

**§ 1
General / Scope**

- (1) All deliveries and benefits underlie these terms as well as possible separate contractual agreements. Different terms of purchasing of the purchaser do also not become subject matter of contract with order acceptance, unless the supplier has agreed to this separately in written form.
- (2) The supplier reserves to himself the property and copy right for samples, illustrations, drawings and similar things – in electronic form also – they must not be available for third persons. It is not allowed to the purchaser to make copies of documents and objects which are reserved with property and copy rights.
- (3) The supplier commits himself, not to make any information and documents available to third persons, which are referred to as confidential by the purchaser, without his agreement.
- (4) Price lists, which are handed over or sent by the supplier, are regarded as submittal of quotation. All quotations are subject to change without notice with regard to prices and possibility of delivery, subject to prior sales.
- (5) Concerning the construction of the standard tools, the catalogue details of the supplier are considered, which however are subject to a further technical development. Changes through the further development do not authorize the purchaser to complaints.
- (6) Verbal additional agreements do not exist. Changes need to be in written form in order to obtain validity.
- (7) With the new edition of this catalogue, the validity of our catalogue drilling 2006/07 „precision tools in solid carbide, diamond and cermet for drilling – countersinking – reaming“ will expire.

**§ 2
Acceptance of an order**

- (1) For want of special agreement a contract is accomplished with the order confirmation of the supplier in written form or with the delivery of the goods. The purchaser is liable for the correctness of the documents such as drawings, samples, models, templates and the like which he has to provide to the supplier. If no clear construction tolerances emanate from the drawings or the order of the purchaser, the supplier manufactures according to his experiences and norms which are usual in a line of business respectively within the tolerance limits given from the particular production process.
- (2) The supplier reserves to himself over- and under-deliveries on special tools of about 10% of the quantity, at least however at small quantities up to 4 pieces = 1 piece, from 5 pieces to 11 pieces = 2 pieces and from 12 pieces to 29 pieces = 3 pieces.
- (3) On tools made to order the minimum order value amounts to € 400,- concerning the charging of discounts on the catalogue items. Tools made to order wont be taken back by the supplier unless the good is defective.
- (4) The minimum net invoice value is € 60,-. Is the order value less than € 60,- the supplier is entitled to charge a mark-up for small-volume purchases of € 20,- lump-sum.
- (5) In case of a cancellation or return shipment we will invoice the pending costs, but at least € 40,-.

**§ 3
Price and payment**

- (1) The prices are without engagement and are valid for want of special agreements ex works exclusive of packing, dispatch, insurance as well as customs and customs additional costs. The fees for post and express deliveries are being charged separately. The dispatch occurs on account and risk of the purchaser. On the prices the sales tax in the particular compulsory level is being added separately.
- (2) For want of special agreements the payment has to be made without any deduction within 30 days free of costs to an account of the supplier. Payments to a representative of the supplier without whose presentation of a collecting power are illegal.
- (3) If nothing else is agreed, the supplier is entitled to correct the agreed prices accordingly in case of increase in price of material and raw material prices as well as the manufacturing costs between the contract conclusion and the delivery.
- (4) The right of holding back payments or accumulating counterclaims has the purchaser only insofar, as his counterclaims are unquestioned and legally assessed or accepted by us.
- (5) Payments by bill of exchange or cheque are only accepted on special agreement and when rediscountable, and when the customer always pays immediately in cash, the costs arising, in particular, discount, exchange and stamp costs and bank charges. If bills of exchange and cheques are accepted in payment credit is granted subject to their being honoured.
- (6) In case of delayed payment the supplier charges interest for delay in the amount of 3% above the particular discount rate of the German Federal Bank. The assertion of further damage caused by delay is not excluded through this.

**§ 4
Delivery time, purchase and transfer of risks**

- (1) The delivery time indications of the supplier result from the best discretion but without any binding character. They result from the agreements of the parties to the contract and assume for the supplier for its compliance, that all commercial and technical questions between the parties to the contract are cleared and that the purchaser has fulfilled all of his incumbent obligations such as adduction of approvals or required official certificates. The same is valid when as payment of the purchaser a down payment was agreed. If this is not the case, the delivery time will extend adequately. This is not valid as far as the supplier is responsible for the delay.
- (2) The compliance of the delivery date is subject to correct and accurately timed self-delivery. The supplier informs about delays which become apparent as soon as possible. If delivery dates are culpably exceeded by the supplier, the purchaser is obliged to set an adequate extension of time with menace of rejection in written form; this has to be addressed to the company management and must be confirmed by it. After an effectless expiry of the extension of time the purchaser is able to cancel the contract. This arrangement is not valid for parts with special design. The purchaser is only entitled to claims for damages against the supplier because of default if the delay can be put down to willful intention or gross negligence. The limitation of liability is not valid if in special cases the date is fixed by contract.
- (3) Is the breach of the delivery time to put down on act of God, industrial conflicts or other occasions, which are outside the sphere of the supplier, the delivery will extend adequately. The supplier will inform the purchaser about the beginning and the end of such circumstances as soon as possible.
- (4) Is the dispatch of the delivery item delayed because of reasons for which the purchaser is responsible for, he will be charged with the costs arisen by the delay from – starting one month after notice of readiness for dispatch. Is the dispatch delayed on request of the purchaser, the supplier is entitled to dispose of the delivery item ulterior after an appointment of a date and effectless expiry of an adequate period of time and to supply the purchaser with appropriate extension of time. The same is not valid for special designs. In this case the supplier is entitled to assert full claim for damages because of non-acceptance of the goods.
- (5) The delivery time is regarded as kept if the delivery item has left the suppliers company until its expiry or the readiness for dispatch was advised.
- (6) The risk passes to the customer in the moment when the delivery item has left the suppliers company, also in fact if partial shipments take place or the supplier has taken over any other services e.g. the dispatch costs or something like that. The customer is not allowed to refuse the purchase in case of a not substantial fault. If the dispatch delays or is omitted due to circumstances which can not be accused to the supplier, the risk passes to the customer from the day of the notice of readiness for dispatch on. The supplier commits himself to effect the required insurances on special request and for the account of the customer, which he is requesting for.

**§ 5
Retention of title**

- (1) The supplier reserves the right of ownership on the delivery item until all receivables of the supplier against the purchaser out of the business connection are balanced, including the in future up coming receivables also from concluded contracts of the same or a later time. This is also valid when several or all receivables of the supplier were added to a current invoice and the balance was stricken and accepted. For the case that the purchasers behaviour is contrary to contract especially in case of delayed payment, the supplier is entitled to take the delivery items back after dunning and the purchaser is committed to give the items out. Because of the retention of title the supplier is only able to reclaim the delivery item if he has withdrawn from the contract. In case of garnishments and other interferences of third persons, the purchaser has to inform the supplier immediately.
- (2) The supplier is entitled to resell the delivery item in the ordinary course of business. However, he already has to assign all claims to the supplier now, which have accrued because of the resale against the buyer or against third persons. The purchaser is authorised to collect this receivable also after the assignment. The authority of the supplier to collect the receivable by himself is untouched by this. However the supplier commits himself not to collect the receivable as long as the purchaser fulfils his payment obligations properly, the collecting authority is not cancelled or no request for opening of insolvency proceedings is placed. Otherwise the supplier is able to ask the purchaser to announce the assigned receivables and their debtors and to give all required information for the collection, to hand out the appropriate documents and to inform the debtor of the assignment as far as the supplier has not already informed him. Is the delivery item being sold together with other goods which do not belong to the supplier, the receivable of the purchaser against the buyer in the amount of the agreed delivery price of the supplier and the purchaser is regarded as assigned. An eventual processing or deformation of

the delivered goods by the purchaser is regarded as made for the supplier. If goods are being processed with other items which do not belong to the supplier, the supplier acquires the coownership of the new item in proportion of the value of the delivered goods to the other processed items at the time of the processing. For the produced items incidentally the same is valid as for the goods which were delivered under reserve.

- (3) The purchaser must neither mortgage the delivery item nor to assign it by security.
- (4) The supplier is entitled to insure the delivery item at the expense of the purchaser against theft, breakage, fire, water and other damages, unless the purchaser has not demonstrably effected the insurance by himself.
- (5) When cohesively to the payment of the sales price by the purchaser a liability by bill of exchange of the supplier is constituted, the retention of title including its agreed special forms or other securities which are agreed to secure payment, will not expire before the bill of exchange is discharged by the purchaser as drawee.
- (6) The request for opening of the insolvency proceedings entitles the supplier to withdraw from the contract and to insist on the immediate return of the delivery item.

**§ 6
Claims because of defects**

For defects of items and title concerning the shipment, excluding further claims and under reserve of liability according to § 7, the supplier guarantees as follows:

Defects of items

- (1) All those parts which turn out to be defective because of circumstances that happened before the transfer of perils, are to be repaired free of charge at supplier's option or to be replaced with parts without defects. The ascertainment of such defects has to be announced to the supplier immediately in written form. Replaced parts become property of the supplier.
- (2) For making all rectifications of defects and replacements which seem to be necessary for the supplier, the purchaser has to give him the required time and chance after agreement; otherwise the supplier is freed of the liability for any consequences which arise out of it. Only in urgent cases of danger of the operating safety respectively for blocking of relative great damages, in which the purchaser has to be informed immediately, the purchaser has the right to correct the defect by himself or by thirds and to demand damages of the supplier for the required expenses.
- (3) Of the direct cost which arose because of the rework or replacement delivery, the supplier bears the costs of the replacement piece including the despatch – as far as the complaints turn out as authorized.
- (4) The purchaser has a right to cancel the contract within the scope of the legal regulations, if the supplier lets the set adequate time limit for rework and replacement delivery because of a defect elapse effectless, under consideration of the legal exceptional cases. When there is only an irrelevant defect, the purchaser has solely the right of a price decrease. This right of price decrease is in other respects excluded.
- (5) Particularly in the following cases no warranty will be assumed: unsuitable or faulty usage, incorrect start-up or use by the purchaser or thirds, wear and tear, faulty or careless treatment, non-duly maintenance, the use of unsuitable equipment as well as chemical, electrochemical or electrical influences, as far as the supplier has not to take the responsibility for them. For defects of the material which was delivered by the purchaser, the supplier is only liable if he should have noticed the defects by the use of workmanlike carefulness.
- (6) When the production is according to the drawing of the purchaser, the supplier is only liable for the accomplishment as per drawing.
- (7) If the purchaser or a third person reworks in a faulty way, there is no liability of the supplier for the results which arise out of it. The same is valid for made changes of the delivery item without previous agreement of the supplier.

Defects of title

- (8) If the usage of the delivery item results in an infringement of the industrial property rights or copyright in the inland, the supplier will basically redress the further usage for the purchaser or he will modify the delivered item in a way which is reasonable for the purchaser at his own expenses so that the infringement of the property rights does not exist any longer. For the case that this is not possible by economically adequate circumstances or in an appropriate time period, the purchaser is entitled to cancel the contract. Provided that the mentioned case happens, the supplier is entitled to cancel the contract, also. Furthermore the supplier will release the purchaser of indisputable and legally determined claims of the concerned property right owner.
- (9) The obligations of the supplier mentioned in § 6 paragraph 8 are concluding under reserve of § 7 paragraph 2 for the case of the infringements of property right or copyright. They are only existing if:
 - a) the purchaser informs the supplier immediately about asserted infringements of property right or copyright
 - b) the purchaser supports the supplier with the blocking of asserted claims in an adequate scale respectively enables the supplier to execute the modification measurements according to § 6 paragraph 8,
 - c) all blocking measurements including extra-judicial regulations remain preserved to the supplier
 - d) the defect of title is not based upon instruction of the purchaser and
 - e) the infringements of right is not caused thereby, that the purchaser has modified the delivery item on his own authority or has used it in a non-conventinary way
 - f) The purchaser assumes the sole responsibility for the documents which have to be brought by him, such as drawings, templates, samples and suchlike. The purchaser has to vouch for it, that construction drawings which he provided, will not interfere in property rights of a third party. The supplier is opposite to the purchaser not obliged to verify, if any property rights of third persons were injured by the submittal of quotation because of its sent design. When there results a liability of the supplier out of claim-causal facts anyway, the purchaser has to reimburse him.

**§ 7
Liability**

- (1) If the delivery item can not be used contractually because of the fault of the supplier due to refrained or faulty design of suggestions and advices which are made before or after the conclusion of the contract or by the infringement of other contractually additional obligations – particularly instruction for handling and usage of the item – the regulations of §§ 6 and 7 paragraph 2 are accordingly valid excluding further claims of the purchaser.
- (2) For damages which did not come into existence at the delivery item itself, the supplier is only liable – for what reasons ever –
 - a) in case of intention
 - b) in case of gross carelessness of the owner respectively of the agencies or executive employees
 - c) in case of culpably injury of life, body and health
 - d) in case of defects, which he has fraudulent concealed or whose absence was guaranteed by him.
 - e) in case of defects of the delivery item as far as somebody is liable according to product liability law for damages to persons and of property for privately used items.

In case of culpable injury of substantial contractual obligations the supplier is not either liable in case of gross carelessness and in case of slight negligence, in this last case it is limited to the contract typical, reasonably predictable damage. Further claims are excluded.

**§ 8
Limitation of time**

- (1) All claims of the purchaser – for what justiceable reasons ever – prescribe in 12 months. For claims for damages according to § 7 paragraph 2a-e the legal periods of time are valid.

**§ 9
Use of software**

- (1) As far as there is software included in the delivery, the purchaser is entitled to a non-excluding right, to use the delivered software including its documentation. It is left for usage on the delivery item which is determined for it. A usage of the software on more than one system is forbidden. The purchaser is only allowed to clone, adapt, translate the software in the legally acceptable scope or commute the object code in the resource code. The purchaser commits himself not to remove or modify indications of the manufacturer without the explicit prior agreement of the supplier – particularly copyright notations. All other rights concerning the software and documentations including the copies remain with the supplier respectively the software supplier. The awarding of sublicenses is not allowed.

**§ 10
Applicable right/ Place of jurisdiction/ Miscellaneous**

- (1) For all privities of contract between the supplier and the purchaser, the relevant right of the Federal Republic of Germany, for privities of contract of domestic parties among themselves, is solely valid, too.
- (2) Place of jurisdiction is the court which is responsible for the domicile of the supplier. The supplier however is entitled to file suit at the headquarters of the purchaser. If goods and services have to be rendered by the supplier outside the national territory of the Federal Republic of Germany, so German law applies also. The use of the UN - purchasing law (Agreement of the United Nations about contracts for the international sale of goods - CISG-) is excluded.