

Standard Terms and Conditions of Sale for Products and Services of MS-Schramberg GmbH & Co. KG

(Updated: 05/2008)

1. Validity of the Terms and Conditions

The legal relationship between the Customer and MS-Schramberg GmbH & Co. KG shall be subject to the terms and conditions set forth below and to any further agreements to be concluded. They are applicable to all our offers, deliveries and services, including information and consulting services.

Any modifications, amendments and additional agreements must be made in writing and require our written confirmation in order to become effective. Any other standard terms and conditions shall not apply even if we have not explicitly objected to them in an individual case.

2. Offers

Our offers are subject to confirmation unless a period of validity has explicitly been agreed.

3. Contracts

Any contracts entered into with us, even if they have been orally concluded by representatives of our company, require our written confirmation, in order to become legally valid.

4. Dates and Deadlines

4.1 Any dates and deadlines indicated for our deliveries and services shall not be binding unless anything else has been expressly agreed in writing. The dates and deadlines shall not start before an agreement on all commercial and technical details has been reached, the customer has provided the information, documents and materials to be procured by him and, as far as payment in advance or a down payment has been agreed, the agreed price or down payment has been paid.

If the Customer has not fulfilled his obligation to cooperate or if he requests any modifications, this shall lead to an adequate adjournment of dates or an adequate extension of deadlines.

4.2 Force Majeure, labour disputes, unrest, measures initiated by public authorities as well as any other unforeseeable, inevitable and serious events shall release us from our obligations to deliver goods or services for the duration of the disturbance and to the extent of the effects thereof. This shall also apply if these events arise at a moment when the fact of default is already given. The Parties are obliged to provide the relevant information immediately as far as this can be reasonably expected. The dates and deadlines shall be adequately modified or extended thereby. This shall also apply if deliveries and services have not been provided by our suppliers in due time or in due form.

4.3 If a date or deadline is not complied with for any other reason, the Customer shall be entitled to request for every full week a compensation of 0.5 per cent, up to a total amount of 5 per cent, of the value of that part of the delivery or service that has been delayed, provided that he can furnish proof that a damage was caused by the delay. Any further claims of the Customer shall be excluded in all cases of delay in the delivery of goods or services, even after an additional period of time granted to us has expired. This shall not apply as far as liability is mandatory, e.g. in cases of deliberate action, gross negligence or injury to life, body or health. This shall not affect the Customer's right to withdraw from the contract once an additional period of time set to us has expired without result. This shall apply accordingly if we withdraw from the contract.

- 4.4 If deliveries or services by release order have been agreed, the release orders for the total quantity or the total volume must be issued within 12 months.
- 4.5 If the Customer is in default of payment, we shall not be obliged to provide any further deliveries or services under the current contract.

5. Prices and Terms of Payment

- 5.1 Our prices are quoted ex works (EXW, Incoterms 2000).
- 5.2 Unless explicitly agreed otherwise (e.g. a framework contract), the prices shall be binding within a period of three months from the original confirmation order. After this period, we shall be entitled to invoice in addition any increases in costs, taking into account the Customer's reasonable interests.
- 5.3 Unless anything else has been agreed in writing, our invoices shall be due for payment with a discount of 2 per cent within 14 days after the invoice date or without any deductions within 30 days.
- 5.4 After 30 days, the fact of default in payment shall be given. If the date of receipt of the invoice is not certain, the Customer shall be in default, at the latest, 30 days after receipt of the delivery or the completion of the service on the basis of the due date determined according to the terms of payment.
- 5.5 If the Customer is in default of payment, we shall be entitled to charge interest on arrears of 7 per cent above the basic interest (ECB). Section 383 of the German Commercial Code (HGB) remains unaffected.
- 5.6 The Customer shall be entitled to offset or retain payments only as far as his counter-claims have been found to be final and conclusive by a court, are uncontested or have been acknowledged by us.
- 5.7 The assignment of any claims of the Customer against us to a Third Party shall require our explicit written consent in order to be effective. Section 354a of the German Commercial Code (HGB) remains unaffected.
- 5.8 If we gain knowledge of a serious deterioration of the Customer's financial situation after the conclusion of the contract (e.g. application for the opening of insolvency or bankruptcy proceedings, unfavourable credit information or default in payment that has occurred in the meantime), we shall be entitled to perform outstanding deliveries or services only against cash in advance or an adequate security, in doing so the dates and deadlines for the deliveries or services being extended accordingly. Notwithstanding the provision of Paragraph 5.4, in this case any existing receivables shall become immediately due for payment, even if a deferment has been granted.

6. Delivery, Passing of the Risk and Quantity Variances

- 6.1 The place of performance shall be the place of delivery in accordance with Incoterms 2000. All risks of loss or damage of the goods shall pass to the Customer with delivery at the place of performance. This shall apply also if partial deliveries are made or if we assume further obligations (e.g. dispatch handling or costs).
- 6.2 In the production of magnets, the quantities produced may vary for production-related reasons. Therefore, we shall be entitled to deliver lower or higher quantities, provided that the Customer has been informed about these variances and his reasonable interests are not impaired thereby. The quantity actually supplied shall be invoiced.

- 6.3 We shall be entitled to provide partial delivery of goods and services, if we inform the Customer in due time that the remaining quantity will be delivered within an adequate period of time and if we have inquired if this is acceptable to the Customer.
- 6.4 If the delivery is delayed for reasons within the Customer's responsibility, the latter shall bear the costs for the unsuccessful delivery attempt and the continued storage of the goods in the factory or at another place of storage which we may choose. The risk shall pass to the Customer once a ready-for-dispatch note has been issued.

7. Production according to Customer's Instructions

- 7.1 The Customer is liable towards us for ensuring that no industrial property rights of any Third Party are violated by the production and delivery of the goods manufactured according to his instructions. If a Third Party asserts property rights against us, we shall be entitled to withdraw from the contract after having heard the Customer, unless the Third Party withdraws its assertion of property rights against us within an appropriate period of time by a written statement. The Customer is obliged to reimburse the costs and the damage we incurred by the assertion of the property rights. In the event of a withdrawal from the contract, the expenditure for the services rendered so far shall be reimbursed by the Customer.
- 7.2 If goods are produced according to drawings, samples and any other instructions given by the Customer, we shall neither provide any warranty nor assume any liability for the suitability of use of the product or for any other defects as far as these circumstances are due to the Customer's instructions.
- 7.3 The Customer shall indemnify us against all and any claims raised by a Third Party on the basis of damage caused by the products as far as these were manufactured according to drawings, samples or any other instructions given by the Customer. This shall also apply to any claims under product liability.
- 7.4 The design documentation, tools, moulds and equipment required for executing the Customer's orders that are developed by us or by a Third Party on our behalf shall be our exclusive property. The Customer shall not have any rights thereto even if he has contributed to or paid for the costs. Unless anything else has been agreed in writing or any permissions need to be obtained on the basis of relevant agreements, we shall be entitled to destroy the tools, moulds and equipment five years after the Customer's last order.
- 7.5 We reserve all property rights and copyrights as well as any further industrial property rights to all documents provided and made available to the Customer. It shall not be admissible to make them available to any Third Party or to exploit them commercially and they shall be immediately returned to us, including all copies or duplicates thereof, when we request this.

8. Provisions by the Customer

If the Customer provides any parts, materials or any other substances for the execution of his order, the Customer shall be responsible for their suitability. Unless explicitly agreed otherwise, we shall not perform any incoming goods inspections or tests for suitability. If the parts, materials or other substances provided by the Customer are unsuitable, unusable or inappropriate for the intended use and this is not evident to us, any claims for warranty or liability towards us shall be excluded. Furthermore, the Customer shall reimburse any damage caused by the fact that the parts, materials and substances are unsuitable, unusable or inappropriate for the intended use as well as any additional expenses required in this context.

9. Technical Modifications

Unless explicitly agreed otherwise, we reserve the right to effect modifications that are technically required or advisable (in particular modifications of design, selection of materials, specification) as far as the Customer has been informed about these modifications in advance and his requirements and/or interests have been taken into account.

10. Warranty

- 10.1 Any complaints must be reported to us in writing immediately, at the latest however within 2 weeks after receipt of the delivery. Any complaints reported later shall not be considered.
- 10.2 We must be given the opportunity to verify the complaints on site. Any products objected to shall be sent back to us at our request. Return deliveries without our prior consent shall not be admissible. In case of defects of material or production for which evidence can be provided, we shall grant warranty as follows: Products that cannot be used shall, at our option, be taken back at the price invoiced or replaced by new products corresponding to the original order, free of charge ex works, against return of the unusable products. If it is possible to rectify the defects, we shall also be entitled to provide rectification.

11. Other Claims for Damages

- 11.1 In all cases of damage, any claims for damages against us - irrespective of the legal cause -, in particular for the compensation for damage that has not occurred on the delivery item itself, shall be excluded as far as the claims for compensation are not covered by our insurance.
- 11.2 Paragraph 11.1 shall apply accordingly to the models or drawings of any kind provided to us. These objects will not be insured by us against any risks, not even against fire.

12. Reservation of Title

- 12.1 The goods delivered by us shall remain our property until the full purchase price has been paid and until any and all other payments due from the business relationship, also those arising in future, have been settled. The acceptance of bills of exchange or cheques shall be considered as payment only after they have been honoured.
- 12.2 The Purchaser shall not be entitled to pledge or assign by way of security the goods subject to reservation of title to any Third Party. The Purchaser shall procure any documents that are required for us in order to assert our rights in the event of seizures or any other impairment of our rights. The processing of the goods subject to reservation of title shall be made for us, excluding the acquisition of ownership according to Section 950 of the German Civil Code (BGB), without any liabilities arising for us. If the goods subject to reservation of title are processed, combined or intermixed with objects not belonging to us, we shall acquire co-ownership in the intermediate or final products proportionally to the value of the purchase price of our goods as against the value of the whole products. The new products shall be preserved for us.
- 12.3 The Purchaser shall be entitled to sell the products subject to reservation of title and the products created therewith in the ordinary course of business, if he, in turn, reserves the title with conditions corresponding to our reservation of title. Already now, the Purchaser assigns to us the claims towards his buyers from the resale, including any ancillary rights for securing the payments due to us. If the goods subject to reservation of title are sold after processing or together with other goods from other suppliers, the share of the claims towards the buyer that corresponds to the purchase value of our goods used for the delivery as against the sales price shall be assigned to us.

12.4 The Purchaser shall be entitled to collect the assigned payments so long as he meets his payment obligations towards us. At our request, the Purchaser shall inform us about his customers and submit any documents required for asserting our rights. In case of default in payment or cessation of payment, we shall be entitled to collect the assigned claims ourselves and to have the Customer's business documents inspected by a Third Party obliged to secrecy so that our claims can be determined. If the securities we are entitled to exceed our claims by more than 25 per cent, we shall release securities corresponding to the exceeding amount at our option when requested to do so by the Purchaser. In composition proceedings of the Purchaser, we shall not be subject to the blocking period as laid down in Section 28 of the rules for composition proceedings.

13. Confidentiality

13.1 The Parties agree to keep in confidential all commercial and technical details, that are not obvious, they disclose to each other in the framework of the business relationship.

13.2 Drawings, models, templates, samples and similar items must not be provided to or made otherwise accessible to any Third Party. The said items may only be reproduced as far as this is necessary for operational requirements and provided the copyright rules are complied with.

13.3 The Parties shall make sure that their other business partners will also be bound by secrecy.

14. General Provisions

14.1 If one provision of these Terms and Conditions of Sale is or becomes ineffective, this shall not affect the validity of the remaining provisions. The Parties shall be obliged to replace the invalid provision by another provision which comes closest to the economic purpose of the original one.

14.2 The Law of the Federal Republic of Germany shall apply exclusively. Application of the UN Convention on Contracts for the International Sale of Goods (CISG) shall be excluded.

14.3 The place of performance is Schramberg. The exclusive legal venue shall be the Local Court (Amtsgericht) Oberndorf am Neckar.