

# General terms of delivery and payment of the company innoCast GmbH

## (from 01.03.2007)

### 1 Conclusion of contract, scope of delivery

- a) Our deliveries and services shall be provided exclusively based on the following terms and conditions. The customer's conditions shall only apply if we expressly confirm them in writing. confirm them in writing. Our general terms and conditions of delivery and payment shall only apply to business transactions. They shall also apply to all future transactions with the from current business relations.
- b) Our offers are subject to change. A contract shall only be deemed to have been concluded if we have confirmed in writing or if we execute the order.
- c) The information contained in brochures and catalogs, such as illustrations, drawings, weights, and dimensions are approximations customary in the industry, unless they are expressly designated as binding.
- d) We reserve the right of ownership and copyright to illustrations, brochures, calculations, and other documents. copyrights: they may not be made accessible to third parties. This shall apply to such written documents that are designated as "confidential"; prior to their third parties, the customer must obtain our express written consent before passing them on. consent.

### 2. Pricing and terms of payment

- a) Our prices are inclusive of packaging, freight, postage, and plus statutory value added tax.
- b) If order-related costs change significantly after conclusion of the contract, the contracting parties shall agree on an adjustment.
- c) Our invoices are due within 30 days of the invoice date without deduction. In the case of payment within 14 days of the invoice date, we grant a 2% discount.
- d) If the goods are only to be delivered on call of the purchaser, we are entitled to invoice from the ready for dispatch notification.
- e) Only undisputed or legally established claims entitle the purchaser to set-off or retention. Furthermore, he shall only be entitled to exercise a right of retention to the extent that his counterclaim is based on the same contractual relationship.
- f) If we have delivered partially defective goods, the customer shall nevertheless be obliged to make payment for the undisputedly defect-free goods, unless the partial delivery is of no interest to him.
- g) We accept discountable and properly taxed bills of exchange on account of payment if this has been expressly agreed in advance. Credit notes for bills of exchange and checks shall be made subject to receipt less expenses with value date of the day on which we can dispose of the equivalent value.
- h) If we are obligated to advance performance and if, after conclusion of the contract, we become aware of circumstances according to which our claim for payment is endangered by the Purchaser's inability to pay, we may, in addition to the statutory claims based on the retention of title agreed in Section 9, prohibit the resale and processing of the delivered goods and demand that they be returned to us. and prohibit their return or the transfer of indirect possession of the delivered goods at the of the delivered goods at the expense of the customer and to revoke the authorization to collect the revoke the collection authorization under the conditions of item 9 letter h). The customer authorizes us to enter its premises in the cases and to collect the delivered goods. to collect the delivered goods. The taking back of the goods shall only constitute a rescission of the contract if we have expressly declared this.
- i) In the event of default in payment, we may, after written notice, suspend the performance of our obligations until receipt of the payments. After setting a reasonable deadline, we are also we are also entitled to withdraw from the contract in this case.

### 3. Delivery time

- a) Delivery periods shall commence with our order confirmation, but not before all details of the execution have been clarified and all other prerequisites to be fulfilled by the Purchaser have been met; the same shall apply accordingly to delivery dates. Deliveries before the expiry of the delivery period and partial deliveries are permissible if this is not unreasonable for the purchaser. The date of delivery shall be the date of notification of readiness for dispatch, otherwise the date of dispatch. Unless otherwise agreed or unless the contractual relationship provides otherwise, the delivery time stated by us shall always be non-binding. Our contractual obligations are subject to our own correct and timely deliveries by our suppliers.
- b) Agreed delivery deadlines and dates shall be extended or postponed without prejudice to our rights arising from default on the part of the purchaser by the period by which the purchaser is in arrears with it is in arrears with his obligations. If the purchaser is in default of acceptance, the risk of accidental loss or accidental deterioration of the object of sale shall pass to the customer at the time the point in time at which the customer is in default of acceptance.
- c) If we are in default, the purchaser may grant a reasonable period of grace with the explicit period that he will refuse acceptance of the performance after the expiry of this period, and to withdraw from the contract after expiry of this period.
- d) At our request, the customer shall be obliged to declare within a reasonable period whether he will withdraw from the contract due to the delay in delivery and/or demand compensation in lieu of performance or insists on delivery.

### 4. Serial deliveries, long-term and call-off contracts

- a) Unlimited contracts may be terminated with 6 months' notice to the end of the month.
- b) If, in the case of long-term contracts (contracts with a term of more than 12 months and unlimited contracts) after the first four weeks of the contract have elapsed, a substantial material or energy costs, each party to the contract shall be entitled to make an appropriate to demand an appropriate adjustment of the price taking these factors into account.
- c) Our prices are calculated based on the agreed order quantities. If no binding quantities have been agreed, our calculation shall be based on the agreed target quantities. agreed target quantities. If the order quantity or the target quantity is not reached, we shall be entitled to shall be entitled to increase the price per unit appropriately. If the customer exceeds the quantity with our consent, he may demand an appropriate price reduction, provided he notifies us in writing at least 2 months before the agreed delivery date. The amount of the reduction or increase shall be determined based on our calculations.
- d) In the case of delivery contracts on call, binding quantities shall be notified to us by call at least 3 months before the delivery date, unless otherwise agreed. of the delivery date. Additional costs caused by a delayed call-off or subsequent changes to the call-off about time or quantity by the purchaser shall be borne by the purchaser; our calculation shall be decisive in this respect.
- e) In the case of series production, an excess or short delivery of up to 10 % compared to the quantity due to the special features of the casting process. The total price the total price will change accordingly.

### 5. Force majeure and other impediments

- a) Events of force majeure, industrial disputes, lockouts, and official measures shall entitle us to postpone delivery for the duration of the hindrance and a reasonable start-up period or to withdraw from the contract in whole or in part on account of the part of the contract.
- b) Force majeure shall be deemed to include unforeseen circumstances, e.g., operational disruptions, scrap, and after-treatment, which make it impossible for us to deliver on time

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despite reasonable delivery in time despite reasonable efforts; we must provide proof of this.

## 6. Test procedure, acceptance

- a) If acceptance has been agreed, its scope and conditions shall also be specified in writing by the in writing by the time the contract is concluded.
- b) If this is not the case, acceptance shall take place to our usual extent and in accordance with our usual conditions customary with us. The same shall apply to initial sample tests.

## 7. Dimensions, weights, quantities

- a) Deviations in dimensions, weights, and quantities within customary tolerances, relevant DIN regulations and technical casting requirements are permissible. Details of and weights in our quotations and order confirmations are not guarantees of quality.
- b) The delivery weights and quantities determined by us shall be decisive for the calculation.  
shall be decisive.

## 8. Shipment and transfer of risk

- a) Loading and shipment shall be at the risk of the Purchaser.
- b) The risk of accidental loss and deterioration of the goods shall pass to the Purchaser upon to the railroad, the forwarding agent, or the carrier, even if the goods are shipped with our own vehicles. the shipment is made with our own vehicles.
- c) If the goods are to be delivered or made available at the request of the purchaser only upon his at the request of the purchaser, the risk shall pass to the purchaser - whichever is the earlier - upon handover to the transport person or after the expiry of 7 calendar days from notification of readiness for dispatch. to him. Clause 8 d) shall remain unaffected.
- d) If the loading or transport of the goods is delayed for a reason for which the Purchaser is for which the customer is responsible, we shall be entitled to store the goods at the customer's expense and risk at the expense and risk of the customer and to take all measures deemed suitable to preserve the goods. measures deemed suitable for the preservation of the goods. The statutory provisions and regulations in our general terms and conditions of delivery and payment concerning default of acceptance shall remain unaffected.
- e) Only at the express request of the Purchaser shall we cover the delivery by a transport insurance; the insolvency transport insurance; the costs incurred in this respect shall be borne by the customer.
- f) The choice of the means of transport and the transport route shall be made at our discretion.

## 9. Retention of title

- a) All delivered goods shall remain our property (reserved goods) until all claims, including future claims, also the respective balance claims, to which we are entitled from the business relationship have been fulfilled. This shall also apply if payments are made on specially designated claims. If the customer is in default of payment, we shall be entitled to demand the return of the delivered goods. The costs for this shall be borne by the customer. This shall not apply if insolvency proceedings have been applied for or opened against the customer, based on which we shall not be entitled to demand the immediate return of the delivered goods.
- b) The taking back of the goods or the assertion of the reservation of ownership shall  
shall only constitute a withdrawal from the contract if we expressly declare this.
- c) The customer shall always process the delivered goods on our behalf without any obligation on our part. If the goods subject to retention of title are processed or inseparably combined with other items not belonging to us, we shall acquire co-ownership

of the new item in the ratio of the invoice value of the goods to the other processed or combined items at the time of processing.

- d) If our ownership lapses because of the goods being combined or mixed, the customer shall already now transfer to us the ownership rights to which he is entitled in the new stock or item to the extent of the invoice value of the goods subject to retention of title and shall hold them in safe custody for us free of charge. The co-ownership rights arising hereunder shall be deemed to be reserved goods within the meaning of letter a).
- e) The purchaser may only use the reserved goods in the ordinary course of business at his normal business terms and conditions and, if he is not in default, provided that the claims from the resale are transferred to us in accordance with letters f) and g). shall pass to us. He shall not be entitled to dispose of the reserved goods in any other way.
- f) The customer's claims arising from the resale of the goods subject to retention of title shall be hereby assigned to us. They shall serve as security to the same extent as the reserved goods. goods subject to retention of title.
- g) If the goods subject to retention of title are sold by the purchaser together with other goods not goods not supplied by us, the assignment of the claim arising from the resale shall only apply to the amount of us of our invoice value of the reserved goods sold in each case. In the event of the sale of goods in which we have co-ownership shares in accordance with letter b), the assignment of the claim shall be in claim in the amount of these co-ownership shares.
- h) The customer shall be entitled to collect claims from the sale in accordance with letters e) and f) until our revocation. until our revocation. We shall have the right of revocation in the cases referred to in para. cases mentioned in No. 2, if the customer is in default of payment, if an application for the opening of insolvency proceedings have been filed or payments have been suspended. In these cases, the customer shall be obliged to inform us immediately of the assigned claims and the debtors, to provide us with all information required for collection, to hand over the associated and to inform the debtors of the assignment. The customer shall not be the customer is in no case authorized to assign the claims.
- i) Pledges or transfers by way of security of the reserved goods are not permitted. In the event of a third parties, the customer shall be obliged to notify us thereof without delay. notify us thereof without delay.
- j) If the value of the existing securities exceeds the secured claims in total by more than more than 20 %, we shall be obliged to release securities of our choice. The customer must notify us immediately of any seizure or other interference by third parties. notify us without delay.

## 10. Liability for material defects

- a) We shall be liable for the flawless manufacture of the parts supplied by us in accordance with the agreed technical delivery specifications. In particular, the customer shall bear the responsibility for the intended use, the purchaser shall be responsible for proper design in compliance with safety regulations, the selection of the material and the necessary test procedures, the correctness and the necessary test procedures, the correctness and completeness of the technical delivery specifications and the technical and drawings provided to us, as well as for the execution of the production facilities equipment provided, even if modifications are proposed by us which meet with its approval. which meet with his approval. Furthermore, the customer shall be liable for the fact that industrial property rights or other rights of third parties are not infringed based on his information. They shall indemnify and hold us harmless from and against any and all claims of third parties with respect to such industrial property rights. Decisive for the contractual condition of the goods is the time of the transfer of risk. transfer of risk.
- b) We shall not be liable for the only insignificant deviation from the agreed condition, for only insignificant impairment of the

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usability as well as for defects which are caused by improper use, faulty assembly or commissioning and normal wear and tear. normal wear and tear. If the purchaser or third parties carry out improper modifications or improper modifications or repair work, we shall likewise not be liable for these and the consequences arising therefrom.

c) The purchaser must report material defects immediately after receipt of the goods at the place of destination, hidden defects immediately after discovery of the defect.

d) In the event of an agreed acceptance or initial sample inspection in accordance with item 6, the notification of defects which could have been defects which could have been detected during such inspection shall be excluded.

e) We shall be given the opportunity to determine the defect complained of. In urgent cases of safety or to prevent disproportionately large damage to the purchaser, we shall have the damage to the purchaser, we shall immediately ascertain the defect complained of. Goods which are the subject of a complaint returned to us immediately upon request. If the customer does not comply with these obligations or makes changes to the goods already complained about without our consent, he shall without our consent, he shall lose any rights on account of material defects.

f) In the event of a justified notice of defect within the time limit, we shall, at our discretion, either repair the rejected or deliver a faultless replacement (supplementary performance).

g) If we fail to meet our warranty obligations or fail to do so within a reasonable period or if the reasonable time or if the rectification of the defect is initially unsuccessful, the purchaser may set a final deadline in writing within which we must meet our obligations. obligations. It is not necessary to set a deadline if it would be unreasonable for the customer. After unsuccessful expiry of this period, the customer may, at his discretion, demand a reduction in the price, withdraw from the rescind the contract or carry out the necessary repairs himself or have them carried out by a third party at us by a third party at our expense and risk. If the rectification of defects has been successfully carried out by the purchaser or a third party, all claims of the purchaser with reimbursement of the reimbursement of the necessary costs incurred by him.

h) Claims of the Purchaser for expenses incurred for the purpose of supplementary performance of supplementary performance resulting from the fact that the goods have been taken to another place to another place after delivery shall be excluded insofar as they increase the expenses unless the transport the transfer is in accordance with the intended use.

i) The Purchaser shall have statutory rights of recourse against us only to the extent that the customer has not made any agreements with his customer that go beyond the statutory claims for beyond the statutory claims for defects.

j) Further claims of the Purchaser shall be excluded in accordance with Clause 13.

k) The proof of a defect shall be incumbent on the Purchaser.

### **11. Order-related production equipment, parts to be cast in**

a) Order-related production equipment such as patterns, templates, core boxes, ingot molds, tools, devices, and control gauges provided by the customer shall be sent to us free of charge. be sent to us free of charge. The conformity of the production equipment provided by the with the contractual specifications or with the drawings or samples provided to us. drawings or samples provided to us shall only be checked by us based on express agreements. agreements. We may modify production equipment provided by the customer if this appears to us to be necessary for casting technical reasons and the workpiece is not changed as a result. changed as a result.

b) The costs for modification, maintenance and replacement of his production equipment shall be borne by the customer. shall be borne by the customer.

c) The production equipment shall be handled and stored by us with the care that we are accustomed to we are accustomed to applying in our own affairs. We shall not be liable for accidental loss or deterioration of the production or deterioration of the production equipment. We are not obliged to take out insurance not obliged to take out insurance.

d) Ownership of order-related production equipment which is manufactured or procured by us on behalf of the customer, shall pass to him upon payment of the agreed price or share of the costs. The parties to the contract agree that ownership shall pass to the customer upon payment of the agreed price or cost share. The handover of the equipment shall be replaced by our obligation to keep the equipment. The equipment shall be stored by us for a period of 3 years after the last casting. We shall be entitled to return to the customer, at the customer's expense and risk, any production equipment no longer required by us. at the customer's expense and risk or, if the customer does not comply with our request to collect the equipment within a reasonable period, we may store such equipment at the usual costs to be borne by the customer and, after setting a reasonable deadline and warning, destroy it at the customer's expense. destroy them at the expense of the customer. The custody relationship may be terminated by the customer at the earliest two years after the transfer of ownership at the earliest, if there is no good cause. Clause 11 lit. c) shall apply accordingly.

e) The customer may only assert claims based on copyright or industrial property rights to the extent that it rights only insofar as he draws our attention to the existence of such rights and expressly reserves them. expressly reserved.

f) If the use of production equipment which can only be used once gives rise to equipment which can only be used once, the customer shall either provide new production equipment or bear the costs of the replacement equipment. or to bear the costs of the replacement equipment.

g) Parts to be cast in by us must be supplied by the customer true to size and in perfect condition. and in perfect condition. The customer shall supply replacements free of charge for parts which become parts which become unusable due to rejects.

### **12. Confidentiality**

a) Each contracting party shall keep confidential all documents (including samples, models and data) and knowledge which it obtains from the business relationship only for the jointly pursued purposes and purposes and shall keep them secret from third parties with the same diligence as its own documents and knowledge vis-à-vis third parties, if the other contracting party designates them as confidential or confidential or has an obvious interest in keeping them confidential.

b) This obligation shall commence upon first receipt of the documents or knowledge and shall end 36 months after the end of the business relationship.

### **13. General limitation of liability**

a) Unless otherwise stipulated below, any other and further claims of the customer against us, irrespective of the legal basis, for breach of the obligations arising from the contractual obligation and from unlawful acts.

b) This limitation of liability shall not apply in the event of mandatory liability, e.g., in accordance with the product liability law, in the event of intent, gross negligence on the part of the legal representatives or executive employees as well as in case of culpable violation of essential contractual obligations. In the case of culpable breach of essential contractual obligations, we shall be liable - except in the case of intent or gross negligence on the part of our legal representatives or executives - for the employees - only for the reasonably foreseeable damage typical for the contract. It damages to life, body, or health and in the absence of a guaranteed quality. in the absence of a guaranteed quality, if and to the extent that the guarantee has the specific purpose of protecting to protect the customer against damage

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that has not occurred to the delivered goods themselves, the delivered goods themselves.

c) Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our liability of our employees, workers, staff members, legal representatives, and vicarious agents.

d) Liability for loss of production and loss of profit is excluded in all cases.

excluded in any case.

e) Claims for damages and material defects to which the purchaser is entitled against us shall become statute-barred one year after delivery of the goods to the purchaser. This shall not apply insofar as longer periods are prescribed by law in §§ 438 Para. 1 No. 2 (buildings and items normally used in buildings) and 479 Para. 1 (claims under a right of recourse) of the German Civil Code (BGB) as well as in cases of injury to life, limb, or health, in the event of a willful or grossly negligent breach of duty on the part of the Supplier and in the event of fraudulent concealment of a defect. The statutory provisions on suspension of expiry, suspension and recommencement of the periods shall remain unaffected. In the case of claims for damages under the Product Liability Act, the statutory limitation provisions shall apply. Also, in the case of intentional and grossly negligent breaches of duty the statutory limitation rules shall apply.

### **14. Place of performance and jurisdiction**

a) If the customer is a merchant, the place of jurisdiction shall be Langenfeld (Germany). However, we shall also be entitled to sue the customer at the court of his registered office.

b) Unless otherwise stated in the order confirmation, the place of performance for our services shall be the location of our delivery plant. For payment obligations, the place of performance is Langenfeld (Germany).

### **15. Applicable law**

The legal relations between the parties shall be governed exclusively by German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (UNCITRAL/CISG).

### **16. Other provisions**

a) Payments may only be made to us. Claims against us may not be assigned.

b) Any amendment or modification of this contract or any agreement on its cancellation must be in writing to be valid. This requirement may only be waived by written declaration. Verbal collateral agreements have not been made.

### **17. Partial invalidity**

Should one or more provisions of these terms of delivery and payment be invalid terms of delivery and payment should be invalid in whole or in part, the validity of the remaining not affected. The parties hereby undertake to agree on a substitute provision that comes as close as possible to the economic result of the omitted clause as closely as possible.

### **18. Partnership clause**

In all compensation payments, in particular in the amount of compensation, due consideration should also be given in good faith to the economic circumstances of the contracting parties, the nature, scope and duration of the business relationship and the value of the goods.