purchaser.
3. A delivery time is met when the object of delivery has been removed from the factory and continues up until its expiry or whenever readiness for shipment has been advised. If an acceptance agreement has been agreed upon, then the acceptance date shall be considered authoritative, excepting justified rejection of acceptance, or alternatively a notification of changes in the state of readiness for acceptance.
4. If the delivery or the acceptance of the delivery item are delayed for reasons for which the Purchaser is not responsible, he will be charged the costs due to the delay starting one month after notification of the readiness for shipment or acceptance.
5. If the non-observance of the delivery time is due to force majeure, industrial disputes or other events which are outside the influence of the Seller, the delivery time will be extended accordingly. The Seller will inform the Purchaser about the onset and the termination of such circumstances as soon as possible.
6. The Purchaser is entitled to withdraw from the contract in the event that a completed performance is made impossible on the part of the supplier prior to passing of risk. Additionally, the Purchaser can withdraw from the contract if the performance of a part of the delivery becomes impossible upon an order and if he has a rightful interest in the refusal of the partial delivery. If this is not the case, the Purchaser has to pay the contractual price attributable to the partial delivery. The same applies in the event of the Supplier's inability to perform. In all other respects, Section VII.2 applies.  
If the impossibility or inability occurs during a delay in acceptance or if the Purchaser is liable for these circumstances alone or in a predominant share, he is liable to give consideration.
7. If the Supplier is in default and if the Purchaser suffers any damage thereby, he shall be entitled to claim a lump-sum compensation for default. For each full week of the delay, it amounts to 0.5 p.c., however, in all not exceeding 5 p.c. of the value of that part of the complete delivery which cannot be used contractually or in due time as a result of the delay.  
If the Purchaser grants the Seller in default a reasonable period for performance – taking into account the statutory cases of exception, and if the period is not observed, the Purchaser is entitled to termination within the scope of the statutory provisions.  
No further claims of a default in delivery are thus allowed to be made.

### **V. Passing of Risk, Acceptance**

1. Risk passes to the Purchaser with the dispatch of the delivery item at a minimum, that is, in cases where partial shipments are made or where the Supplier has accepted other services such as the shipping charges or cartage or installation. To the extent that an acceptance has yet to be executed, it will establish the basis for the passing of risk. The acceptance has to be carried out without delay to the acceptance date, or alternatively upon the Seller's notification of the readiness for acceptance. Acceptance cannot be refused by the Purchaser when a non-essential fault is applicable.

2. If the delivery and/or the acceptance is delayed or stopped due to circumstances which are not attributable to the Seller, the risk passes to the Purchaser on the date of the notification of the readiness for shipment and/or acceptance.
3. Partial deliveries are permitted to the extent that they are reasonably acceptable for the Purchaser.

#### **VI. Reservation of Title**

1. The object of sale shall remain the Seller's property until all claims due under the contract of sale have been paid. If the Purchaser is a legal entity under public law, a special fund under public law or an entrepreneur acts in the exercise of its commercial or independent professional activities in an execution of the contract, then title remains reserved also for Seller's claims against the Purchaser under the current business relationship until all Seller's claims related to the object of sale have been satisfied.  
At the Purchaser's request, the Seller shall waive reservation of title if the Purchaser has incontestably satisfied all claims in connection with the object of sale, and if reasonable security is provided for claims remaining under the current business relationship.
2. Should the Purchaser be in default on payment, the Seller shall have the right to withdraw from the contract of sale. If, over and above this, the Seller has a right to claim for damages in lieu of performance and takes repossession of the object of sale, Seller and Purchaser agree that the Seller shall refund the current marketable value of the object of sale at the date of its return. At the Purchaser's request – which must be expressed immediately after the object of sale has been taken back – a publicly appointed and sworn expert, e. g. Deutsche Automobil Treuhand GmbH (DAT) will be selected at the Purchaser's option to determine the current market value. All costs of returning and selling the object of sale shall be borne by the Purchaser. Without proof, the costs of sale shall amount to 5 % of the current marketable value. Such costs shall be set higher if the Seller proves higher expenses or set lower if the Purchaser proves lower expenses.
3. As long as reservation of title remains in force, the Purchaser may neither dispose of the object of sale nor permit other Parties to use it under contract.
4. The application for opening of insolvency proceedings entitles the Seller to withdraw from the contract and to claim immediate return of the delivery item.

#### **VII. Material Defects, Warranty**

1. Any claims by the Purchaser for material defects shall lapse, in accordance with statutory provisions, within two years of delivery of the object of purchase. In derogation of this, a limitation period of one year applies for commercial vehicles, tank bodies, tank vehicles and tank containers, if the Purchaser is a legal entity under public law or a special fund under public law, or an entrepreneur executing the contract acts in the exercise of its commercial or independent professional activities.
2. For the handling of any elimination of defects, the following shall apply:
  - a) All those components shall be rectified or supplied as new components at the Seller's option which turn out to be defective due to a condition caused prior to the passing of risk. The Seller shall be informed immediately about the determination of such defects. Replaced components become property of the Seller.
  - b) For the performance of any repairs and replacements deemed appropriate at the Seller's reasonable discretion, the Purchaser is obliged to make available the time and opportunity required for said repairs/replacements, following coordination with the Seller. The Seller is released from any liability for consequences resulting from a lack of coordination. Only in urgent cases where a hazard to operational safety exists and as a protection against disproportionately high damage and where the Seller has been notified immediately, is the Purchaser entitled to remove the defect himself or have it removed by third parties and to claim compensation of the required expenses from the Seller .
  - c) Of the expenses caused by the repair and/or any substitute delivery, the Supplier shall bear the expenses of the replacement, to the extent that the complaint proves to be justified, including those costs of shipment and the appropriate costs of dismantling and installation. Additionally, the Supplier shall bear the costs of any provision of his fitters and auxiliary staff, if such costs can be claimed in all fairness according to the circumstances of the individual case. In any other respect, the Purchaser bears the expenses, e.g., towing charges, travel expenses to and from the repair shop and the expenses for a substitute vehicle. Further claims by the Purchaser, in particular a claim for damages not resulting from the delivery item, shall be excluded.
  - d) No warranty whatsoever shall be accepted in the following cases:  
Inappropriate or improper use, faulty installation or activation by the Purchaser or third parties, natural wear, faulty or negligent treatment, improper maintenance, inappropriate working materials, chemical, electrochemical or electrical influences, unless they can be ascribed to a fault of the Seller.
  - e) If the Purchaser or third parties rectify any defect improperly, the Seller shall not assume any warranty for the resulting consequences. The same shall apply for any rectifications and modifications of the delivery items carried out without the Seller's prior consent.
3. For the supply of used vehicles, it will be agreed that warranty will be completely excluded. The sale and/or supply will be considered to have taken place on a "as is" basis and thus are excluded from any warranty.

#### **VIII. Liability**

1. In the event the Seller is liable for damages through slight neglect on the grounds thus set forth in the present terms and conditions pursuant to statutory provisions, the Seller's liability is limited as follows:  
Liability exists only if substantial obligations of the contract have been violated, and is limited to normal damage foreseeable at the time of execution of contract. This limitation shall not apply with respect to death and injuries to limb and health respectively.  
No liability whatsoever shall be assumed for any slightly negligent damage caused by a defect of the object of sale.
2. Irrespective of a fault on the Seller's part, any liability on the part of the Seller on grounds of fraudulent concealment of a defect, of having given a guarantee or of a procurement risk, and under the product liability law, shall not be affected.
3. Liability for default in delivery has been regulated conclusively in section IV.
4. The rights of the Purchaser on grounds of warranty pursuant to section VII shall not be affected. Personal liability on the part of the legal representatives, servants and employees of the Seller shall be excluded in cases of damage resulting from their slight negligence.

#### **IX. Applicable law, Place of Jurisdiction**

1. Regarding the legal relation between domestic parties, the law of the Federal Republic of Germany shall exclusively govern all legal relations between the Seller and the Purchaser.
2. Place of jurisdiction is the court competent for the seat of the Seller. However, the Seller shall have the right to file a lawsuit also at the Purchaser's registered office.