

General Supply Conditions of G.W.P. Manufacturing Services AG

I. Scope of the conditions

The company G.W.P. AG (hereinafter referred to as "G.W.P."), Malteserstr. 170/172, 12277 Berlin, is a service provider producing mechanical components of metal and plastic. The following General Terms and Conditions of Supply apply for all contracts, deliveries and other performance of G.W.P. They therefore also apply for all future business relationships, even if they are not expressly agreed upon in each individual case. These conditions are deemed to be accepted at the latest when the goods or service are/is accepted. Any contrary conditions of the customer are expressly rejected.

II. Offer and conclusion of contract

G.W.P. drafts an offer based on the documents provided by the customer (drawings etc.). G.W.P. shall be bound to this offer for 15 days.
 2. The contract enters into force if the customer confirms the offer from G.W.P. within the offer period or if a corresponding contract is signed by both contractual parties.
 3. If some or all of a set number of parts entered in an order is canceled before or after the start of production, a processing fee of 10% of the ordered amount, or at least €250 will be charged. If the cancellation is after the start of production, the full amount for manufactured extra parts will be charged, although deductions can be made for the number of semifinished parts that can be sorted out.

III. Price

1. Prices do not include the valid legal rate of VAT. Any changes instigated by the customer or any additions to the original object of the contract are not included in the price, regardless of whether these are requested during drafting of the production documents, manufacture of the tools, the sample phase, series production or at any other time.
 2. The piece price agreed within the framework of an order for the first batches of the workpieces does not automatically apply for workpieces ordered at a later date to be produced on the same tool.
 3. G.W.P. reserves the right to adapt the prices in order confirmations in response to currency fluctuations. We will only adapt a submitted price when the currency fluctuation exceeds 5% between the time at which the order is confirmed and the time of invoicing.

IV. Production documents

1. In so far as the object of the contract consists of creation of tool drawings and/or design drawings (production documents), these must be carefully checked by the customer on receipt and their correctness must be confirmed in writing.
 2. The contents of the production documents which have been confirmed by the customer specifies the further object of the contract, in particular with regard to the quality and features of the tools and workpieces. However, no guarantee as to quality or features shall result from this.
 3. In the absence of agreement to the contrary, one half of the price agreed for creation of the production documents is payable in advance, and the other half is due when the production documents are delivered to the customer.

V. Tools

1. If the object of the agreement is manufacture of tools, said manufacture will take place in China according to Chinese standards for series production of shaped parts in China. The parts shall be exclusively supplied to the production facilities in China. We are not obliged to transport the tool further afield or to export the tool to Germany (EXW).
 2. Changes to the drawings and requirements while the dies are being constructed are subject to charges starting one week after confirmation of drawings that contain information on the dies.
 3. After expiration of the contractual service life of a die, its storage by G.W.P. will be subject to charges according to the price list.
 4. The life cycle laid down in the individual contract is agreed as the lifetime of the tool, however at the most five years following delivery to the production facilities in China.
 5. In the absence of specific agreement to the contrary, one half of the price agreed for manufacture of the tool is payable in advance and the remaining half is due on delivery of the initial sample.

VI. Initial sample and sample inspection report

1. Before the start of series production, G.W.P. shall send an initial sample of the workpiece including a sample inspection report to the customer. The customer can continue to demand supply of new samples free of charge as long as the samples supplied deviate from the contractually agreed specifications to a not inconsiderable extent and repeat supply is reasonable for G.W.P.
 2. If the sample corresponds to the aforementioned requirements, the customer shall approve the sample. However, if he does not approve the sample which is capable of approval following a written demand from G.W.P. stating a response time within 14 days, or if he finally refuses to grant approval, the sample shall be considered approved.
 3. The approved sample describes the quality and features of the workpieces which are to be manufactured in series production. However, no guarantee as to quality or features shall result from this.

VII. Workpieces

1. The workpieces are manufactured in China. G.W.P. is entitled to make use of a different material for the manufacturing process, in so far as this has the same or better material characteristics as the agreed material, or the customer has approved the sample supplied after G.W.P. has drawn attention to the fact that another material was used.
 2. In the absence of specific agreement to the contrary, G.W.P. shall send the delivery FCA Zhongshan (China) including normal packaging. Partial deliveries are permissible in so far as they are reasonable for the customer. G.W.P. urgently recommends the customer to make use of a forwarding agent recommended by G.W.P. G.W.P. draws the attention of the customer to the fact that the calculation is based on commissioning of a forwarding agent recommended by G.W.P. If the customer nevertheless decides in favour of a different forwarding agent, G.W.P. is entitled to charge any additional costs arising as a result to the customer.

3. In the absence of specific agreement to the contrary, the price agreed for manufacture of the workpieces is due for payment when the workpieces are transferred to the person responsible for the transport in Zhongshan.

VIII. Delivery time and delay

1. The delivery time results from the agreements made between the contractual partners. Adherence to the delivery times and periods assumes timely receipt of all the documents, approvals and releases to be supplied by the customer, in particular of plans, as well as fulfilment of the agreed conditions of payment and other obligations on the part of the customer. If these prerequisites are not fulfilled in good time, the periods shall be extended correspondingly; this does not apply in so far as G.W.P. is to blame for the delay.
 2. If non-fulfilment of the delivery periods is attributable to force majeure, e.g. mobilisation, war, revolution or similar events, e.g. strike or lockout, the delivery periods shall be extended accordingly.
 3. If G.W.P. is late with delivery, the customer – in so far as he has suffered harm as a result – shall be entitled to demand compensation for each completed week of the delay in the amount of 0.5 %, for each week, however at the most 5% of the price for the portion of the deliveries affected by the delay. The customer shall only be entitled to raise further claims as a result of the delay in cases of intent, gross negligence or if a fixed-date purchase was agreed. In all cases in which liability of G.W.P. exceeds compensation of the amount named in Sentence 1, Section XIV. (Liability) shall apply.
 4. The customer can only withdraw from the contract within the framework of the legal regulations if G.W.P. is guilty of delay with regard to its performance.

IX. Payment

1. If not otherwise agreed, the invoices of G.W.P. are payable immediately on issue without deduction. Despite any contrary conditions of the customer, G.W.P. is first entitled to offset any payments against older debts of the customer. The customer will be informed of the way in which the offset has been implemented. If costs and interest charges have already arisen, G.W.P. is entitled to offset the payment first against the costs, then against the interest charges and then against the payment for the main performance.
 2. Payment is only considered to have been made when G.W.P. is able to dispose of the relevant monies. In the case of cheques, payment is only deemed to have been made when the cheque is redeemed.
 3. If the customer enters into arrears of payment, G.W.P. shall be entitled to demand interest of 8% above bank base rate as from the date when the arrears first arise, unless G.W.P. is able to demonstrate higher damages.
 4. If circumstances become known to G.W.P. which call the creditworthiness of the customer into question (e.g. cessation of payment, return of cheque without redemption), G.W.P. is entitled to claim the entire outstanding payment as immediately due, even if G.W.P. has accepted cheques. In this case, G.W.P. is also entitled to require pre-payment or provision of security.
 5. The customer is only entitled to offset, retain or reduce payment – even if complaints or counter-claims are raised – if the counter-claims are established in law or are undisputed. However, the customer is also entitled to withhold payment based on counter-claims from the same contractual relationship.

X. Retention of title

1. Until all claims have been met (including all balances due from the current account), which are due to G.W.P. against the customer for any legal reason whatsoever now or in the future, the following securities are allotted to G.W.P., which G.W.P. will release on request, with the freedom to select said securities, in so far as their value exceeds the claims by more than 20% on a long-term basis.
 2. The goods, including planning documents, tools and samples, remain the property of G.W.P. Processing or alteration of the goods are invariably carried out for G.W.P. as manufacturer, however without any obligation being involved for G.W.P. If the (co-)ownership of G.W.P. lapses through combination with other goods, it is already now agreed that the (co-)ownership of the customer as regards the homogenous goods shall be transferred to G.W.P. on a proportional basis (invoiced value). The customer shall store the goods (co-)owned by G.W.P. free of charge. Goods in which G.W.P. holds (co-)ownership shall hereinafter be referred to as goods subject to retention of title.
 3. The customer is entitled to process and sell the goods subject to retention of title in the normal course of business as long as he is not in arrears of payment. It is not permitted to pledge the goods or to offer them as security. Any claims arising in connection with the goods subject to retention of title arising from onward sale or other legal reasons (insurance, tortious act), – including all claims for balanced due from the current account –, are already now assigned to G.W.P. by the customer by way of security. G.W.P. authorises the customer, subject to revocation, to collect claims assigned to G.W.P. on account of G.W.P. in his own name. This authorisation to collect claims can only be revoked if the customer does not fulfil his obligations to pay in a proper manner.
 4. If third parties attempt to seize the goods subject to retention of title, in particular by way of attachment, the customer shall draw the attention of the third party to the fact that the goods are the property of G.W.P. and shall inform G.W.P. of the situation without delay, so that G.W.P. can assert its claims of ownership. In so far as the third party is not in a position to reimburse G.W.P. with any legal or other costs arising in this connection, the customer shall be liable for the costs.
 5. In cases where the customer infringes the contract – in particular in cases of delays in payment – G.W.P. is entitled to withdraw from the contract and to require that the goods subject to retention of title be returned.
 6. G.W.P. retains exclusive rights of use with regard to copyright as applied to the planning documents; the above provisions regarding retention of title apply accordingly. XI. Transfer of risk The risk is transferred to the customer when the goods are handed over to the party implementing the transport. The same applies in cases where acceptance is delayed.

XII. Defects

1. The customer shall examine the item which has been delivered immediately after delivery within the framework of the normal course of business. If a defect is discovered, it must be reported to G.W.P. in writing without delay. If the customer does not fulfil his obligations in this respect, the delivery is considered to be approved. If a defect should be discovered at a later date, the defect must be reported in writing to G.W.P. immediately following discovery, otherwise the delivery shall be considered approved.
 2. All those parts or performances which exhibit defects, the cause of which was already present at the time when risk was transferred – which must always be proved by the customer – will either be repaired free of charge by G.W.P., newly supplied or newly provided, at G.W.P.'s discretion.
 3. The customer must grant the necessary time and opportunity for implementation of all the repairs and replacement deliveries which appear necessary to G.W.P. If G.W.P. has not eliminated a defect within an appropriate period set by the customer, and is to blame in this respect, the customer is entitled to eliminate the defect himself or to have it eliminated by a third party and to require reimbursement of the necessary costs from G.W.P. In urgent cases, when operational safety is threatened, or in order to defend against risk of disproportionate damages, there is no need to set an appropriate period for the work. However, G.W.P. must be informed immediately in such cases.
 4. If a reasonable number of repairs or replacements are not successful, the customer – regardless of any claims for damages – may withdraw from the contract within the framework of the legal regulations or may reduce the price paid.
 5. G.W.P. shall not be responsible for any direct or ancillary transport costs or costs for work or materials which arise in the way of subsequent fulfilment of the contract (e.g. repair or replacement of goods), if these are caused by the fact that the item to be delivered was taken to a different location from the customer's company location. An exception to this is if the relocation relates to the proper and intended use of the item in question.
 6. Claims for damages do not exist if the deviations from the agreed quality and features of the goods are only slight, if their usefulness is only slightly limited, or if the goods have been used improperly or changed, or assembled or commissioned incorrectly by the customer or third parties. Other exceptions are natural wear and tear or improper or negligent stress.
 7. The right to claim for defects elapses 12 months following transfer of risk. As an exception, freedom of defects and usefulness and durability of tools for their entire lifetime is guaranteed in the sense of Section V, No. 2.
 8. Otherwise the provisions of Section XIV (Liability) apply in relation to claims for damages. Further claims or claims relating to defects other than those regulated by No. VII against G.W.P. and its vicarious agents are excluded. In particular, written agreement is needed in all cases if a guarantee is to be offered.
 9. Only the customer is permitted to raise claims for damages. Such claims are not assignable.

XIII. Industrial property rights and copyright of third parties

The customer guarantees that the goods ordered are free of industrial property rights and copyright of third parties. He will inform G.W.P. immediately in writing if third parties assert such rights in relation to the goods. The customer shall declare that he holds G.W.P. harmless as regards all claims of third parties on first request and shall allow G.W.P. an advance payment in the amount of the costs which will probably arise as a result of the legal defence of the case.

XIV. Liability

1. Claims for damages against G.W.P. in principle only exist if G.W.P. or its vicarious agents have acted with intent or gross negligence. However, G.W.P. accepts liability for ordinary negligence if proper fulfilment of the duty which has been infringed was essential in order to achieve the purpose of the contract (cardinal duty). In this case, liability for pecuniary loss is limited as regards its scope to the immediate pecuniary loss and as regards its amount to the foreseeable damages.
 2. The aforementioned limitation of liability does not apply in cases of injury to life, limb and health or for claims according to product liability law. Neither does it apply in cases of liability for malicious non-disclosure of defects or for acceptance of a guarantee.
 3. In so far as liability of G.W.P. is excluded or limited, the exclusion or limitation also applies as regards personal liability of staff, employees, colleagues, representatives and vicarious agents of G.W.P.

XV. Final provisions

1. Changes or additions to the contract must be made in writing unless a different form is specified as essential in the specific case or the aforementioned provisions of this contract state to the contrary; this also applies for any changes to this provision.
 2. The law of the Federal Republic of Germany shall govern these conditions of business and the entire business relationships between seller and purchaser. The provisions of the UN Convention on the International Sale of Goods shall not apply.
 3. In so far as the purchaser is a merchant in the legal sense, legal person under public law or a special fund under public law, Berlin is the exclusive venue for all conflicts resulting indirectly or directly from the contractual relationship.
 4. If one provision in these conditions of business or one provision within the framework of other provisions should be or become ineffective, the effectiveness of the other provisions or agreements shall not be affected.