

General Terms and Conditions

CeraCon GmbH

01.12.2004

1. General conditions

1.1 (Scope) These General Terms and Conditions are only intended for use in business with entrepreneurs.

1.2 (Conflicting business conditions, confirmation in writing) The only terms and conditions for the contract shall be these terms and conditions. We will not accept any conflicting general business terms, whether or not expressly rejected by us. Any modifications or additional agreements must be confirmed in writing by us.

1.3 (Offers, right to make modifications, electronic data storage) Initial quotations are made free of obligation. We reserve the right to make technical improvements and modifications of our products without prior notification. We may store and process contract information in data processing systems.

1.4 (Offsetting, withholding) Unless the customer has undisputed counterclaims, he shall neither be entitled to offset nor to withhold payments for deliveries received.

1.5 (Place of performance, Court of jurisdiction, governing law) Place of performance is our works in D -97990 Weikersheim. For all disputes arising out of the contract the courts of jurisdiction shall be D 97980 Bad Mergentheim / D 73479 Ellwangen as competent courts of our registered office. We can also take legal action against the customer at his registered office. The contract shall be construed and interpreted in accordance with the laws of the Federal Republic of Germany with exception of the 'UN Convention on the International Sale of Goods' (CISG).

1.6 (Contractual language) The language of the contract is English.

2. Delivery and risk

2.1 Place of performance for delivery is our works. The risk shall be transferred to the customer when the goods leave our works. This shall apply also when we have agreed to provide additional services such as freight forwarding, exportation or installation.

2.2 The customer shall bear all transport, packing and insurance costs to the place of delivery unless otherwise agreed.

3. Delivery period, delay

3.1 Delivery periods are ex works. Delivery times or periods shall commence only after settlement of all technical questions and after we have received all documents, permits or releases required from the customer or from authorities as well as any advance payments requested. Subject to correct and punctual internal delivery. We shall inform the customer without delay of the non-availability of the delivery products.

3.2 Acts of God or any events for which we are not responsible i.e. strikes, lockouts, operating breakdowns, shortages of raw materials or means of production, delayed deliveries or failure of delivery by our suppliers shall extend the delivery period accordingly. Delivery times will also be extended due to modification of products or services requested by the customer.

3.3 In any case the customer has to send us a reminder setting a reasonable period of grace before claiming default of delivery.

3.4 In the event of compensation for damages caused by late deliveries, our liability for compensation besides performance shall be limited to 5 % and for compensation instead of performance to 10 % of the value of our delivery. This limit shall not apply in cases of intent, gross negligence and/or injury to life, body or health.

4. Conditions of payment

4.1 Prices quoted shall be EXW (ex-works). If applicable, VAT will be added. We may raise prices in accordance with § 315 BGB in proportion to cost increases (including tax increases) if a period of more than four months lies between conclusion of contract and delivery.

4.2 Invoices are due immediately without deduction to our account in the Federal Republic of Germany, in EURO (€). We shall accept bills of exchange or checks only on account of performance and at the customer's expense.

4.3 In case of any delays in payment or if we have reason to believe that there could be failure of the customer to fulfill his paying obligation we reserve the right to require payment in advance or the provision of security.

5. Reservation of proprietary rights

5.1 The delivered products shall remain our property and title shall not pass to the customer until all open liabilities of the customer have been fully paid for.

5.2 The customer may resell products in the normal course of business provided the claims arising from the resale have not been assigned, pledged, attached or otherwise encumbered.

5.3 The customer shall not combine our products with other products that are object to rights of third parties. In case of the constitution of a new product, we will achieve joint ownership.

5.4 The customer assigns to us in advance any claims arising from the resale of the delivered products (5.2) or the newly constituted products (5.3) up to the amount of our invoice. Any and all revenue received by the customer relating to the resale shall be used exclusively for paying any amounts due to us.

5.5 In the event of delay in payment, we are entitled to withdraw from the contract and/or, even without withdrawal, to demand that reserved goods still available at the customer be handed over to us and to collect the assigned claims ourselves. To determine our rights, we can have all of the documents/books affecting our proprietary rights of the customer inspected by a person who is obliged to observe professional discretion.

6. Liability for defects

6.1 We are liable that our products are free of defects at the transfer of risk. Immaterial deviations from the agreed quality or non-essential restrictions in usability are, however, of no significance.

Qualities, performance or other features shall only be binding if we have expressly agreed on them in writing to the customer. Details in advertisements, instructions for use or reference to industrial standards shall also only be binding if we have expressly agreed on them in writing.

If the customer requires the products for special purposes which exceed the agreed or anticipated use, he must check before use if the products are suitable for such purposes - including all aspects pertaining to product safety - and customer is required to ensure that products comply with all relevant technical, legal and official regulations and requirements. We are not liable if such proper verification has not been performed by the customer and proper written authorization was not obtained from us.

6.2 In case of a defect the customer has to set us a reasonable period of time to enable us to eliminate the defect either - subject to our discretion - by repairing the product or supplying a product free from defects (subsequent performance according to § 439 BGB). In the event of rejection, impossibility or failure of subsequent performance, the customer has the right to demand a reduction of the purchase price or - provided the performance in question is not construction work - to withdraw from the contract.

In case that additional expenses to repair or replace the products arise because the customer has transferred the products after delivery to another place than the agreed place of performance the customer has to bear the additional costs.

6.3 The customer has to inspect the products as to quantity and defects immediately on receipt and has to notify any apparent defects without undue delay. Hidden defects are to be notified immediately after being discovered. Transportation damages have to be notified at once to the forwarder. Failure to meet these obligations excludes any and all potential claims for these defects.

6.4 We are further not liable for any damages following improper use, handling, maintenance, operation or processing or on normal wear and tear. This especially excludes liability for results of thermic, chemical or electric impact on the products or in case that the customer does not use the products according to our instructions or uses unsuitable operation materials.

6.5 Our liability for slight negligence is restricted to claims based on injury to life, body or health, to claims arising from the Product Liability Law and to claims arising from the culpable infringement of essential contractual obligations, with said infringement putting the purpose of the contract at risk. Our liability for the slightly negligent infringement of essential contractual obligations is restricted to typically occurring damage foreseeable by us at the time the contract was signed.

6.6 Claims against us based on defects are subject to a statute of limitations of one year as of the delivery of the goods to the customer/acceptance of the service by the customer. The same shall apply accordingly to claims for damages, for whatever legal reason.

The restriction of the period of limitation shall not apply for claims based on fraudulent concealment of a defect, for claims based on the Product Liability Law as well as for claims arising from injury to life, body or health, and for other damage based on intent or gross negligence. The limitation periods of §§ 438 Abs. 1 S. 1, 438 Abs. 1 Nr. 2, 479 Abs. 1, 634 a Abs. 1 Nr. 2 BGB shall not be restricted.

6.7 If, in the course of the examination of a defect of which the customer has given notice, or in the course of our subsequent improvement work, it should turn out that the notice of defects was not justified, we shall be entitled to charge reasonable compensation for the examination and/or repair work.

7. Spare parts

In case we have an obligation to storing / delivery of spare parts this obligation lapses latest five years after delivery of the original product. Spare parts are charged according to our current Price Conditions or as offered.

8. Industrial proprietary rights, secrecy

8.1 We reserve ownership in any moulds, samples, diagrams, commercial or technical documents provided by us as well as all copyrights, proprietary and intellectual property rights in any such item. This applies also if the customer has partly or wholly borne their costs. The customer may use all such items only in formats approved by us in writing, he is neither entitled to manufacture these items nor to have them manufactured on his behalf.

8.2 The customer is responsible that the use of drawings, models, samples, or instructions as provided to us by the customer shall not infringe industrial property rights or other rights of third parties. The customer shall be liable for payment of all expenses, awards, damages, and other compensation to outside parties and all cash and non-cash expenses in defending any allegation of such infringement.

8.3 All information acquired through the business relationship which is not deemed to be public knowledge shall be deemed proprietary and may not be disclosed to any third parties.