

# GENERAL TERMS AND CONDITIONS OF BUSINESS AND DELIVERY OF GALFA GMBH & CO. KG

(December 2017)

## SCOPE

- 1.01 All our orders, deliveries and services are made exclusively in accordance with these General Terms and Conditions of Business and Delivery (GTCs). These GTCs also apply to future business relations, even if they are not expressly agreed again.
- 1.02 Conflicting or deviating terms of the customer shall not apply, even if we do not expressly object to them or if we execute the order in the knowledge of these terms.
- 1.03 Other terms and conditions of business are only recognized to the extent that they are in accordance with our GTCs or are made explicitly by us in individual cases on the basis of the respective contract or service.

## OFFERS

- 2.01 Our offers are always free and non-binding. The sending of an order as well as the delivery of goods for processing constitute binding offers of the customer, which we can accept within two weeks by sending an order confirmation. If goods are delivered to us without prior offer or without specification of an offer number so that it cannot be assigned internally, we shall base our order confirmation on the price resulting from the existing agreement, and in the absence of an agreement, the usual price.
- 2.02 Indicative prices as communicated are not offers and shall become the basis for a contract only upon agreement.
- 2.03 Requirements such as coating, packing, delivery mode etc. which were taken as a basis for an earlier first sample order are stored in our system and will be taken as a basis for all further deliveries. In case the customer wishes to deviate from the requirements of the first sample order he has to point this out explicitly in his order. Additional expenses caused by failure to inform us in advance are to be borne by the customer or to be reimbursed to us, as the case may be, unless the customer is not responsible for the failure.
- 2.04 Offers, cost estimates, illustrations, drawings, calculations, brochures, catalogues etc., which we have handed over to the customer, shall remain our property. They may not be disclosed to third parties without our consent, and are to be returned or destroyed at our request.

## PRICES AND PAYMENT TERMS

- 3.01 Our prices are in Euro net without discount or other reductions, ex works excluding packaging, freight and insurance, plus the currently valid value added tax.
- 3.02 The prices are valid only for products which are suitable for surface coating, i.e. provide a coating-compatible surface and a coating-compatible construction. The material to be processed must in particular be free of mould, sand, scales, carbon deposit, burnt grease, welding slag, graphite, paints etc.; it must not contain pores, cavities, cracks, doublets, etc.; threads must be sufficiently undercut. For additional work such as the removal of paint, oil, grease, tar, scrap metal coating and the subsequent attachment of openings to hollow bodies as well as the preparation of test reports, we calculate the surcharges previously agreed with the customer. If an agreement on the surcharges is not reached, we can withdraw from the contract.
- 3.03 If more than four months have elapsed between the conclusion of the contract and the provision of services, and the cost factors (production material, energy, operating materials, wages etc.) which are decisive for pricing have increased by the time of the performance, we are entitled to increase the price appropriately. If the increased price is 20% or more above the agreed price, the customer has the right to withdraw from the contract. This right must be exercised immediately after notification of the increased price.

3.04 Unless otherwise agreed, payments shall be made in full within 14 days after receipt of the invoice. The customer is not entitled to deduct any cash discount without special written agreement. In the event of a delay in payment, we charge statutory interest on arrears, without prejudice to further rights.

3.05 The customer shall have the right to set off against our claims only if his claim is undisputed or legally binding established. The customer is only entitled to exercise a right of withholding if his counterclaim is based on the same contractual relationship.

## DELIVERY

4.01 Unless otherwise agreed, the delivery period begins with receipt of the order confirmation, delivery by the customer of the material to be processed, and clarification of all technical questions.

4.02 Delivery times given by us are only approximate. The delivery period shall be extended adequately in the event of unforeseeable circumstances outside our sphere of influence and beyond our control, occurring at our premises or with sub-suppliers or sub-contractors, such as force majeure, strike, raw material shortage, disruption to operation or loss of energy. An extension of the delivery period shall also apply if the circumstances described above arise within the scope of an already existing default.

4.03 If the delivery is delayed in accordance with clause 4.02, the customer is entitled to withdraw from the contract after expiry of a reasonable period of grace. Section 323 (2) of the Civil Code (BGB) remains unaffected. If these circumstances make delivery impossible for us, we shall be released from our obligation to deliver. If the delivery is no longer reasonable for us due to these circumstances, we are entitled to refuse delivery.

4.04 The customer is obliged to declare on our request within a reasonable period of time whether or not he is withdrawing from the contract due to a delay in the performance and/or is demanding compensation instead of performance, or is insisting on the performance.

4.05 If the customer is in arrears with regard to his obligation to deliver or cooperate, we shall be entitled to withdraw from the contract and to demand damages instead of performance, subject to a grace period of 14 days provided in writing.

4.06 Partial deliveries are permissible insofar as these are not unacceptable to the customer.

4.07 The risk for items to be processed by the customer shall pass to the customer upon leaving our factory, however, with the handover to the freight forwarder or freight carrier at the latest. The same applies if the goods to be processed are collected by us at the request of the customer and/or if we have secured freight-free deliveries. The customer is free to insure against these risks.

4.08 If the goods are ready for dispatch and the dispatch or acceptance is delayed for reasons beyond our control, the risk is transferred to the customer upon receipt of the notification of readiness for dispatch.

4.09 Way of shipment, type and means of dispatch are to be left to us without warranty for the fastest and cheapest transport. The interests of the customer shall adequately be taken into account. If we act as a freight forwarder, the General German Freight Forwarder Conditions (ADSp) shall apply in their current version.

4.10 The customer must immediately after notification call up the goods which have been reported as being ready for shipment. If no such call is made, we shall be entitled to store the goods at the customer's expense and risk, as per our discretion, and to charge them as delivered ex works.

- 4.11 If shipment or delivery of the goods is delayed at the request of the customer, we may charge a storage fee of 1% of the invoice amount for each month commenced, starting one month after notification of readiness for shipment, unless we can prove higher storage costs. The customer can provide proof that storage costs have not been incurred at all or are substantially lower than the lump sum.
- 4.12 We shall not be held responsible for any waiting times, as long as they are still adequate on the whole, unless collection and delivery dates have been made binding in writing.
- 4.13 Insurances against transport damage are only made at the customer's instruction and expense.
- 4.14 If processed goods are returned for reasons for which we are not responsible, the customer bears the risk until the goods are received by us.
- 4.15 Surface-treated parts are only packed as far as the material to be processed has been sent in packaged form and backpacking has been requested, and the packaging material can be re-used. If a packaging is additionally required after the surface treatment, this is calculated separately and not taken back.

#### WARRANTY AND LIABILITY

- 5.01 We shall only assume warranty and liability for our service in accordance with the following provisions and only against the customer as the first recipient. The assignment of warranty claims to third parties is excluded.
- 5.02 We warrant professional surface treatment in accordance with the recognized rules of technology, the DIN regulations who are valid or whose drafts are generally accepted, and in compliance with the relevant standards. We reserve the right to make changes to the procedure due to technical progress or practical requirements. The customer will only be informed of any changes to the procedure if this is required by law. We do not provide guarantees in the sense of the law.
- 5.03 The precondition for a professional surface treatment according to clause 5.02 is that the material left to us for processing is suitable for surface coating. It is the sole responsibility of the customer to ensure that the goods delivered to us for processing fulfil the conditions set out in clause 3.02. Without special contractual agreements, we are not obliged to carry out special investigations and/or tests of the delivered goods for their suitability for surface coating. Explicit emphasis is laid on clause 2.03.
- 5.04 Samples that an order is based on are not binding. We only warrant an almost identical design, since galvanic, zinc lamella and chemical processes as well as quality differences of the raw material cannot exclude certain deviations even with careful and proper processing.
- 5.05 In the case of defective surface-treated parts, the customer shall be entitled to the warranty claims listed in the following clauses. However, this presupposes that he immediately checks the goods we have processed for defects and notifies us of such defects immediately in writing. The obligation to inspect also exists, if faulty samples have been sent. Defects that are found later shall also be notified immediately in writing. In the case of complaints being not in due form or non-timely, the goods shall be deemed to have been approved.
- 5.06 If the services provided by us are deficient, the customer is primarily only entitled to demand free supplementary performance, which is free of charge in accordance with Section 635 of the Civil Code.
- 5.07 If we are not ready for the supplementary performance or are not able to do so, if subsequent performance is unreasonable, if supplementary performance is delayed beyond a reasonable time set by the customer for reasons which we are responsible for, or if supplementary performance fails for other reasons, then the customer is entitled to withdraw from the contract or demand the reduction of the compensation (decrease). Any supplementary performance shall be deemed to have failed after the unsuccessful second attempt, unless the nature of the good or of the defect or other circumstances require differently.
- 5.08 The customer's claims for defects shall lapse 12 months after acceptance or, if this is not a contract to produce a work, after the other statutory start of limitation. This does not apply if the law requires longer deadlines, in particular in Section 634a (3) of the Civil Code. Also sentence 1 does not apply for damage caused by injury to life, body or health, for damage caused by intentional behaviour or gross negligence, or in case of a breach of essential contractual obligations (these are obligations whose fulfilment is a precondition of the proper execution of the contract and on which fulfilment the customer regularly trusts and may trust) of our legal representatives or senior executives., and for a possible obligation to reimburse expenses required for the purpose of cure according to Section 439 (3) of the Civil Code.
- 5.09 Claims for damages by the customer are excluded. This applies in particular to claims for damages for breach of obligations arising out of the debt relationship, for example due to default or defects, and from tort. We are not liable for damages that are not caused to the goods themselves. Above all, we are not liable for loss of profit or other assets of the customer. However, the foregoing exclusion of liability does not apply in the case of intent, gross negligence on the part of our legal representatives or senior executives, or in the case of culpable breach of essential contractual obligations within the meaning of clause 5.08. In the case of culpable violation of essential contractual obligations, we shall be liable – except in cases of intent or gross negligence on the part of our legal representatives or senior executives – only for the contract-typical, reasonably foreseeable damage. Furthermore, the exclusion of liability does not apply to liability under the Product Liability Act (ProdHaftG) or to the injury to life, body or health or to the absence of assured characteristics if and insofar as the assurance has been intended to secure the customer against damage not arising on the goods themselves. Finally, the exclusion of liability does also not apply if we have concluded a purchase agreement with the customer and are obliged to reimburse expenses required for the purpose of cure according to Section 439 (3) of the Civil Code. Insofar as the liability towards us is excluded or restricted, this also applies to the personal liability of our management, employees, representatives and vicarious agents.
- 5.10 The goods handed over to us for processing shall be delivered with delivery note or with exact written indication of the number of items and the total weight. The details of the raw weight are not binding for us, even if they are of importance for the customer. For missing parts replacement is made only if their delivery is proven by a delivery note signed by us and the risk for missing parts has passed to us.
- 5.11 In the case of small parts and bulk parts, we take over no liability for the quantity of waste material and shortages up to and including 3% of each total quantity delivered, unless agreed otherwise. In particular, in the case of a technologically caused irreparable basic metal structure or composition (for example, in the case of amphoteric materials, such as zinc diecasting), a reasonable reject rate for the contractor of up to 3% of the total order quantities for any one-year period shall be deemed to be agreed.
- 5.12 Defect in any partial delivery does not entitle the customer to withdraw from the contract, unless the defect of a partial delivery is so substantial that the acceptance of further partial deliveries is no longer of interest to the customer.
- 5.13 The warranty applies only to wear under normal, operational and climatic conditions. If the goods are intended for special conditions and if we have not been informed beforehand so that this has not become subject of the contract, a warranty for this special condition is excluded. The warranty expires with regard to defects which have already been attempted to be rectified by a third party without giving us prior reasonable opportunity to correct the defect.
- 5.14 If we have not resigned under clause 3.02 and the customer is still insisting on the work without the additional work required, or if the material delivered to us for surface treatment is not technologically suitable for such surface treatment, then we shall not accept any liability for any certain dimensional stability, adhesion, colour retention and corrosion-preventing properties of the applied layer, as far as a defect is due to the unsuitability of the material.
- 5.15 The adhesion stability of the surface coating is not warranted if the material has been deformed after the surface treatment, even if sample-coated parts could be deformed without chipping the coating and the cus-

customer has demanded processing despite being advised of the danger of chipping.

- 5.16 Corrosion damage is not accepted as a defect if the product intended for surface treatment or a suitable material sample is not left to us for testing for a sufficiently long period of time, at least for six weeks before the start of processing. If in individual cases and with regard to the delivery terms defined to us by the customer it is not possible for us to carry out short-term tests or other chemical and/or mechanical investigations or the preparation of measurement protocols or test certificates, and if the customer nevertheless requires the surface treatment, damages resulting from the lack of such inspection are not deemed a defect.
- 5.17 Hollow parts are only galvanically treated on the outer surfaces unless a cavity treatment has been agreed. Immediate corrosion on the untreated surfaces does not constitute any claims for defects.
- 5.18 Surface-treated material is endangered by condensation water and frictional corrosion. Accordingly, it must be packaged, stored and transported appropriately by the customer.
- 5.19 The customer has to determine the minimum layer thickness at a measuring point to be agreed and to prevent chemical and mechanical damage to the surface by suitable measures.
- 5.20 Should the customer consider a hydrogen embrittlement to be necessary, we agree to carry this out only after appropriate agreement and with the exclusion of any warranty.

#### SECURITY RIGHTS

- 6.01 We have a statutory right of lien on the goods we process. Irrespective of this, the customer assigns us a contractual lien on the goods delivered for the purposes of surface treatment, which serves to secure our claims from the order. Unless otherwise agreed, the contractual lien is also applicable to receivables from earlier orders as long as they relate to the object of the contract in a coherent, consistent, valid contractual relationship. If the surface-treated parts are delivered to the customer before full payment, it is hereby agreed with the customer that the ownership of these parts is transferred to us in the value of our claims in order to secure our claims, and the transfer of ownership is replaced by the customer safekeeping the parts for us. The same shall apply with regard to the customer's remainder right concerning the surface treatment of goods delivered to us by the customer being subject to reservation of title of a third party. We are entitled to effect the abolition of the reservation of title. The customer's right to have the ownership of the goods retransfer from a third party, to which he had previously delivered the goods for the purpose of surface treatment and transferred them as security, are herewith assigned to us. We accept such assignment.
- 6.02 The customer shall neither pledge nor assign property to which we have a right of lien or which is in our security property. However, he may resell or process the goods in the ordinary course of business, unless he had assigned the claim against his contractual partner to a third party in advance. Any processing of the goods overstretched by the customer to a new movable item shall be effected on our behalf with effect for us, without any liabilities arising on our side. We hereby grant to the customer the new property co-ownership in the ratio of the value of the new object minus the value of our services to the value of the new object. The customer shall keep the new item with commercial diligence and free of charge.
- 6.03 In the event that the customer acquires our security goods with other movable property to form a uniform new object on his sole ownership or co-ownership, through the assembly, blending or merger, he shall hereby transfer this right of ownership to us in proportion to the value of our security product value of the other item with the simultaneous commitment to keep the new item for us free of charge.
- 6.04 In the case of the resale of the goods we have processed and are assigned us as security or of the new item made from them, the customer has to point out to his clients that we have security rights on the property.
- 6.05 In order to secure the fulfilment of our claim, the customer shall herewith assign to us all future claims resulting from the resale or further proces-

sing of the goods given to us with all additional rights in the amount of the value of the goods. We accept the assignment herewith.

- 6.06 The customer is authorized to collect the claims resulting from the sale or processing of the goods against third parties in our favour. At our request, the customer has to individually prove the claims and must inform third parties of the assignment made, with the request to pay to us up to the amount of our claims. We are also entitled to notify the buyer of the assignment at any time and to collect the claim. However, we shall not require the customer to collect the claims or to disclose the assignment, and we shall not collect the claim ourselves, nor shall we ourselves disclose the assignment as long as the customer duly meets his payment obligations.
- 6.07 The customer shall be obliged to inform us without delay of any enforcement measures by third parties concerning the security rights. In the event that third parties assert rights to the secured goods, the customer is herewith obliged to hand to us immediately all necessary documents and to compensate us for the costs of the intervention.
- 6.08 The customer is obliged to insure the goods in our secured property adequately against the risk of fire and theft and to assign the claims against the insurer and the injured party to us upon request.
- 6.09 At the customer's request, the collateral granted to us pursuant to the above provisions shall be released to the extent that the value exceeds the claims to be secured by more than 20%.
- 6.10 All our claims, including claims from other contracts, shall become immediately payable as soon as the customer is culpably in default with the fulfilment of other, not insignificant liabilities, suspends payments, is over-indebted, has opened insolvency proceedings over his assets, or if the opening of such proceedings is rejected for lack of assets. In such a case, we shall be entitled to refuse any outstanding deliveries and services and to determine the customer a reasonable period in which he shall, at his own option, effect immediate payment or provide security against our performance or delivery. After the unsuccessful expiry of the period, we are entitled to withdraw from the contract.

#### FINAL PROVISIONS

- 7.01 The place of performance and jurisdiction for all claims, obligations and disputes arising from the contract shall be the registered office of our company for both parties. However, we are also entitled to sue the customer at his place of business.
- 7.02 The laws of the Federal Republic of Germany shall apply. In the case of multilingual contract versions the German version shall prevail.
- 7.03 Should any of the aforementioned provisions be invalid, void or unenforceable, the validity of the remaining provisions shall remain unaffected. The same applies if any other contractual agreement is or becomes void, ineffective or impracticable. In lieu of a void, invalid or impracticable other contractual agreement, a provision is deemed to be agreed which is, as far as possible, equivalent to the null, invalid or impracticable provision in the economic and legal result.