

# **Terms of sale and delivery**

## **of ALFRED GIESSER MESSERFABRIK GmbH**

### **1. Scope of Application**

- 1.1 All supply contracts of ALFRED GIESSER MESSERFABRIK GmbH (hereinafter referred to as GIESSER) shall be subject to the provisions of these Terms and Conditions of Sale and Delivery unless they are replaced by individually negotiated and written agreements.
- 1.2 Defense clause  
General terms and conditions of the contractual partner of GIESSER shall not become an integral part of the contract, irrespective of whether reference is made to them upon conclusion of the contract or whether they are attached to further correspondence after conclusion of the contract, even if GIESSER does not expressly object to the reference.

### **2. Termination of contract and inaccuracies**

- 2.1 The conclusion of the contract shall only be effected by GIESSER's written order confirmation (acceptance). An order confirmation produced with the aid of automatic equipment in which the signature and name are missing shall be deemed to be in writing within the meaning of sentence 1.
- 2.2 Silence on the part of GIESSER in response to offers, orders, requests or other declarations by the customer shall only be deemed to constitute consent if this has been expressly agreed separately in writing.
- 2.3 Insofar as the order confirmation contains obvious errors, spelling mistakes or miscalculations, the contract shall only be concluded on the terms actually provided by GIESSER.

### **3. Delivery time/ scope of delivery**

- 3.1 The agreement of delivery periods and dates must be in writing. Delivery periods and dates are non-binding unless they have been expressly declared binding by GIESSER.
- 3.2 The delivery period shall commence with the dispatch of the order confirmation by GIESSER, at the earliest, however, at the time of the complete provision of the documents, approvals and releases to be procured by the customer and clarification by GIESSER of all questions technically necessary for the fulfillment of the contract.
- 3.3 The delivery period shall end at the earliest at the time when the customer has fulfilled his other obligations in due time and order.
- 3.4 GIESSER shall not be liable for delays in delivery due to delayed or otherwise improper self-delivery.
- 3.5 The delivery deadline shall be deemed to have been met if the ordered goods have left the factory by the expiry of the deadline or GIESSER has notified the orderer (buyer) that the goods are ready for dispatch.
- 3.6 GIESSER reserves the right to make excess or short deliveries of up to 10% of the scope of delivery for production-related reasons; the agreed prices shall be adjusted accordingly. If such changes are unavoidable for GIESSER, GIESSER shall notify the orderer thereof without delay; in the event of a short delivery, the orderer's payment obligation shall be reduced accordingly; in the event of an excess delivery, the orderer shall notify GIESSER in writing without delay - within three working days at the latest - if the order is to be cancelled, otherwise the excess delivery shall be deemed to be a new request by GIESSER and to have been accepted by the orderer in accordance with § 462 of the German Commercial Code.
- 3.7 Partial deliveries are permissible.

### **4. Prices**

- 4.1 In the absence of a separate agreement within the meaning of point 1.1, the prices shall apply "Ex Works". Packaging shall be invoiced separately. The statutory value added tax is not included in the price and shall be shown separately in the invoice at the statutory rate applicable on the date of invoicing.
- 4.2 Orders for which fixed prices have not been expressly agreed shall be invoiced at the unit costs incurred up to the time of delivery. If a supplier of GIESSER charges alloy, scrap, energy or other surcharges, GIESSER shall be entitled to adjust the price accordingly and at the same time inform the purchaser of the reason for the increase.

### **5. Payment**

In the absence of a separate agreement, the delivery price is to be paid within 10 days of the invoice date with a 2% discount or within 30 days of the invoice date net without deductions. The day of payment shall be the day on which GIESSER can dispose of the delivery price. In the event of late payment, the customer shall pay interest on arrears at a rate of 8% per annum. GIESSER reserves the right to claim further or more extensive damages.

### **6. Offsetting and Right of Retention**

- 6.1 The Buyer may only set off undisputed or legally established claims.
- 6.2 The Buyer shall only be entitled to exercise a right of retention if its counterclaim is based on the same contractual relationship.

### **7 Transport/ Transfer of Risk**

- 7.1 The delivery item shall be deemed to be sold "Ex Works" unless otherwise agreed in writing. GIESSER shall indicate to the Purchaser in text form the date on which the goods are to be accepted. Upon expiration of the acceptance date, the risk of accidental loss and accidental deterioration shall pass to the Buyer.
- 7.2 If, in deviation from 7.1, it is agreed that GIESSER is to ship the goods, the risk of accidental loss and accidental deterioration shall pass to the Buyer when GIESSER hands over the delivery item to the forwarder or carrier, irrespective of which contracting party bears the transport costs.
- 7.3 If 7.1 or 7.2 are inapplicable in an individual case, the transfer of risk shall be determined in accordance with the applicable clause of the Incoterms (International Commercial Terms).

## **8 Acceptance of the delivery item**

- 8.1 If the Seller does not accept the delivery item at the contractually agreed time, the payment obligations dependent on the delivery shall nevertheless become due. In this case GIESSER shall arrange for the storage of the delivery item at the expense and risk of the Buyer. In this case, GIESSER shall insure the delivery item in text form at the request of the purchaser. The purchaser shall immediately inform GIESSER of the reason for the delay, also in text form.
- 8.2 If the purchaser is not responsible for the delay in acceptance and GIESSER is able to store the delivery item on its own premises without disrupting its operations, no costs shall be charged to the purchaser for storage.
- 8.3 If the purchaser is responsible for the delay in acceptance, GIESSER may request the purchaser in text form to accept delivery within a reasonable period. If the purchaser does not comply with this request - regardless of the reason - GIESSER may withdraw from the contract to the extent of the non-accepted part of the delivery item or from the entire contract by notifying the purchaser in text form or demand compensation from the purchaser.

## **9. Retention of ownership**

- 9.1 The delivery item shall remain the property of GIESSER until full payment of the agreed price, as well as any costs incurred for shipment and possible further claims for damages arising from the same contractual relationship (e.g. due to delay in acceptance).
- 9.2 In the event that the Buyer sells the goods subject to retention of title, he shall assign his claims from the resale to GIESSER. GIESSER accepts the assignment. GIESSER's claims against the purchaser shall remain valid insofar as they exceed the value of the assigned claims.
- 9.3 In the event that the delivery item is combined with another movable item or (§ 947 BGB) or processed or transformed (§ 950 BGB), GIESSER and the Buyer agree that the combination, processing, or transformation shall be carried out for GIESSER as manufacturer. The retention of title shall continue to the new item to the extent corresponding to the ratio of the invoice value to the value of the new item.

## **10 Liability due to defects**

- 10.1 The information contained in GIESSER's catalogs, brochures, circulars, advertisements, illustrations and price lists regarding weight, dimensions, capacity, price, performance, and the like shall not be deemed to be quality specifications of the delivery item; they shall only be binding if and to the extent that this is expressly agreed by contract.
- 10.2 The Buyer shall inspect the goods immediately upon receipt (§ 377 para. 1 HGB). If this inspection reveals obvious defects or if hidden defects become apparent later, the buyer shall notify GIESSER of these defects in writing without delay. Otherwise, the goods shall be deemed to have been approved (§ 377 paras. 2 and 3 HGB).
- 10.3 If a defect becomes apparent, GIESSER shall have the right to rectify the defect; reduction, withdrawal and compensation shall be excluded as long as GIESSER has not had two opportunities to rectify the defect. No independent material defect rights shall apply to spare parts used in the course of rectifying the delivery item.
- 10.4 GIESSER shall be liable for claims for damages based on intent and gross negligence, in the event of culpable breach of cardinal obligations as well as for representatives and vicarious agents in accordance with the statutory provisions. As far as there is no intentional breach of contract, the liability is limited to the foreseeable, typically occurring damage; this does not affect the liability for culpable injury to life, body or health. The same applies to mandatory liability under the Product Liability Act.
- 10.5 GIESSER shall not be liable for defects in the delivery item that are based on materials supplied by the Buyer or a design prescribed by the Buyer.

## **11. Plans and documents**

All rights to plans and technical documents which GIESSER provides to the purchaser before or after conclusion of the contract shall remain with GIESSER and may not be used, copied, reproduced, shown to third parties, handed over or otherwise disclosed in terms of content by the purchaser without the express written consent of GIESSER.

## **12 Prototypes, Know-How**

If GIESSER supplies a prototype for test purposes, the contracting parties shall assume that the purchaser does not register its own property rights on the basis of the use or further development of this prototype but leaves the acquired know-how to GIESSER. In the event that the purchaser, in deviation from sentence 1, nevertheless applies for industrial property rights, he hereby assigns to GIESSER all industrial property rights which he acquires on the basis of the use or further development of the prototype. GIESSER accepts this assignment. In the event that the assignment is not possible, the purchaser grants GIESSER exclusive, unlimited and gratuitous rights of use to these industrial property rights upon conclusion of the delivery contract.

## **13 Applicable law, place of jurisdiction**

- 13.1 The contract and the contractual relationship shall be governed by the law of the Federal Republic of Germany.
- 13.2 The exclusive place of jurisdiction shall be the registered office of GIESSER.