

General terms of delivery and payment for Gartner Extrusion GmbH

1. Scope

1.1 These general terms of delivery and payment shall apply exclusively to contracts between Gartner Extrusion GmbH (hereinafter known as the Contractor) and companies, legal entities under public law and special funds under public law. Terms of business issued by the Customer shall not become part of the contract, even if the Customer bases its order on them and the Contractor does not expressly reject them.

1.2 In the event of ongoing business relations, these general terms of delivery and payment shall also apply to all future transactions with the Customer, even if they are not expressly agreed in the future.

2. Contract conclusion and contract content

2.1 The Contractor's written order confirmation shall be decisive for the scope and completion of all contract work.

2.2 All agreements, particularly oral side-agreements with representatives and telephone purchase orders, must be confirmed in writing in order to become a valid duty for the Contractor.

2.3 Quotations produced by the Contractor shall not be binding for the Contractor. Until they have been confirmed in writing by it, they shall be subject to change and non-binding. Subject to technical modifications and changes in form, colour and/or weight within the bounds of reason.

2.4 The contract shall be concluded with the proviso that the Contractor is supplied by its suppliers on the basis of normal industry terms and with the correct goods promptly. This shall only apply in the event that a failure to supply goods is not the Contractor's responsibility particularly if it has concluded a congruent cover deal with its suppliers. The Customer shall be notified without delay of the lack of availability of the goods or services. Its quid pro quo shall be reimbursed to it without delay.

2.5 Illustrations and descriptions of work as well as technical and operational information relating to dimensions, weights or other performance and consumption details in the Contractor's catalogues, drawings and publications shall be for general information purposes only; they shall only be binding if this has been expressly agreed in writing; nevertheless this shall not give rise to any guarantee or agreement of a property unless this has been expressly agreed in writing or has been declared or confirmed in writing by the Contractor. This shall also apply to a purchase on the basis of a trial or sample.

2.6 Application advice and information as well as recommendations made by the Contractor shall only reflect the current status of knowledge and experience. Therefore this advice, information and these recommendations shall be non-binding.

2.7 The Contractor shall hold exclusive copyright to the commercial and technical documents it produces, in particular calculations and drawings. Such documents may only be made accessible to third parties with the express written consent of the Contractor. These documents must be returned to the Contractor at its request in the event that no contract is concluded. A right of retention shall be excluded unless this is based on a legally established claim or a claim which is not disputed by the supplier.

2.8 The contract must be amended to suit the interests of both parts in the event that new or amended legal regulations or new requirements from authorities and test bodies result in modifications to the contract duties after the submission of a quotation by the Contractor or after a contract has been concluded.

2.9 If the Contractor provides construction services, the latest versions of the provisions of the Standard Contract Terms for Building Services Parts B and C shall apply in addition to these terms but secondary to them.

2.10 The rights of the Customer from the various contracts shall only be transferrable with the prior consent of the Contractor.

3. Prices

3.1 The prices shall be net prices exclusive of value-added tax which shall be added to them at the current rate. The prices shall be quoted to include free delivery to the freight driver at the works in Gundelfingen (FCA pursuant to Incoterms 2000) unless otherwise expressly agreed in writing. In the event that the Customer supplied goods for finishing, such goods must be supplied at no charge to the Contractor by the Customer.

3.2 The agreed prices shall only be binding if the goods and services can be supplied within four months starting from the date on which the contract is concluded. Otherwise the Contractor reserves the right to make a proportionate amendment to the prices in keeping with any change in the costs related to the completion of the order which occurs after the conclusion of the contract (in particular increases in wages and material prices).

3.3 We shall be entitled to correct pricing errors in the event that we can provide evidence of errors in the calculations.

4. Shipment, packaging and transfer of risk

4.1 The Contractor shall use standard industry packaging. If this includes crates, lattice crates and pallets, normal prices shall be charged. If these items are returned to us free of charge within six weeks from the date of shipment, 75% of the charged value will be credited as long as they are in usable condition in the Contractor's opinion.

4.2 Shipment-related services by the Contractor which go beyond the scope of the FCA commercial clause must be agreed and paid separately. The Contractor shall not accept any liability for the duration of the transport process.

4.3 The risk shall be transferred to the Customer when the goods are placed on the means of transport. This shall apply even if the Contractor has agreed to provide additional shipment-related services as described in No. 4.2.

4.4 If the shipment or the collection of the goods is delayed or impossible due to conduct which is the Customer's responsibility, the risk shall be transferred to the Customer when notification is provided that the goods are ready for shipment.

4.5 Goods reported to be ready for shipment in accordance with the contract must be called without delay, otherwise the Contractor shall be entitled to ship or store them at the Customer's expense and to charge for them immediately. In any event a new collection date must be agreed with the Contractor by the Customer without delay.

4.6 If the Customer provides notification of a deadline delay at a time when the Contractor can no longer influence the production process (generally three months before the delivery date), the Contractor shall be entitled to store the finished goods at the Customer's expense and risk starting from the date of the originally agreed delivery date.

4.7 If the Customer is in default with accepting delivery of the goods or if the Contractor is entitled to store the goods at the Customer's expense under the previous provisions, the Customer shall pay storage charges amounting to 1% of the invoice total for each month or part month.

4.8 The Customer shall be entitled to provide evidence that the Contractor has suffered lower damages whilst on the other hand the Contractor shall be entitled to claim compensation for higher actual damages.

5. Tools

5.1 If the Customer pays a share of the tool costs, this shall not result in it acquiring any (co-)title, seizure rights or claims for reimbursement relating to such tools.

5.2 The Contractor shall be entitled to scrap the relevant tools three years after the last purchase order.

6. Terms of payment

6.1 The Contractor's invoices shall be payable immediately.

6.2 If the account receivable from the Customer has been covered by the Contractor's credit insurer, the invoice shall be payable within 30 days from the date of the invoice. A discount of 2% shall be granted if payment is made within 14 days from the date of the invoice.

6.3 Deposit payments shall not accrue interest.

6.4 A payment shall not be deemed to have been made until the Contractor can dispose of the amount. This shall particularly apply to any agreed payments by cheque.

6.5 Bills of exchange shall only be accepted by prior arrangement and only for the purposes of payment and with the reservation that discounting is possible. If payment is made by bills of exchange, cheques or other instruction documents, the Customer shall bear the costs of the discounting and collection process; these costs must be paid immediately. The Contractor shall only accept liability for the prompt submission, protestation, notification and return of bills of exchange in the event of their non-redemption if it or its agents are guilty of malice or gross negligence.

6.6 The Customer shall not be entitled to set off invoices against accounts receivable by it unless they are undisputed or have been established by a court of law. The Customer may only exercise

a right of retention if its counter-claim is based on the same contract and the legal claim has been established by a court of law or acknowledged by the Contractor.

6.7 The Contractor shall be entitled, even against the Customer's wishes, to use the payments made by the Customer for another account receivable payable earlier than the individual order for which the payment was actually made. The Customer must be notified of this without delay. If costs and interest have already been incurred, the Contractor shall be entitled to use the payment initially to pay the costs and then to pay the interest and finally to settle the main debt.

6.8 If the Customer is in default with its payments, the outstanding amount shall attract interest; the provisions of § 288 Paragraphs 2 to 4 of the Civil Code shall apply.

6.9 If the Contractor becomes aware of circumstances which question the Customer's creditworthiness, for example if a cheque issued by the Customer is refused or if the Customer is in default, the Contractor shall be entitled to make the entire outstanding debt due for immediate payment. In this case it shall also be entitled to deliver outstanding goods or provide outstanding services against payment in advance or after the provision of security.

7. Delivery dates and delays

7.1 Lead times shall only be binding if they have been expressly confirmed in writing by the Contractor. They shall commence on the date on which the order confirmation is sent but not before the receipt of all the documents and permits to be provided by the Customer and not before the receipt of an agreed deposit. Meeting lead times shall require the fulfilment of the Customer's contract duties, in particular compliance with payment agreements, and the prompt clarification of all details and technical questions.

7.2 Forces majeure or unforeseen events which are beyond the control of the Contractor, for example business and traffic problems, difficulties in the supply of energy or material, machine defects, accidents, strikes and the like, including those that occur at the Contractor's sub-contractors, shall result in a reasonable extension of the lead time if such events have a material effect on the Contractor's ability to deliver the goods or provide the services on time. In such cases the Contractor may cancel the contract in full or in part relating to the unfulfilled part of the order. The Contractor shall not be deemed to be responsible for hindrances of the type described above even if they occur whilst the Contractor is already in default with the delivery of its goods or provision of its service.

7.3 If the hindrance lasts for more than two months, the Customer shall be entitled, after setting a reasonable extended deadline, to cancel the contract for the unfulfilled part of the order. If the delivery date is extended as a result of events described above or if the Contractor is released from its duty to deliver goods or provide services as a result or if it cancels the contract, the Customer may not derive any compensation claims as a result of this. The Contractor may only claim these circumstances if it has notified the Customer of them without delay.

7.4 Part shipments shall be permitted. The Customer may not derive any rights from delayed part shipments relating to the part shipments which were not delayed.

7.5 In the event of late deliveries which are the Contractor's responsibility, an extended deadline for goods which are not kept in stock by the Contractor shall only be deemed to be reasonable if it is at least four weeks.

7.6 The limitations of liability set out in No. 9 of these general terms of delivery and payment shall apply to the Contractor's liability.

8. Liability for defects

8.1 The Contractor's liability for defects and the absence of an agreed property in the service or goods shall be based exclusively on the following provisions but only on condition that the agreed terms of payment have been or will be 95% fulfilled (with the exception of reasonable retention (including "lien retention") to secure its defect claim).

8.2 The following shall apply in the event that defects are identified:

8.2.1 DIN tolerances shall apply to DIN standard goods.

8.2.2 Differences of up to 10% in terms of weight or quantity shall be permitted, both in terms of the total final quantity and of the various part shipments.

8.2.3 If goods are delivered with an anodised finish the Contractor shall accept liability for defects under DIN 17611 on condition that perfect material was supplied to it.

8.2.4 Sections shall be delivered in accordance with DIN 755 and/or DIN EN 12020.

8.2.5 Demands by the Customer which are wholly or partly contradictory to these standards and the failure on the part of the Customer to provide necessary details or details requested by the

Contractor shall exempt the Contractor from its duty to comply with these standards and all consequences which may result from this.

8.2.6 The following shall apply to the lightfastness of colourings:

Defect claims, with the exclusion of all other rights, shall comprise the Contractor being obliged, at its discretion to refer the Customer to its right to reduce the invoice total by a maximum of 5% of the contract value or to its right to cancel. Refulfilment claims and replacement claims shall be excluded regardless of their legal basis. The details furnished by the Customer relating to the type of processing and colouring shall be decisive for the completion of the work. Since the colours depend on the material when using the Duranodic 300 process/colour anodisation process (integral process) and the Colorox process (electrolytic single-colour process), it is the Customer's responsibility to establish the appropriate type of alloying with its material suppliers. It is not possible to provide absolute colour matching due to the nature of the material and process. Before completing an order using the Duranodic 300 or Colorox process, therefore, the Customer must use the original material to produce appropriate commission samples for colour tolerances and to submit them to the architect or developer for approval. The light and dark limits from this process shall be binding for the acceptance procedure. Any colour nuances between these limits must be accepted by the Customer. The current version of the cleaning instructions issued by the Aluminium Centre in Dusseldorf shall apply to cleaning the anodised or coated aluminium unless otherwise agreed. The Customer shall be responsible for ensuring that this work is carried out correctly and properly.

8.2.7 The insulating zone of insulation composite sections must be able to withstand temperatures of up to 200°C; otherwise defect claims shall be excluded.

8.2.8 The Contractor shall only be obliged to provide a warranty for anodisation if the Customer has supplied and used standard materials (for sheet metal EN-AW 5005A and EN-AW 5050B, for sections EN-AW 6060 and EN-AW 6063). The Contractor's warranty shall be voided if unsuitable cleaning products and media are used; this shall particularly apply if anodised components are cleaned using oxidising cleaning products.

8.2.9 The Contractor shall provide a warranty for coated PURAL quality (plastic coating process) as set out in its process description.

8.2.10 The following shall apply to our samples and specimens (hereinafter known as samples):

8.2.10.1 Samples shall be produced in different conditions to those which prevail in the subsequent production process. It is therefore unavoidable that the goods and samples supplied by us will not be completely identical.

8.2.10.2 The properties of the samples are therefore not to be regarded as agreed properties of the goods to be supplied by us in the sense of § 434 Paragraph 1 of the German Civil Code. Instead the relevant technical standards, the Contractor's drawings and any expressly agreed properties shall be exclusively decisive for shipments of these goods.

8.2.11 The Customer must inspect the goods without delay (as long as this is possible on the basis of its standard business procedures) and obvious defects must be reported in writing within ten days of receipt of the goods; otherwise claims for defects shall be excluded. The prompt sending of such notification shall apply to satisfying the above deadline.

8.2.12 The Customer shall bear the full burden of proof for all disputed claims, particularly for the defect itself, for the timing of the identification of the defect and for lodging a claim promptly.

8.2.13 § 377 of the German Commercial Code shall apply to mutual transactions between businesses.

8.3 The following shall apply to defect rectification:

8.3.1 The Contractor must be given an opportunity to inspect the defect on site or to have it inspected. Defective goods must be returned to the Contractor on request at its expense. These costs must be reimbursed to the Contractor in the event that the complaint is unjustified.

8.3.2 In the event of justified complaints the Contractor shall be entitled to refinish the goods or replace them at its discretion. If this does not rectify the defect it shall be entitled to the same rights a second time.

8.3.3 The Customer's right to cancel the contract or demand a reduction in payment at its discretion shall apply in the event that the goods supplied do not comply with the contract if the defect is more than just a minor flaw and the Contractor has twice refused to refulfil the contract or it has failed to rectify the defect after two attempts.

8.3.4 If the supplied goods are only partly defective the Customer may only cancel the contract in full if a defective part shipment is of no interest to it; otherwise it shall remain obliged to accept the perfect part of the shipment of goods.

8.3.5 The Contractor shall provide the same warranty for the rectified goods or services as for the initially supplied goods or services.

8.3.6 In the event that the Contractor's operating or maintenance instructions are not followed, modifications are made to the products, parts are replaced or consumables are used which do not comply with the original specification or if the Customer has completed defective construction work and this results in defects on the goods, all defect claims shall be void unless one of the circumstances described above is the Contractor's responsibility.

8.3.7 If it is clear to the Contractor that the goods are for a structure, the statute of limitations shall be 5 ½ years from the date on which the goods were accepted by the Customer.

9. Limitations of liability

9.1 The Contractor's liability shall be unlimited in the event of death or physical injury and health harm caused by its goods or late delivery of said goods.

9.2 This shall also apply in the event that the Contractor or its agent is guilty of malice or gross negligence for supplying defective goods or supplying the goods late.

9.3 In the event of minor negligence, liability shall be excluded if the delay or the defect was based on minor contract duties.

9.4 If a breach of duty on the part of the Contractor relates to major contract duties, but the Contractor or its agents are not guilty of malice or gross negligence, the Customer's claim shall be restricted in the event of default to default compensation of 0.5% for each complete week of the delay subject to a maximum of 5% of the invoice value for the goods and services affected by the delay, otherwise to the foreseeable, direct average damages which are typical for this type of contract on the basis of the type of goods or services.

9.5 Otherwise the Customer's claims for damages and reimbursements for expenses (hereinafter known as compensation claims), regardless of their legal basis, particularly those resulting from breach of duties from a debt relationship and from illegal acts, shall be excluded.

9.6 This shall not apply in the event of accepting a warranty or a purchasing risk.

9.7 This shall also not apply if claims are made on the basis of the Product Liability Law, in the event of malice or gross negligence on the part of the Contractor or its agents.

10. Reservation of title

10.1 The goods shall remain the Contractor's property (reservation of title goods) until all accounts receivable have been settled, in particular the relevant balance accounts receivable which the Contractor holds against the Customer as a result of their business relationship.

10.2 If reservation of title goods are processed to produce new movable goods, such processing shall be carried out on behalf of the Contractor without this resulting in any obligation for the Contractor; the new goods shall become the property of the Contractor. In the event that the goods are processed, mixed or joined with goods which are not the Contractor's property, the Contractor shall accrue co-title to the new goods in the same proportion as the invoice value of the reservation of title goods to the total value. The Customer shall preserve the Contractor's title/co-title for it free of charge.

10.3 The Customer may only sell the reservation of title goods as part of its normal business activities on the basis of its standard terms of business and as long as it is not in default with the proviso that it has agreed a reservation of title with its customer and that the accounts receivable from the resale are actually transferred to the Contractor as described in Number 10.4 below.

10.4 Assignment of accounts receivable

10.4.1 The Customer hereby assigns the accounts receivable together with all auxiliary rights (including and balance accounts receivable) which it accrues from the resale or for another legal reason against its customers or third parties to the Contractor for security up to the amount of the final invoice total (including value-added tax) of the account receivable by the Contractor.

10.4.2 If the reservation of title goods have been processed, mixed or joined and the Contractor has accrued co-title to these goods up to the amount of its invoice total, it shall be entitled to the account receivable by the Customer from its customer in the proportion of the value of its rights to the value of the goods.

10.4.3 If reservation of title goods are installed in a site or building by the Customer, the Customer hereby assigns the resultant claim for payment or from the resale of the site or building to the

Contractor up to the invoice value of the reservation of title goods together with all auxiliary rights including the right to granting a security mortgage with a ranking above the remainder. The Contractor hereby accepts this assignment.

10.4.4 If the Customer has sold the account receivable as part of a genuine factoring procedure, the Contractor's account receivable shall become due immediately and the Customer hereby assigns in its place the account receivable from the factor to the Contractor and shall immediately forward its proceeds to the Contractor. The Contractor hereby accepts this assignment.

10.5 The authority of the Customer to sell, process or install the reservation of title goods as part of its normal business activities shall end in the event that it is in default or if revoked by the Contractor as a result of a long term deterioration of the Customer's financial situation, but at the latest when it declares insolvency or if an application for insolvency is made against its assets. In this case the Customer undertakes to provide the Contractor on request with a precise list of the outstanding accounts receivable by it (the Customer) with the names and addresses of customers, the amount of the various accounts receivable, the date of the invoice, etc. and to provide the Contractor with all the information required to claim the assigned accounts receivable and to enable the Contractor to review such claims.

10.6 The reservation of title goods and assigned accounts receivable must not be pledged or title to them transferred by way of security.

10.7 The Customer undertakes to keep the reservation of title goods in perfect condition and to have any necessary repairs to them completed without delay by specialist contractors; it must provide the Contractor with information about the reservation of title goods at any time, in particular relating to their location. In the event that it has a justified interest to do so, the Contractor shall be entitled to inspect the reservation of title goods.

10.8 In the event of action by third parties against the reservation of title goods, in particular in the event of seizures and any other (possibly impending but expected) adverse effects on the Contractor's rights, the Customer undertakes to notify the third party of the Contractor's title/co-title and to notify the Contractor without delay.

10.9 The Customer undertakes to obtain adequate standard insurance for the reservation of title goods at its own expense against theft, breakage, fire, water and other damage for the period of its obligations to the Contractor and to provide evidence of such insurance to the Contractor on request. It hereby assigns its compensation claims from insurance companies or others which it accrues as a result of the damage of the above type to the Contractor up to the amount of the invoice total for the goods. The Contractor hereby accepts this assignment.

If the Customer fails to meet the obligations set out in the previous paragraph, the Contractor shall be entitled to take out the above insurance policies for the amounts it (the Contractor) deems necessary at the expense of the Customer with the proviso that the rights from the insurance policies shall be accrued directly by the Contractor.

10.10 In the event of a breach by the Customer against the duties described in this Number 10, the Contractor shall be entitled, after setting a reasonable extended deadline, to make the entire outstanding debt for the reservation of title goods due immediately regardless of the term of any bills of exchange or to demand security within this deadline; no extended deadline shall be required if this would adversely affect or jeopardise the Contractor's rights or financial interests or if the Customer is guilty of a serious breach of the provisions set out in this Number 10.

If the Customer fails to pay its outstanding debt within seven days after receiving a request to this effect from the Contractor or if it fails to provide the requested security within this period its utility right to the reservation of title goods shall be voided. The Contractor may then demand the immediate return of the reservation of title goods at the expense of the Customer with the exclusion of all rights of retention. In this case the Customer hereby irrevocably grants the Contractor access to the location of the reservation of title goods and shall enable it (the Contractor) to take possession of them.

10.11 Notwithstanding the Customer's payment obligations the Contractor shall be entitled to dispose of the reservation of title goods it has taken back into its possession by selling them on the open market at the best possible price or to accept them at the current market price. In the absence of an express agreement with the Customer, the market price for reservation of title goods shall be estimated by a sworn expert appointed by the chamber of Industry and commerce for the area in which the reservation of title goods are located and this estimate shall be binding. After deducting the costs incurred by the Contractor including those for the appointment of the

expert, the proceeds from the disposal or the market price shall be set off against the Customer's payment obligations.

10.12 If the value of the existing security exceeds the value of the secured accounts receivable by more than 20%, the Contractor shall be obliged to release some of the security at the discretion of the Contractor if requested to do so by the Customer.

11. Place of fulfilment, place of jurisdiction

11.1 If the Customer is a company, legal entity under public law or a special fund under public law, the place of fulfilment for all goods and services and for repair and spare parts orders or for refulfilment or defect claims shall be the Contractor's registered office. The place of jurisdiction, including for proceedings relating to bills of exchange and other documents, shall be Dillingen/Donau. However, the Contractor shall also be entitled to sue the Customer at the court with jurisdiction for its (the Customer's) place of residence or registered office.

11.2 If individual provisions of these general terms of delivery and payment or a provision in other agreements between the Customer and the Contractor should be or become invalid, this shall not affect the validity of all the other provisions and agreements. The wholly or partly invalid provision shall be replaced by one which comes as close as possible to the commercial objective of the invalid provision.

11.3 German law shall be applicable to this contract. The United Nations Convention on Contracts for the International Sale of Goods (CISG) (Federal Law Gazette 1989 II Page 588) shall not be applicable.