

# General Terms of Sale of Schütte, Meyer & Co. Gusstechnik GmbH

- 1. Scope**
  - 1.1 We conclude contracts with companies, legal persons of public law or special fund under public law on deliveries and services to be supplied by us only according to the present General Terms of Sale (Allgemeine Verkaufsbedingungen, AVB) in their applicable version.
  - 1.2 Our AVB shall also apply for any future contracts within the existing business relationship with the customer. The customer may retrieve and download our AVB online at [www.schuettemeyerguss.de](http://www.schuettemeyerguss.de) at any time.
  - 1.3 The customer's terms of business deviating from our AVB shall not apply even in the case that we do not expressly object to them or render or accept services without reservation, unless we approved such terms expressly on a case-by-case basis in writing.
- 2. Offers, Conclusion of Contract**
  - 2.1 If the customer submits an offer to us, the contract shall only be concluded upon the receipt of our acknowledgement of order or invoice or upon the delivery of the goods to the customer. Our acknowledgement of order and/or invoice shall be decisive for the scope and content of the contract.
  - 2.2 The customer shall be bound by their offer for a minimum of 4 weeks after its receipt by us.
  - 2.3 If the placing of order by the customer was preceded by our offer, the contract shall be concluded by placing the order. If the placing of the order by the customer deviates from our offer or our offer was being made "without engagement", the contract shall only be concluded upon our confirmation of the order.
  - 2.4 The details contained in our prospectuses and catalogues, such as illustrations, drawings, weight specifications and dimensions shall constitute customary approximate values, unless expressly designated by us as binding.
  - 2.5 We reserve any property rights and copyrights in any illustrations, prospectuses, calculations and other documents; they shall not be made available to third parties by the customer. This shall particularly apply for documents marked as "confidential".
- 3. Prises, Price adjustment, Payments**
  - 3.1 Our prices shall be ex works or ex warehouse and shall not include packaging, freight, postal charges, guaranteed value and transportation insurance, unless otherwise agreed. The value added tax shall apply in addition. In the case of agreed deliveries abroad, the customer shall bear the customs duty. Cash discounts, allowances or bonuses shall only be granted in the case of separate written agreement.
  - 3.2 If there is a major change of specific cost factors, including the costs for wages (e.g. due to wage agreements), primary material, energy, freight or public charges, between the conclusion of the contract and the delivery date, the agreed price may be adjusted in line with the influence of these cost factors.
  - 3.3 Our prices shall be calculated on the basis of the order volume agreed. If no binding order volumes are agreed, our calculation shall be based on the target quantities agreed. If the target quantity is not achieved, we shall be entitled to adjust the price per unit correspondingly.
  - 3.4 Our claim shall become due upon the receipt of our notice on the provision of the goods for collection or in the case of agreed delivery, upon delivery to the customer, unless a later payment date was agreed upon in writing.
  - 3.5 Payments shall be in EURO without any deductions, free of expenses and charges to a bank designated by us. Payment and cash discount periods shall commence with the date of invoice. Cash discount deductions agreed shall only be permissible, if the customer is not in default with other claims from our business relationship. For the timeliness of the payment, the corresponding crediting on our business account shall be decisive.
  - 3.6 We reserve the right to use payments for the redemption of the oldest invoice items due, including the interest and costs accrued, in the following order: costs, interest, main claim.
  - 3.7 If the customer does not carry out the payment within two days after the receipt of the notice on the provision of the goods for collection at the latest or in the case of especially agreed delivery, two days after delivery, they shall be in default, unless they receive our invoice beforehand or an agreed delivery date elapsed prior to this. In this case, the customer is already in default, if they do not carry out the payment within one day after receipt of invoice or at the date of payment. In commercial business, we will first charge overdue payment interest of 5 percentage points p.a. starting from the due date (section 3.3); default interest of 8 percentage points p.a. above the respective base rate starting from the default.
  - 3.8 Time for payment allowed shall be omitted, if a significant deterioration of the financial situation of the customer becomes known to us or if our customer gives incorrect or incomplete information on their creditworthiness. In those cases, outstanding debts shall become due immediately insofar as the customer is not entitled to the right to refuse performance. Furthermore, we may assert our security interest and condition outstanding deliveries on the provision of appropriate security or advance payment. If the customer refuses them, we may, unless we have already delivered the performance, rescind from the contract without the customer being entitled to derive rights from that.
  - 3.9 Drafts and cheques shall only be accepted if particularly agreed and accepted on account of performance. Drafts must be discountable. Bills of exchange charges and discount charges shall be borne by the customer; they shall be calculated from the due date of the invoice amount and are due immediately. The time of a draft may not exceed 90 days after the date of invoice.
- 3.10** The customer may only charge up against our claims, if their counterclaim is undisputed or legally established or is ready for decision. The same shall apply for the enforcement of a right of retention. In both cases, the counterclaim must be justified from the customer's own right.
- 4. Order-related production equipment, parts to be cast**
  - 4.1 Order-related production equipment such as models, templates, core storage boxes, coquilles, casting tools, devices and control gauges provided by the customer shall be sent to us free of charge. The correspondence of the production equipment provided by the customer with the contractual specifications or drawings or samples forwarded to us shall only be checked by us if expressly agreed.
  - 4.2 We may modify the production equipment provided by the customer, if this is required for casting reasons and if the work piece will not be changed due to that. The costs for the modification, maintenance and the replacement of this product equipment shall be borne by the customer.
  - 4.3 The production equipment will be treated and stored by the diligence applied by us in own matters. We shall not be liable for accidental destruction or deterioration of the product equipment. We shall not be obliged to take out insurance.
  - 4.4 Product equipment of the customer no longer needed by us may be sent back at the customer's expense and risk or, if the customer does not comply with our request for collection within a reasonable period, destroyed at the usual costs to be borne by the customer.
  - 4.5 Claims arising from copyright or industrial legal protection may only be asserted by the customer to the extent that they point out the existence of such rights and reserve them expressly.
  - 4.6 If waste results from the use of production equipment that can be used only once, the customer shall either provide the production equipment once again or shall bear the costs of substitute equipment.
- 5. Delivery / Transfer of risk / Delivery period**
  - 5.1 The delivery term ex works (Incoterms 2010) shall apply. Risk of loss and cost bearing shall be transferred to the customer with the collection of the goods.
  - 5.2 Fixed dates shall require our express written confirmation.
  - 5.3 Delays in delivery due to labour disputes and unpredictable extraordinary events, such as act of sovereignty, traffic disruptions etc. shall fully exempt us from the obligation to deliver for the time of their execution or in the case of impossibility, unless we are liable for the disorder.
  - 5.4 Any additional period of time granted to us must amount to 6 weeks at the least.
  - 5.5 If we are not able to deliver because we are not supplied by our own suppliers, although we concluded congruent hedging transactions, we shall be exempted from our obligation to perform and may rescind from the respective contract concerned. We will immediately notify the customer of this. Already provided counterperformances will be refunded by us to the customer immediately. In such a case, the customer shall not be entitled to claims beyond this.
  - 5.6 In the case of delivery contract on demand, we shall be communicated binding quantities within four months prior to the delivery date on demand, unless otherwise agreed.
  - 5.7 Starting from an order volume of 10 equal cast parts, we shall be entitled to excess or short deliveries of up to 10 % compared with the order volume due to particularities of the casting process. The agreed price shall adjust automatically.
- 6. Non-acceptance / Returns**
  - 6.1 If the goods purchased are not accepted culpably, we may demand non-acceptance compensation in the amount of 20 % of the purchase price; the enforcement of further claims shall remain reserved. The customer shall be entitled to prove a minor damage.
  - 6.2 Returns shall only be accepted after written notice and our prior confirmation of acceptance. They shall take place at the customer's costs and risk, unless the returned goods are faulty.
- 7. Goods contrary to the contract**
  - 7.1 Discrepancies in dimensions, weight and quantities as well as deviations from the material properties shall be permissible within the framework of tolerances customary in trade, relevant DIN or ISO regulations and casting requirements and shall not constitute a defect of the goods delivered.
  - 7.2 Goods delivered by us shall correspond to the properties of the technical delivery regulations agreed. Particularly with regard to the purpose of use of our goods intended by the customer, the ordering party shall be responsible for a proper construction observing any security regulations, selection of the material and the required inspection procedures, correctness and completeness of the technical delivery regulations and the technical documents and drawings submitted to us as well as for the execution of the production equipment provided. This shall also apply, if modifications are suggested by us and find approval. Furthermore, the customer shall ensure that due to their information, property rights and other rights of third parties are not violated. For the contractual condition of goods, the time of the passing of risk shall be decisive.
  - 7.3 If the delivered goods are faulty, the customer shall only be entitled to claim a subsequent improvement of the goods. An additional delivery shall be excluded, as it would regularly cause disproportional costs and no significant disadvantages arise for the customer due to the exclusion. Optionally, we may deliver goods free of faults as well.

7.4 If the supplementary performance fails or does not take place within a reasonable period set for us, the customer may rescind from the contract or reduce the purchase price. Compensation may only be claimed under the conditions of section 8.

7.5 If our customer, after notification of defects and expiry of the period set for the supplementary performance, does not signify which rights according to section 7.1 and 7.2 they claim, we may grant the customer a period of 3 weeks in writing to make a statement. After expiry of the period without effect, the authority to decide shall pass to us.

7.6 The legal inspection obligation and the requirement to give notice of defects according to § 377 HGB [German Commercial Code] apply providing that the customer must notify obvious defects within one week after delivery of the goods, whereas the timely dispatch of the written notification of defects shall be sufficient to keep the deadline. Initial sample releases of our customer shall not release them from their inspection obligations and their obligations to give notice of defects and shall not restrict them either. Expenses required for the purpose of supplementary performance shall only be borne by us to the extent that they arise typically and predictably.

7.7 The warranty period shall amount to 12 months. It shall commence with the delivery ex works on the day of collection stated in our notification of readiness for delivery, otherwise upon handover of the goods.

## 8. Liability

8.1 Claims for damages of the customer, regardless of their legal grounds, as well as claims for reimbursement of wasted expenditures shall be excluded, unless the cause of damage is either based on intent or a grossly negligent breach of duty or at least on a negligent breach of a contractual obligation, the violation of which puts the achievement of the contractual purpose at risk (material contractual obligation); in the latter case, the amount of the liability shall be limited to the typically occurring and foreseeable damage.

8.2 The above-mentioned limitation of liability according to section 8.1 shall also apply to the personal liability of our employees, representatives and organs as well as our agents.

8.3 The limitations of liability according to section 8.1 and 8.2 shall not apply to personal damages, i.e. to damages from an injury to life, limb or health, in the case of liability according to the product liability law or if we provided a guarantee as an exception.

## 9. Limitation

9.1 Contractual claims for damages and claims for reimbursement of wasted expenditures of the customer shall be subject to a limitation period of 24 months.

9.2 Notwithstanding section 9.1, the customer's contractual claims for damages and claims for reimbursement of wasted expenditures based on a defect of the goods, and the right to supplementary performance according to section 7.1 shall be subject to a limitation period of 12 months. Rights of recourses according to § 478 et seq. BGB [German Civil Code] shall not be affected by this.

9.3 Section 9.1 and 9.2 sentence 1 shall not apply in the case of intent or grossly negligent breach of duty or a violation of material contractual obligations as well as in the cases mentioned in section 8.3. The statutory limitation periods shall apply here.

9.4 Our payment and interest claims shall be subject to a limitation period of five years.

## 10. Reservation of Title

10.1 We shall reserve the title in the goods delivered until all claims from the business relationship with the customer are settled, including accessory claims, claims for damages and encashment of a cheque or discharge of a bill. This reservation of title shall also remain effective, if we include individual claims in a current invoice and the balance has been struck and recognised.

10.2 The customer shall be obliged to keep our goods subject to reservation of title safe with due care, to maintain, repair and insure them against loss and damage at their own costs within the usual framework of a prudent businessman. The customer hereby shall assign their claims arising from the insurance contracts to us in advance. We shall accept the assignment.

10.3 The customer shall be entitled to have the goods subject to reservation of title at their disposal within the ordinary course of business, as long as they timely fulfil their obligations from the business relationship with us. This shall not apply if and insofar as a prohibition of assignment regarding the claim of the purchase price was agreed between the customer and their purchasers. The customer shall not be entitled to pledges, transfers by way of security or other charges of the goods subject to reservation of title. They shall be obliged to secure our rights in the case of a resale of the goods subject to reservation of title in the amount of our claim of the purchase price. This may be done in a way that the customer conditions the transfer of ownership on the full payment of the goods by their purchaser in the resale.

10.4 If our goods subject to reservation of title are sold by the customer, the customer shall assign any claims arising from the resale, including payments for compensation of third parties in the amount of the invoice value of the goods subject to reservation of title along with any security and interests and ancillary rights, including drafts and cheques, to us at the present day. We shall accept the assignment. If the goods subject to reservation of title are sold with other things at a lump sum price, the assignment shall be limited to the proportional amount of the customer's invoice for our goods subject to reservation of title sold with the other goods. If goods are sold, which we acquired joint ownership of in according to section 10.6, the assignment shall be limited to the part of the claim corresponding to our co-ownership share.

10.5 In the case of a default or other not insignificant breaches of duty as well as considerable deterioration of the customer's financial situation, they shall undertake subject to § 107 section 2

*InsO* [German Insolvency Code] to surrender the goods subject to reservation of title. This obligation shall be independent of a rescission or a setting of a final deadline. The customer shall at the present day entitle us to enter their premises for the purpose of collection. We shall be entitled to resell goods taken back within the ordinary course of business and to offset our costs against the proceeds. The taking back of the goods subject to reservation of title shall take place as a precaution only; a rescission from the contract shall only be present here in the case of an express written declaration. If we rescind from the contract, we may claim compensation according to § 503 section 2 BGB for the duration of the provision of the goods. Furthermore, we may, in the case of default or a significant deterioration of the customer's financial situation, notify the customer's purchasers in their name of the assignment of the claims arising from the resale to us and collect the claims.

10.6 The customer shall process the goods subject to reservation of title for us only without acquiring claims against us from this. The new item shall become our property. In the case of a processing, mixing or connecting of the goods subject to reservation of title with goods in the property of third parties, we shall acquire ownership in the new item in the proportion of the invoice value of our goods subject to reservation of title and the invoice value of the other goods. If a connection or mixing with a main item of the customer takes place, they shall assign their ownership in the new item to us at the present day.

10.7 The customer shall immediately inform us about compulsory enforcement measures of third parties regarding the goods subject to reservation of title or the claims assigned to us or any other securities, stating the documents required for an intervention; this shall also apply to impairments of any other kind.

10.8 We shall undertake to release the securities due to us according to the above-mentioned provisions on the customer's request, if the invoice value of the goods transferred by way of security exceeds our claims to be secured by more than 20 %. The selection of the goods subject to reservation of title to be released shall be incumbent upon us.

10.9 The agreements regarding the reservation of title shall apply until the customer's settling of all claims. If the customer includes the claim in a current account relationship with their purchaser, they shall assign the balance claim respectively arising in their favour from the current account to us. The customer shall be entitled to collect this claim even after the assignment. Our entitlement to collect the claim by ourselves shall remain unaffected, whereas we may not collect the claim, as long as the customer duly complies with their payment obligations. The customer shall undertake to forward any details and documents required for the enforcement of the claims assigned.

10.10 If the reservation of title is not valid according to the foreign law of the country, in which the delivered goods are located, the customer shall provide an equivalent security on our request. If they do not comply with this request, we may demand the immediate payment of any outstanding invoices.

## 11. Place of Performance, Jurisdiction, Governing law

11.1 The place of performance shall be our place of business in Iserlohn.

11.2 The place of jurisdiction for any dispute arising from commercial transactions with fully qualified merchants and legal persons of public law shall be Iserlohn (§ 38 ZPO [German Code of Civil Procedure]) for both parties. This shall also apply to actions filed under the summary proceedings based on drafts and cheques. We may also sue our customer at their general place of jurisdiction.

11.3 German law shall apply. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 (CISG – "Vienna Convention") shall be excluded.

## 12. Severability clause

If individual provisions of these AVB or of the delivery transaction are or become invalid in whole or in part, the validity of the remaining provisions or the remaining parts of such clauses shall not be affected by this.