

**Order, Delivery and Payment Terms  
for Stehle GmbH in 87700 Memmingen/Germany**

**§ 1 Scope, Exclusion of validity of different terms and conditions of business**

1. All quotations, deliveries and services of our company are based on these Order, Delivery and Payment terms. They are also applicable without repeated explicit notification for future quotations, deliveries and services to the customer, insofar as this is a corporate body, a special fund under public law or an entrepreneur and, in concluding the contract, is exercising its commercial or independent professional function.

2. Our Terms apply exclusively. The validity of different or supplementary terms and conditions of business of the customer is explicitly ruled out, unless we explicitly agree to their validity in an individual case.

**§ 2 Conclusion of contract, Scope of delivery, Assignment prohibition**

1. Unless otherwise agreed, our quotations are prepared free of charge. Unless otherwise agreed, the supply contract results from our acceptance of the customer order or the beginning of execution of the order on our part.

2. If we confirm acceptance of the order in writing, our order confirmation is binding for the scope and content of the order relationship. For the purpose of the contract, the information in our quotations is binding, unless otherwise agreed.

3. The documents on which the quotation is based, such as drawings, illustrations, descriptions and weight and dimension specifications, are only considered to be part of the content of the contract if they are explicitly part of the content of our quotation. We reserve the right to make changes, where these changes are not fundamental in nature and do not restrict the purpose of the delivery in accordance with the contract in a manner that is unreasonable for the customer. The documents remain our property and may not be copied, used for any other purpose or made accessible to third parties, and must be returned on demand. The statutory copyright and industrial property rights are also applicable.

4. The customer is not entitled to assign any claims against us or any rights resulting from our business relationship to third parties, or to transfer them to third parties, without our consent. The same shall apply to claims against us or other rights arising indirectly by operation of law.

**§ 3 Delivery term**

1. The agreed delivery term shall begin upon conclusion of the contract, but not before any documents to be provided by the customer have been received in full and any agreed advance payments have been made. The delivery term shall be considered to have been met if the delivery item has left our warehouse or has been reported to the customer as ready for dispatch before expiry of the term, but cannot be delivered for reasons for which the customer is responsible.

2. The delivery term shall be extended appropriately in cases of force majeure, as well as the occurrence of unforeseen and extraordinary events affecting our company or our suppliers, such as civil disturbance, strike, lockout, fire, confiscation, embargo, legal or official restrictions on energy consumption or incorrect and/or late self-supply, insofar as these events are outside our responsibility, we were not able to avert them despite taking reasonable care in accordance with the circumstances of the individual case, and they affect the prompt performance of the contract. If the delivery term is extended for an inappropriate time due to such circumstances, the customer is entitled, after the expiry of an appropriate extension period to be set by the customer, to withdraw from the contract or, insofar as the customer has an interest in a part delivery, from the unperformed section of the contract. If we have already performed part of the services incumbent upon us, the customer can only withdraw from the whole of the contract if he demonstrably has no interest in the part performance. Other legally or contractually agreed rights of withdrawal shall remain unaffected by this.

3. If we should fall into arrears with the delivery, after the setting and vain expiry of an appropriate extension period the customer is entitled to withdraw from the contract or, insofar as the customer has an interest in a part delivery, the unperformed section of the contract. Further claims by the customer - in particular claims for damages in lieu of performance, and reimbursement of delay damages - are excluded, unless otherwise stipulated in § 10 below. In cases, in which § 10 of these Terms provides for liability due to delayed delivery, the delay damages for each complete week of delay shall be 0.5 %, up to a maximum of 5 % of the value of that part of the total delivery, which

cannot be used on time as a consequence of the delay. The parties have the right to provide evidence of higher or lower delay damages.

4. Deliveries before expiry of the delivery term and part deliveries are permissible, insofar as this does unreasonably impair contrary interests of the customer.

**§ 4 Prices, Payment, Setoff and Right of Lien**

1. The specified prices apply to ex works deliveries from Horb and are net prices exclusive of the applicable sales tax, even if this is not shown separately, and exclusive of the costs for packaging, freight, installation, postage, insurance expenses, customs duties, any banking and payment transaction costs and other incidental costs.

2. Our invoices are due for immediate payment. Unless otherwise agreed, the customer may make payment of the price plus the aforementioned additional costs within 10 days from the invoice date minus 2% discount or within 30 days from the invoice date with no deduction, whereby these payment arrangements do not affect the due date. If the customer is in arrears with a due payment, the aforementioned payment terms shall be cancelled and the invoice amount is due for payment immediately and with no deductions. The preceding payment arrangements do not apply to repair invoices. These are due for payment immediately and with no deductions.

3. The customer shall be in arrears after the expiry of 30 days from receipt of the invoice, unless there are grounds that result in an earlier incidence of arrears (e.g. reminder or a payment period to be determined by the calendar). From the onset of arrears, our claim shall accrue interest at an annual interest rate of 5 percentage points above the base rate. If the customer is a corporate body, a special fund under public law or an entrepreneur and, in concluding the contract, is exercising its commercial or independent professional function, our claim shall accrue interest from the onset of arrears at an annual interest rate of 8 percentage points above the base rate.

4. In case of payment arrears, we are entitled to make further deliveries dependent on the complete settlement of the payment arrears.

5. Unless otherwise agreed, in the case of wage and salary increases or rises in the prices of raw materials or supplies, we reserve the right to adjust the price appropriately, varying from the contractual agreement. This right applies to consumers in the sense of § 13 BGB and only for orders, which are to be executed later than four months after conclusion of the contract and for deliveries and services under contracts for performance of a continuing obligation.

6. Furthermore, we are entitled to refuse our performance if, as a result of a circumstance that has become known to us after conclusion of the contract, we have reason to fear that we will not receive the corresponding consideration from the customer in full and on time, unless the customer affects this consideration or provides adequate security. In particular, this shall apply if, after conclusion of the contract, our credit insurer has refused to insure the purchase price for payment of the delivery item due to the customer's credit rating.

7. If the customer is a merchant in the sense of HGB and the contract is part of his trade, we are entitled to demand maturity interest of 5% without the need for a prior reminder.

8. Setting off with counter claims of the customer that are disputed, not legally established and not ripe for judgement is excluded. If the customer is an entrepreneur and, in concluding the contract, is exercising its commercial or independent professional function, it shall forego the exercising of a right to repudiation or lien, unless we, or our legal representatives or vicarious agents, are burdened with gross breach of contract or the counterclaims of the customer on which the rights of repudiation or lien are founded are based on the contract or are undisputed, legally established or ripe for judgement.

9. We only accept cheques and bills of exchange in fulfilment by prior agreement. Any interest and costs shall be charged to the customer.

**§ 5 Termination by customer**

1. Should the customer terminate/cancel the order, it shall remain liable to pay the agreed price. However, the price shall be reduced by the amount of the expenditure that we save as a consequence of the cancellation of the contract or the amount that we earn, or maliciously neglect to earn, through alternative use of the freed up capacity.

2. In case of termination/cancellation by the customer before the start of production, our remuneration in accordance with Para.1 above shall in principle be 10 % of the gross order value including sales tax. However, both we and the customer are entitled to prove a different (higher or lower) level of remuneration in accordance with Para.1 above. In this case, the customer shall be liable for the remuneration actually proved in accordance with the above Para. 1.

**§ 6 Passing of risk, Dispatch, Packaging**

1. Unless otherwise agreed, our deliveries are ex works.

2. In all cases, including for carriage prepaid delivery, the risk - including the risk of confiscation - shall pass to the customer upon handing over of the delivery item to the transport agent. This shall also apply if we carry out the transportation ourselves, or have it carried out, even if we have accepted dispatch or delivery at our own cost. Should dispatch be delayed for reasons that lie in the responsibility of the customer, the risk shall pass to the customer upon notification that the delivery item is ready for dispatch.

3. In the absence of a contrary agreement, we shall determine the type and method of packaging and dispatch.

4. Transport insurance shall only be taken out at the express demand and at the cost to the customer.

#### **§ 7 Retention of title**

1. We shall retain the title to the delivery item until payment has been made in full for all claims arising from this contract, including those from cheques and bills of exchange and any claims for recourse from cheque and bill of exchange payments made in fulfilment. For payments by the so-called cheque-bill of exchange method, we retain the title to the delivery item, until the risk of recourse from the bills of exchange provided to us has lapsed. If the customer is a corporate body, a special fund under public law or an entrepreneur and, in concluding the contracts on which the claims below are based, is exercising its commercial or independent professional function, we shall furthermore retain the title to the delivery item until full payment of all claims arising from the business relationship has been affected.

2. The customer shall carry out processing or remodelling of the delivery item for us, without any obligations arising on our part as a result. Should the customer combine, mix, blend or process the delivery item with other goods, we shall receive co-ownership of the resulting goods. The co-ownership share shall be calculated based on the relationship of the invoice value of the delivery item to the value of the newly produced goods. The combination, mixing, blending or processing of the delivery item is permissible in the normal course of business, as long as our aforementioned security interest remains assured.

3. The customer may sell the delivery item and the items resulting from it in accordance with Para. 2 above (hereinafter referred to collectively as conditional goods) in the normal course of business, as long as he ensures the extended retention of title (assignment in accordance with Paragraph 4 below). Other acts of disposal, in particular pledging as collateral, leasing, conferment or mortgaging, are not permitted.

4. The customer hereby assigns to us the claims arising, or yet to arise, from the sale or other use of the conditional goods, and we accept this assignment. Insofar as the conditional goods were in our co-ownership, the assignment shall only cover the proportion of claims corresponding to our co-ownership share.

5. The customer is only authorised to collect the assigned claims in the normal course of business and only revocably. Revocation is only permitted if the customer does not properly fulfill its obligations in accordance with this contract, in particular its payment obligations, is insolvent or encumbered, or has applied for the initiation of insolvency proceedings on its assets. In this case, on our demand the customer shall notify the debtor of the assignment; we are likewise entitled to disclose the extended retention of title to the client of the customer.

6. The customer's right to dispose of the conditional goods and to process, combine, mix and blend them or to collect the assigned claims shall lapse, without the need for explicit revocation, at the onset of insolvency, upon suspension of payments, upon submission of the request for insolvency by the customer or a third party or upon the establishment of encumbrance. In these cases, and in the cases stipulated under Paragraph 5, we are entitled, after the expiry of an appropriate period, to withdraw from the contract and to take possession of the conditional goods. The customer is obliged to surrender the goods. Any realisation proceeds from realisation of the conditional goods taken back will be credited - minus appropriate realisation costs - against the liabilities of the customer.

7. In the case of revocation of the right of collection, the customer is obliged to inform us without delay of the name or company name of the debtor for the assigned claims.

8. If the value of the securities provided to us exceed the total value of the secured claims by more than 20%, we are obliged at the request of the customer, to release the excess securities at our discretion.

9. The customer must notify us in writing without delay of any imminent or completed access by third parties to the conditional goods or to the assigned claims, handing over the documents necessary for intervention. Within the relationship between us and the customer, intervention costs, including any process costs, shall be charged to the latter.

#### **§ 8 Warranty**

1. We shall bear liability for defects of quality and title of the delivery item, in accordance with the terms below.

2. Complaints resulting from incomplete or incorrect deliveries or complaints due to apparent defects, must be notified to us immediately within eight days after handover of the delivery item, otherwise the delivery item shall be considered to have been approved, unless we or our legal representatives or vicarious agents are burdened with malice. The customer must submit complaints about hidden defects immediately, within eight days of their discovery. If the customer is a merchant and the contract is part of its trade, §§ 377, 378 HGB shall also apply.

3. Our warranty for defects of quality and title is limited to subsequent performance and, in terms of time, to a period of 12 months from handover.

4. If the defect consists of a real right of a third party, as a result of which he can demand surrender of the delivery item, our warranty period shall be 10 years from handover.

5. If the customer is an entrepreneur and, in concluding the contract, is exercising its commercial or independent professional function, a corporate body or a special fund under public law, we shall have the right to choose between free of charge elimination of the defect or replacement delivery.

6. We are entitled to refuse subsequent performance if this is associated with disproportionate costs to us. Instead of subsequent performance, a reduction of the agreed price or cancellation of the contract and - subject to the conditions in § 10 of these Terms - payment of damages in lieu of performance or reimbursement of expenses can then be demanded. Cancellation of the contract and payment in lieu of performance or reimbursement of expenses are ruled out, if only an insignificant defect exists. Furthermore, if we have made defect-free part deliveries, cancellation of the entire contract is only permissible if the interest of the customer in the part deliveries made has demonstrably lapsed.

7. The customer must forward the defective delivery item to us for rectification of defects or replacement delivery at its own risk. Replaced delivery items or parts thereof shall become or remain our property.

8. Further claims by the customer, in particular as a result of personal injury, for damage to goods that are not the subject of this contract or for loss of profit, consequential costs etc. are ruled out, unless otherwise stipulated in § 10 below.

9. Our warranty does not extend to the suitability of the delivery item for intended usage by the customer, which is different from the normal usage, unless this has been agreed in writing.

#### **§ 9 Withdrawal, Impossibility of performance of contract**

1. Apart from in the other cases regulated separately in these Terms, the customer can also withdraw from the contract by written declaration if performance of the contract has become impossible for us before the passing of risk. In the case of partial impossibility, there shall only be a right of withdrawal if the customer demonstrably has no interest in the part delivery or part performance; otherwise, it can demand an appropriate reduction in the price. Furthermore, withdrawal from the contract is only permissible if the breach of duty is significant.

2. If the impossibility is not the responsibility of either party, we shall have a claim for the corresponding proportion of the remuneration for the part performance.

#### **§ 10 Liability**

1. In principle, the customer is not entitled to any other or more extensive contractual or legal liability claims against us, our legal representatives and vicarious agents than those granted in these General Delivery and Payment Terms.

2. Our liability, and the liability of our legal representatives and vicarious agents, is limited in every case to breach of duty and unlawful acts based on intent and gross negligence and the culpable infringement of significant contractual obligations (cardinal obligations).

3. We, our legal representatives and vicarious agents, shall bear full liability for intent and gross negligence; otherwise our level of liability, and the liability of our legal representatives and vicarious agents, is limited to reimbursement of damages that are typical and foreseeable for the contract. If we have taken out liability insurance to cover the typical contractual risk, the level of our liability, and the liability of our legal representatives or vicarious agents, shall be limited to the benefits of the liability insurance, insofar as the customer is a corporate body, a special fund under public law or an entrepreneur and, in concluding the contract, is exercising its commercial or independent professional function. If there are no benefits under the insurance policy, we must intervene with separate damage payments up to the level of the insured sum.

4. The limitations of liability under Para. 2, 3 und 5 do not apply to liability for damages arising from a risk to life, of injury or to health caused by negligent breach of duty by us or malicious or negligent breach of duty by one of our legal representatives or vicarious agents.

5. Claims for damages by the customer due to negligent breach of duty by us, our legal representatives, vicarious agents and other third parties, whose behavior is to be imputed to us in an individual case, in particular in cases of negligently defective deliveries or negligent delay in delivery, are excluded, insofar as they do not constitute the infringement of significant contractual obligations. Furthermore, compensation for damages in lieu of performance in cases of defective delivery is excluded, if the breach of duty is insignificant.

6. The limitations of liability stipulated in these Terms do not apply to our liability for damages under the terms of the currently valid version of the Law on Liability for Defective Products of 15/12/89, from the acceptance of a guarantee or an exercise risk and in case of malicious concealment of a defect.

7. In cases where our liability arises as a consequence of defects in materials procured from third-party suppliers, the customer is initially instructed to assert our claims assigned to him against the third-party supplier - if necessary judicially. If this action is unsuccessful, we shall be liable in accordance with the preceding paragraphs and those of § 8.

#### **§ 11 Taking back goods**

1. Insofar as we have entered into an obligation towards the customer, with reference to these Order, Delivery and Payment Terms, to take back delivered tools, the customer is entitled to demand the partial or complete taking back of the tools if, and to the extent that, the tools are unused, unmodified and in mint condition, correspond to our current stock programme at the time of the demand for taking back and the customer demands that we take back the tools within one year of their delivery.

2. In the case of taking back tools, the customer shall receive from us, in accordance with Para. 1 above, a credit note for 90 % of the net price calculated for the delivery of the tools taken back. The customer is not entitled to any further claims, in particular for complete or partial repayment of the price paid for the returned tools.

3. Returns of goods for which we are not responsible must be made free of charge. The customer must reimburse us for the resulting costs.

#### **§ 12 Special tools**

All tools not listed in the catalogue are special tools, which must undergo a feasibility study. In case of the commissioning of special tools or hard metal moulds, we are entitled to deviate from the commissioned delivery quantity by +/- 20 %.

#### **§ 13 Place of performance, Legal venue, Applicable law**

1. The place of performance for all claims arising from this business relationship shall be 72160 Horb, insofar as the customer is a merchant under commercial law or a corporate body.

2. The legal venue for all claims arising from this business relationship, including those from bills of exchange and cheques, shall be the court, in whose district we have our headquarters, insofar as the customer is a merchant under commercial law or a corporate body. We are also entitled to institute legal proceedings at the court with jurisdiction over the headquarters of the customer.

3. All contractual and business relationships between us and the customer are subject exclusively to the law of the Federal Republic of Germany, to the exclusion of terms applicable under international agreements, in particular the Hague Convention and the United Nations Agreement on Uniform Law for the International Sale of Goods (CISG).

#### **§ 14 Limitation of authority of field staff, executives and engineers**

We hereby explicitly declare that our staff, with the exception of the Directors and authorised representatives, in particular field staff and commercial agents, executives and engineers are not entitled to agree amendments to the content of the contract either by telephone or verbally. Amendments to the contract must always be made in writing and, in the absence of agency of estoppel or constructive authority, require the approval of the executive board.

#### **§ 15 Final clause**

Should one or more of the clauses of these Terms, or parts thereof, be or become ineffective, this shall not affect the validity of the remaining clauses. The void clause shall be replaced by a legally permissible clause, which comes as close as possible to the intended economic effect of the ineffective clause.