

Sales, Supply and Payment Conditions of Zahnradfertigung Ott GmbH & Co KG

1 Scope of the Conditions

- (1) These General Terms and Conditions are intended for use by entrepreneurs, public-law legal persons and to separate public-law estates. They do not apply to consumers.
- (2) Our supplies, services and offers are always subject to these General Terms and Conditions. Consequently, they also apply to all future business relationships, even if they will not again be expressly agreed. No later than at the time of receiving the goods or services, they will be considered to have been accepted. Conditions printed on forms and any other general terms and conditions of customers will not be accepted, not even if they are not expressly rejected.
- (3) All arrangements that will be agreed between us and the customer for the purpose of implementing this agreement, must be confirmed in writing.

2 Offer and Conclusion of the Agreement

- (1) Our offers are not binding and subject to change without prior notice. In order to become legally valid, statements of order acceptance and all orders must be confirmed by us in writing, whether on paper or electronically.
- (2) Drawings, images, dimensions, weights and other aspects of the services will only be binding, if they have been expressly agreed in writing.
- (3) Our staff are not entitled to agree to verbal secondary arrangements or to make a verbal promises that are beyond the contents of the written agreement.

3 Prices

- (1) Except what stated otherwise, the prices stated in our offers are firm for 30 days from the date of the offer. For the remainder, the prices stated in our order confirmation do apply, would must be agreed with the amounts of legal turnover tax at the prevailing rate. Additional goods and services will be charged separately.
- (2) Except where agreed otherwise, the prices are stated ex-factory, exclusive of VAT and packaging. If, after conclusion of the agreement, costs in relation to the order do change significantly, each of the parties will have the right of requiring suitable adjustment of the prices, thereby taking those factors into account.

4 Delivery and Performance Periods

- (1) For the delivery period to start, it is prerequisite that the customer will have properly honoured his obligations in good time, which entails particularly that we must have received all documents and drawings as well as the technical data that are needed to be able to execute the order.
- (2) The delivery periods are not binding and our subject to us receiving our supplies ourselves in good time, except if we have agreed binding deadlines in writing.
- (3) The delivery deadline will have been met, when the specific item has been completed and left our factory or when readiness for dispatch has been advised. Where official acceptance is required, the date of acceptance will be of the essence — except in case of justified refusal —, or, alternatively, the notification of readiness for acceptance.
- (4) If the reason for missing the delivery deadline is force majeure, industrial unrest or similar events beyond our control or influence, the delivery period will be extended accordingly. We will inform the customer as soon as possible of the beginning and end of such circumstances.
- (5) If the impediment persists for more than three months, customer will, after having set a suitable additional fulfilment period, have the right of withdrawing from the part of the agreement that has not yet been fulfilled. The customer cannot derive claims for compensation of damages from the extension of delivery periods or if we are relieved of our obligation. We may only appeal to the mentioned circumstances, if we do inform the customer without delay.
- (6) We do always have the right of making partial deliveries or of rendering the services in parts, except if it would not be of interest to the customer.
- (7) If the customer defaults on acceptance, we will have the right demanding compensation of the damages that we will incur.

5 Gearing Work

- (1) All workpieces that we are given for gearing work must be accompanied by an order form, containing the following information:
 - a) Description, quantity and type of packaging;
 - b) Quality of the material (classification and/or steel grade/type);
 - c) The required type of gearing will all data that are needed for manufacturing, particularly the rack profile, module, number of teeth, profile shift, tooth pitch resp. diametral ball pitch, facewidth, root and tip diameters, helical angle.
- (2) We will check the specifications of the customer in terms of content and completeness against our knowledge and possibilities. If there are any justified doubts about successful gearing, we will inform the customer. Workpieces that are supplied by the customer, but have the wrong dimensions of gear have other deficiencies, may be returned. Returning such parts does not amount to withdrawing from the agreement.
- (3) If gearing is not successful without us being at fault, for example because:
 - a) the customer did not provide the correct specifications as required in Paragraph 1,
 - b) we uncovered hidden faults in the workpiece that we could not see before starting working on it, or
 - c) properties of the used material, the design or the condition of the supplied workpieces have made successful gearing impossible, although we could not recognise that, the full amount of compensation will, nevertheless, be owed. Any necessary additional work will be charged separately.
- (4) If the conditions of Paragraph 3 apply and trying to work on the workpieces has caused damage to our machines and tools, the customer will be liable for it.
- (5) The geared workpieces will be tested in accordance with the prevailing standards in the industry. More thorough testing and analyses, especially as required by the customer, will only be carried out on the basis of a specific agreement. Testing before dispatch does not discharge the customer from his obligation of testing upon delivery.

6 Passage of Risk

- (1) Risk passes to the customer at the moment that the consignment is handed over to the person, who will take care of the forwarding, or when the consignment has left our warehouse for the purpose of transportation.
- (2) If the customer defaults on formal acceptance, the risk of accidental deterioration and accidental perishing or loss will pass to the customer.
- (3) In the case of gearing work, the customer must deliver the workpieces and collect them again after completion, all at his expense and risk.

7 Claims for Deficiencies

- (1) No agreement or guaranty of a particular quality standard can be derived from any specimens or images that we provide for viewing. That applies correspondingly to information in catalogues or prospectuses. Deviations that fall within the tolerance boundaries of the pertinent DIN standards, do not constitute deficiencies.
- (2) The period during which claims for compensation of deficiencies may be lodged is one year from delivery or acceptance, except where the law prescribes a longer period, especially in respect of parts that have been used in construction as normally intended, which then led to the deficiency.
- (3) If our operating or service instructions are not complied with, if changes are made to the products, if parts are exchanged for parts that do not comply with the original specifications or if consumables are used that do not comply with the original specifications, then we do not accept liability for deficiencies in the products will be rejected, unless the customer can substantiate that the deficiency is not the result of one or more of those circumstances.
- (4) If the workpiece that has been supplied by the customer has been subject to gearing work in accordance with Article 5 has perished or been impaired as the result of a flaw in the workpieces or as the result of us complying with the instructions from the customer, or if gearing has become impossible for reasons that we are not responsible for, we do not accept liability for ensuing deficiencies or damage.
- (5) The customer must inform us forthwith in writing of manifest deficiencies in the supplied goods or rendered services, in any case within seven days from delivery or official acceptance, and hidden deficiencies within seven days from them being uncovered. If the customer neglects to do so, the delivery or service will be considered to have been approved.
- (6) If a customer informs as that products are deficient, we require, at our discretion and at our expense, that
 - a) the deficient part or device will sent to us for repair, after which we will return it;
 - b) the customer will make the deficient part or device available on his premises, so that one of our technicians may carry out the repair on location.If the customer should require that the repair must be carried out at another location than the location of fulfilment, we will adhere to request and replace the necessary parts free of charge, but we will charge working time and travel expenses at our standard rates.
- Only in urgent cases, where operating safety is in imminent danger or in order to fend off disproportionately serious damage, the customer will have the right of having the deficiencies repaired himself or by third parties, on condition that we are informed without delay, and to demand from us that we compensate him for the necessary expenses.
- (7) If remedial work is not successful within an appropriate period, the customer may demand a reduction in the compensation that he pays us or withdraw from the agreement, at his discretion.
- (8) Liability for normal wear and tear does not exist.
- (9) Claims for compensation on account of deficiencies may only be lodged by the customer and cannot be ceded.

8 Spare parts

During a period of five years from delivery of a gearbox, we will supply spare parts for it at the then prevailing prices.

9 Sureties

- (1) Until all our current and future claims against the customer on whichever legal basis have been satisfied (including outstanding amounts in current account), we do require the following sureties, which we will release when the total value of the sureties does persistently exceed 20 % of the total value of the claims.
- (2) We retain title to goods that are supplied to us. We process or restructure always in the capacity of manufacturer, though without obligation on our part. For the event that (co-)ownership should lapse through connection or integration, it is agreed already now that the (co-)ownership of the customer of the unified part will pass to us in proportion to its value (invoice value). The customer must enforce our (co-)ownership free of charge. Goods, of which we are (co-)owner, will be referred to hereafter as reserved goods.
- (3) The customer does have the right of processing or selling the reserved goods in the normal course of business, on condition that he is not in default. Pledging or cession as surety is not allowed. Claims in respect of reserved goods (including all those in current account), emanating from on-selling or being established on any legal basis whatsoever (insurance, forbidden actions), are herewith already ceded to us as surety, to the full extent. We do irrevocably authorise the customer to collect in his own name, though for our account, the claims ceded to us. This collection authorisation can only be revoked, if the customer does not properly honour his payment obligations towards us.
- (4) If third parties should seize the reserved goods, especially by way of pledge, the customer must instruct those parties in respect of our ownership and must inform us forthwith, to enable us to enforce our ownership. Should the third party not be able to indemnify us for the judicial and extrajudicial costs that we will incur in this regard, the customer will be liable for them.
- (5) In case of behaviour of the customer in contravention of this agreement — particularly when defaulting on payments — we will have the right of withdrawing from the agreement and of demanding that the reserved goods will be handed over to us.
- (6) We do have a lien on workpieces that have been handed over to us by the customer for the purpose of manufacturing or processing.

10 Payment

- (1) Except where agreed otherwise, our invoices are due for payment in full, immediately after invoice date.
- (2) Notwithstanding different instructions from the customer, we do have the right of booking payments firstly against his older debts; in that case we will inform the customer about the way in which the funds have been applied. If costs and interest have already accrued, we will have the right of firstly booking the payment against the costs, then against the interest and finally against the main claim.
- (3) A payment is only then considered to have been made, when we can dispose over the amount. In case of payment by cheque, the payment has not been made until the cheque has cleared.
- (4) Should the customer get in default, we will have the right of demanding interest from the moment of default onward, at eight percentage points over the basic rate per annum, as lump-sum compensation. We reserve the right of demonstrating that the amount of damages may be higher.
- (5) Should circumstances become known to us that raise questions about the creditworthiness of the customer, particularly if a cheque does not clear or if he ceases to make payments, we will have the right of demanding immediate settlement of all open claims. In such cases, we will additionally have the right of demanding advance payments or sureties.
- (6) The customer will only have the right of offsetting, retention or reduction, also when lodging claims in respect of deficiencies and also in the face of counterclaims, if the counterclaims have been legally determined or are not disputed. However, the customer does also have the right of retention in respect of counterclaims emanating from the same contractual relationship.

11 Changes in Construction

We do reserve the right of making constructional changes to our products at any time; though we are under no obligation of making the same changes to products that have already been delivered.

12 Patents

- (1) We will indemnify the customer and his customers against claims in respect of violation of copyrights, trademarks or patents, except if the supplied product was designed by the customer. In terms of amount, our obligation to indemnify is limited to the foreseeable damage.
- (2) An additional prerequisite for indemnification is that we will be put in charge of the legal dispute and that the alleged infringement is exclusively limited to the method of construction of our supplied goods, without there being a link with or use in conjunction with other products.
- (3) At our discretion, we do have the right of freeing ourselves from the obligations that we have assumed in Paragraph 1, by either
 - a) acquiring the licences in respect of the patents that are alleged to have been violated, or
 - b) making amended goods or parts thereof available to the customer, which would, if they are exchanged against the item of part that is the subject of the violation, would eliminate the allegation of violation.

13 Confidentiality

Except where expressly agreed otherwise in writing, the information that has been provided in conjunction with the orders, is not confidential.

14 Liability

- (1) Regardless of the type of infringement of obligation, including forbidden actions, liability for damage is not accepted, except in cases of wilfulness or gross negligence.
- (2) If essential obligations under the agreement have been infringed, we are, for each individual case, only liable up to the amount of foreseeable damage. Claims in respect of foregone profit, expenditure that could not be avoided, emanating from consequential damages to third parties and other indirect damages, are not eligible.
- (3) The limitations on and exclusions from liability under Paragraphs 1 and 2 do not apply to claims that rest on deceitful behaviour on our part, and in respect of guarantees on particular states of quality they do not apply to liabilities under product liability legislation and damages resulting from death, personal injuries or impaired health.
- (4) Where our liability is excluded or limited, it applies equally to our staff, employees, representatives and fulfilment agents.

15 Manufacturing on Instruction of the Customer

- (1) Where manufacturing or processing is on the basis of drawings, dimensions, prototypes or other instructions of the customer, we do not accept liability for the functionality of the product or for deficiencies that result from the instructions of the customer.
- (2) The customer does indemnify us against any claims of third parties in respect of product liability or of damage caused by the goods, except if we have caused the damage wilfully or grossly negligently.
- (3) The customer does represent that the manufacturing and delivering of goods that have been fabricated upon his instructions, do not violate any copyrights, trademarks or patents of third parties. If any claims are lodged against us in respect of such intellectual property rights, we will have the right of withdrawing from the agreement, after hearing the customer and without legally establishing whether or not claims by third parties are justified, except if the third party withdraws his claim in a written statement to us, within eight days from lodging the claim. The customer must compensate us for damages that we may incur as a result of lodging claims on account of violating intellectual property rights. In case of withdrawal, we must be paid for the goods that have been delivered or the services that have been rendered up to that point. This does not affect any other legal remedies that may be available to us.

16 Applicable Law, Jurisdiction, Partial Nullity

- (1) These General Terms and Conditions and the entire legal relationship between us and the customer are governed by the laws of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods (CISG) does not apply.
- (2) If the customer is a merchant, public-law legal person or separate public-law estate, exclusive jurisdiction is vested in the courts of Tübingen in respect of all disputes that may directly or indirectly arise within this contractual relationship.
- (3) If a stipulation in these General Terms and Conditions or a stipulation within the framework of other agreements should be or become void, the validity of all other stipulations or agreements is not affected.