

General Terms and Conditions of Sale and Delivery of Procast Guss GmbH

version 09/2020

Our quotations, deliveries and services are submitted and furnished on the basis of the following terms and conditions exclusively. They are also applicable to all future business transactions with the Purchaser resulting from the current business relationship. Other terms and conditions of the Purchaser shall not be applicable even if they have been made known to us and we proceed and carry out the delivery without reserves. Any other, deviating agreements that are concluded between us and the Purchaser in view of a performance of a contract shall be subject to the written form requirement for the sake of evidence.

1. Conclusion of Contract, Scope of Delivery

- a) Our quotations are nonbinding, unless otherwise agreed according to the order acknowledgement or unless otherwise declared in writing explicitly. A contract shall be deemed to be concluded only once we have acknowledged a purchase order in writing.
- b) The information included in leaflets and catalogues, such as illustrations, drawings, weights and measures and other technical measures represent approximate values customary according to the industrial standard, unless they have been expressly qualified as binding.
- c) We have title to the proprietor's and author's rights in all illustrations, leaflets, calculations and other documents. They may be made available to any third parties with our previous explicit consent given in writing exclusively.

2. Pricing and Payment Conditions

- a) Our prices are quoted ex works, plus packing, freight, postage, insurance, customs duties and the applicable VAT.
- b) Our prices are calculated according to the purchase order quantities agreed. If no binding purchase order quantities are agreed, the calculation shall rely on the target quantities agreed. If the target quantity is not achieved, we shall be entitled to increase the price per unit adequately.
- c) The weights and quantities of pieces or units determined by us shall prevail for the calculation.
- d) Our invoices have to be settled according to the following terms: within 30 days net for cast parts, within 10 days net for manufactured, modified, revised models etc.
- e) If we have supplied any defective goods, the Purchaser shall nevertheless be committed to make payment for those goods that are of uncontested perfect quality, unless he is not interested in that partial delivery.

- f) If any circumstances come to our knowledge after conclusion of the contract, according to which our payment claim is threatened due to the Purchaser's lack of ability to perform and pay, we shall be in a position to inhibit any further sale and processing of the goods supplied and to revoke the authorization to collect under the proviso of the provisions outlined in paragraph 9, subparagraph e) of this document, on the basis of the applicable statutory claims and especially on the basis of the Objections Due to Uncertainty according to § 321 of the German Civil Code (BGB), but also on the basis of the reservation of title as agreed under paragraph 9 subparagraph e) of this document.
- g) In case of a delay in payment we may, upon previous notification in writing, suspend performance of our obligations until receipt of these payments due, and we shall be committed to perform only against previous advance payment or rendering of security. In this case, we shall also be entitled to cancel the contract upon expiry of an appropriate grace period granted. In case of a delay in payment, we may also take back the goods until receipt of payment of the due amount to safeguard our claims, to the extent as this is bearable for the Purchaser, e.g. for items that have just been stored in the warehouse, which have not been sold yet and which are not currently used. In this case, any right of retention of the Purchaser shall be excluded. This repossession of goods must not be construed as a concluding notice of cancellation of contract.
- h) If the terms and conditions of payment are not observed or if any circumstances become known that are capable of reducing the Purchaser's creditworthiness, all of our accounts receivable including those for which we have accepted bills of exchange, shall become payable with immediate effect.

3. Time of Delivery

- a) Delivery periods and deadlines shall be binding only if they have been confirmed as such by us explicitly. Delivery periods shall begin to run as of the date of our order acknowledgement, but not before complete clarification of all details of the order execution and before fulfillment of all other requirements to be met by the Purchaser; the same shall apply to delivery deadlines. Deliveries made before expiry of the time of delivery and partial deliveries shall be admissible, unless this is unbearable for the Purchaser. The date of delivery shall be the date of advice of dispatch, otherwise the date of dispatch. Unless otherwise agreed or resulting from the contractual relationship, the time of delivery specified by us shall always be unbinding.
- b) Any delivery times and deadlines agreed shall be extended or delayed, irrespective of our rights arising from a delay originated by the Purchaser, by the period the customer is in arrears with his obligations.
- c) In case of a delay, the limitations of liability according to paragraph 11 of this document shall apply accordingly.

4. Serial Deliveries, Long-term Contracts and Call-off Contracts

- a) If in long-term contracts (contracts with a term of more than twelve (12) months or unlimited contracts) a substantial change in labour, material or energy costs occurs upon expiry of the first four (4) weeks, each contracting partner shall be

entitled to demand an appropriate price adjustment while taking into account these factors.

- b) In case of supply contracts concluded on a call-off basis (or “individual delivery request basis”), binding information on the quantities required has to be given to us at least three (3) months before the delivery deadline, unless otherwise agreed. Any additional costs that are incurred to us owing to a late call-off or owing to any subsequent modifications to the call-off (regarding deadlines or quantities) made by the Purchaser shall be at the Supplier’s charge.
- c) In case of serial manufacturing, an increased or decreased delivery of up to 10% compared to the quantity ordered shall be allowed owing to the particularities of the casting process.
- d) Any such increased or decreased delivery will lead to an appropriate adjustment of the total price.

5. Force Majeure and Other Obstructions

- a) Events of force majeure, labour conflicts, lock-outs and measures taken by public authorities shall give us the right to defer the delivery for the duration of the obstruction and by an appropriate start-up time.
- b) Unforeseen circumstances, such as operational disruptions, rejects and rework which make the observation of the time of delivery impossible in spite of reasonable efforts taken shall be deemed equivalent to cases of force majeure; the proof of this has to be furnished by us.

6. Inspection Procedures, Acceptance of Delivery

- a) If an acceptance of delivery has been agreed, the scope and the terms and conditions have to be stipulated at the same time by the time of conclusion of the contract.
- b) Otherwise, the acceptance of delivery shall take place within the scope and on the terms and conditions as usual in our company. The same shall apply to initial sample inspections.

7. Measures, Weights, Numbers of Pieces and Units

Deviations in measures, weights and numbers of pieces or units within the framework of tolerances common in the industry are inadmissible. Information about measures, weights and other technical information as well as illustrations, descriptions and drawings on the item of delivery which is included in brochures, leaflets, product descriptions and other documents of ours shall be only roughly authoritative, unless it has been explicitly qualified by us as binding according to the order acknowledgement.

8. Dispatch and Transfer of Risk

- a) Unless otherwise agreed in writing, the delivery term FCA from the place of departure ex works (Incoterms 2010) shall also be applicable if we have accepted to fulfill some other performances such as payment of shipping costs or delivery at the place of destination.

- b) Goods that have been notified to be ready for dispatch have to be taken over immediately, otherwise we shall be entitled to dispatch them at our own discretion or store them in a warehouse at costs customary in the forwarding industry and at the Purchaser's risk. As soon as the goods have been stored in the warehouse, they shall be deemed as being delivered.
- c) Upon transfer of the goods to the railway company, the forwarding agency or the freight carrier, or one week after the date of commencement of the storage, but upon departure of the goods from the factory or the warehouse at the latest, the risk shall be transferred to the Purchaser, even in cases where we have taken over the delivery.

9. Reservation of Title

- a) All goods that have been supplied shall remain our property (goods subject to reservation of title) until complete settlement of all accounts receivable, and especially of those outstanding balance claims which we are entitled to receive from the commercial relationship. This provision shall also apply if payments on particularly qualified accounts receivable are made.
- b) The Purchaser shall always accomplish the processing of the goods supplied on our behalf in our capacity as the manufacturer of the goods, as defined in § 950 of the German Civil Code. If the goods subject to a reservation of title are processed or inseparably linked to other items that are not our property, we shall become co-proprietors of the new item or product for the invoice amount of the goods subject to a reservation of title in proportion to such other processed or combined items.
- c) If our ownership expires due to any such connection or combination of items or products, the Purchaser shall already at this stage assign to us the proprietary rights in the new item or product which he is entitled to, to the extent of the invoice amount of the goods subject to a reservation of title, and he shall keep them in safe custody on our behalf and free of charge. The co-proprietary rights resulting thereof shall be deemed as being goods subject to the reservation of title within the meaning of subparagraph a) of this paragraph.
- d) The Purchaser may sell the goods subject to a reservation of title in the customary course of business at his standard terms and conditions of business and as long as he is not in arrears, provided that the accounts receivable from the resale transaction according to subparagraphs e) and g) are transferred to us. He shall not be entitled to any other types of possession or control over the goods subject to the reservation of title.
- e) The accounts receivable of the Purchaser from the resale transaction of the goods subject to a reservation of title are assigned to us already at this stage. They shall serve as securities to the same extent as the goods subject to a reservation of title do. This shall equally apply to indemnifications from insurance benefits and other claims. We herewith accept this assignment.
- f) If the goods subject to a reservation of title are sold by the Purchaser along with other goods that are not supplied by ourselves, the assignment of the account receivable from the resale transaction shall only be applicable to the amount of the invoice value of the goods subject to a reservation of title that have been sold.

If goods are sold which we keep shares of a co-proprietorship in according to subparagraph 9.b. of these terms and conditions, the assignment of accounts receivable shall be applicable to the amount of the corresponding value of these shares of a co-proprietorship.

- g) The Purchaser shall be entitled to collect accounts receivable from the orderly resale of the goods subject to a reservation of title, until our revocation of such entitlement. We shall have the right to cancel this entitlement if the Purchaser is in default on payment, if an application for the institution of insolvency proceedings has been filed or if cessation of payments has occurred. In these cases, the Purchaser shall be committed to inform us immediately on all accounts receivable that have been ceded and on the debtors of these accounts receivable, to give us any information required for the collection, to issue the corresponding documents and to inform the debtors about the assignment. The Purchaser shall in no case be authorized to assign the accounts receivable to any third parties.
- h) If the value of the existing securities exceeds the accounts receivable that have been secured by more than 20 % in total, we shall in this respect be committed to issue securities at our discretion.
- i) The Purchaser has to advise us immediately of any access by third parties to goods supplied under reservation of title or to accounts receivable that have been assigned.

10. Liability for Defects

- a) We are responsible for the faultless manufacturing of the parts supplied by us in accordance with the agreed technical delivery specifications. In particular as regards the intended use, the Purchaser shall be responsible for the proper construction in compliance with the applicable safety regulations, for the right choice of construction materials and the required inspection procedures, for the correctness and completeness of the technical delivery specifications and the technical documents and drawings that have been handed over to us, as well as for the execution of the manufacturing facilities provided, even if modifications are proposed by us that would find his approval. Furthermore, the Purchaser warrants that no proprietary rights or other rights of third parties are violated by his information provided. The time of the transfer of risks shall be the crucial moment for determining the contractual state of the goods.
- b) We are neither liable for any insignificant deviation from the agreed quality, in case of only an insignificant impairment of usability, nor for defects and deficiencies that are caused by an improper or incorrect use, faulty mounting or commissioning work and normal wear and tear. If the Purchaser or any third parties carry out any modifications or repair or reconditioning work improperly, we will not be liable for such improper modifications or work and their consequences either.
- c) The warranty rights of the Purchaser require that he has fulfilled his investigation and complaining rights in accordance with § 377 of the German Civil Code property. The Purchaser is committed to issue a complaint in writing for any

material defects immediately upon receipt of the goods at the place of destination and for concealed defects immediately upon discovery of the concealed defect.

- d) In case of an acceptance of delivery or initial sample inspection agreed in accordance with paragraph 6 of this document, complaints about any defects that could have been discovered shall be excluded.
- e) We must be given the opportunity to identify the defect complained about. In urgent cases of danger to operational safety or to prevent excessive danger on the Purchaser's side, we shall be committed to ascertain the defect complained about immediately. Goods that have been complained about have to be returned to us immediately upon our request. If the Purchaser fails to meet these obligations or modifies the goods complained about in any way without our previous consent, he shall lose any of his rights related to a material defect.
- f) In case of a justified and timely complaint, we will at our discretion either repair or recondition the goods complained about or supply a substitute of perfect quality (remedy).
- g) If we fail to meet our warranty obligations or if we fail to meet them within an appropriate period or if the remedy or repair is initially unsuccessful, the Purchaser shall have the right to concede a final grace period in writing, within which we will have to fulfill our obligations. There is no need for granting such grace period if it is unbearable for the Purchaser. Upon fruitless expiry of the grace period conceded, the Purchaser may at his discretion demand a price deduction, cancel the purchase contract or effect the required remedy or repair by himself or have it effected by a third party at our expense. If the remedy or repair work has been accomplished successfully by the Purchaser or by a third party, any and all claims of the Purchaser shall be deemed as being settled upon refund of the required amount of costs he has incurred.
- h) Any claims asserted by the Purchaser due to the expenditures required for the purposes of the remedy or repair, which result from the fact that the goods are transferred to a different place after delivery, shall be excluded if they increase the expenditure, unless the transfer is in line with the intended use of the goods.
- i) Legal claims for recourse asserted against us by the Purchaser shall only be applicable if the Purchaser has concluded no further agreements with his customer in addition to the legal claims for defects and deficiencies.
- j) Any further claims of the Purchaser shall be excluded according to paragraph 11 of this document.
- k) The proof of a defect or deficiency has to be furnished by the Purchaser.
- l) We shall inform the Purchaser about any relevant modifications to the goods, in particular those modifications that have been due to the "Reach-Regulation" (EU No. 1807/2006), and about their availability, possibility of use or quality, without any delay and shall agree with him upon suitable measures to take in particular cases.

11. General Limitations of Liability

- a) If through our fault the item of delivery cannot be used according to the provisions of the contract by the Purchaser as a result of the fact that proposals and advice have not been given or have been given incorrectly before or after conclusion of

the contract or due to the violation of other secondary contractual obligations, the provisions of paragraphs 10 and 11.b) of these terms and conditions shall apply accordingly, whereas any further claims of the Purchaser shall be excluded.

- b) The following limitations of liability shall not apply in the event of loss of life, physical injury and damage to the health of persons. Notwithstanding a fault requirement, even the potential liability of the Supplier in case of a fraudulent concealment of a defect, resulting from the granting of a guarantee or the acceptance of a procurement risk or according to the applicable product liability law, shall remain unaffected.
- c) We are liable, for whatever legal reasons, for any damages that have not been caused to the item delivered itself only in case of wrongful intent or gross negligence committed by the owner, corporate bodies or executive employees of our company.

In case of a culpable breach of duties, the fulfillment of which is a prerequisite for the proper performance of the contract and the compliance with which the Purchaser may rely on regularly ("essential contractual obligations"), we shall also be liable in case of gross negligence committed by executive employees and in case of slight negligence, this latter case being limited to the reasonably foreseeable damage typical for the type of contract.

Any further claims shall be excluded.

- d) To the extent that our liability is excluded or restricted, this shall equally apply to the personal liability of our employees, other members of the staff, legal representatives and vicarious agents.

12. Limitation

Any claims for damages and material defects accruing to the Purchaser against us shall expire one year after delivery of the goods at the buyer's address. This provision shall not apply if the law according to §§ 438, subparagraph 1 No. 2 (buildings and items that are commonly used in buildings) and 479, subparagraph 1 (rights of recourse) of the German Civil Code prescribes longer periods, and in cases of loss of life, physical injury and damage to the health of persons, in case of a grossly negligent breach of duty by the Supplier or in case of a fraudulent concealment of the defect. The legal provisions regarding suspension of the running of time, suspension and recommencement of limitation periods shall remain unaffected thereby. In case of damage claims according to the applicable product liability law, the statutory limitation provisions shall apply. Even in case of a willful or grossly negligent breach of duty, the statutory limitation provisions shall apply.

13. Order-related Production Equipment, Parts to be Cast

- a) Order-related production equipment such as models, patterns, core boxes, molds, casting tools, devices and control gauges which are provided by the Purchaser have to be sent to us free of charge. Compliance of the production equipment provided by the Purchaser with the contractual specifications or any drawings or patterns or samples furnished to us will be verified by us only upon previous explicit agreements. We shall be authorized to modify the production

equipment provided by the Purchaser if this appears necessary to us for reasons lying within casting technology and if the work piece is not affected thereby.

- b) The costs for modification, maintenance and replacement of his production equipment shall be borne by the Purchaser upon previous notification of these measures.
- c) The production equipment is treated and kept in safe custody by us with the same care and diligence that we apply to our own matters and affairs. We are not liable for accidental loss or deterioration of the production equipment. We shall not be obliged to conclude an insurance contract.
- d) The parties to the contract agree and acknowledge that the ownership of orderrelated production equipment that is manufactured or purchased by us by order of the Purchaser shall be transferred to the Purchaser as of the date of receipt of payment of the price or costs share that has been agreed. Delivery of the equipment shall be replaced by our obligation to keep these items. The equipment will be kept in safe custody by us for the period of 3 years after the last casting. We shall be allowed to return any production equipment of the Purchaser which we no longer need, at the Purchaser's cost and risk or, if the Purchaser fails to meet our request to collect his equipment within a reasonable period of time, we may keep it in safe custody at the Purchaser's expense and destroy it at the Purchaser's expense after expiry of a reasonable limitation period and previous warning. The storage relationship may be terminated by the Purchaser two years after transfer of title at the earliest, unless there is a major reason for doing so. The provision of paragraph c) of this document shall apply accordingly.
- e) The Purchaser may assert any claims relating to copyright or commercial legal protection rights only to the extent as he informs us about the existence of any such rights and explicitly reserves the right to appeal thereto.
- f) Should the use of production equipment that may be used only once generate a product to be rejected, the Purchaser must either supply new production equipment again or bear the costs for a replacement thereof.
- g) Inserts to be incorporated by us in castings must be dimensionally accurate and supplied by the Purchaser in perfect condition. The Purchaser must supply replacements free of charge if parts become unusable due to rejects.

14. Confidentiality

- a) Each party to the contract shall be obliged to use any and all documents (including samples or patterns, models and data) and knowledge gained from this business relationship only for the jointly pursued purposes and to keep them secret vis-à-vis any third party with the same due care and diligence that he would apply to his own similar documents and knowledge, if the other party to the contract has declared them to be strictly confidential or has an apparent interest in keeping them secret.
- b) This obligation shall commence with the first receipt of documents or knowledge and shall terminate 36 months after the end of the business relationship.

15. Data Protection

We will store and process personal data of the Purchaser in compliance with the applicable regulations on data protection, especially the BDSG¹, within the framework of business transactions. This is equally applicable to any data of the final customer which the Purchaser transfers to the Supplier lawfully while observing the legal data protection requirements. This information and data will be used by us for customer support and care, in particular for settling warranty issues. The customer care and support shall also include the realization of customer satisfaction surveys.

16. Place of Performance and Place of Jurisdiction

- a) The place of jurisdiction for all disputes arising out of or being related to any business relationship with merchants – even for bills of exchange, cheque and other documentation processes – shall be the German city of Bielefeld. We shall also be entitled to institute proceedings at the place of jurisdiction at the Purchaser's headquarters.
- b) The place of performance for deliveries is the head office of the Supplier's plant, the place of performance for payments is Bielefeld.

17. Applicable Law

The legal relationships between the parties to the contract are exclusively subject to German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods dated April 11, 1980.

¹ BDSG = Bundesdatenschutzgesetz = German Federal Data Protection Act