

Scope of Applicability

The Terms and Conditions given below shall apply to all business relations between supplier (GEALAN Formteile/CAXsolutions) and customer(s), unless their applicability has been excluded explicitly by statutory provisions.

I. Applicability

1. Contracts shall not be binding until the supplier has confirmed the order. The text form shall be obligatory for any amendments and modifications. All offers shall be subject to confirmation.
2. In the event of continual business connections, these Terms and Conditions shall also apply to future businesses which are not explicitly referred to, provided that the purchaser has received such Terms and Conditions from the supplier along with a formerly confirmed order.
3. Terms and conditions of the purchaser shall not apply, unless having been accepted explicitly by the supplier. Should the Terms and Conditions of Business used on this side conflict with any Terms and Conditions of Business of the purchaser, it shall apply in case of doubt that the non-conflicting elements remain definitive and final.
4. Should individual provisions of these Terms and Conditions be or become ineffective, the rest of them shall not be affected thereby.

II. Prices

1. In case of doubt, prices shall apply ex works (EXW), freight charges, customs duties, import charges, additional expenses, and packaging costs excluded, plus legal value-added tax (VAT), unless anything different has been agreed by and between the parties.
2. In the event of decisive cost factors being subject to a substantial change following submittal of quotation or following confirmation of order up to the time of delivery, supplier and purchaser shall agree on an adjustment of prices and of the cost portions for moulds.
3. Has the price been agreed so as to be dependent on the parts weight, the final price shall be determined by the weight of the released patterns.
4. The supplier shall not be bound to preceding prices in the event of new orders (= follow-up orders).

III. Delivery Commitment; Obligation to accept

1. Terms of delivery shall commence following receipt of all records which are required for executing the order and on which the parties have agreed before. In addition, the commencement of the term of delivery shall be dependent on the receipt of a down payment, if any, and on material provisions having been effected in due time, provided that this has been agreed. Supplier's notification of readiness for shipment within the period stipulated shall be sufficient for having met the term of delivery.
2. Should the supplier fail to meet an agreed term of delivery as a result of his own fault, the purchaser shall be entitled, after expiration of a reasonable additional respite and to the exclusion of any further claims, to demand a compensation for default or to withdraw from the contract, unless he has acted with gross negligence or deliberately. The compensation for default shall be limited to a maximum of 5 (five) per cent of such part of the delivery which has not been fulfilled as specified in the contract. Withdrawal from the contract shall be excluded in the event that the purchaser himself is in default of acceptance.
3. Adequate part deliveries and reasonable deviations from the quantities ordered to the maximum amount of +/- 10 (ten) per cent shall be allowed.
4. In the event of orders on call without agreement in terms of validity period, production lot volumes, and dates of acceptance, the supplier may demand a binding regulation in this connection 3 (three) months following confirmation of order at the latest. Should the purchaser fail to comply with this request within a period of 3 (three) weeks, the supplier shall be entitled to set an additional respite of 2 (two) weeks and to withdraw from the contract following such respite's expiration and/or to claim damages.
5. In the event of the purchaser's non-compliance with his obligations to accept, the supplier shall, without prejudice to any other rights he may have, not be bound by the regulations governing the autonomous sale to other customers, but, on the contrary, may sell the article of sale privately following prior notification of the purchaser.
6. Any events of force majeure shall entitle the supplier to postpone the delivery by the length of time of the hindrance and a reasonable lead time or to withdraw from the contract in full or in part for such part of the contract which has not been fulfilled. Strike, lock-out, or any unforeseeable, unavoidable events, such as interruptions of operations, which make it impossible for the supplier to deliver in due time in spite of his reasonable endeavours to do so, shall be deemed to equal to force majeure; the supplier must provide evidence in respect of such events. This shall also apply in the event that the above-mentioned hindrances occur during a default of delivery or in any sub-supplier's factory. The purchaser may request the supplier to declare within a period of 2 (two) weeks his intention whether to withdraw from the contract or to supply within a reasonable additional respite. In the event of his non-

declaration, the purchaser may withdraw from such part of the contract which has not been fulfilled as yet. The supplier shall inform the purchaser immediately, should any event of force majeure as laid down in paragraph 1 occur. The supplier must keep any impairments the purchaser may face as low as possible; if required, by handing out the moulds for the length of time of the hindrance.

IV. Packaging; Dispatch; Passing of Risk; Default of Acceptance

1. Unless otherwise agreed, the supplier shall choose proper packing, mode and route of dispatch.
2. Also in the event of dispatch free of carriage charges, risk passes to the purchaser at the time when the goods have left the factory of the supplier. In the event of any delays of dispatch which the purchaser is responsible for, passing of risk takes place already at the time when readiness for dispatch has been notified.
3. At purchaser's written request, goods shall be insured at his expense against risks he has to prescribe.

V. Retention of Title

1. Deliveries shall remain supplier's property, until all claims the supplier shall be entitled to towards the purchaser have been met, even though the purchase price for claims as specifically referred to has been paid. In the event of open account, the property reserved to the deliveries (goods subject to reservation of title - hereinafter referred to as "reserved property") shall be considered as security for the balance of invoice of the supplier. Should, in connection with paying the purchase price, an endorser's liability of the supplier be substantiated, the retention of title shall not expire until the purchaser as drawee has honoured the bill.
2. Any handling or processing by the purchaser shall take place to the exclusion of the acquisition of property according to § 950 German Civil Code by supplier's order; appropriate to the proportion of the net invoice amount of his goods to the net invoice amount of the goods to be handled or processed, the supplier shall be entitled to joint ownership of the goods produced in this way which shall serve as reserved property for securing the claims of the supplier according to paragraph 1.
3. In the event of processing (connection/mixing) by the purchaser with other goods which are not owned by the supplier, the provisions of §§ 947, 948 German Civil Code shall apply with the consequence that the supplier's joint ownership to the new goods shall now be deemed to be reserved property for the purpose of these conditions.
4. The purchaser shall be allowed to resell reserved property only in usual business dealings and on condition that he shall also agree with his customers a retention of title according to paragraphs 1 to 3. The purchaser shall not be entitled to any other dispositions to the reserved property, in particular pledges and transfer by way of security.
5. For any case of resale, the purchaser shall assign to the supplier already now the claims and any other justified demands towards his customers with all ancillary rights arising for him from the resale, until he has met all claims of the supplier. At supplier's request, the purchaser shall be obliged to immediately provide any information and hand out all records as may be required for asserting the rights of the supplier towards the purchaser's customers.
6. In the event that the purchaser resells the reserved property after processing according to paragraph 2 and/or 3 along with other goods not owned by the supplier, the assignment of the claim of the purchase price according to paragraph 5 shall apply to the extent of the invoice amount of the reserved property of the supplier only.
7. In the event that the amount of the securities existing for the supplier exceeds his total claims by more than 10 (ten) per cent, the supplier shall be obliged, at purchaser's request, to release securities to this extent at supplier's option.
8. Attachments or distraint of reserved property by third parties must be notified to the supplier immediately. Any costs of intervention incurred by this shall, in any case, be at the expense of the purchaser, unless they have been paid by any third party.
9. Should the supplier, in accordance with the above-mentioned provisions, exercise his right to retention of title by taking back reserved property, he shall be entitled to sell the goods privately or to have them sold by auction. Reserved property shall be taken back at the proceeds realised, at most at the agreed delivery prices, however. Any claims for damages going beyond this, in particular loss of profit, shall remain reserved.

VI. Liability for Material Defects

1. The released samples and the mutually accepted specifications as agreed shall be decisive for quality and design of the products. The reference to technical standards shall serve as description of performance, but shall not be interpreted as guarantee of procurement.
2. Should the supplier have advised the purchaser outside his contract performance, he shall be liable for the functional capability and for the suitability of the article of sale only in the event of explicit warranty given previously.

3. Defects must be notified immediately in writing. Hidden defects must be notified immediately upon their detection. In both cases, all warranty claims shall become statute-barred 12 (twelve) months following passing of risk, unless otherwise agreed. Where law prescribes it as mandatory to comply with longer periods pursuant to § 438 para. 1 no. 2 German Civil Code, § 479 para. 1 German Civil Code, and § 634 a para. 1 no. 2 German Civil Code, such periods shall apply.

4. In the event of justified notification of defect, where the patterns, which the purchaser has released in writing, define quality and design to be expected, the supplier shall be obliged to perform subsequently. Should he fail to fulfil this obligation within an appropriate period of time or should any subsequent improvement fail in spite of repeated attempts, the purchaser shall be entitled to reduce the purchase price or to withdraw from the contract. Any claims going beyond this, in particular claims for reimbursement of expenses or claims for damages owing to losses or consequential losses caused by a defect, shall exist only within the scope of the regulations under clause VII. On request, replaced parts should be returned to the supplier free of charge.

5. Unauthorised re-working measures and improper handling shall result in the loss of all warranty claims. The purchaser shall be entitled to repair any defects following prior notification of the supplier and to demand adequate cost reimbursement only for the purpose of averting disproportionately great damages or in the event of the supplier being in default of rectification of defects.

6. Normal wear and tear and wear-out shall not entail any warranty claims.

7. Claims of recourse pursuant to §§ 478, 479 German Civil Code exist only if the consumer was entitled to assert such claims, and that only to a legal extent, not in the event of any arrangements out of good will which have not been agreed upon with the supplier, however, and imply the compliance with personal obligations of the party asserting its right of recourse, in particular the compliance with obligations to notify defects.

VII. General Limitations of Liability

In all cases where the supplier is obliged, in deviation from the abovementioned conditions, owing to any contractual or legal basis of claim, to pay damages or to reimburse expenses, he shall be liable only up to the extent to which he, his executive employees, or his vicarious agents may be accused of premeditation, gross negligence, or any injury to life, limb, or health. The liability regardless of negligence or fault under the Product Liability Act and the liability for the compliance with a guarantee in respect of properties and conditions shall remain unaffected thereby. In addition, the liability for the culpable breach of fundamental contractual obligations shall remain unaffected thereby; except for the cases as stipulated in sentence 1 of this paragraph, liability shall be limited in this respect to the foreseeable, contract-typical damage, however. The above-mentioned regulations shall not involve any change in terms of the burden of proof to the disadvantage of the purchaser.

VIII. Terms of Payment

1. All payments should be effected in € (Euro) solely to the supplier.

2. Unless otherwise agreed, the purchase price for deliveries or other services shall be payable with a cash discount of 2 (two) per cent within 14 (fourteen) days and without deduction within 30 (thirty) days from date of invoice. Prerequisite for granting discount shall be the settlement of all indisputable invoices which were due for payment in the past. For payments by way of bill, if any, no cash discount shall be granted.

3. In the event of exceeding the agreed term of payment, interest, equivalent to the legal interest rate and amounting to 8 (eight) percentage points above the relevant base interest rate of the ECB, shall be charged, unless the supplier provides evidence for a higher damage.

4. The right to refuse the acceptance of cheques or bills shall remain reserved. Cheques and bills eligible for rediscount shall be accepted for performance's sake only; all associated costs shall be borne by the purchaser.

5. The purchaser shall be entitled to offset or to assert any right of retention only if his claims have been determined without doubt or in a legally binding way.

6. The sustained non-compliance with terms of payment or circumstances giving reason for serious doubts in respect of the purchaser's creditworthiness shall result in all claims of the supplier falling due immediately. Moreover, the supplier shall be entitled in this case to demand advance payments for still outstanding deliveries and to withdraw from the contract, after an appropriate period of time expired in vain.

IX. Moulds (Tools)

1. The price for moulds also includes one-time sampling costs, but does not include any charges for testing and processing appliances and for any modifications the purchaser might have arranged for being done; additional sampling costs, which the supplier is responsible for, shall be at supplier's expense.

2. Unless otherwise agreed, the supplier is and shall remain the owner of the moulds the supplier himself or any third party charged by him has manufactured. Moulds shall be used for orders of the purchaser only, as long as the purchaser fulfils his obligations to pay and

accept. The supplier shall be obliged to replace these moulds free of charge only if such moulds are required for meeting a requirement of output produced which has been guaranteed to the purchaser. Supplier's obligation to store the moulds shall expire 2 (two) years following the last parts delivery from such mould and following prior notification of the purchaser.

3. Shall, according to the agreement, the purchaser become owner of the moulds, property shall be passed on to him following full payment of the purchase price for such moulds. Handing the moulds over to the purchaser shall supersede the obligation to store the moulds in favour of the purchaser. Independently of the purchaser's legal entitlement to restitution and independently of the service life of the moulds, the supplier shall be entitled to sole ownership of such moulds by the time of the contract being terminated. The supplier must identify the moulds as third-party property and must insure them at purchaser's request and expense.

4. In the event of purchaser-owned moulds according to paragraph 3 and/or in the event of moulds the purchaser made available on loan, the liability of the supplier in respect of storage and care shall be limited to the degree of care as being exercised for personal property. Any costs incurred by maintenance and insurance shall be borne by the purchaser. Supplier's obligations shall cease, should the purchaser not collect the moulds within a reasonable period of time following completion of order and appropriate request. While the purchaser fails to comply with his contractual obligations to the full extent, the supplier shall, in any case, be entitled to assert his right of retention to the moulds.

X. Material Provisions

1. Should material supplies be provided by the purchaser, such materials must be supplied in due time and perfect condition at purchaser's expense and risk considering an adequate surplus of material of no less than 5 (five) per cent.

2. In the event of non-compliance with these requirements, the delivery time shall be prolonged to a sufficient extent. Except for cases of force majeure, any additional costs shall be borne by the purchaser, also in the event of interruptions of production.

XI. Industrial Property Rights and Defects of Title

1. In the event that the supplier must deliver in accordance with drawings, models, samples, or by using parts provided by the purchaser, the purchaser shall assume responsibility for avoiding that any third parties' property rights may be violated thereby. The same shall apply to services of development of the supplier which have been ordered and accepted by the purchaser. The supplier shall point out to the purchaser any rights the supplier might be aware of. The purchaser must release the supplier from any third parties' claims and pay damages for the loss occurred. Should any third party, with reference to any property right owned by it, prohibit the supplier to manufacture or supply, the supplier shall be entitled - without review of the legal status - to cease operations, until purchaser and third party have clarified the legal status. Should it be no longer reasonable for the supplier to continue executing the order owing to the delay, he shall be entitled to withdraw from the contract.

2. Any drawings and samples handed over to the supplier, which have not resulted in placing of order, shall be returned on request; otherwise, the supplier shall be entitled to destroy them 3 (three) months following submittal of quotation. This obligation shall apply accordingly to the purchaser. Such party to the contract as being entitled to destroy such records must inform the other party to the contract early enough of its intention of destruction.

3. The supplier shall be entitled to copyrights and industrial property rights, if any, in particular to all rights of use and exploitation to the models, moulds and appliances, drafts and drawings designed by him or by any third party charged by the supplier to do so.

4. Should any other defects of title exist, clause VI. shall apply accordingly.

XII. Place of Performance and Jurisdiction

1. Supplier's factory location shall be the place of performance.

2. At supplier's option, the registered office of the supplier or the registered office of the purchaser shall be the legal venue, also for exchanging deeds, bills, and cheques.

3. Solely German law shall apply. Applying the UN Convention of 11 April 1980 on Contracts for the International Sale of Goods (German Civil Code 1989 p. 586) to the Federal Republic of Germany (German Civil Code 1990 p. 1477) shall be excluded.