

# General Terms and Conditions for Sales and Delivery of AGST Draht & Biegetechnik GmbH

## I. Conclusion of contract

1. The following terms and conditions apply to all our offers, deliveries and services, including consultancy and advice. Unless expressly agreed otherwise, they shall also apply to all future business relations with Customers, even if we do not expressly refer to them again when concluding the contract. The buyer's terms and conditions of purchase are hereby contradicted.

2. Terms and conditions other than these shall not apply, even if we do not expressly object to them. Supplements, amendments or additional agreements to these terms and conditions require our written confirmation in order to be effective. This also applies to the waiver of the written form requirement.

3. Our offers are subject to confirmation. A contract shall only be concluded when we confirm the Customer's order in writing or execute the delivery or service on order without separate confirmation. Silence in response to such an order does not constitute automatic acceptance.

4. The use of an electronic signature according to the respective state of the art and in accordance with the legal provisions for this is permissible for the effective conclusion of a contract or amendment to a contract and replaces the written form requirement.

## II. Dates and deadlines

1. Stated dates and deadlines for our deliveries and services are non-binding unless expressly agreed otherwise in writing. The deadlines shall not commence until agreement has been reached on all details of the execution, the Customer has provided the information, documents and materials to be procured by him and - insofar as advance payment or prepayment has been agreed - has paid the agreed price or the prepayment. Omitted acts of cooperation as well as change requests by the Customer shall lead to an appropriate postponement of the dates or extension of the deadlines.

2. The date of dispatch ex works shall be decisive for compliance with the delivery dates and periods.

3. In the case of contracts with continuous delivery, call-offs and schedules for approximately equal monthly quantities shall be issued to us; otherwise we shall be entitled to make the determinations ourselves at our reasonable discretion. If the individual call-offs exceed the contractual quantity in total, we shall be entitled but not obliged to deliver the excess quantity. We may charge for the excess quantity at the prices valid at the time of the call-off or delivery.

4. Continuing obligations shall commence upon signature or at the point in time designated in the respective contract as the beginning of the continuing obligation and shall apply - unless otherwise agreed - for a period of 12 months. The continuing obligation shall be extended by a further 12 months in each case unless one party terminates the contract in writing three months before the expiry of the contract term. The right to extraordinary termination for good cause shall remain unaffected. Good cause shall be deemed to exist in particular in the event of an application for the opening of insolvency proceedings against the assets of the purchaser, the purchaser's default in payment of more than one month and the infringement of property rights and/or copyrights as well as the infringement of confidentiality obligations by the purchaser.

5. Unforeseeable and unavoidable events (e.g. war, war-like conditions, shortage of energy or raw materials, sabotage, strike, natural and other disasters, pandemic situations) as well as all other operational disruptions or official influences for which we are not responsible shall release us from the obligation to deliver and perform for the duration of their existence, even if they occur during an already existing delay. As a result, deadlines and dates shall be extended to a reasonable period of time. This shall also apply to late or improper deliveries or services on the part of our suppliers for which we are not responsible. The contractual partners are obliged to provide the necessary information without delay within the scope of what is reasonable and to adapt their obligations to the changed circumstances in good faith.

6. In the event of non-compliance with the deadline for other reasons, the Customer may - insofar as he has demonstrably suffered damage as a result of the delay - demand compensation for delay of 0.5 of hundred for each full week of delay up to a total of 5 of hundred of the value of that part of the delivery with which we are in default. Any further claims of the Customer are excluded in all cases of delayed delivery, even after expiry of a period of grace granted to us. This shall not apply if liability is mandatory, e.g. in cases of intent, gross negligence or injury to life, body and health. The Customer's right to withdraw from the contract after the fruitless expiry of a grace period granted to us remains unaffected. The same applies to a withdrawal by us.

## III. Prices and terms of payment

1. Unless otherwise agreed, our prices are net prices FCA, INCOTERM 2020, plus statutory VAT.

2. Unless expressly agreed otherwise in writing, all payments shall be due 14 days after dispatch of the delivery and invoicing to the Customer and shall be made without deduction free of charge to the specified payment office. The date of receipt of payment shall be decisive for redemption. Bills of exchange and cheques are only accepted on the basis of a corresponding agreement and only on account of performance. In these cases, redemption shall only occur when we can finally dispose of the respective amount. All bill of exchange, cheque and discount charges as well as all other costs shall be borne exclusively by the Customer.

3. Default of payment occurs 30 days after the due date and receipt of the invoice. If the time of receipt of the invoice is uncertain, the debtor shall be in default at the latest 30 days after receipt of the consideration and the due date determined on the basis of the payment term.

4. If the Customer defaults on a payment, we shall be entitled, at our discretion, to charge default interest in the amount of 9 percentage points above the base interest rate (ECB), but at least 9% per annum (e.g. in the case of a negative base interest rate) or compensation for the precisely calculated damage incurred by us as a result of the delay.

Furthermore, we reserve the right to charge a lump sum in the amount of 40.00€. § Section 353 HGB remains unaffected.

5. The Customer shall only have a right of set-off or retention insofar as counterclaims have been legally established, is undisputed or has been acknowledged by us.

6. The assignment of all claims of the Customer against us to third parties requires our express written consent in order to be effective. The provisions of § 354a HGB remain unaffected.

7. If, after the conclusion of a contract, we become aware of a significant deterioration in the financial circumstances of the Customer (e.g. application for the opening of insolvency proceedings, unfavourable credit information or in the event of payment arrears in the meantime), we shall be entitled to carry out outstanding deliveries or services only against prepayment or the provision of appropriate security, in which case any delivery or service deadlines shall be extended or dates postponed accordingly. In this case, we are also entitled to withdraw from the contract without the Customer being entitled to compensation. If we have already delivered, we may, notwithstanding no. 3, demand immediate payment of our invoice.

8. The statutory provisions on default of payment shall remain unaffected.

## IV. Delivery and transfer of risk

1. The place of performance is the place of delivery in accordance with INCOTERM, depending on the respective plant in which the delivery items are manufactured. The risk of accidental loss or accidental deterioration of the goods shall pass to the Customer upon delivery from the place of performance. This shall also apply if partial deliveries are made or if we have to provide other services (e.g. shipment handling or shipping costs). The goods are delivered unpacked and not protected against rust.

2. We are entitled to make partial deliveries and provide partial services if we notify the Customer in good time that the remaining quantity will be delivered within a reasonable period and this is reasonable for the Customer upon request.

3. If delivery is delayed for reasons for which the Customer is responsible, he shall bear the costs for the unsuccessful offer as well as for the further storage in the delivery plant, or a storage location of our choice. In these cases, the risk of accidental loss or accidental deterioration shall pass to the Customer upon notification of readiness for dispatch or expiry of the agreed delivery date.

## V. Manufacture according to the Customer's instructions

1. In the case of manufacture in accordance with Customer drawings, samples and other instructions of the Customer, we shall not assume any liability for the functional defects, insofar as these circumstances are based on the Customer's warranty and liability.

2. The Customer shall indemnify us against all claims by third parties for damage caused by the products, insofar as these are based on Customer drawings, samples and other instructions by the Customer. This also applies to claims arising from product liability.

3. The Customer warrants to us that the manufacture and delivery of the goods manufactured according to his instructions do not infringe the industrial property rights of third parties. In the event of third parties asserting industrial property rights against us, we shall be entitled to withdraw from the contract after hearing the Customer, unless the third party withdraws from the assertion of the property rights within a reasonable period of time by means of a written declaration to us. The Customer shall be obliged to compensate us for the damages and costs arising from the assertion of the property rights. In the event of withdrawal, the work performed on the product or service to date shall be reimbursed in accordance with our invoicing.

4. The moulds, tools and design documents required for the execution of the order by us or on our behalf for the execution of the order are exclusively our property. The Customer shall not be entitled to any claims in this respect, even if he has contributed to the costs for the production of the moulds, tools and construction documents. We are entitled to destroy the corresponding moulds, tools and construction documents at the latest 5 years after the execution of the last Customer order if no other written agreements have been made or if corresponding approvals have to be obtained on the basis of agreements.

5. We retain ownership, copyright and other industrial property rights to all documents provided to the Customer. They may not be made accessible to third parties or used commercially and must be returned to us immediately upon request together with all copies and transcripts made.

## VI. Provisions by the Customer

If parts, material or other substances are provided by the Customer for the execution of his order, the Customer shall be responsible for their suitability. Therefore, unless expressly agreed otherwise in writing, we do not carry out an inspection of incoming goods and a suitability test. If the materials provided by the Customer are unusable or unsuitable for the order, and if this is not obvious to us, the Customer shall have no warranty or liability claims in this respect. Furthermore, the Customer shall compensate us for any damage caused by the uselessness or unsuitability of the materials after our invoicing and to reimburse any additional expenses incurred.

## VII. Technical changes and quantity deviations

1. Unless expressly agreed otherwise, we reserve the right to make technically necessary or expedient changes (in particular to the design, choice of materials, specifications, etc.), provided that the Customer has been informed of these changes in advance and that his interests have been taken into account.

2. There may be fluctuations in the output of the goods for technical reasons. We are therefore entitled to make excess or short deliveries, insofar as these deviations have been communicated to the Customer and are reasonable taking into account the Customer's interests. The actual delivery quantity will be invoiced.

# General Terms and Conditions for Sales and Delivery of AGST Draht & Biegetechnik GmbH

## **IIX. Warranty and incoming goods inspection**

1. Within the scope of the following provisions, we warrant that the products delivered and services rendered are not afflicted with defects at the time of the transfer of risk of the delivery or service which nullify or more than insignificantly reduce the value or suitability for the customary use or the use assumed under the contract. All those products or services which show a material defect within the limitation period - irrespective of the period of operation - shall, at the Supplier's discretion, be repaired, redelivered or provided again free of charge, provided that the cause of the defect already existed at the time of the passing of risk. We do not provide any warranty for wear and tear due to normal use and defects caused by improper use and handling or storage as well as non-compliance with the manufacturer's assembly or operating instructions. The right of warranty expires both in the case of improper handling by the Customer or by third parties commissioned by the Customer.

2. Unless expressly agreed otherwise in writing, all information about our products, in particular illustrations, drawings, technical information and references to standards and specifications contained in our offers and brochures, do not constitute guarantees of quality and/or durability within the meaning of § 434 of the German Civil Code (BGB), but are only descriptions or identifications. The same applies to the delivery of samples or test pieces.

3. The Customer must inspect the goods immediately after delivery, even if samples or specimens were previously provided, and notify us immediately in writing of any defects or deviations in quantity detected. Otherwise, the goods shall be deemed to have been approved, unless the defects were not recognisable during the inspection. If an acceptance of the goods or an initial sample inspection has been agreed, the notification of defects which the partner could have detected during careful acceptance or initial sample inspection shall be excluded. In the event of complaints, the buyer shall immediately give us the opportunity to inspect the goods complained about; on request, the goods complained about or a sample thereof shall be made available to us at our expense. In the event of unjustified complaints, we reserve the right to charge the purchaser for freight and handling costs as well as the costs of inspection.

4. The warranty period shall be 12 months and shall commence at the time the products are handed over to the Customer at the place of performance, at the latest upon delivery to the Customer. Insofar as work performances, including work deliveries of non the subject matter of the contract, the warranty period shall commence on the date of acceptance within the meaning of § 640 of the German Civil Code (BGB).

5. We shall bear the costs incurred for the purpose of rectifying the defect (in particular transport, travel, labour and material costs). Insofar as the expenses increase due to the fact that the items have been moved to a different delivery to a place other than the Customer's place of delivery, the Customer shall bear the additional costs, unless the transfer corresponds to the intended use. In the event of rectification, the Customer must enable us to do so without delay and to make the rejected goods available to us for inspection and processing.

6. The costs arising from any unjustified notices of defects shall be borne by the Customer. Fixed-rate charges for notices of defects by Customers shall not be accepted.

7. If the repair or replacement delivery fails, the Customer is entitled to demand a reduction of the remuneration or to withdraw from the contract, without prejudice to any claims for damages.

8. Claims for defects do not exist in the case of only insignificant deviation from the agreed quality and in the case of only insignificant impairment of usability.

9. Liability for a specific purpose or a specific suitability is only assumed insofar as this is expressly agreed; otherwise, the risk of suitability and use is exclusively incumbent on the purchaser.

10. Insofar as we act as a supplier of materials and parts to our Customers, we are not subject to any liability pursuant to § 478 of the German Civil Code (BGB).

11. Unless otherwise stipulated in these Terms and Conditions of Sale and Delivery, further claims are excluded.

12. For the products supplied by us, we generally issue excerpts from the test certificates in accordance with EN 10204. If the manufacturer's original acceptance test certificate is required, this is only part of the contract if our order confirmation contains the same wording.

## **IX. Retention of title**

1. The goods shall remain the property of the Seller until full payment of all claims arising from the business relationship, including ancillary claims, claims for damages and encashment of cheques and bills of exchange.

2. The retention of title shall also remain in force if individual claims of the Seller are included in a current account and the balance is drawn and recognised.

3. If the buyer defaults on payment and if this indicates a risk to the feasibility of a not insignificant part of our claim, we shall be entitled to prohibit the further processing of the delivered goods, to take back the goods and, if necessary, to enter the Customer's premises for this purpose.

4. If goods subject to retention of title are processed by the buyer to form a new movable item, the processing shall be carried out for the Seller without the Seller being obliged as a result. The new item becomes the property of the Seller. In the event of processing, mixing or blending with goods that do not belong to the Seller, the Seller shall acquire co-ownership of the new item in the ratio of the factor values of its reserved goods to the total value.

5. The buyer shall only be entitled to resell, process or install the goods subject to retention of title subject to the following provisions and only subject to the proviso that the claims pursuant to section 7. are also actually transferred to the Seller and provided that the

Seller retains the title and provided that he equally reserves title in accordance with the provisions of this section.

6. The buyer's authorisation to sell, process or install goods subject to retention of title in the ordinary course of business shall end upon revocation by the Seller as a result of a sustained deterioration in the buyer's financial position, but at the latest upon the buyer's suspension of payments or upon the filing of an application for or the opening of insolvency proceedings against the buyer's assets.

7.a. The buyer hereby assigns the claim with all ancillary rights from the resale of the reserved goods - including any balance claims - to the Seller.

7.b. If the goods have been processed, mixed or blended and the Seller has acquired co-ownership in the amount of his invoice value, he shall be entitled to the purchase price claim in proportion to the value of his rights to the goods. If goods subject to retention of title are installed by the buyer in a property/building, the buyer hereby assigns the resulting claim for payment or from the resale of the property/building in the amount of the invoice values of the goods subject to retention of title with all ancillary rights, including the right to grant a security mortgage with priority over the rest.

7.c. If the buyer has sold the claim within the scope of genuine factoring, the Seller's claim shall become due immediately and the buyer shall assign the claim against the factor taking its place to the Seller and shall immediately forward its sales proceeds to the Seller. The Seller accepts this assignment.

8. The buyer is authorised to collect the assigned claims as long as he meets his payment obligations. The authorisation to collect shall expire upon revocation, but at the latest in the event of default of payment by the buyer or in the event of a significant deterioration of the buyer's financial circumstances. In this case, the Seller is hereby authorised by the buyer to inform the purchasers of the assignment and to collect the claims himself. The buyer is obliged to provide the Seller a precise list of the claims to which the buyer is entitled with the names and addresses of the buyers, the amount of the individual claims, the invoice date, etc. and to provide the Seller with all information necessary for the assertion of the assigned claims and to permit the verification of this information.

9. If the value of the collateral existing for the Seller exceeds its total claims by more than 20%, the Seller shall be obliged to release collateral of its choice to this extent at the request of the buyer or of a third party adversely affected by the Seller's excessive collateral.

10. Pledging or transfer by way of security of the reserved goods or the assigned claims is not permitted. The Seller must be informed immediately of any pledges, stating the pledgee.

11. If the Seller repossesses the delivery item on the basis of the reservation of title, this shall only constitute a withdrawal from the contract if the Seller expressly declares this. The Seller may satisfy his claims from the repossessed goods subject to retention of title by unrestricted sale.

12. The buyer shall store the reserved goods for the Seller free of charge. He shall insure them against the usual risks such as fire, theft and water to the customary extent. The buyer hereby assigns to the Seller his claims for compensation to which he is entitled from damages of the above-mentioned kind against insurance companies or other parties obliged to pay compensation, in the amount of the invoice value of the goods. The Seller accepts the assignment.

13. All claims as well as the rights arising from the retention of title to all special forms stipulated in these terms and conditions shall remain in force until full release from contingent liabilities which the Seller has entered into in the interest of the buyer.

## **X. Other claims for damages**

1. Claims for damages by the Customer, irrespective of the legal grounds, in particular due to breach of obligations arising from the contractual obligation and from unauthorised action, are excluded. We are therefore not liable for damage that has not occurred to the delivered goods themselves. In particular, we shall not be liable for loss of profit or other financial losses of the Customer.

2. This shall not apply in cases in which we or our vicarious agents are guilty of intent or gross negligence. The exclusion of liability shall also not apply in cases in which we or our vicarious agents are compulsorily liable due to injury to life, body or health or due to the assumption of a guarantee for the existence of a characteristic. In the event of a breach of essential contractual obligations, the fulfilment of which the Customer may particularly rely on, we shall also be liable in cases of slight negligence.

3. In the event of a slightly negligent breach of material contractual obligations as well as in the event of intent and gross negligence on the part of such employees and other vicarious agents who are not executive employees, we shall only be liable to the extent of the typically foreseeable damage, taking into account all relevant and recognisable circumstances.

4. Liability under the Product Liability Act remains unaffected. A change in the burden of proof to the detriment of the Customer is not associated with the above provisions.

5. Irrespective of the cause of the damage, the Customer is obliged to mitigate the damage. If he does not comply with this obligation, his claim shall be reduced by that part which he could have prevented through appropriate measures.

6. Insofar as our liability is excluded or limited, this shall also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents.

## **XI. Other**

1. Our contracts and these General Terms and Conditions of Sale for Deliveries and Services of AGST Draht & Biegetechnik GmbH shall be governed by German law to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG).

# General Terms and Conditions for Sales and Delivery of AGST Draht & Biegetechnik GmbH

2. The possible invalidity of individual provisions of these Terms and Conditions of Sale shall not affect the validity of the remaining provisions. Any ineffective provisions shall be replaced by the contracting parties with provisions that come as close as possible to the ineffective ones in terms of their purpose.

3. The exclusive place of jurisdiction for all disputes arising from and in connection with this contract is the registered office of AGST Draht & Biegetechnik GmbH. However, we are also entitled to choose another place of jurisdiction.

4. In the case of cross-border deliveries, German law shall apply exclusively.

Engelskirchen, 23.10.21

