

DYNACAST Deutschland GmbH General Terms and Conditions of Purchase

(Stand 1.1.2018)

1. General, Scope

1.1 All present and future purchases and orders that we conclude with the Suppliers named in clause 1.2 shall take place exclusively on the basis of these General Terms and Conditions of Purchase. We do not recognize any conflicting terms and conditions of Supplier or any differing terms and conditions of Supplier not contained in our General Terms and Conditions of Purchase. Our General Terms and Conditions of Purchase shall also apply where we accept the delivery from Supplier unconditionally in the knowledge of Supplier's conflicting terms and conditions or any differing terms and conditions not contained in our General Terms and Conditions of Purchase.

1.2 Our Purchase and Order Terms and Conditions apply only with respect to persons who are acting in the exercise of their trade, business or profession ("Entrepreneur") at the time that the contract is concluded. They do not apply to purchasers who are natural persons who enter into a legal transaction for purposes that predominantly are outside their trade, business or profession ("Consumers").

2. Order, Order Confirmation, Production Changes

2.1 Our orders are only binding if we place or confirm them in writing. Our order must be immediately confirmed by Supplier making reference to our order number.

2.2 Supplier must check whether the descriptions in our letter placing the order are correct and whether the material is sufficient for the known purpose intended. If Supplier has doubts about the usability of the order, it shall inform us without delay.

2.3 Supplier may only make changes to the delivery items in their construction and / or workmanship with our prior written consent. The same applies to tools and devices approved by us (see clause 11.5 below) in their construction and / or workmanship. Insofar as is reasonable, we may request changes to the delivery item in its construction and / or workmanship, whereby possible additional or reduced costs and possible effects on delivery dates shall be appropriately mutually agreed.

3. Price

3.1 The agreed prices are fixed prices. Value added tax, unless stated as being payable in addition, is included in the price.

3.2 In the absence of specific agreements, the agreed prices are deemed to be "delivered duty paid" according to the DDP Clause of the Incoterms 2010. They include all tasks and requirements associated with the delivery of the delivery items, in particular packing, packaging and shipment to the agreed place of receipt.

4. Delivery Date

4.1 The agreed date of delivery is binding. It begins on the day upon which Supplier accepts the order. Receipt of the delivery item at our site in 78199 Bräunlingen, Germany or an otherwise agreed place of receipt.

4.2 If, after the order confirmation has been given, any circumstances should prevent Supplier from observing the agreed delivery date, Supplier must inform us promptly of the reason(s) for and the anticipated length of the delay. In the case of delays resulting from acts of god or industrial disputes for which Supplier is not responsible we can, without Supplier having the right to make any claims as a result, either - after the expiry of an appropriate period of time - withdraw from the contract entirely or in part or demand that the order be met at a later date.

4.3 Principally to ensure that delivery obligations are fulfilled, Supplier is obliged to pay, in the case of a delay in performance, a contractual penalty of 0.25% of the value of the order for every complete working day of delay (excluding Saturdays), but not more than 5% of the total value of the order. If the delay in performance concerns only a part of the order, the contractual penalty shall be calculated pro rata on the order value of the relevant part. The same applies if the delay in performance ends at different points in time. The order value is understood as including value added tax. We can initiate this right to the contractual penalty within one week after the delivery of the goods. The right to assert a larger claim of compensation for damage and the rights under clause 4.5 of this Agreement remain unaffected by this clause. Any contractual penalty paid shall be offset against the claim for compensation for damage.

4.4 The contractual penalty in accordance with clause 4.3 of this Agreement shall also be paid if Supplier, being under an obligation to deliver goods of a certain type, suffers a delay in performance because it has delivered faulty goods, we return them and demand that the faults be rectified or replacements be provided.

4.5 In the case of delayed delivery, we may, after the expiry of an additional, appropriate period of time as required by law and determined by us in which delivery has not occurred, withdraw from the contract and / or demand compensation for damage instead of performance.

5. Delivery and Performance, Dispatch, Documentation, Retrieval of Packaging

5.1 Delivery must correspond exactly to our order in terms of characteristics and price. Advance, partial and excess deliveries are only permissible with our consent.

5.2 Transport to the agreed destination shall take place at the expense and risk of Supplier, by rail, post or other delivery service, at our choice. We will not carry any costs that arise from the non-observance of our dispatch instructions or packing/packaging requirements.

5.3 The agreed destination stated in the order shall be the place of performance for all Suppliers' obligations. If our order does not state explicitly a place of destination our registered office in 78199 Bräunlingen shall be considered to be the agreed destination.

5.4 Every delivery must be accompanied by a delivery note. This delivery note must include the usual commercial particulars, especially the order number, an exact description of the goods, the delivery quantity, dimensions, weight and packaging. For deliveries by rail or delivery services, the above details must also be stated on the consignment note and / or other paperwork accompanying the goods. If Supplier fails to provide these particulars in whole or in part, delays in processing are inevitable; possible additional costs or losses that result therefrom shall be borne by Supplier.

5.5 Complete delivery includes the handover of the associated documentation. Until such documentation has been provided, the contractual performance shall not be considered to have been completely rendered. We are entitled to hold back an appropriate portion of the purchase price until all documents have been handed over.

5.6 Insofar as Supplier is obliged by law to retrieve packaging, it must collect it from us at its own expense. If it requests that the packaging be sent back to it, it will carry the dispatching costs thus arising.

6. Technical Requirements, Defect Claims

6.1 The supplier must observe the relevant laws or other rules with respect to the nature and quality of the products (e. g. accident prevention regulations, VDE rules, DIN standards, VDI guidelines, Equipment Safety Act, Product Safety Act, environmental laws, EU regulations, European and national provisions on the CE marking). Observation of galvanic layer thicknesses has to be proven by measurement protocols. In case of zinc coatings layer thicknesses has to be ensured and proven by follower parts (Fe) (Mitläuferteile (Fe)).

6.2 We are entitled to the statutory defect claims without restriction. To the extent the Supplier has granted any guarantee, the rights from this guarantee are supplementary to the statutory defect claims.

6.3 In particularly urgent cases, we shall be entitled, after prior consultation with Supplier (i. e., clarification of whether Supplier itself is capable of immediately performing the required tasks) and at Supplier's expense, to replace, exchange or repair defective parts and to eliminate any damage or, also at Supplier's expense, to have such work carried out by third parties. The same shall apply if Supplier falls into delay in satisfying our claims due to defects.

6.4 If, after selling a newly manufactured item we incur costs in relation to a customer for the rectification of faults or additional deliveries in the form of liability for defects under the purchase contract, we can demand that these costs be reimbursed by Supplier if the defects asserted by our customer stem from goods delivered to us by Supplier and the defect was already present in the goods at delivery. We are entitled to make this claim for reimbursement of costs regardless of whether we resell Supplier's goods unchanged or reworked, rebuilt or incorporated into our product.

6.5 Subject to sentence 2 the limitation period for claims for defects in the delivery of movable goods as well as for claims for reimbursement of costs in accordance with clause 6.4 of this Agreement shall be three years from the date of delivery. For goods that are usually used in the construction industry the statutory limitation period of five years applies.

For goods that are intended to be used continuously in our business establishment (e.g. operational and business equipment), the limitation period according to the previous sentence of this clause shall be extended by the time for which the goods cannot be used due to defects. The period of suspension of the limitation period begins with the day on which we notify Supplier of the defect and ends when the goods can be put to use again.

Laws regarding other cases of suspension or restart of the limitation period remain unaffected.

7. Rights in the Event of Defects of Title (Especially Infringement of Third Party Industrial or Intellectual Property Rights)

7.1 In the event of a defect of title, we shall have and be entitled to claim upon any relevant rights at law relating to defects in title and to assert the claims under clause 7.2 of this Agreement.

7.2 If a third party makes claims against us in relation to the delivery item due to alleged infringement of industrial or intellectual property rights, Supplier shall be obliged to indemnify us against all and any such claims. This duty to indemnify exists only if and to the extent Supplier is responsible for the infringement of industrial or intellectual property rights. Without Supplier's consent we shall have no right to enter into any arrangement whatsoever, especially not a settlement, with the third party. Supplier's duty to indemnify shall relate to all expenses that we necessarily incur out of or in connection with the action taken by a third party.

8. Product Liability

8.1 Insofar as Supplier is responsible for product damage, it is obliged to indemnify us against claims for compensation for damage from third parties insofar as the cause is within its area of control and organisation and it itself is liable with respect to third parties.

8.2 In this regard, Supplier is also obliged to reimburse possible necessary expenditure incurred by us in connection with a product recall that we carry out. We shall inform Supplier, as far as possible and reasonable, of the content and scope of the recall measures to be carried out and will give it the opportunity to take a position.

8.3 Supplier is obliged to maintain a product liability insurance with adequate cover for the risk. Claims for compensation for damage beyond this amount by us remain unaffected.

9. Invoicing, Payment, Transfer, Offset

9.1 The number of invoices stated in our order shall be sent after every delivery or performance of a relevant obligation. In addition to a possible order number used by us and / or an article number and commission number, the same information as listed under clause 5.4 of this Agreement shall be quoted on all invoices. The payment period and the period in which a discount for prompt payment is available are suspended if difficulties are encountered in processing the invoice because information specified in sentence 2 of this clause is missing.

9.2 Unless specifically agreed, payments shall be made within 10 days following receipt of the goods and invoice with a discount of 3% on the invoice sum, or within 30 days following receipt of the goods and invoice with a discount of 2% on the invoice, or without deduction within 60 days after receipt of the goods and invoice. If multiple payments have been agreed, the discount shall be granted for each individual payment made within the discount period specified in the preceding sentence.

9.3 The means of payment shall be determined by us. For the purposes of timeliness of payment, also with respect to the entitlement to a discount for prompt payment, it shall suffice that we render the relevant performance at the place of performance within the specified time. The place of performance is deemed to be our registered office in 78199 Bräunlingen, Germany.

9.4 Transfer of rights to third parties on the part of the Supplier is only permitted with our written consent. We shall not deny our consent without an important reason. If the transfer of a monetary claim against us without our consent is effective by effect of law, we can nevertheless render performance to the previous holder of the claim with the effect that we are free from the claim.

9.5 We shall have rights of offset and retention within the scope permitted by law. The right to offset is permitted in particular for contractual penalty claims.

10. Confidentiality, Production Documentation

10.1 We reserve all ownership, copyright and industrial or intellectual property rights to production documentation (e. g. models, samples, diagrams, calculations, drawings) provided to Supplier. The production documentation may only be used for the processing of the offer and to fulfil the order; it shall not be made available to third parties without our consent.

10.2 Without our written consent, Supplier must not allow third parties to see or make available to them any production documents and / or other items that we have made available to it. The same applies to goods manufactured using our production documents and / or other items; these goods must not be made available to third parties either in their original state or as half-finished or finished products.

10.3 The parties are further obliged to keep confidential trade and business secrets of the contract partner, which obligation extends beyond the duration of the contract. This obligation of confidentiality does not apply to commonly known circumstances and ends in any event when any circumstances become public knowledge, provided that a breach of contract by Supplier was not the cause thereof.

10.4 All the production documentation provided by us can be recalled from Supplier at any time, if this is possible with regard to the stage of completion of an order. At the same time, Supplier shall be obliged to hand back any possible copies of the production documentation that it may have made. The same applies to other documents that were possibly developed from the production documentation. After completion of the order, all the documents listed in sentences 1 and 2 above of this clause must be returned to us without any request being made.

11. Reservation of Title, Provision of Materials, Tools

11.1 Materials provided by us shall remain our property. Supplier shall undertake to store the materials provided clearly and separately as our property, to insure such materials at its own expense adequately against fire, water, theft and disasters and to use such materials only within the terms of relevant agreements.

11.2 Processing or conversion by Supplier is undertaken for us. In the case of processing or accession we acquire joint ownership of the new item in proportion to the value of our property (purchase price plus value added tax) in relation to the other processed or acceded items at the time of the processing or accession. Supplier shall protect our right to joint ownership.

11.3 To the extent our security rights according to clause 11.1 and 11.2 of this Agreement exceed the purchase price plus value added tax of all goods subject to reservation of title by more than 10 %, we shall be obliged on Supplier's demand to release security rights of our choice.

11.4 The tools and devices ordered by us become our property when they have been paid for in full and, when the order has been completed, must, upon request, be handed over to us together with any associated drawings; we shall have all rights to copy, publish and use the drawings. Supplier is obliged to employ these tools and devices exclusively for the manufacture of the goods that we have ordered and to insure them at its expense for the value of such items as new against fire, water, theft and disasters. Supplier is further obliged to carry out essential maintenance and inspection work at its expense and in a timely manner. It must report possible malfunction to us at once; if it omits to do so culpably, it shall be obliged to compensate any damage possibly arising therefrom.

11.5 Prior to the manufacture of the tools and devices ordered by us, the construction plans and drawings forming the basis of production must be presented to us for our consent and permission to begin production. The construction plans and drawings must be kept by Supplier until the order has been completed in such a way that they are always available in case the tools and devices are destroyed.

12. Place of Jurisdiction, Applicable Law

12.1 If the Supplier is a "Kaufmann" (full merchant) within the meaning of the German Commercial Code (HGB) any disputes arising from or in connection with the contractual or delivery relationship - including disputes about bills of exchange and checks - the courts at our registered office shall have jurisdiction. The same applies if the Supplier has no general legal venue in Germany, or if after the contract is concluded the Supplier has moved his domicile or normal place of residence outside of Germany or if his domicile or normal place of residence is not known at the point of time legal action is taken. We also reserve the right to take action against Supplier at the place where Supplier is generally amenable to the jurisdiction of courts of law.

12.2 Our General Terms and Conditions of Purchase and the entire legal relationship between the parties to this Agreement shall be governed by the laws of the Federal Republic of Germany excluding the UN Convention on the International Sale of Goods (CISG) of 11 April 1980.