

- 1. Contract conclusion and content**
- 1.1 Our offers are without obligation pending written confirmation by our company.
- 1.2 The business relationship is subject exclusively to these "General Terms of Delivery and Payment". They shall therefore also apply to all future business relations, even if they are not expressly agreed again or referred to by us. We are not bound by the customer's general purchasing conditions, even if they are attached to an order even if such have not been expressly rejected.
- 1.3 We reserve the right to non-delivery regarding metals, i.e. we are obliged to deliver only insofar as we are able to acquire the necessary raw metals at the price valid on the day (date) of order acceptance.
- 1.4 The customer's rights under this contract are transferable only on prior receipt of authorisation by our company.
- 1.5 All documents, such as brochures, drawings and material data, remain our property. They are subject to copyright protection. They may not be disposed of.
- 2. Prices**
- 2.1 All prices are quoted in euros, excluding packaging and value added tax.
- 2.2 The agreed prices are basic prices. They are understood as fixed prices in the absence of any changes prior to the date of delivery (invoice issue date), particularly with regard to changes in the price of metal, materials or supplies, wages and salaries, freight and/or public duties. Should such changes occur after conclusion of contract, we reserve the right to apply an appropriate price increase.
- 2.4 In the case of conversion orders, the agreed prices and conditions are conditional on timely provision of the required conversion material, delivered carriage paid and promptly to our plant prior to order fulfillment. Otherwise, we will be entitled to invoice the replacement material used by us at the current market price.
- 2.5 In the event of delayed delivery of the reworking metals by the customer, we shall be entitled to tax the metals not provided at the current price in accordance with § 3 para. 10 German Value Added Tax Act (UStG). In this case, we reserve the right to charge the customer accordingly.
- 3. Production equipment (tools, systems, etc)**
- 3.1 The customer will reimburse the cost of production equipment acquired or manufactured by us on the customer's behalf. The production equipment acquired or manufactured by us will remain the property of our company.
- 3.2 If, contrary to 3.1 above, it is agreed that the customer will acquire ownership of the production equipment, such ownership will be transferred to him on full payment of the purchase price. Transfer of the production equipment will be replaced by a custodial agreement. The custodial agreement can be terminated by the customer by giving notice of 24 months.
- 3.3 We handle all production equipment with the due care as applied in our own affairs. It is used exclusively for the customer's orders. If three years have passed since the last delivery, and in the absence of an agreement to the contrary, we will not be obliged to continue storage of such equipment. In the event that deliveries are made on the basis of drawings or other details provided by the customer, which violate third party rights, the customer shall irrevocably indemnify us against all claims of third parties.
- 4. Freight and packaging**
- 4.1 Shipment will be at the expense of the Customer. Where we commit to bearing the freight costs, we are at liberty to deliver free of charge or to reimburse the freight costs listed in the contract. Additional freight costs, such as specially requested accelerated, express, airfreight or other costs incurred by the particular nature of the goods (bulky shipment, etc), will be charged to the customer in all cases. The same shall apply to deliveries to places other than those provided for in the contract.
- 4.2 Requested packaging and packaging deemed necessary by our company (wooden crates or cardboard boxes) will be charged at cost-price and will be non-returnable. Collico cases and rail containers will be invoiced at the rental rate. Empty Collico cases are to be returned using the free return voucher. Special packaging (containers, racks, etc) are loaned as required and must be returned, carriage paid, within six weeks or they will be invoiced. The amount charged will be reimbursed on return of the relevant items.
- 5. Acceptance**
- 5.1 If the goods are subject to special inspection conditions, such acceptance inspection will take place at our premises. In such cases, acceptance inspection costs shall be borne by us, with the exception of the personal travel and accommodation costs of the customer's acceptance representative.
- 5.2 If the customer waives inspection at our plant, the goods are deemed manufactured and accepted in accordance with the contract as soon as they leave the plant.
- 6. Risk transfer**
- 6.1 All risk is transferred to the customer when the goods are handed over to the freight forwarder.
- 6.2 In the case of conversion material, the customer bears all risk until the goods are received at our plant. The same applies in the case of goods returned for reasons we are not responsible for.
- 7. Excess or short deliveries**
- Depending on the type of product, deliveries may vary in weight and quantity up to a tolerance of 10 %, whether in relation to the overall volume or partial deliveries.
- 8. Warranty**
- 8.1 The customer must examine the goods received and report any deficiencies immediately in writing after receipt at the specified destination. Hidden defects must be reported immediately after discovery and all associated processing must be discontinued.
- 8.2 Current DIN tolerance levels will apply in the case of complaints related to DIN standard goods.
- 8.3 In the case of defects demonstrated to have occurred prior to risk transfer, which exclude or adversely affect the use of the part supplied by us, we will, at our discretion, either correct the defect or deliver a part that is free of defects. If reworking efforts fail twice, the customer may withdraw from the contract or reduce payment. The customer is obliged to grant us sufficient time and opportunity to take rework action and deliver defect-free parts; otherwise, we will be relieved of liability for the defects. Measures initiated by the customer to correct deficiencies without our consent will not be reimbursed by us. If use of the delivered goods continues despite the defect, we will be liable for the original defect only, and not for any damage caused by continued use. The defect-free goods and reprocessed goods will be subject to the same warranty provisions as the goods originally delivered.
- 8.4 Whether our products are used independently, as equipment components, or in association with other products, their suitability for the intended purpose can ultimately be proved only by practical application, regardless of any recommendation made by us. The customer bears the full associated risk. Any warranty of quality must be declared expressly in writing and specified as such.
- 8.5 Claims based on defects will be invalid where deviation from the agreed features or practical functionality is insignificant, in the case of natural wear and tear beyond our control, errors in the design and material specified by the customer, unsuitable or incorrect handling, processing, over-stressing, storage and use, as well as other modifications to the delivered goods effected by the customer or third parties, which cause changes to the physical, chemical or technological properties.
- 8.6 Negotiations regarding complaints will not constitute a waiver of our objection regarding timely and adequate reporting of defects. Defect inspection representatives are only entitled to verify defects, but not to legally binding recognition of defects with effect against us.
- 8.7 The provisions above also apply to the delivery of false goods.
- 8.8 Claims for defective goods shall become statute-barred 12 months after transfer of risk. The provisions above do not apply in cases where longer periods are specified by law, in accordance with Sections 438, Para 1, Pt 2 (construction goods), 479, Para 1 (right of recourse) and 634 a (construction defects) of the German Civil Code (BGB).
- 8.9 Any further claims by the customer - regardless of the legal basis - and particularly claims for compensation for damage that did not directly affect the delivered goods, are excluded unless otherwise stipulated in section 9 below. In all cases, such claims are limited to the value of the delivered goods, unless the compensation claim is based on intent or gross negligence by us, our legal representative or agent. Liability for culpable injury to life, limb and health shall remain unaffected.
- 9. Product liability**
- 9.1 Liability exemptions under these General Terms do not apply to claims valid under the German Product Liability Act (*Produkthaftungsgesetz*).
- 9.2 In the event of liability to third parties, compensation agreed between the customer and our company shall be subject to Section 254 of the German Civil Code (BGB), regardless of the party directly addressed by the claimant.
- 9.3 With regard to the customer's measures to prevent damage (e.g. recall actions) we accept liability only to the extent stipulated by law.
- 10. Delivery, acceptance and call-off periods**
- 10.1 Delivery dates refer to the time of shipment from our plant. They are quoted to the best of our knowledge, but are not binding. Delays do not entitle the customer to repudiate the order or to assert claims of any kind.
- 10.2 Unforeseen events, tool and press failures, labour disputes, official or state measures and other circumstances of force majeure that completely or partially hinder fulfilment of the contract, entitle us to extend delivery deadlines by the period of obstruction, regardless of whether these circumstances affect our company or a sub-supplier. If the obstruction is for an extended period, or causes a price increase, or makes production of the goods impossible, we are entitled to fully or partially withdraw from the delivery contract, or to pass the increased costs on to the customer. Claims against our company for compensation based on the circumstances outlined above or similar nature will be invalid.
- 10.3 If the customer refuses to accept the goods on the agreed date, we are entitled to store the goods at the cost and risk of the customer, and to otherwise dispose of the goods on expiration of appropriate notice and/or to claim damages. The customer shall nevertheless remain obliged to make payment.
- 11. Reservation of title**
- 11.1 The goods remain our property until full payment of all claims, including secondary claims and claims for damages, and clearance of cheques and bills of exchange.
- 11.2 Reservation of title remains valid even if some of our claims are honoured in a current invoice, the balance drawn and recognised.
- 11.3 If reserved goods are reprocessed by the customer to create a new movable item, such processing will be on our behalf without incurring any obligation on our part. The new item becomes our property. In the event that such is processed, mixed or combined with goods that do not belong to us, we will acquire co-ownership in the new item in accordance with the proportional value of our reserved property to the overall value.
- 11.4 The customer is only entitled to resell, reprocess or install reserved goods on condition that the following provisions are met and only if the rights specified in 11.6 below are actually transferred to us.
- 11.5 The customer's authorisation to sell, process or install reserved goods within the framework of normal business practices ends on revocation by us on the basis of a longer-term deterioration in the customer's assets, and at the latest on cessation of payment by him or on application for or initiation of bankruptcy or settlement proceedings affecting his assets.
- 11.6 The customer hereby assigns to our company his rights, including all secondary rights, in relation to the resale of reserved goods. If the goods have been processed, mixed or combined and if we have acquired co-ownership to the value of our invoice amount, we are entitled to the purchase price claim proportional to the value of our rights in the goods. If the customer has sold the rights in the process of factoring, he hereby assigns claims against the factor to us. We hereby accept the assignment.
- 11.7 The customer is entitled to collect assigned claims as long as he fulfils his payment commitments. The authorisation to collect expires on revocation, and at the latest in the event of delay in payment or significant deterioration in the customer's assets. In such cases we are entitled to inform the recipients of the assignment and to collect the claims ourselves. On request, the customer is obliged to provide us with a detailed list of the claims due to us, including names and addresses of the clients and the amount of the individual claims, with invoice dates, etc, and to provide us with all information necessary to assert the assigned claims, as well as to permit the review of such information.
- 11.8 If the value of the security provided to us exceeds the amount due to us by an overall total of more than 10 %, the customer, or other third party adversely affected by our excess security, may request proportional release of security at our discretion.
- 11.9 Bailment or security agreements regarding the reserved goods or the assigned claims are not permitted. We must be advised immediately in the event of seizure, including notification of the creditor's details.
- 11.10 If we reclaim the delivered goods within the framework of reserved ownership, this will only constitute contract withdrawal if expressly stated by us. We are at liberty to sell the reclaimed reserved goods on the open market. The proceeds from the sale of the goods shall be set off against the customer's liabilities - less reasonable selling costs - and shall be offset by us against the oldest existing claim against the customer.
- 11.11 The customer will store the reserved goods for us free of charge. He is obliged to insure such goods against the usual risks, such as fire, theft and water, in accordance with standard business practices. The customer hereby assigns to us his rights to compensation resulting from damage as mentioned above in relation to insurance companies or other party with secondary compensation obligation, in the amount of the invoice value of the goods. We hereby accept the assignment.
- 11.12 All claims and rights in relation to reservation of goods associated with all specified special conditions remain valid until complete release from any contingent liabilities that we have entered into in the interest of the customer.
- 12. Service contracts - conversion business**
- Ownership of goods manufactured by us within the framework of a service contract and delivered to the customer is, without express statement, deemed assigned to us as security for all relevant claims resulting from the business relationship. The customer accepts storage of such goods on our behalf for the duration of our security ownership.
- 13. Payment terms**
- 13.1 Our invoices are payable within 30 days from the date of the invoice without any deduction.
- 13.2 Tool costs and tool alteration costs are payable immediately without any deduction on presentation of the first-off sample.
- 13.3 If partial payment deadlines are not met, the entire balance will be due immediately. If there is a deterioration in the customer's creditworthiness, if he fails to pay in response to our payment reminder, if he ceases payment or if insolvency proceedings are initiated in relation to his assets, or if an out of court settlement is requested, we are entitled, regardless of any previous agreements, to demand pre-payment, security or cash payment and to refuse performance until receipt of payment or security deposit, or to withdraw from the contract, or to demand compensation for non-performance. The aforementioned rights apply to all of our claims. Outstanding claims are payable by the customer subject to interest at the rate of 9% above the base rate of the Deutsche Bundesbank, without the need for prior notification.
- 13.4 The customer is not entitled to withhold or offset payments, even in the case of complaints or counter claims, unless such counter claims have been accepted or have become final and absolute.
- 13.5 Bills of exchange will only be accepted following prior agreement, conditional upon discounting and as a means of payment. Bills for refinance by way of so-called cheque/bill transactions will not be accepted. Discounting charges and all other costs associated with the clearance of bills and cheques will be paid by the customer.
- 14. Compliance**
- The customer is obliged to comply with the laws of the applicable legal system(s) in which he operates and not to tolerate or engage in any form of corruption or bribery, including any payment of money or other form of benefit for the purpose of influencing decision making in violation of law. The customer hereby accepts our Code of Conduct, available at [www.otto-fuchs.com](http://www.otto-fuchs.com). In case of non-compliance we are entitled in the range of reasonableness to terminate all contracts as well as the complete business relationship with the customer and to claim damages.
- 15. Place of performance and jurisdiction**
- 15.1 The place of performance for all obligations and claims under this contract is Meinerzhagen, Germany.
- 15.2 The exclusive place of jurisdiction will be Meinerzhagen. However, we are also entitled to seek legal action at the customer's place of business or, in the case of claims based on bills of exchange and cheques, at the place of payment.
- 15.3 The contractual relationships shall be governed exclusively by German Law, except for the conflict-of-laws-provisions and of the United Nations Convention on Contracts of the International Sale of Goods (CISG).
- 16. Partial invalidity**
- If one provision of these terms and conditions should be or become ineffective, this will not affect the validity of the terms and conditions in other respects. The parties shall agree upon a provision to replace the ineffective provision that reflects as closely as possible the economic intent of the previous provision.
- 17. Validity of the English version**
- The English version of these General Terms and Conditions of Delivery and Payment shall be for convenience purposes only. In case of inconsistencies, the German version shall prevail.