

# General Terms and Conditions of Business and Delivery (GTC)

## Biacchessi GmbH & Co KG

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### 1. General information

- 1.1. The following terms and conditions only apply to business transactions and form the basis of all our offers, orders, deliveries and services. As a matter of principle, we do not enter into contractual relationships with consumers and always assume that we only contract with entrepreneurs. Contractual partners who are to be classified as consumers must inform us of this before the contract is concluded. If such notification is not made and it later transpires that our contractual partner is a consumer, we shall be entitled to withdraw from the contract immediately.
- 1.2. Insofar as the term "in writing" is used in the context of these GTC for notifications or declarations to the user, this means text form (e-mail, letter, fax, etc.) within the meaning of Section 126b BGB.
- 1.3. Our General Terms and Conditions apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the buyer shall only become part of the contract if and insofar as we have expressly agreed to their validity. This requirement of consent shall also apply if the Buyer refers to his General Terms and Conditions in the context of the order and we have not expressly objected to the General Terms and Conditions.

### 2. Offers

- 2.1. Our offers are always subject to change, legally non-binding and to be understood as an invitatio ad offerendum with regard to the respective service. Clients must check our offers and, if we are to be commissioned, prepare an order letter as a legally binding offer on the basis of our previously sent, non-binding offer. In case of doubt, the contract shall only come into effect with and in any case only in accordance with the terms and content of our written order confirmation, which is drawn up in response to the client's legally binding offer. Individual contractual agreements remain unaffected by this.
- 2.2. Indicative prices communicated are not quotations and only become the basis of the contract if agreed. We are bound to our offer prices for a maximum period of four weeks until the order is placed.
- 2.3. The contents of offers and contract documents, including attachments, may not be made accessible to third parties without our consent.

### 3. Prices and terms of payment

- 3.1. Our prices are quoted strictly net without discount or other reduction in euros ex works excluding packaging, freight and insurance plus the applicable statutory value added tax. The granting of discounts requires the express agreement of the contracting parties. The prices apply exclusively to parts designed and manufactured for processing. For any additional work required, such as the removal of paint, oil, grease, tar, old metal coatings and the subsequent attachment of openings to hollow bodies as well as the preparation of test reports, we shall charge the surcharges previously agreed with the customer, or, in the absence of such, the prices corresponding to fairness in accordance with § 315 BGB.
- 3.2. If the cost factors relevant for pricing (production materials, energy, operating materials, wages and salaries, etc.) change significantly in the period between the conclusion of the contract and the contractually agreed time of delivery, we

shall be entitled to demand that the customer agree new reasonable prices to compensate for such cost increases by amending the offer prices. This shall only apply after the expiry of three months after conclusion of the contract. If no agreement is reached, we and the customer are entitled to withdraw from the contract.

- 3.3. Unless otherwise expressly agreed, payments are to be made within 14 days of receipt of invoice without deduction of discounts. In the event of late payment, we shall charge interest on arrears at a rate of 9 percentage points above the applicable prime rate (Sections 286, 288 (2) BGB), without prejudice to other rights.
- 3.4. The client shall only be entitled to offset against our claims if his claim is undisputed or has been legally established or has been recognized by us.

### 4. Delivery

- 4.1. Unless otherwise agreed, the delivery period shall commence upon receipt of the order confirmation; however, if the material to be processed is delivered by the client at a later date, it shall not commence until this time.
- 4.2. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we shall inform the client of this immediately and at the same time inform the client of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately reimburse any consideration already paid by the client. A case of non-availability of the service in this sense shall be deemed to be in particular the failure of our supplier to deliver to us in good time if we have concluded a congruent hedging transaction, neither we nor our supplier are at fault or we are not obliged to procure in the individual case.
- 4.3. If the client defaults on its obligation to provide or cooperate after a written reminder, we are entitled to withdraw from the contract after setting a grace period of 14 days in writing and to demand compensation instead of performance.
- 4.4. Partial deliveries are permissible insofar as these are reasonable for the Client in individual cases. Reasonableness shall be deemed to exist if the Contractor's interest in the change outweighs or at least equals the Client's interest in the unchanged provision of the agreed service.
- 4.5. Deliveries are ex works Martinstr. 25, 42655 Solingen (EXW Incoterms 2020), excluding packaging.
- 4.6. The risk for the client's items to be processed shall pass to the client when they leave our factory, but at the latest when they are handed over to the forwarding agent or carrier.
- 4.7. If the goods to be processed are collected by us at the client's request, the transport risk shall be borne by the client. The client is free to insure these risks. With regard to the Contractor's liability for transport damage, reference is made to clause 4.6.
- 4.8. The aforementioned provisions shall also apply if we have guaranteed carriage paid deliveries.
- 4.9. If the goods are ready for dispatch and dispatch or acceptance is delayed for reasons for which we are not responsible, the risk shall pass to the customer upon receipt of the notification of readiness for dispatch.

- 4.10. The shipping route, type and means of shipment shall be left to us without any obligation to commission the fastest and/or cheapest transportation. The interests of the customer shall be given due consideration. If we act as forwarder, the General German Forwarders' Terms and Conditions shall apply in addition.
- 4.11. The client must call off goods notified as ready for dispatch immediately, but at the latest after the expiry of a reasonable period after notification. If no call-off is made, this shall entitle us to store the goods at the expense and risk of the customer at our reasonable discretion and to invoice them as delivered ex works.
- 4.12. If dispatch or delivery of the goods is delayed at the request or instigation of the customer, a storage fee of 1% of the invoice amount may be charged for each month or part thereof, starting one month after notification of readiness for dispatch. The storage fee shall be limited to 5% of the invoice amount, unless we can prove higher storage costs. The customer may provide evidence that storage costs were not incurred at all or are significantly lower than the flat rate.
- 4.13. We shall not be liable for any waiting times, provided that these are reasonable and do not exceed one week, unless binding collection and delivery dates have been agreed.
- 4.14. Insurance against transport damage shall only be taken out at the request and expense of the client.
- 4.15. If processed goods are returned to us for reasons for which we are not responsible, the customer shall bear the risk until we receive the goods.
- 4.16. Surface-treated parts shall only be packaged to the extent that the material to be processed is sent packaged, repackaging has been requested and the packaging material is reusable. If additional packaging is requested after surface treatment, this will be charged separately and will not be taken back.

## 5. Claims for defects

- 5.1. Within the scope of the contractual claims for defects, the Contractor shall only be liable for damages - except for damages resulting from injury to life, limb or health - for intent and gross negligence, including intent and gross negligence on the part of its representatives and vicarious agents, unless otherwise stipulated below.

All limitations of liability in these GTC do not apply to liability for damages resulting from injury to life, body or health, which is based at least on an intentional or negligent breach of duty by us or an intentional or negligent breach of duty by our legal representative or vicarious agent.

Liability for simple or slight negligence is excluded insofar as it is not a breach of a material contractual obligation within the meaning of the case law of the Federal Court of Justice and does not involve damage resulting from injury to life, limb or health. In this respect, an essential contractual obligation is an obligation whose fulfillment characterizes the contract and on whose compliance the customer may rely.

Insofar as the aforementioned exclusion of liability does not apply due to the breach of an essential contractual obligation, the Contractor shall only be liable to the amount of the invoiced service. Any further claims of the Client, e.g. for raw materials, special trips, quality costs (flat rates for complaints, inspection, sorting and/or processing costs) are excluded. The above limitations or exclusions of liability shall not apply in the event of a breach of pre-contractual information and clarification obligations. The Contractor's liability under the Product Liability Act shall remain unaffected. Contractual penalties are not recognized.
- 5.2. We guarantee professional surface treatment in material and workmanship in accordance with the recognized rules of technology, the applicable DIN regulations or - where relevant -

corresponding standards, i.e. EN or ISO standards. In galvanic and chemical processes and due to quality differences within the raw material, deviations from a sample on which the order is based are sometimes unavoidable. Such unavoidable deviations do not constitute a defect.

- 5.3. If the delivered item is defective, we may initially choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement delivery). Our right to refuse subsequent performance under the statutory conditions remains unaffected. We are entitled to make the subsequent performance owed dependent on the client paying the purchase price due. However, the customer is entitled to retain a reasonable part of the purchase price in proportion to the defect. The buyer must give us the time and opportunity required for the subsequent performance owed, in particular to hand over the rejected goods for inspection purposes.
- 5.4. Claims for defects on the part of the contractual partner shall become time-barred one year after the start of the statutory limitation period; this period shall be extended by the period of time typically required to recognize the notified defects in the subject matter of the contract. The aforementioned period shall not apply in the cases of §§ 438 Para. 1 No. 2 and § 634a Para. 1 No. 2 BGB.

The delivered goods must be inspected immediately to ensure that they are free of defects, insofar as this is feasible in the ordinary course of business. Obvious defects must then be reported immediately in writing. The obligation to inspect shall also apply if reference samples have been sent. In the case of defects that are not immediately recognizable, the same shall apply within the aforementioned period after discovery of the defect in question.
- 5.5. If a complaint is not made in due form or time, the goods shall be deemed to have been approved by merchants within the meaning of the German Commercial Code (HGB).
- 5.6. The items handed over to us for processing must be delivered with a delivery bill or with precise written details of the number of items and total weight. The details of the gross weight are not binding for us, even if they are important for the customer. Missing parts shall only be replaced if their delivery is documented by a delivery bill signed by us or can otherwise be proven and the risk for the missing parts has passed to us. In the case of small and mass-produced parts, we accept no liability for rejects and shortfalls of up to 3% of the total quantity delivered, unless this is due to gross negligence or intent on our part, on the part of our representatives or vicarious agents, or unless otherwise agreed.
- 5.7. The Client reserves the right to reduce the purchase price or remuneration or, at its discretion, to withdraw from the contract and to demand compensation for damages in accordance with Section 5.1. if the subsequent performance fails or if the Seller refuses both the rectification of defects and the subsequent delivery or if the subsequent performance is unreasonable. Rectification shall be deemed to have failed after the second unsuccessful attempt, unless the nature of the item or defect or other circumstances indicate otherwise.
- 5.8. A defect in the partial delivery does not entitle the client to withdraw from the contract, unless the defect in a partial delivery is so significant that the acceptance of further partial deliveries is no longer of interest to the client.
- 5.9. The warranty shall only apply to use under the usual operational and climatic conditions in the Federal Republic of Germany. If the goods are intended for special conditions and we have not been informed of this beforehand, so that this has not become part of the contract, a warranty for these special conditions is excluded. Claims for defects shall lapse in respect of such defects for which a third party has already attempted to

rectify the defect and where this has made it more difficult for the user to rectify the defect, unless the user has previously had a reasonable opportunity to rectify the defect.

- 5.10. Insofar as properties of the goods are warranted with regard to appearance, coating thickness, corrosion resistance and coefficient of friction, the warranty is subject to the condition that the goods remain in an unused condition. Warranted properties are subject to the condition that the goods are handled properly by the contractual partner, in particular through proper transportation, storage, sorting or packaging processes. If the contractual partner wishes to invoke the warranted characteristics, it must provide evidence of proper handling of the goods.
- 5.11. The material to be machined must be free of casting skin, molding sand, scale, oil carbon, burnt-on grease, welding slag, graphite, paint coatings; it must not have any pores, blowholes, cracks, doubles, etc.; threads must be sufficiently undercut. If this is not the case, we are entitled to refuse processing or withdraw from the contract. If the customer nevertheless insists on processing or if the material supplied to us for surface treatment is not technologically suitable for such surface treatment for reasons that are not recognizable to us, we do not assume any warranty for a certain dimensional accuracy, adhesive strength, color retention and corrosion-preventing properties of the applied layer, insofar as a defectiveness is due to the unsuitability of the material and is not based on gross negligence or intent by us, our representatives or our vicarious agents. Furthermore, no warranty is given for adhesion if the material has been deformed after surface treatment, even if test electroplated parts could be deformed without flaking of the electroplated layer and the customer has requested processing despite being informed of the risk of flaking.
- 5.12. If the goods intended for surface treatment or a suitable material sample is not provided to us for testing purposes for a sufficiently long period determined by us in accordance with § 315 BGB (German Civil Code), but for at least six weeks, prior to the start of processing, we shall not assume any liability for corrosion damage that is not due to intent or gross negligence by us, our representatives or our vicarious agents. If, in individual cases, it is not possible for us to carry out short-term tests or other chemical and/or mechanical tests or to prepare measurement reports or test certificates in view of the delivery time specified to us by a customer for scheduling reasons, and if the customer requests surface treatment without carrying out short-term tests or other chemical and/or mechanical tests or the preparation of measurement reports or test certificates despite prior notification by us to this effect, we shall not accept any liability for damage attributable to the lack of testing, except in cases of intent and gross negligence.
- 5.13. Hollow parts are only electroplated on the outer surfaces, unless cavity treatment has been agreed in special cases. The immediate onset of corrosion on the untreated surfaces does not justify any rights of complaint. Surface-treated material is at risk from condensation water and fretting corrosion. It must be properly packaged, stored and transported.
- 5.14. The client must specify the minimum layer thicknesses at a measuring point to be agreed and take suitable measures to prevent chemical and mechanical damage to the surface. We shall only be liable for weather damage and for any damage caused by residues from the treatment process seeping out of doubles and other inaccessible cavities in the event of gross negligence or intent on our part, our representatives or our vicarious agents.  
The above limitations or exclusions of liability shall not apply in the event of a breach of pre-contractual information and

clarification obligations.

## **6. Limitations of liability outside the liability for defects**

- 6.1. The Contractor shall also only be liable for damages outside the liability for defects in accordance with Clause 5.1.
- 6.2. The goods delivered to us, including the containers, packaging and transport systems provided, are not insured under our insurance contracts until delivery. There is no insurance cover in this respect. If required, this must be done independently by the customer by taking out external insurance.

## **7. Security interest**

- 7.1. We are entitled to a statutory contractor's lien on the objects processed by us. Irrespective of this, the client shall grant us a contractual lien on the objects handed over for the purpose of surface treatment, which serves to secure our claim arising from the order. Unless the contracting parties have agreed otherwise, the contractual lien shall also apply to claims from previously executed orders and services, insofar as they are in an internally related, uniform life relationship with the object of the order. If the surface-treated parts are delivered to the client before full payment has been made, it is hereby agreed with the client that ownership of these parts is then transferred to us in the ratio of the value of our claim to the value of the delivered parts to secure our claims and that the transfer of ownership is replaced by the client keeping the parts for us. The same shall apply accordingly with regard to the expectant right of the client to objects handed over to us for the purpose of surface treatment which have been delivered to the client by a third party subject to retention of title. We are entitled to bring about the lapse of the retention of title. The client's claims for retransfer of ownership against a third party to whom he had previously transferred the objects handed over to us for the purpose of surface treatment as security are hereby assigned to us. We hereby accept the assignment.
- 7.2. The client may neither pledge nor assign items to which we have a lien or which are in our ownership by way of security. However, he may resell or process the goods in the ordinary course of business, unless he has already effectively assigned the claim against his contractual partner to a third party in advance. Any processing by the client of the goods assigned to us as security to create a new movable item shall be carried out on our behalf with effect for us, without any liabilities arising from this.  
We hereby grant the client co-ownership of the new item in the ratio of the value of the new item less the value of our performance to the value of the new item. The client shall store the new item with due commercial care and free of charge.
- 7.3. In the event that the customer acquires sole or co-ownership of our security goods by combining, blending or mixing them with other movable items to form a uniform new item, he hereby assigns to us this right of ownership in the ratio of the value of our security goods to the value of the other item to secure our claims with the simultaneous undertaking to properly store the new item for us free of charge.
- 7.4. In the event of resale of the goods processed by us and assigned to us as security or of the new item manufactured from them, the client must inform his customers of our ownership by way of security.
- 7.5. To secure the fulfillment of our claim, the customer hereby assigns to us all claims, including future claims, arising from the resale or further processing of the goods assigned to us, including ancillary rights in the amount of the value of the goods. We hereby accept the assignment.
- 7.6. The client is authorized to collect the claims against third parties resulting from the resale or further processing for our

benefit. At our request, the customer shall provide evidence of the claims individually and disclose the assignment to third party purchasers with the request to pay to us up to the amount of our claims. We are also entitled to notify the subsequent purchaser of the assignment ourselves at any time and to collect the claim.

However, we shall not request the customer to collect the claims or to disclose the assignment, shall not collect the claim ourselves and shall not disclose the assignment itself as long as the customer duly fulfills his payment obligations to us.

- 7.7. The client is obliged to inform us immediately of any enforcement measures by third parties against the security interests.
- 7.8. The customer is obliged to insure the goods in our ownership by way of security sufficiently against the risk of fire and theft as far as possible and to assign the claims against the insurer and the damaging party to us upon request.
- 7.9. At the request of the client, the securities to which we are entitled in accordance with the above provisions shall be released to the extent that their value exceeds the claims to be secured by more than 10%.
- 7.10. In the event that third parties assert rights to the collateral, the client hereby undertakes to hand over all necessary documents to us immediately and to reimburse us for any intervention costs incurred, insofar as the intervention is successful and enforcement against the third party as debtor has been attempted in vain.
- 7.11. All our claims, including those arising from other contracts, shall become due immediately, even in the event of deferral, as soon as the client culpably defaults on the fulfillment of other, not insignificant obligations to us, ceases payments, is over-indebted, insolvency proceedings are opened against its assets or the opening of such proceedings is rejected due to lack of assets.

In such a case, we shall be entitled to refuse any outstanding deliveries and services and to set the customer a reasonable deadline within which he must, at his discretion, effect payment or provide security concurrently with our service or delivery. After unsuccessful expiry of the deadline, we are entitled to withdraw from the contract.

#### **8. Place of fulfillment and jurisdiction**

- 8.1. If the Client is a merchant, a legal entity under public law or a special fund under public law, the place of jurisdiction for both parties to the contract shall be the Contractor's registered office. The place of performance shall be our registered office, unless warranty claims or claims in connection with the rescission of a contract are concerned.
- 8.2. The laws of the Federal Republic of Germany shall apply to the exclusion of foreign law and the standardized international sales law. The German version of a contract text is authoritative.

#### **9. Employees**

The contractual partner is not permitted to entice away our employees if this is objectionable under competition law, i.e. if this constitutes a violation of Section 4 No. 4 UWG. Our contractual partner shall bear the burden of proof that there are no reprehensible circumstances in terms of competition law, in particular in terms of Section 4 No. 4 UWG. If he does not succeed in proving this, he is obliged to pay the contractual partner a reasonable contractual penalty, which we can determine in accordance with Section 315 BGB. However, the contractual partner is free to have the contractual penalty reviewed for reasonableness in court. The contractual penalty shall amount to at least half of the net monthly salary of the poached employee for each month until the expiry of the notice period for ordinary termination by the employee.

#### **10. Severability clause**

Should any of the aforementioned provisions of these GTC be void, invalid or unenforceable for any reason, the validity of the remaining provisions and the underlying contract shall remain unaffected.