

WILHELM SCHULTE-WIESE GESENKSCHMIEDE GmbH & Co. KG

General Terms and Conditions of Sale and Delivery for Forgings (Last updated: 01/2020)

1. Scope

(1) These General Terms and Conditions of Wilhelm Schulte-Wiese Gesenkschmiede GmbH & Co.KG (hereinafter WSW) only apply to relations with entrepreneurs according to sect. 14 BGB (GERMAN CIVIL CODE) (hereinafter also "Purchaser"). They also apply to all of "WSW's" future transactions with the Purchaser insofar as they are legal transactions of a related nature.

(2) WSW shall only recognise the Purchaser's General Terms and Conditions conflicting with or deviating from our General Terms and Conditions if WSW explicitly agrees to their validity in writing.

2. Quotations and Conclusion of Contract

(1) WSW's quotations are non-binding. Any acceptance declarations and all orders require an order confirmation from WSW either in writing or via electronic communication to become legally effective.

(2) Any deviating purchasing conditions of the Purchaser shall only be accepted if they have been confirmed by us in writing.

3. Prices and Payment Conditions

(1) Prices are in accordance with the order quantities, they are quoted in euros, ex works and exclusive of VAT for any packing materials. The subsequent reduction of the order quantity or the number of units with agreed partial delivery and the reduction of agreed call-offs shall entail an increase of unit prices considering in particular additional setup and startup costs.

(2) Our invoices are payable within a period of 30 days net. Special payment agreements between Customer and Supplier are indicated on our order confirmation.

(3) Interest on arrears amount to 9 percentage points above the respective base-lending rate p.a., additionally a lump sum of € 40.00 will be charged. We reserve the right to the enforcement of higher damage caused by default.

(4) We shall accept bills of exchange or cheques with express reservation; they shall only be accepted for payment and shall only be deemed as payment with exempting effect after their redemption. Discount charges shall be borne by the Purchaser.

(5) The Supplier is entitled to assign its claims against the Purchaser to third parties.

(6) If the time period between the conclusion of the contract and the delivery is more than 4 months without WSW being responsible for a delay in delivery, WSW may appropriately increase the price taking into consideration incurred material, wage and other additional costs that have to be borne by WSW. If the purchase price increases by more than 40%, the Purchaser is entitled to withdraw from the contract.

(7) In the case of a considerable deterioration of the Purchaser's financial situation (e.g. opening of insolvency proceedings against the buyer's assets, rejection of the initiation of insolvency proceedings due a lack of assets, deterioration of the financial situation becoming known) after the conclusion of the contract WSW is entitled to refuse performance and to request security deposit or advance payment. Should the Purchaser not provide security or agree to make an advance payment within two weeks, WSW can withdraw from the contract. In these cases and if the Purchaser ceases payment, all of the Purchaser's outstanding receivables shall become due and payable immediately. At the same time all discounts and other reductions in payment granted will lapse. Moreover, the Purchaser shall be obligated to identify all stocks remaining from WSW's deliveries and to render those to WSW.

4. Deliveries

4.1 Organisation

The blank or finished parts drawings resp. plaster models in conjunction with the tolerances laid down in the "Technical Guidelines DIN EN 10243-1" for forging blanks are binding for the dimensional implementation of the forgings manufactured by us and approved by the Purchaser. Any deviations are subject to special agreement.

4.2 Tools

The tools and devices built for the manufacture of the forgings shall remain our property, irrespective of any partial costs being charged. We shall undertake to keep the tools for the Purchaser for a period of 3 years from the last delivery. After 3 years we shall give the Purchaser the opportunity to comment on the further safekeeping of the tools within 6 weeks. The safekeeping period shall end if no statement is made or no new order is placed within these 6 weeks. If the Purchaser presents the prospect of a new order within these 6 weeks, the safekeeping period is extended by 1 year. Should the Purchaser request safekeeping periods of more than 4 years, we will have the right to charge storage costs. After the expiry of the safekeeping period we will be able to dispose of the tools freely. Any costs for the renewal and maintenance of the tools as well as the risk of tool breakage shall be borne by us.

4.3 Heat Treatment

Heat treatment is subject to express agreement. If no particular specifications are provided, it shall be carried out according to DIN EN 10283.

4.4 Examination and Approval

The costs of the usual examination of the external condition, i.e. checking the dimensions according to drawings and DIN EN 10254, checking for surface defects and surface cracks and, in the case of heat treated items, randomised examination for strength are covered by the unit price if included in the quotation.

Any additional examinations will be charged extra. A prescribed approval, if any, has to be carried out on our premises immediately upon notification of readiness for shipment. The personal and material costs of the approval shall be borne by the Purchaser.

4.5 Delivery Period

(1) The delivery period resp. delivery date is indicated to the best of our knowledge and belief but without guarantee. Agreed delivery periods shall begin with the date of our order confirmation, however, not before all the design details have been clarified. Deliv-

ery dates are considered to be met if the goods leave the delivery works or, in the case of default of acceptance on the part of the Purchaser, are made available at the delivery works at the agreed point in time.

(2) We shall not default if delivery is not carried out due to circumstances not imputable to us. We are not responsible for incidents of force majeure, strikes and lockouts, accidents and all other causes which induce a partial or complete stoppage of work, shortage of material, shortage of operating materials, transport difficulties, difficulties in energy supply, operational disturbances within our own factory or at subcontractors' factories, which is deemed to be equivalent. Should one or more of these incidents occur, we shall have the right to postpone delivery for the period of the obstruction. The Purchaser shall be informed of the beginning and end of such obstructions without delay.

(3) In the event of a delay in delivery the Purchaser shall have to set an appropriate final deadline under refusal to accept performance. After the fruitless expiry of the deadline the Purchaser can assert the right of withdrawal or make claims for damages only for that part of the scope of the contract, which has not been fulfilled by us. The Purchaser cannot claim loss of interest, neither in the case of partial default nor in the case of default with regard to the fulfilment of the entire contract.

(4) Delivery dates and delivery periods shall be extended appropriately, if the Purchaser for its part delays or omits necessary or agreed acts of cooperation.

In any case, the Purchaser shall only be entitled to claims for damages due to a delay in delivery if this delay has been brought about by wilful intent or gross negligence on our part, our statutory representative or one of our vicarious agents.

(5) If the Purchaser is in default of acceptance or culpably violates any other obligations to cooperate, WSW will be entitled to request the compensation of any losses incurred by WSW including any additional expenses. We reserve the right to further claims. If the above preconditions apply, the risk of accidental loss or accidental deterioration of the purchased item shall be transferred to the Purchaser at the time it defaults on acceptance or payment.

5. Transfer of Risk

The risk of shipment shall be borne by the Purchaser; this risk shall be transferred to the Purchaser as soon as the consignment leaves our works. If shipment is carried out by a freight carrier, the transfer of risk shall be effected with the transfer of the consignment to the freight carrier.

6. Under and Overdeliveries

Considering production conditions, under or overdeliveries deviating from order quantities by +/-10% are permissible.

7. Offsets and Retentions

Offsets and retentions on the part of the Purchaser are excluded, unless the claims to be offset or retained are undisputed or final.

8. Claims for Defects

(1) The Purchaser's written complaints shall be submitted within the time limits mentioned below. Externally recognisable defects are approved within 8 days from the receipt of the delivery as long as the forgings are in their delivered condition, i.e. have not been heat treated or chiplessly formed by the recipient.

(2) Internal defects, which can only be detected upon machining or putting the forgings into use, become time-barred within one year from the receipt of the delivery. This shall not apply in the case of an injury to life, limb or health the Seller is to be blamed for, in the case of intentional or grossly negligent breach of duty on our part, in the case of the acceptance of a guarantee or a procurement risk and if a defect is fraudulently concealed. In such a case it needs to be properly established that it is our delivery. Defective units are replaced in the form of goods or a credit note is issued for them. A replacement delivery can only be requested by the Purchaser if, due to the defective units, the minimum quantity (according to clause 6) is not reached.

(3) Shortages of up to 0.5% of the order volume, or at least up to 2 units, shall be borne by the Purchaser. On principle, processing costs of defective items will not be refunded, reworking and additional working costs only with our prior consent. Any further claims are excluded. Compensation claims expire at the latest one month from our written rejection of the Customer's Complaint.

(4) Claims for defects shall not apply in the case of only a minor impairment of usability, only a minor deviation from the agreed quality, natural wear and tear and damage incurred after the transfer of risk due to incorrect or neglectful treatment, excessive use, improper operating consumables or due to extraordinary external influences not specified in the contract. If improper modifications or repair work are carried out by the Purchaser or any third party, there shall be no claims for defects for these and the arising consequences either.

(5) If rectification fails or is refused by WSW, the Purchaser is entitled to demand withdrawal or reduction at its discretion.

(6) WSW shall be liable under statutory provisions insofar as the Purchaser claims compensation for damages based on aforethought or gross negligence, including aforethought or gross negligence of WSW's representatives or vicarious agents. If WSW is not accused of intentional contract violation, liability for compensation shall be limited to the foreseeable, typically occurring damage.

(7) WSW shall be liable under statutory provisions if WSW culpably violates a major contractual duty (cardinal obligation). In this case liability for damages shall be limited to foreseeable, typically occurring damage.

(8) Insofar as the Purchaser is entitled to replacement of the loss instead of the performance, WSW's liability shall - also with regard to the cases covered in clause (5) - be limited to the replacement of foreseeable, typically occurring loss.

(9) Indirect damage and consequential damage resulting from defects in the delivery item are only eligible for replacement in so far as such damage is typically to be expected when using the item delivery item as stipulated.

(10) Liability due to nonaccidental injury to life, body or health shall remain unaffected; this shall also apply to compulsory liability according to the Product Liability Act.

(11) Unless specified otherwise above, WSW's liability is excluded.

(12) The period of limitation for claims for defects is 12 months starting from the transfer of risk.

9. Liability

(1) Any further liability for damages than that stipulated in clause 8 shall be excluded, regardless of the legal nature of the asserted claim. This shall apply in particular to claims for damages owing to negligence upon conclusion of contract, due to other breaches of duty or on account of tortious claims for compensation for material damage pursuant to sect. 823 BGB (German Civil Code).

(2) To the extent that WSW's liability for compensation is excluded or limited, this shall also apply with regard to the personal liability for compensation of WSW's employees, workers, members of staff, representatives and vicarious agents.

10. Reservation of Ownership

(1) WSW reserves the right to retain title to the goods delivered until full payment has been received. The retention of title shall apply until all, also future and conditional claims from the business relation between the Purchaser and WSW, have been fulfilled.

(2) The Purchaser is not authorised to assign the goods as security or pledge them, however, the Purchaser has the right to sell the reserved goods in a regular course of business. As of now, the Purchaser shall herewith assign all claims towards its business partners arising from this to WSW.

(3) If the goods are machined or processed by the Purchaser, the retention of title shall also extend to the complete new object. The Purchaser shall acquire co-ownership of the fractional share corresponding to the value of its goods compared to that of the goods delivered by WSW.

(4) If the value of all securities existing for WSW's benefit exceeds the existing receivables consistently by more than 20 %, WSW will release securities of its choice upon the Purchaser's request.

(5) WSW is entitled to demand the surrender of the items belonging to it at any time, in particular to assert its rights to selection and assignment of claims to consideration in insolvency proceedings if the fulfilment of its claims by the Purchaser is jeopardised, in particular if insolvency proceedings have been opened against the Purchaser's assets or if the Purchaser's financial situation deteriorates considerably. The assertion of the retention of title as well as the pledging of the delivery items on the part of WSW are not considered as withdrawal from the contract.

(6) In the case of pledges and the seizure of the reserved goods or other disposals or interventions of third parties in WSW's rights the Purchaser shall inform WSW without delay and make all necessary efforts to avert the risk in coordination with WSW. If it is appropriate for the protection of the reserved goods, the Purchaser shall, at WSW's request, assign claims to WSW. The Purchaser is obligated to pay compensation for any and all losses and costs, including court and lawyer costs incurred by WSW for intervention measures to counter third-party access.

(7) The Purchaser is obligated to sufficiently insure the goods delivered by WSW against loss, fire and damage. This insurance obligation shall cease if the goods are no longer subject to WSW's retention of title in the broadest sense. As of now, the Purchaser shall assign all claims from the respective insurance contracts to WSW.

11. Industrial Property Rights

The Customer is obligated to examine the possibility, on its own initiative, that the placement of an order may constitute an infringement of industrial property rights, and, as the case may be, to draw our attention to the fact that the items ordered are effectively protected by industrial property rights. The Customer shall assume any liability for claims that, due to the execution of its order, will be asserted against us for this reason by anyone entitled. The Purchaser shall bear all fees, costs and expenses incurred by it in connection with any legitimately successful prosecution instituted against it outside of Germany.

12. Miscellaneous

(1) This contract and all legal relationships between the parties are subject to the law of the Federal Republic of Germany to the exclusion of CISG (the United Nations Convention on Contracts for the International Sale of Goods).

(2) Place of fulfilment and exclusive place of jurisdiction for all disputes arising from this contract shall be WSW's place of business.

(3) All agreements made between the parties for the execution of this contract have been laid down in writing in this contract.