

## **General terms of delivery and payment of Otto Klostermann GmbH**

### 1. Scope

1.1. The following manufacturing contracts shall apply to all contracts concluded between the purchaser and us, the manufacturer, for the delivery of goods, in particular the delivery of steel components. They shall also apply to all future business relations, even if not expressly agreed again. Any deviating terms and conditions of the purchaser which we do not expressly accept shall not be binding for us, even if we do not expressly object to them. The following manufacturer's terms and conditions of delivery shall also apply if we execute the purchaser's order without reservation with knowledge of contradictory or deviating terms and conditions of the purchaser.

1.2. All agreements entered into between the purchaser and us for the execution of the manufacturing contracts are set out in writing in the contracts.

### 2. Offers and conclusion of contract

2.1. We can accept an order of the purchaser, which is to be qualified as an offer to conclude a manufacturing contracts, within two weeks by sending an order confirmation or by sending the ordered products within the same period.

2.2. Our offers are subject to change and non-binding, unless we have expressly stated that they are binding.

2.3. We reserve our ownership rights, copyrights and other industrial property rights to all images, calculations, drawings and other documents. The purchaser may only disclose them to third parties with our written consent, irrespective of whether they have been marked as confidential.

### 3. Terms of payment

3.1. Our prices are quoted ex works without packaging, unless otherwise defined in the order confirmation. Our prices do not include the statutory value added tax. VAT is listed separately on the invoice in the applicable statutory amount on the day of invoicing.

3.2. Discount deduction is only permissible in the event of a special written agreement between us and the purchaser. The manufacturer's compensation shall be due for payment (without deduction) on receipt of the invoice by the purchaser, unless the order confirmation specifies a different term of payment. A payment shall only be considered effected when we can dispose of the amount. In the case of payments by cheque, payment shall only be considered effected when the cheque is cashed.

3.3. If the purchaser is in default with a payment, the statutory provisions shall apply.

3.4. The purchaser is only entitled to set-off, even if notices of defects or counterclaims are asserted, if the counterclaims have been determined to be legal, have been recognised by us or are undisputed. The purchaser is only entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

#### 4. Delivery period

4.1. Dates of delivery or deadlines which have not been expressly agreed as binding are exclusively non-binding information. The specified delivery time does not begin until the technical questions have been clarified. At the same time, the purchaser shall duly and punctually fulfil all obligations incumbent upon it.

4.2. If the underlying manufacturing contract is a fixed transaction within the meaning of § 286 para. 2 No. 4 of the German Civil Code (BGB) or § 376 of the German Commercial Code (HGB), we shall be liable in accordance with the statutory provisions. The same applies if, as a result of a delay in delivery for which we are responsible, the purchaser is entitled to assert that it is no longer interested in the further fulfilment of the contract. In this case, our liability is limited to the foreseeable, and typically occurring damage, if the delay in delivery is not due to an intentional breach of contract for which we are responsible, in which case fault on the part of our representatives or vicarious agents is to be attributed to us.

We are also liable towards the purchaser in the event of a delay in delivery in accordance with the statutory provisions if this is based on an intentional or grossly negligent breach of contract for which we are responsible, in which case fault on the part of our representatives or vicarious agents is to be attributed to us. Our liability is limited to the foreseeable, typically occurring damage if the delay in delivery is not due to an intentional breach of contract for which we are responsible.

4.3. In the event that a delay in delivery for which we are responsible is due to the culpable breach of a material contractual obligation, in which case fault on the part of our representatives or vicarious agents is attributable to us, we shall be liable in accordance with the statutory provisions, provided that in this case the liability for damages shall be limited to the foreseeable, typically occurring damage.

4.4. Furthermore, in the event of a delay in delivery for which we are responsible, the purchaser may claim a lump-sum compensation in the amount of 3% of the delivery value for each full week of delay, but not more than 15% of the delivery value.

4.5. Any other liability for a delay in delivery for which we are responsible is excluded. Further statutory claims and rights of the purchaser to which it is entitled in addition to the claim for damages due to a delay in delivery for which we are responsible remain unaffected.

4.6. We are entitled to make partial deliveries and provide partial services at any time, to the extent that this is reasonable for the purchaser.

4.7. If the purchaser is late in acceptance, we shall be entitled to demand compensation for the damage incurred and any additional expenses. The same applies if the purchaser culpably neglects its cooperation duties. With the occurrence of default of acceptance or default of debtor, the risk of accidental deterioration and accidental loss shall pass to the purchaser.

## 5. Transfer of risk / shipping / packaging

5.1. Loading and shipping take place uninsured at the risk of the purchaser. We will try to take into account the wishes and interests of the purchaser with regard to the type of shipping and the shipping method; any additional costs resulting from this - even in the case of agreed freight-free delivery - shall be borne by the purchaser.

5.2. We do not accept the return of transport packaging and all other packaging in accordance with the Packaging Ordinance, with the exception of pallets. The purchaser has to provide for the disposal of the packaging at its own expense.

5.3. If shipment is delayed on request or due to the fault of the purchaser, we shall store the products at the expense and risk of the purchaser. In this case, the notification of the readiness for dispatch is equivalent to the shipment.

5.4. On request and at the expense of the purchaser, we will also provide transport insurance for the delivery.

## 6. Liability

6.1. The purchaser shall only be entitled to claim for defects if the purchaser has duly fulfilled its obligations to inspect the goods and give notice of defects in accordance with § 377 of the German Commercial Code (HGB).

6.2. If there is a defect in the products for which we are responsible, we shall provide rectification subject to the exclusion of the purchaser's rights to withdraw from the contract or to reduce the purchase price (reduction), unless we are entitled to refuse to provide rectification on the basis of the statutory provisions. The purchaser has to grant us a reasonable period of time for rectification. Rectification may be effected, at our discretion, by remedying the defect (repair) or by delivery of a replacement product. In the event of rectification of defects, we shall bear the necessary expenses insofar as such expenses are not increased because the subject matter of the contract is located at a place other than the place of performance.

If the rectification has failed, the purchaser may, at its discretion, demand a reduction of the manufacturer's remuneration (reduction) or declare its withdrawal from the contract. The repair shall be deemed to have failed with the second futile attempt, unless further attempts of repair are reasonable and acceptable to the purchaser due to the subject matter of the contract.

The purchaser can only assert claims for damages under the following conditions due to the defect if the rectification has failed. The purchaser's right to claim for further damages based on the following conditions remains unaffected.

6.3. The claims of the purchaser due to a defect expire one year after delivery of the products to the purchaser, unless we have fraudulently concealed the defect; in this case, the legal regulations apply. Our obligations under section 6 para. 4 and section 6 para. 5 remain unaffected.

6.4. In accordance with the statutory provisions, we shall be obliged to accept the return of the new products or to reduce the manufacturer's remuneration (reduction), even without the otherwise required deadline, if the purchaser's purchaser, as the consumer of the manufactured new movable item (purchase of consumer goods), can demand the return of the goods or the reduction of the manufacturer's remuneration due to the defect of these goods, or if the purchaser receives a claim for withdrawal resulting therefrom. We are also obliged to reimburse the purchaser's expenses, in particular transport, travel, labour and material costs, which it had to bear in relation to the end consumer in the course of rectification due to a transfer of risk of defect in the goods from us to the purchaser. The claim is excluded if the purchaser has not properly fulfilled its inspection obligations according to § 377 of the German Commercial Code (HGB).

6.5. The obligation under section 6 is excluded insofar as it involves a defect based on advertising statements or other contractual agreements which do not derive from us, or if the purchaser has given a special guarantee to the end user. The obligation is also excluded if the purchaser itself was not obliged to exercise the warranty rights in relation to the end user on the basis of the statutory regulations or did not make this notification with regard to a claim that it had received. This also applies if the purchaser has given the end user guarantees that go beyond what is legally required.

6.6. We are fully liable in accordance with the statutory provisions for damage to life, limb and health resulting from a negligent or intentional breach of duty by us, our legal representatives or our vicarious agents, as well as for damage covered by liability under the German Product Liability Act. We are liable in accordance with the statutory provisions for damages that are not covered by sentence 1 and that are the result of intentional or grossly negligent breaches of contract as well as fraudulent intent on our part, on the part of our legal representatives or on the part of our vicarious agents. In this case, however, the liability for damages is limited to the foreseeable, typically occurring damage unless we, our legal representatives or our vicarious agents have acted intentionally. If we have given a guarantee of quality and durability for the goods or parts thereof, we shall also be liable under this guarantee. However, we shall only be liable for damage resulting from the absence of the guaranteed quality or durability, which does not occur directly to the product, if the risk of such damage is obviously subject to the guarantee of quality and durability.

6.7. We are also liable for damages resulting from simple negligence, provided that the negligence concerns the breach of such contractual obligations, the observance of which is of particular importance for the achievement of the contractual purpose (cardinal obligation) we are, however, only liable to the extent that the damages are typically associated with the contract and are foreseeable.

6.8. Any further liability is excluded regardless of the legal nature of the asserted claim. This applies in particular to tortious claims or claims for reimbursement of futile expenses instead of performance; this does not affect our liability pursuant to section 4 subsection 2 to section 4 subsection 5 of this contract. If our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, representatives and vicarious agents.

6.9. Claims for damages of the purchaser due to a defect shall expire one year after delivery of the products. This does not apply in the case of injuries to life, body or health for which we, our legal representatives or our vicarious agents are liable, or if we or our legal representatives have acted with intent or gross negligence, or if our ordinary vicarious agents have acted with intent.

## 7. Retention of title

7.1. Up to the fulfilment of all claims, including all current account balance claims, to which we are entitled with respect to the purchaser now or in the future, the goods delivered by us (goods subject to retention of title) shall remain our property. If the purchaser is in breach of contract, e.g. in default of payment, we have the right to withdraw the goods subject to retention of title after setting a reasonable period of time in advance. If we withdraw the goods subject to retention of title, this shall be a withdrawal from the contract. If we seize the goods subject to retention of title, this shall be a withdrawal from the contract. We are entitled to utilise the goods subject to retention of title after taking them back. After deduction of a reasonable amount for the costs of utilisation, the proceeds of utilisation shall be set off against the amounts owed to us by the purchaser.

7.2. The purchaser shall handle the goods subject to retention of title carefully and insure them adequately at their new value against fire, water damage and theft at his own expense. Necessary maintenance and inspection work shall be carried out by the purchaser at its own expense and in good time.

7.3. The purchaser is entitled to sell and or use the goods subject to retention of title properly in business transactions as long as it is not in default in payment. Pledging the goods or transferring ownership by way of security is not permitted. The purchaser herewith assigns to us as a precaution all claims arising from the sale or further processing or installation or any other legal grounds (insurance, tort) with regard to the goods subject to retention of title (including all current account balance claims). We accept the assignment. We authorise the purchaser on a revocable basis to collect the claims assigned to us for the purchaser's account in its own name. The direct debit authorisation can be revoked at any time if the purchaser does not properly fulfil its payment obligations. The purchaser is not authorised to assign this claim even for debt collection by way of factoring, unless the obligation of the factor is established to return the amount of the claims directly to us for as long as we still have claims against the purchaser.

7.4. Any processing or transformation of the goods subject to retention of title will be made for us by the purchaser in any case. If the goods subject to retention of title are processed with other items which do not belong to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including VAT) to the other processed items at the time of processing. For the new item resulting from the processing, the same shall apply as for the goods subject to retention of title. In the event that the goods subject to retention of title are inseparably mixed with other items not belonging to us, we shall acquire co-ownership of the new item in the ratio of the value of the goods subject to retention of title (final invoice amount including VAT) to the other mixed items at the time of mixing. If the purchaser's item is to be regarded as the main item as a result of the mixing, the purchaser and we agree that the purchaser shall transfer co-ownership of this item to us on a pro rata basis; we hereby accept the transfer. The purchaser keeps our sole or co-ownership of an item created in this way for us.

7.5. In the event that third parties have access to the goods subject to retention of title, in particular in the event of seizure, the purchaser shall notify them of our ownership and inform us immediately so that we can enforce our ownership rights. Insofar as the third party is not in a position to reimburse us for court or out-of-court costs incurred in this connection, this shall be the responsibility of the purchaser.

7.6. We are obliged to release the securities to which we are entitled insofar as the realisable value of our securities exceeds the claims to be secured by more than 10%; in this context, it is our responsibility to select the securities to be released.

7.8. If we, as the manufacturer, process items on behalf of the purchaser which the purchaser delivers to us, we shall acquire unrestricted ownership of the item in accordance with § 950 of the German Civil Code when the items are processed. Upon delivery of the manufactured goods, the provisions of 7.1 to 7.7 of this section shall apply without restriction.

If we, pursuant to § 950 of the German Civil Code, do not acquire ownership of the manufactured item because the value of our performance as manufacturer less the value of the unprocessed goods is lower than 60 % of the value of the manufactured item, the provisions of 7.2 to 7.7 of this section shall apply without restriction.

## 8. Place of performance, place of jurisdiction, applicable law

8.1. Place of performance and jurisdiction for deliveries and payments (including claims in connection with checks and bills of exchange) as well as for all disputes arising between us and the purchaser under the contracts for labour and materials concluded between us are our registered office. However, we are also entitled to sue the purchaser at its place of residence or business.

8.2. The relations between the contracting parties are governed exclusively by the law applicable in the Federal Republic of Germany. The application of the uniform law on the international sale of movable goods, as well as of the law on the conclusion of international purchasing contracts for movable goods is excluded.

**Status as at 2011**