

**JÄCKEL + CO. EDELSTAHL METALLTECHNIK GMBH**  
**General Terms and Conditions of Sale and Delivery**  
Status September 2020

**A. General provisions**

**I. Conclusion of contract**

1. These Terms and Conditions of Sale and Delivery shall apply exclusively to companies, legal entities under public law or separate assets under public law pursuant to Section 310 (1) of the German Civil Code (BGB).
2. Our Terms and Conditions of Sale and Delivery shall apply exclusively, which the Purchaser agrees to upon acceptance of the offer. Furthermore, these terms and conditions shall apply to all future transactions with the Purchaser, even if no express reference is made to them and insofar as legal transactions of a related nature are concerned. We do not recognize any terms and conditions of the Purchaser that are contrary to or deviate from our terms and conditions of sale and delivery, even if we do not expressly object to the terms and conditions. Deviations shall therefore only apply if they are expressly recognized by us in writing to the Purchaser.
3. Our offers are subject to change. Our explanations must be made in writing.

**II. Prices**

Prices apply ex works or ex warehouse excluding packaging plus the applicable statutory value added tax. The costs for packaging will be invoiced separately.

**III. Terms of payment**

1. Payment shall be made without deduction in such a way that we can dispose of the amount on the due date.
2. The Purchaser may only set off claims that are undisputed or have become res judicata. He shall only be entitled to rights of retention insofar as they are based on the same contractual relationship.
3. Default interest shall be charged at a rate of 9 percentage points above the respective base interest rate. We reserve the right to assert a higher damage amount caused by default.
4. Insofar as our claim for payment is at risk as a result of subsequently occurring circumstances from which a significant deterioration of assets results, we shall be entitled to call it due prematurely, irrespective of the term of bills of exchange accepted on account of payment.
5. The Purchaser may avert the legal consequences referred to in section 3 by providing security in the amount of our endangered claim for payment.
6. The statutory provisions on default of payment shall remain unaffected.

**IV. Retention of title**

1. The objects of the deliveries (reserved goods) shall remain our property until all our claims against the Purchaser arising from the business relationship have been fulfilled.
2. As long as title has not yet passed in full to the Purchaser, the Purchaser is prohibited from pledging or transferring title by way of security, and resale is only permitted to resellers in the ordinary course of business and only on condition that the reseller receives payment from its customer or makes the reservation that title shall not pass to the customer until the customer has fulfilled its payment obligations.
3.
  - a) If the Purchaser resells goods subject to retention of title, he hereby assigns to us his future claims from the resale against his customers with all ancillary rights - including any balance claims - without requiring any special declarations at a later date. If the goods subject to retention of title are resold together with other items without an individual price having been agreed for the goods subject to retention of title, the Purchaser shall assign to us, with priority over the remaining claim, that part of the total price claim which corresponds to the price of the goods subject to retention of title that we have invoiced.

b) If a justified interest is substantiated, the Purchaser shall provide us with the information required to assert its rights against the Customer and hand over the necessary documents.

c) Until revoked, the Purchaser is authorized to collect the assigned claims from the resale. In the event of good cause, in particular default of payment, cessation of payments, opening of insolvency proceedings, protest of a bill of exchange or justified indications of over-indebtedness or imminent insolvency of the Purchaser, we shall be entitled to revoke the Purchaser's collection authority. In addition, we may, after prior warning and observance of a reasonable period of time, disclose the assignment by way of security, realize the assigned claims and demand disclosure of the assignment by way of security by the Purchaser to the customer.

4.

a) The Purchaser is permitted to process the reserved goods or to mix or combine them with other items. The processing, mixing or combining (hereinafter: processing) shall be carried out for us. The Purchaser shall keep the new item for us with the due care of a prudent businessman. The new item shall be deemed to be goods subject to retention of title.

b) The processing or transformation of the object of sale by the Purchaser shall always be carried out in our name and on our behalf. In this case, the Purchaser's expectant right to the object of sale shall continue in the transformed object. If the object of sale is processed with other objects not belonging to us, we shall acquire co-ownership of the new object in the ratio of the objective value of our object of sale to the other processed objects at the time of processing. The same shall apply in the event of mixing. If the mixing is carried out in such a way that the Purchaser's item is to be regarded as the main item, it shall be deemed agreed that the Purchaser transfers co-ownership to us on a pro rata basis and shall hold the sole ownership or co-ownership thus created in safe custody for us. To secure our claims against the Purchaser, the Purchaser also assigns to us such claims as accrue to him against a third party as a result of the combination of the reserved goods with a property; we accept this assignment already now at this time.

c) In the event of the sale of the new item, the Purchaser hereby assigns to us by way of security its claim against the customer arising from the resale, including all ancillary rights, without the need for any further special declarations. However, the assignment shall only apply to the amount corresponding to the value of the processed reserved goods invoiced by us. The share of the claim assigned to us shall be satisfied with priority.

5. In the event of seizure, confiscation or other dispositions or interventions by third parties, the Purchaser must notify us immediately.

6. In the event of breaches of duty by the Purchaser, in particular in the event of default in payment, we shall be entitled to withdraw from the contract and take back the goods after the unsuccessful expiry of a reasonable deadline set for the Purchaser to perform; the statutory provisions on the dispensability of setting a deadline shall remain unaffected. The Purchaser shall be obliged to surrender the goods.

7. We undertake to release the securities to which we are entitled at the request of the Purchaser insofar as their value exceeds the claims to be secured by more than 20%.

**V. Models, tools, other molding equipment**

1. The Purchaser shall be liable for ensuring that the rights of third parties are not infringed by the use of drawings, samples and models submitted. He shall indemnify us from all disadvantages incurred by us as a result, in particular from claims for damages from third parties.

2. Even in the event of remuneration of shares of cost for models, tools, molds or dies, etc. by the Purchaser, these shall remain our sole property.

3. We are not obliged to take out insurance for models stored with us or our suppliers. Models will be stored free of charge for 3 years after their last use, after which they will be returned or destroyed.

## **B. Execution of delivery**

### **I. Delivery periods, delivery dates**

1. Delivery periods shall commence on the date of our order confirmation, but not before full clarification of all details of the order; the same shall apply to delivery dates.
2. If the Purchaser fails to fulfill contractual obligations (including cooperation and ancillary obligations) such as opening a letter of credit, providing domestic or foreign certificates (e.g. for export, shipment or import), making an advance payment or similar, in a timely manner, we shall be entitled to extend our delivery periods and dates, without prejudice to our rights arising from default on the part of the Purchaser, to be reasonably postponed in accordance with the needs of our procurement process.
3. Compliance with the delivery periods and dates shall be determined by the time of the Dispatch ex warehouse shall be decisive. If the goods cannot be dispatched on time through no fault of our own, the delivery periods and dates shall be deemed to have been met upon notification of readiness for dispatch

### **II. RESERVATION CONCERNING AVAILABILITY OF SUBCONTRACTED SUPPLIES**

1. If, for reasons for which we are not responsible, we do not receive deliveries or services from our suppliers, or do not receive them correctly or on time, or if our suppliers subsequently refuse production or delivery for reasons for which we are not responsible, despite the order acceptance having been duly confirmed, or if their delivery conditions change, or if events of force majeure occur, we shall be entitled to postpone the delivery for the duration of the impediment or to withdraw from the contract in whole or in part due to the impracticability of the entire confirmed order or the part of the order not yet fulfilled. The following shall be deemed equivalent to force majeure: strike, lockout, official interventions, shortage of energy and raw materials, transport bottlenecks, prevention of operation through no fault of our own, e.g. due to fire and water, and/or machine damage, earthquake, war or similar events which fall under the term force majeure, as well as all other impediments which, viewed objectively, have not been culpably caused by us. Claims for compensation against us, of whatever nature, cannot be made.
2. If required official import or export licenses are not granted or the execution of the contract is or becomes impossible due to official import or export prohibitions and we are not responsible for cases of the kind described above, we may withdraw from the contract, even if we have undertaken to apply for an import or export license. The Purchaser cannot derive any claims against us from this.

### **III. Dimensions, weight, quality**

1. Deviations in dimensions, weight and quality are permissible in accordance with DIN or current practice. Offers and obligations of the seller always refer to products of usual sales quality taking into account usual tolerances. The weights are determined on our calibrated scales, recorded on the EDP printout "Workshop Order / Measurement/Weighing Record" and are decisive for invoicing.
2. Compared to the order quantity, an excess or short delivery of up to 10% is permissible - also in the case of partial deliveries - taking into account normal commercial usage.

### **IV. Shipping, packaging and transfer of risk**

1. If the loading or transport of the goods is delayed for a reason for which the Purchaser is responsible, we shall be entitled to store the goods at the Purchaser's expense and risk at our reasonable discretion, to take all measures deemed suitable for the preservation of the goods and to invoice the goods as delivered. The same shall apply if goods notified as ready for dispatch are not called within four days. The statutory provisions on default of acceptance shall remain unaffected.
3. The goods shall be shipped in customary packaging appropriate to the product, unless otherwise specifically specified by the Purchaser.

4. In the event of transport damage, the Purchaser must immediately arrange for a statement of facts upon receipt of the goods and notify us of the damage within 3 days.

5. Deliveries shall be made ex works (EXW) in accordance with Incoterms 2020, unless otherwise agreed in writing.

### **V. Warranty; Obligation to examine and give notice of defects**

1. Warranty claims of the Purchaser presuppose that he duly complies with his obligations to inspect the goods and to give notice of defects according to Art. 377 HGB (German Commercial Code). For this purpose, the Purchaser shall inspect the goods and give written notice of any defects immediately upon receipt of the goods at the place of destination. Hidden defects are to be notified immediately upon discovery.  
The same shall apply in the event of incorrect deliveries.
2. If the Purchaser does not give us the opportunity to inspect the defect under complaint on site and/or does not provide samples of the goods under complaint at our request or makes changes to the goods under complaint without our consent, he shall lose his warranty claims.
3. In the case of proven defects which were already present at the time of the transfer of risk and which were notified in due time within the meaning of section 2, we may, at our discretion, either remedy the defect free of charge or, in return for the return of the goods under complaint, either provide a replacement free of charge or credit the value charged for it. A delivery can only be objected to as a whole if the defective goods amount to more than 5% of the delivery quantity. In this case, we shall be given the opportunity to separate out defective goods in order to avoid rejection of the entire delivery.
4. Except as expressly stated in the contract, we make no warranty that the goods to which the contract relates are fit for use in the particular trade of the Purchaser's business or for any other special purpose or application. The determination of this suitability is the responsibility of the Purchaser.
5. Samples or specimens shall only be deemed to be first-off specimens. If delivery according to sample or specimen is expressly agreed, delivery shall only be made according to these.
6. Warranty claims shall fall under the statute of limitations 12 months after delivery of the goods supplied by us to the Purchaser.

### **C. General limitation of liability**

Unless otherwise stipulated, we shall only be liable for damages due to breach of contractual or non-contractual obligations in the event of intent or gross negligence. This shall not apply in the event of mandatory liability, e.g. under the Product Liability Act, for injury to life, limb or health or for breach of material contractual obligations. However, the claim for damages for the violation of essential contractual obligations shall be limited to the foreseeable damage typical for the contract, unless there is intent or gross negligence or liability for injury to life, limb or health. A change in the burden of proof to the detriment of the Purchaser is not associated with the above provisions.

### **D. Other**

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

The place of performance and exclusive place of jurisdiction and for all disputes arising from this contract is the registered office of our company. However, we are also entitled to bring an action at the general place of jurisdiction of the Purchaser. If the Purchaser is not a merchant, the statutory regulation shall apply.

#### **II. Applicable law**

This contract, including its interpretation, shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).