



**General Terms and Conditions of Sale for OEM / OES**

**I. Scope**

(1) In addition to individual contractual provisions and statutory regulations, solely the present General Terms and Conditions of Sale shall be applicable for all our deliveries and services in all business communication between us and the buyer, orderer or customer, hereinafter referred to as buyer. We shall not accept alternative stipulations or Terms and Conditions of the buyer, and such variation shall not automatically become subject terms of the contract when we accept the order. Our silence shall not constitute an acceptance. The present General Terms and Conditions shall also apply, if we accept payments or render services in the knowledge of contradictory or alternative terms of the buyer. The buyer expresses his consent with our terms and conditions at the latest when accepting our delivery.

(2) If the present General Terms and Conditions become integral part of contracts with the buyer by a legal transaction, they shall, in case of continued business relation between us and the buyer, continue to be applicable for all future contracts without renewal of the legal transaction and until they are superseded by new General Terms and Conditions.

(3) For the purpose of traceability, all agreements made or to be made between us and the buyer are to be manifested in written form.

**II. Particulars, eligibility, property in documents**

(1) Any form of advice in spoken and written, e.g. by our sales force, is granted to the best of our knowledge based on our experience. Particulars to our produce, especially in our sales literature, catalogues, documents and electronic sources, e.g. internet, especially relating to the suitability and use of our produce, are non-committal unless they are essential part of our offer or our order acknowledgement. It does not relieve the buyer of his responsibility to carry out his own tests and trials. In particular, the buyer is not relieved of his duty to test himself whether our produce and recommendations are suitable for the intended and for all further usage. This applies particularly for the compliance with legal and official provisions when using our products.

(2) Particulars about quality and measurements are specified according to DIN standards or material data sheets. In the absence of DIN standards or material data sheets, the corresponding European standards shall apply, failing those, commercial practice shall be applied.

(3) Drawings and other documents, such as models, samples and all other items provided by us for the execution of the order, shall remain our property and must be returned to us upon request. We reserve all rights, especially copyrights, therein. They must not be disclosed to third parties or be used other than for the contractual purpose, for which the buyer has received them. This applies especially for documents that are classified confidential. The buyer must not pass these information on to third parties without our prior express approval in writing.

**III. Scope of services, conclusion of the contract, written form**

(1) Basically, it is the buyer's order that constitutes the offer, and it shall have to be accepted by us in regular intervals in writing (order acknowledgement). The scope of our service is defined by our written order acknowledgement, or by our offer, in case we submitted one. However, if a validity period is specified in our offer, it shall only be binding for and if accepted within this period of time. After expiry of the time limit, the offer shall no longer be valid.

(2) Unless a longer acceptance period has been provided, we are entitled to accept buyer's order within two weeks of order placement. Where we fail to issue an order acknowledgement, our service rendered shall be deemed to be an order acknowledgement.

(3) Our offers are binding for three months. Production and delivery shall be according to buyer's specifications. We are entitled to cancel our offer until acceptance by the buyer. Buyer's orders that do not qualify as acceptance of our offer, shall only be deemed to be accepted with our express confirmation. In such case, the scope of the service to be rendered shall be as specified in our order acknowledgement.

(4) Buyer's declarations of intent must be in written form. Orders by telephone and data transmissions by e-mail shall be carried out at buyer's risk.

**IV. Modifications, test parameters**

(1) In the event that buyer's information are missing or incorrect we reserve the right to modify the scope of service as may seem suitable. The buyer shall be liable for all disadvantages arising from such modification, especially costs or defects.

(2) Test methods for all tests that must be carried out using specific measured values or other test parameters must be defined and accepted by both parties prior to the commencement of the delivery. In case no test methods have been agreed upon, our own test methods shall be applicable.

**V. Prices, price increase, cash on delivery, cash in advance**

(1) Unless otherwise expressly agreed, our prices are quoted ex works in Euro plus value added tax, which is shown separately on the invoice. The buyer shall bear all cost for packaging, freight, postage, customs and transport insurance.

(2) As a rule, all tooling cost shall be invoiced in Euro.

(3) If the delivery is delayed for reasons beyond our control the prices valid at the date of the actual delivery shall be applicable, however, such price increase shall be restricted to a price accepted by the market. In the event of a very substantial price increase the buyer shall be entitled to withdraw from the contract.

(4) If freight tariffs, taxes, customs duties and other public duties are changed or increased, we may adjust our prices correspondingly without giving rise to the right of rescission on the part of the buyer. Detailed information on additional charges or deductions as well as any further delivery conditions can be inferred from the applicable price agreements. Prices are not binding for repeat orders.

(5) We ship cash on delivery or cash in advance to buyers with which we are not in an ongoing business relationship.

#### **VI. Conditions of payment, interest, deterioration of financial circumstances, miscellaneous**

(1) Unless otherwise expressly agreed, purchase prices are payable net within 30 days from issuing date of the invoice and delivery of the goods.

(2) We have ceded all claims deriving from the business relationship to Eurofactor AG. Payments are to be made in a timely manner, so that we have access amount at the due-date.

(3) If buyer fails to pay within the stipulated payment period, the buyer is in default. If buyer is in delay with payment, we shall be entitled to charge default interest for late payment of at least 8 per cent p.a. above the basic interest rate according to § 247 German Civil Code. The default interest fall due immediately. The parties reserve the right to provide evidence of higher or substantially lower damage. If the buyer fails to pay the amount due within an appropriate respite, however at the latest within one month of due-date, we shall be entitled to withdraw from the contract and to claim damages for non-performance.

(4) If it has been agreed that the goods are to be released for shipment within a specified period of time after our notification of readiness for shipment (call-off), we shall be entitled to invoice the goods right from the point of time of readiness for shipment. This shall also apply for fixed dates in call orders.

(5) Non-payment of due invoices or other circumstances which suggest an essential deterioration of the financial circumstances of the buyer after conclusion of the contract, shall entitle us - regardless of the term of drafts accepted on account of payment - to immediate acceleration of all our outstanding claims based on the same legal relationship. If there are justified doubts about the buyer's ability to meet his financial obligations or about his credit-worthiness, e.g. opening of insolvency proceedings, we shall be entitled to request payment in advance or another suitable security for the fulfillment of buyer's obligation. If buyer does not accept payment in advance or to provide a security, we shall be entitled to rescind such contracts after a reasonable respite and to claim damages for non-performance or reimbursement of expenses.

(6) In all other cases, the statutory regulations relating to delay in payment shall remain unaffected.

(7) We expressly reserve the right to accept bank drafts and cheques. Draft and cheque will only be accepted after previous agreement and only on account of performance and provided that it is negotiable. Discount charges shall be calculated right from the due date of the invoice. Bank fees, discount charges, draft and other fees shall be charged to the buyer.

(8) Under exclusion of §§ 366, 367 BGB (German Civil Code) and notwithstanding any provisions from buyer to the contrary we shall determine at our own discretion which receivables have been settled through buyer's payment. In this respect, the buyer waives his right to decide how his payments shall be used.

#### **VII. Set-off, rights of retention**

(1) An offsetting shall only be allowable against undisputed, accepted or legally determined claims.

(2) Buyer's rights of retention shall be limited to goods bought under the same contractual relation. The fact that buyer asserts alleged defects shall not give rise to any right of retention, unless our goods are obviously defective. In such case, the buyer shall be entitled to retention to the extent that the amount retained is in reasonable proportion to the defects and the anticipated cost for subsequent fulfillment or rectification, especially the remedy of defects.

#### **VIII. Delivery, terms and dates of delivery, obligation to co-operate, partial delivery, reminder**

(1) Unless otherwise agreed, our deliveries shall be ex works or subsidiary (place of fulfillment) according to the EXW clause of the Incoterms 2000, either by collection through buyer or "freight forward" upon request. We shall announce the goods ready for shipment to buyer in sufficient time to enable him to take such measure as to collect the goods.

(2) The deciding factor for compliance with the delivery date shall be the point of time of dispatch ex works or the announcement of the readiness for collection. The agreed delivery shall be deemed as having been complied with once the delivery items are ready for shipment ex works. The agreed delivery date shall also be deemed as having been met, if we have reported the readiness for dispatch in due time, but the delivery items cannot be dispatched in a timely manner without fault on our side.

(3) The delivery period shall begin with buyer's reception of our order confirmation, however, not before complete clarification of technical details concerning the order and before production of all documents and approvals; the same applies for delivery dates. Unless we have bindingly agreed, delivery periods given by us are approximate periods. Sale and delivery of the goods shall be subject to correct and punctual supply to ourselves and subject to unforeseeable production interruption.

(4) Our compliance with the delivery obligation requires the buyer's fulfillment of his obligation to co-operate in due time and form. If buyer fails to fulfill his contractual duties or obligations in due time, e.g. production of domestic or for-

eign certificates, settlement of advance payments or the like, we shall be entitled to extend our delivery periods and dates by a reasonable amount of time as necessary for our own production process— without prejudice to our rights arising from buyer's delay. If we fail to meet our binding delivery period or date for reasons beyond our control (unavailability of the service, e.g. due to missing delivery by our own supplier) we shall notify the buyer immediately and define a new, reasonable delivery period according to the circumstances. If the delivery to be made by us still is unavailable within the new delivery period, we shall be entitled to rescind the contract in whole or in part; any consideration rendered by buyer shall be repaid immediately. Our statutory rights (e.g. exclusion of obligation to render service) and buyer's rights arising from these General Conditions of Purchase shall remain unaffected.

(5) Partial delivery and invoicing thereof shall be permissible, to the extent they do not affect the bringing about of performance to be rendered.

(6) The advent of our default in delivery shall be governed by the statutory regulations. In any case, however, buyer's reminder and appointment of a respite shall be required.

#### **IX. Delay**

(1) In the event of a default in delivery for which we can be held responsible our liability shall be limited according to section XX to the extent of buyer's proven loss suffered from such delay. We do not accept any liability for defaults in delivery for circumstance we do not have to represent. We shall immediately advise buyer of the anticipated duration of the delay.

(2) If the customer is in arrears with the acceptance we shall be entitled to demand compensation for our loss. The risk of incidental deterioration and accidental loss passes to the buyer at the point of time when the default in acceptance starts.

#### **X. Acts of God**

Damage caused by Acts of God as well as considerable, unforeseeable hindrance beyond our control, such as strike, lock-out, extension of delivery period or non-performance of our own supplier, interruption of operation, sale or supply due to lack of energy, raw material or labour, difficulties in provision of means of transport, traffic hold-ups, instructions of higher authority, in our own or our supplier's plant, relieve us from our contractual obligations for the duration of such measure and hindrance. The circumstances mentioned above are deemed beyond our control even if they occur during an already existing default. Buyer shall immediately be advised of begin and end of such measures and hindrances or the unavailability of the delivery item. In the event the delay exceeds more than four weeks, the contractual parties shall be at liberty to withdraw from the contract. In case of rescission, any consideration rendered shall be repaid. Further claims are excluded.

#### **XI. Obligation to purchase, call-off orders**

(1) In case a project is stopped before an initial sample can be released, the buyer shall reimburse SGF all cost accrued until then.

(2) Unless otherwise agreed, an obligation to purchase shall be binding for four months for ordered quantities (finished parts) and primary material (raw material).

(3) For call-off orders the delivery dates for partial delivery shall be determined and agreed taking into consideration our capacity planning and the availability of primary material.

(4) For call-off orders we shall grant a period of six months as of the date of the order, unless otherwise agreed. After expiry of this period without call-off order we shall be at liberty to invoice the products or to withdraw from the contract.

#### **XII. Passing of risk, storage and warehousing charges**

(1) The point of time of the passing of the risk is governed by the EXW clause of the Incoterms 2000. The risk of accidental loss and incidental deterioration of the delivery items passes to the buyer once readiness for dispatch has been reported. The announcement of readiness for dispatch shall be equivalent to handing over of the shipment to the transporting agent or to the point of time when a delivery leaves our work or warehouse, provided that buyer requested delivery of the goods. All shipments shall be at buyer's risk, starting at the point of time when the shipment leaves our work, even if carriage prepaid was agreed.

(2) If the collection or the dispatch becomes delayed due to buyer's request or due to any other reason he has to represent, or becomes impossible without fault on our side, the risk shall also pass on to buyer no later than when sending the announcement of readiness for dispatch or collection. In such case we may, in our reasonable discretion, store the goods at buyer's cost and risk, take all reasonable measures for the preservation of the goods and invoice the goods as delivered. The statutory regulations on default in acceptance shall remain unaffected. After fruitless expiry of an appropriate additional respite we shall also be entitled to dispose otherwise of the delivery items and to deliver to customer after an appropriate additional respite or to deliver him at his cost and risk.

(3) The buyer shall bear the cost for such action, at least warehouse charges of 0.5 per cent of the order value for each month or part thereof, and at most 5 per cent of the order value payable starting at the time of the announcement of readiness for dispatch.

#### **XIII. Insurance, dispatch, absorption of cost, damage assessment, opening hours for loading**

(1) SGF is regarded by carriers as a customer that waives insurance by third parties.

(2) Transport insurance shall only be contracted at buyer's request and cost.

(3) In case we have accepted an obligation for dispatch, this shall not in any way affect passing of the risk, the place of fulfillment and the above stipulations. Mode and route of transportation shall be at our discretion, however without warranty for the cheapest transportation or for full utilisation of cargo weight and desired size of waggon or container. We shall determine the freight carrier or haulage contractor in our own discretion. If the buyer asks for different methods of transportation in a timely manner before the dispatch, we shall strive to comply with his request, but the buyer shall bear all additional cost for such transportation.

(4) In case of damage or loss of the goods during transport, the buyer shall assess the damage without delay and advise us of the results in writing immediately after receipt of the shipment. The defective delivery items are to be returned to us.

(5) Opening hours for loading are Monday through Thursday from 7.00 h until 12.00 h and from 12.45 h to 16.00 h, Friday from 7.00 h until 12.00 h.

#### **XIV. Packaging, buyer's own containers**

(1) Unless otherwise agreed, we may determine the mode and extent of the packaging in our own discretion. The series price is based on our standard packaging (one large carton on a wooden base pallet). Special packaging shall have to be agreed upon separately. We shall determine the packaging in due diligence and according to our best judgment.

(2) Pallets shall remain our property and shall have to be returned without delay to the place of dispatch free of charge.

(3) If the buyer requests transportation in his own containers, these must be sent to us in due time and free of charge. We are not liable for inspection, cleaning or repair of these containers; however we shall be entitled to inspection, cleaning or repair at buyer's cost.

(4) In case of damage or loss we shall be entitled to request, at our own discretion, refund of the current replacement value against surrender of the damaged containers or delivery of a replacement if equal type and value, in case of damage also refund of the cost of repair.

#### **XV. Industrial property rights**

(1) If the contractual products must be manufactured according to buyer's specification, the buyer shall be liable for violations of third parties' copyrights as a result of the manufacture and delivery of these products.

(2) If, in such case, a third party refers to property rights belonging to them and bars us from manufacturing and delivering the product, we shall be entitled to stop the

manufacture and delivery and to request refund of our expenses.

(3) We are not liable for examining the legal situation.

(4) In such cases, the buyer shall not qualify for claims for damages.

(5) The buyer shall indemnify us and hold us free and harmless from third parties' claims as a result of the violation of copyrights. Upon our request, buyer shall pay us an advance on anticipated legal costs.

#### **XVI. Storage conditions**

Our components must be kept in a cool and dry place and protected against ultra violet radiation, damage and solvents and gases thereof.

#### **XVII. Obligations to inspection and to notification of defect, acceptance**

(1) Buyer's claims for defects as well as all contractual claims for damage due to deficient delivery imply that he has duly fulfilled his obligations to inspection and to notice of defects according to § 377 HGB (German Commercial Code). Otherwise the defect shall be deemed to be accepted. It shall be buyer's particular obligation to examine the goods with due diligence as soon as they are delivered or received. Notice of detectable defects is to be given without delay in writing. Hidden defects, that cannot be detected despite the most careful inspection, are to be given notice in writing immediately after discovery. Any processing and treatment of such defective items is to be stopped immediately after discovery of the defect. Otherwise the defective product shall be considered to be approved despite the defect.

(2) For services and work performances the provisions of § 377 HGB (German Commercial Code) shall apply. The notice of defect shall not release the buyer from his payment obligations.

(3) If acceptance of goods has been agreed, acceptance shall be made within one week starting at the date of the announcement of readiness for dispatch in our work or our warehouse. The buyer shall bear all cost for the acceptance. Buyer's failure to go through the acceptance procedure within this period of one week will constitute acceptance of goods. Unless we have given legal warranties on the condition or properties of the goods or intentionally misrepresented a defect by silence, all rights of buyer for claim of defect after completed acceptance by buyer are excluded, inasmuch as the buyer has not given notice of the defect, even though he ought to have discovered it with the agreed method of inspection, i.e. if he has not detected it due to negligence.

(4) The buyer shall grant us the time and opportunity required for the examination of the reported defect, in particular he shall deliver the goods to us for such purpose. In case of unjustified claims we reserve the right to charge the buyer with the freight and handling cost and the examination fees.

### **XVIII. Condition and properties, claims for defect, right of recourse**

(1) Unless contractually agreed, no product description shall be legally binding, and the information given shall not constitute any legal warranty. In addition to the legal regulation, the goods shall also be deemed free from material defect, if it has the properties that the buyer may expect according to our product description. We accept no liability for third parties' statements (e.g. advertising messages).

(2) In case of a defect buyer shall grant us opportunity for cure by either rectification or replacement within reasonable amount of time. We may at our own discretion, rectify the damage, deliver a replacement or issue a credit note without prejudice to our right for refusal. If we fail to provide sufficient rectification, i.e. if at least two attempts for rectification failed or if the rectification is unacceptable for the buyer, the buyer shall be entitled to rescind the contract, unless the defect is negligible, or to request reduction of price. With our prior consent the buyer may carry out the rectification himself at the contractually agreed point of destination. The buyer shall not be entitled to request refund of expenses, especially transport, toll, working and material charges, if such expenses increase due to subsequent transport to a place other than the contractually agreed point of destination, unless the delivery site corresponds to the intended use of the product to be delivered. The buyer is bound to co-operate in the rectification in a reasonable manner against reimbursement of expenses and according to our instructions. Only in urgent cases, e.g. risk of excessive damage or compromise of operational safety, shall buyer be entitled to remedy the defect himself or have it remedied by third parties. He shall inform us and request our consent without delay. Our consent shall only be dispensable if we are not available to buyer.

(3) In case of doubt, information given by us in conjunction with this agreement, e.g. technical specifications, reference to DIN standards, etc., shall not constitute any legal warranties. Solely our express statements in writing shall represent legally binding warranties. No information in product descriptions and specifications shall constitute, except when implemented as warranted properties in terms of § 434 BGB (German Civil Code) or § 633 BGB, a legally binding warranty for the properties and condition of the product itself or for the capability of the product to maintain specific properties or conditions for a specified period of time.

(4) Normal wear and tear of our products due to their material properties, especially in case of defects occurring after passing of the risk as a result of improper use or careless treatment of our products, of incorrect assembly, excessive operational demands, unsuitable means of production or substitute material or due to special outside influences, e.g. of chemical, electro-chemical or electrical nature, shall not constitute any entitlement for warranty claims, unless provided by the agreement or resulting from fault of ours.

(5) In case our products are not used according to their intended use, if in particular legal or official prescriptions or our advice or instructions are not complied with, if inadmissible modifications are made to our products or if our products are improperly treated or used contrary to their contractually agreed intended use, any liability for the resulting damage shall be excluded.

(6) If we carry out subsequent fulfillment without legal obligation, e.g. as a sign of goodwill, the buyer shall only be eligible to warranty claims if expressly agreed.

(7) Notwithstanding any agreement of buyer with his purchaser beyond the legal damage claims, buyer's rights of recourse against us shall be limited to claims for defect and damage as provided by the law.

### **XIX. Limitation of claim, suspension of the period of limitation**

(1) The period of limitation for claims and rights due to defect in our products, service and work performance and all resulting defects thereof shall be one (1) year, unless §§ 438 para. 1 No. 1 and 2, 478, 479 and 634 a para. 1 No. 2 BGB (German Civil Code) stipulate longer periods. The period of limitation acc. to sentence one (1) shall also apply for all indemnity claims against us, regardless whether related to a defect and regardless of the legal foundation of the claim.

(2) The period of limitation according to para. 1, sentence 1 shall not apply in case of deliberate act, if we intentionally misrepresented the defect by silence, if we have accepted liability for product properties, in case indemnity claims are made against us due to threat of life, bodily harm, health hazards and threat of liberty of a person, for claims according to the Product Liability Act, in case of a grossly negligent infringement of obligation or in case of culpable infringement of essential contractual obligations and if the statutory provisions of the Convention on the Sale of Consumer Goods are applicable.

(3) If we carry out subsequent fulfillment, i.e. deliver a merchandise free from defects or the remedy, the period of limitation shall not start anew, but such action shall only suspend the statute of limitation applicable for the original delivery item by the duration of the fulfillment action. The fact that we carry out subsequent fulfillment shall not constitute any acknowledgement in terms of § 212 Nr. 1 BGB (German Civil Code).

(4) The preceding stipulations shall not entail any change of the burden of proof to the detriment of the buyer.

(5) Unless otherwise expressly stipulated, the statutory provisions concerning the beginning of the period of limitation, the suspension of the statute of limitations, the suspension and the new start of periods shall remain unaffected.

### **XX. Limitation of liability**

(1) Our liability in case of deliberate act or gross negligence is governed by the statutory provisions. For the rest we shall only be liable according to the Product Liability Act, for threat of life, bodily harm and health hazards of any person

or for culpable infringement of essential contractual obligations, i.e. infringement of obligations, that enable the implementation of the contract in accordance with the rules and that the contractual partner can normally assume will be met. Indemnity claims for a slightly negligent infringement of essential contractual obligations shall be restricted to the foreseeable losses inherent to the contract. Except for the special cases described under sentence 2 of this paragraph 1, our liability shall also be limited to the foreseeable losses inherent to the contract in case of gross negligence.

(2) Unless we are held responsible for deliberate act, gross negligence, culpable infringement of essential contractual obligations, for threat of life, bodily harm and health hazard of a person or according to the Product Liability Act, our liability for damage to buyer's objects of legal protection, e.g. other objects, lost profit or other financial loss, caused by the delivery and service item, shall be excluded.

(3) The stipulations of the preceding paragraphs 1 and 2 include compensation for damages in addition to insurance benefits and compensation for damages instead of insurance benefits, for any legal reason whatsoever, especially due to defects, infringement of contractual obligations or tortuous act. They shall also apply for the entitlement to reimbursement for vain expenses and for liability for impossibility and arrears.

(4) Indemnity claims against us for loss of property and pecuniary damage as well as cost for vehicle callback shall be restricted to the limit of indemnity in the amount of 10 million Euro covered by our public liability insurance and product liability insurance and our recall insurance.

This limitation of liability shall not apply, if we are held responsible for deliberate act, gross negligence, culpable infringement of essential contractual obligations or according to the Product Liability Act, and in case that buyer asserts claims for damages based on guarantees or contractual warranty of features we have granted, unless the purpose of warranty covers solely the compliance of the underlying delivery with the contract but not the risk of consequential damage.

(5) Obligation to indemnification shall also be excluded inasmuch as the buyer has effectively limited his own liability against his purchasers. The buyer shall also pay efforts on arranging for a legally admissible liability limitation in our favour.

(6) To the same extent that our liability for compensation is excluded or limited, this shall also apply for all claims of buyer due to fault at conclusion of the contract, infringement of secondary obligations, claims according to § 823 BGB (German Civil Code) as well as claims due to impossibility and arrears. This shall also apply for the personal liability of our employees, staff, representatives, performing and vicarious agents to the extent that our liability is excluded or limited.

#### **XXI. Exclusion of rescission or termination**

Beyond those cases where no derogation from statutory provisions is possible, e.g. rescission due to defi-

cient performance or termination for cause, the buyer shall only be entitled to rescission or termination due to infringement, for which we can be held responsible; a free right of termination (acc. to §§ 651,649 BGB (German Civil Code)) shall, in particular, be excluded. Rescission or termination are only binding in writing. In all other cases the statutory preconditions and legal consequences shall apply.

#### **XXII. Tools, cost, provision of material, commission orders**

(1) Title of property for tools that the buyer purchases from SGF shall pass to the buyer, however the tools shall remain in our possession. Due to SGF's special know-how contained in the tools, the tools cannot be removed from SGF plants or from our supplier's plant (in case of purchased parts), except for liquidation or insolvency against us or our supplier. If the tools are no longer needed they may be scrapped against production of written instruction by the buyer.

(2) Unless otherwise agreed, the cost for tools as described in the preceding paragraph shall be assessed in Euro.

1/3 of the tooling cost payable with order,

1/3 of the tooling cost payable at presentation of the initial sample,

1/3 of the tooling cost payable after receipt of the initial sample approval.

If the first third fails to be paid, no initial sampling shall take place. If the second or the last third fail to be paid, no pre-series parts shall be delivered.

Provisions to the contrary shall have to be fixed in writing.

Parts made in series production can be shipped six (6) weeks after receipt of the release of the series tools (initial sample approval) at the earliest, provided that we have received the corresponding schedules in a timely manner. In case that, for reasons beyond our control, series production for the ordered parts cannot be started, we reserve the right to charge all cost accrued in connection with the development and sampling phase to buyer.

(3) Buyer shall be liable for inspection and quality assurance of all items (e.g. material, dimensional accuracy, etc.) provided by him, and he shall deliver all such materials carriage paid. We shall subject the material to an incoming visual inspection with regard to number of items, identification and obvious transport damage. We are only bound to verify the conformity of the material with buyer's specification if there is obvious reason for doubt. We are not obliged to carry out any further examination. An examination may be expressly agreed, but cost of the examination shall be on account of the buyer.

(4) We shall not be liable for compensation due to damage, destruction or loss of the items provided to us, unless we can be held responsible for such damage. If parts become unusable due to defect in workmanship, we shall carry out the same work on a new part, which buyer must send to us, on our account free of charge. Sale and delivery of the

goods shall be subject to correct and punctual supply to ourselves. In all other cases our liability shall be limited to the provision of an item of similar type and value; we shall, however, adjust the value on the basis new for old – to the extent that the legal prerequisites are fulfilled.

(5) We accept no liability for normal wear and tear. The buyer shall effect a goods in transit insurance for the items provided to us to cover damage, such as fire, theft or flood.

(6) Unless expressly stipulated otherwise in the preceding paragraphs 1 through 5 of this section XXII, in all other cases the stipulations of sections I through XXI and XXIII through XXVII of these General Terms and Conditions shall be applicable. This shall in particular apply for our liability for defect and consequential damage as well as for liens on items provided to us.

### **XXIII. Exchange rate agreement**

If, aberrant from sections V and XXII, prices have been agreed in US Dollars, the buyer and SGF shall make an exchange rate agreement with the following conditions:

1. Tooling cost shall be calculated at the EURO/USD currency exchange rate valid at the date of the release of the tool, as published by Deutsche Bank AG, Frankfurt.

2. The unit price for series parts expressed in US Dollar shall be recalculated every three (3) months for the following three months. (The prices shall be recalculated as of 01. January, 01. April, 01. July and 01. October of the year).

- The EURO/USD exchange rate for the recalculation shall correspond to the average EURO/USD exchange rate of the past three (3) months, as published by Deutsche Bank AG, Frankfurt.

- In case the last used EURO/USD exchange rate falls outside of a plus/minus three (3)% margin of the quarterly average as described in paragraph 2, the new average exchange rate shall be calculated as described in paragraph 2. Unless the last used EURO/USD exchange exceeds the plus/minus margin of three (3) %, the USD exchange rate used for the price calculation and consequently the series unit price expressed in US Dollar shall remain unchanged.

### **XXIV. Retention of title, insurance, workmanship, assignment of receivables, access rights, liens**

(1) We reserve the right to the title of the goods delivered (reserved goods) until complete fulfillment of all claims existing at the time of the conclusion of this agreement and of all future claims arising from the existing business connection with the buyer and his affiliates or the business connection coming into existence through this agreement. The retention of title shall continue to be upheld if individual claims are included into current accounts and a current account agreement has been made. In case we accept a draft

or cheque for payment, the title of our goods shall not pass to buyer before the point of time when we can use the amount of the draft or cheque without any recourse risk. If the realisable value of the existing securities exceeds the claims by more than ten (10)%, we shall release securities of equal value at our own option, if requested by the buyer.

(2) The buyer shall be obliged to treat the reserved goods with care, and in particular to insure the reserved goods at replacement value against fire, water, storm, burglary and theft, at his own cost. The buyer shall assign to us any claims that third parties assert for damage, and we herewith accept the assignment with immediate effect. The customer shall carry out all maintenance and inspection as may be necessary in a timely manner and at his own cost.

(3) Processing or treating the reserved goods shall always be done for us as manufacturers in terms of § 950 BGB (German Civil Code) without obligation on our part. The processed or treated goods shall be deemed to be reserved goods in terms of paragraph 1. If the buyer processes, connects or mixes the reserved goods with other goods not belonging to us, we shall acquire co-ownership of the new goods in the relation of the value of the invoiced reserved goods to the invoiced value of the other goods used. If the contract item is processed, connected or mixed with other items, and our ownership lapses for this reason, it shall be agreed that buyer's propriety rights and remainders in the new inventory or item shall be assigned to us with immediate effect in the equal value of the invoiced amount of the reserved goods; in case the item is processed, the right shall be assigned to us in the proportion of the invoiced value of the reserved goods to the invoiced value of the other items used. Buyer shall store such items for us free of charge. Our rights of co-ownership shall be considered to be reserved goods in terms of paragraph 1.

(4) Unless the buyer is in arrears, he may sell the reserved goods within the orderly and usual business course, provided that he reserves the right to ownership and that he assigns all receivables from the resale to us according to paragraphs 5 and 6. He shall not be entitled to dispose of the reserved goods in any other way. The use of the reserved goods in fulfillment of contracts relating to work and services shall constitute a resale in terms of this paragraph 4.

(5) All buyer's claims resulting from the resale of reserved goods shall be assigned to us with immediate effect as of now and we herewith accept the assignment. They shall serve as securities to the same extent as the reserved goods in terms of paragraph 1. If requested by us, the buyer shall give us all relevant information on the inventory of the goods belonging to us and on all claims he has assigned.

(6) If the buyer resells the reserved goods together with other goods, he shall assign to us the claim resulting from the resale in the relation of the invoiced value of the reserved goods to the invoiced value of the other goods. We herewith accept the assignment with immediate effect. If the buyer resells goods to which we are jointly entitled according to paragraph 3, he shall assign to us the claim in the amount of the co-ownership and we herewith accept the assignment.

(7) The buyer shall be entitled to collect receivables from the resale unless we revoke the collection authorization in

cases as described in paragraph 8. If requested by us, the buyer shall notify his purchaser of the assignment to us without delay – unless we do it ourselves – and shall give us all information and documentation as may be necessary for such collection. Buyer shall in no case be entitled to assign the claims to third parties.

(8) In case of buyer's delay of payment and in case this suggests a threat to the realisation of a significant part of our claim, we shall be entitled to prohibit the further processing of the goods delivered, to retrieve the goods and to enter buyer's plant if need be. The retrieval and the attachment of the items delivered shall not constitute a rescission of contract, unless the Consumer Credit Act or § 449 II BGB (German Civil Code) are applicable. The reservation of title shall include the reservation of the right of rescission in case of delay of payment by buyer. The buyer agrees as of now that the agent charged by us with the collection of the reserved goods shall be allowed to enter the buyer's properties or premises where the reserved goods are stored, for the purpose of collection of the goods.

(9) Factoring businesses shall only be effective with our consent. The buyer shall not be entitled to pledge the reserved goods or transfer title thereof to third parties for the purpose of securing a debt. The buyer shall immediately advise us of any interference by third party. The buyer shall advise any third party requiring access to the reserved goods, in particular attachment, that we hold title of the goods and the buyer shall notify us without delay to enable us to protect our property rights. Unless third party is in a position to refund us all legal costs, the buyer shall be liable for such refund.

(10) By reason of all claims in connection with the present contract we shall be entitled to a contractual lien on all items delivered to us for the purpose of processing in addition to the statutory lien. A lien may also be asserted for claims resulting from former works and spare part deliveries, inasmuch as they are in conjunction with the object of services. For all other claims arising from the business connection the right of lien shall apply, however, solely to the extent as such counterclaims are undisputed or bindingly established in court. §§ 12044 ff BGB (German Civil Code) and § 50 sen.1 of the Insolvency Code shall be applicable.

(11) If the stipulations governing the reservation of titles are not applicable according to the legislation of the import country, the buyer shall be obliged to provide securities of equal value upon our request. If the buyer fails to fulfill his obligation we shall be entitled to demand immediate settlement of all unpaid invoices regardless of time for payment allowed.

#### **XXV. Confidentiality and Non-disclosure**

(1) The contractual partners agree that all commercial and technical information made known to them in the course of the business connection, and which has not entered into the public domain, are and will be treated as trade secret.

(2) Drawings, models, templates, samples and similar objects shall not be disclosed or otherwise made avail-

able to third parties. The reproduction of such objects shall only be permissible as may be necessary for operational purposes according to the copyright regulations.

(3) Sub-suppliers shall have to comply with the regulations concerning the confidentiality and non-disclosure. The same obligations shall be imposed on sub-suppliers.

(4) Neither of the contractual partners shall release any publicity regarding this business connection without the prior written consent of the other party.

#### **XXVI. Evidence of exportation**

If a buyer or his agent is situated outside the Federal Republic of Germany and collects goods or exports them, the buyer shall be obliged to furnish evidence of exportation. If the buyer fails to produce such evidence he shall be obliged to pay the turnover tax rate of the invoiced amount as applicable for deliveries within the Federal Republic of Germany.

#### **XXVII. Court of jurisdiction, governing law, place of fulfillment, invalidity, data protection**

(1) Any disputes arising out of this contract shall exclusively be settled by the court of Traunstein, Germany. This shall also apply for disputes arising in conjunction with documentary evidence, draft or cheque. We shall be free, at our own discretion, to bring an action against the buyer at his place of business location.

(2) This agreement with the buyer shall exclusively be governed by the laws of the Federal Republic of Germany. The UN Convention on Contracts for the International Sale of Goods as of 11. April 1980 (CISG) shall be excluded. Unless otherwise agreed in the preceding stipulations, the International Commercial Terms (Incoterms) as amended from time to time shall be applicable for contracts across country boundaries.

(3) Unless otherwise agreed the place of fulfillment shall be our business location in Waldkraiburg.

(4) Should any individual provision in the above general terms and conditions and additional agreements be or become invalid, either in part or in full, or impracticable, this will not affect the validity of the other provisions. The contractual parties shall endeavour to replace the invalid or impracticable provision by a ruling that is as close as possible in economic purpose to the invalid or impracticable provision in a legally effective and practicable form.

(5) We store to memory by means of electronic data processing personal data of the buyer acquired in the course of the business relation pursuant to the Federal Data Protection Act.