

# General Terms and Conditions

## Validity

- 1.1 Our goods and services are subject to the following terms and conditions only. Terms and conditions contrary to or differing from our terms and conditions shall not apply, unless we have expressly approved their validity. The following terms and conditions shall apply even if we, in knowledge of terms and conditions of the customer contrary to or differing from our terms and conditions, furnish our services to the customer without reservations.
- 1.2 Oral agreements made before, during or after the conclusion of a contract shall require our written confirmation in order to become valid.
- 1.3 These terms and conditions shall also apply to all future goods and services supplied to the customer until our new terms and conditions for goods and services come into force.
- 1.4 If one of the provisions in these terms and conditions or the other agreements made is ineffective or becomes ineffective, this shall not affect the validity of the remaining terms and conditions. The contractual partners undertake to replace the ineffective provision with a provision that corresponds to it as closely as possible with regard to ensuring commercial success.

## Quotation

- 2.1 Unless otherwise expressly agreed in writing, our cost proposals shall be non-binding and subject to a charge.
- 2.2 Our quotations shall be non-binding unless we expressly make a binding quotation in writing.

## Prices

- 3.1 Prices shall be calculated on the basis of the list prices plus VAT that apply at the time of delivery. VAT shall be charged except in cases where the conditions for tax exemption of export deliveries are met.
- 3.2 Unless specifically agreed otherwise, the prices shall be EXW (Switzerland)/FCA (exports) in accordance with Incoterms 2010, excluding packaging.
- 3.3 We reserve the right to make reasonable changes to our prices if costs rise or fall after the contract has been concluded, especially due to changes in wage costs, e.g. as a result of collective bargaining agreements or material price changes.
- 3.4 A small conversions surcharge of CHF 50 shall be levied on special conversions for Switzerland which have an item value of less than CHF 100 net.
- 3.5 Replacement deliveries shall be made and repaired goods shall be returned, if they are not covered by the material warranty, on payment of a reasonable flat-rate shipping and packing charge in addition to the remuneration for our services.

## Delivery; delivery periods; default

- 4.1 Deliveries shall be performed – subject to the agreement of differing delivery conditions – carriage paid to the destination. Freight charges shall not be reimbursed if the goods are collected ex works.
- 4.2 Deliveries to destinations in Switzerland with a total net value of CHF 300 or more shall be performed carriage paid to the valley railway station or by post/courier. A shipping charge of CHF 18 shall be made for deliveries with a total net value of less than CHF 300. The minimum order value shall be CHF 100 net.
- 4.3 The start and observance of agreed delivery periods shall depend on the fulfilment of cooperation obligations, especially prompt receipt of all materials, documents, permits, studies and releases to be provided by the customer, and on compliance by the customer with the agreed terms and conditions of payment. If these conditions are not fully met in good time, the delivery periods shall be extended by an appropriate length of time; this shall not apply if we are fully responsible for the delay.
- 4.4 If the failure to comply with agreed delivery periods is due to force majeure or other incidents for which we are not responsible, e.g. war, terrorist attacks, import and export restrictions or labour disputes, including incidents that affect suppliers, we shall extend the agreed delivery periods by an appropriate length of time.
- 4.5 If we are responsible for the delay in delivery, the customer must state, at our request and within a reasonable period of time, whether it insists on the delivery being made or whether it wants to withdraw from the contract. The customer shall not have a right to withdraw from the contract. In cases involving legally binding agreed delivery periods, Item 10 shall apply to any compensation claims in connection with the delay in delivery.
- 4.6 If goods are delivered on call, the customer shall be obliged to call them off within the agreed period. The call-off period shall be one year unless agreed otherwise in writing. After this period has expired, we can demand immediate call-off.
- 4.7 If, at the request of the customer, dispatch or delivery is delayed by more than one month after notification of readiness for dispatch, we shall be entitled to charge the customer a storage fee for every commenced month amounting to 0.5% of the value of the delivery items, but at most 5% of their value. The contracting parties shall be free to prove that higher, or as the case may be, lower storage costs were incurred. This shall not affect any further claims due to delayed acceptance.
- 4.8 Partial deliveries and corresponding invoices shall be permitted, unless they are unreasonable for the customer.

## Transfer of risk

- 5.1 Benefit and risk shall pass to the customer when the delivery is dispatched from the factory, warehouse or workshop, even if delivery is made carriage paid, under a similar clause or including installation.

## Complaints and notification of defects

- 6.1 Visible defects must be notified to us in writing by the customer immediately, but at the latest 15 days after receipt of the goods. Hidden defects must be notified to us as soon as they have been discovered. The date when we receive the notification shall be deemed to be the key date.
- 6.2 If notification of defects is given without good reason, we shall be entitled to have our incurred expenses compensated by the customer.
- 6.3 Defect claims shall be excluded if the notification of defects is not submitted in good time.

## Acceptance/Return

- 7.1 The customer may not refuse to accept deliveries on the grounds of negligible defects.
- 7.2 The customer shall not be permitted to return any goods to us, unless we have expressly authorised their return. The above provision shall not apply if the customer is entitled to withdraw from the contract.

## Material defects/Defects of title

- 8.1 All warranty claims by the customer in connection with material defects shall become statute-barred after 12 months (Article 210 (1) of the Swiss Code of Obligations).
- 8.2 The limitation period for material defects shall commence when the goods are delivered (transfer of risk).
- 8.3 In the case of material defects which were notified in good time, we shall be obliged to either rectify the defect or supply goods free of defects. All further claims by the customer, such as cancellation (gradual rescission), reduction (price reduction) and compensation for damage to the goods and any subsequent damage, shall be excluded.
- 8.4 No defect claims can be asserted in the event of a customary and/or negligible deviation from the agreed condition of the goods or a negligible impairment of the usability of the goods. Unless we have given an express written assurance, the properties of any supplied samples shall not be regarded as guaranteed if the supplied goods are suitable for their intended use.
- 8.5 Replaced goods and replaced parts shall become our property.
- 8.6 Defect claims due to the following reasons shall be excluded:
  - Natural wear and tear
  - Product modifications for the purpose of technical progress, even if we perform them without notice
  - Defects that occur after the transfer of risk due to
    - improper handling, storage or installation
    - failure to follow installation and operating instructions
    - failure to comply with FEPA safety recommendations (see e.g. [www.siaabrasives.com](http://www.siaabrasives.com))
    - failure to comply with government/other safety regulations and recommendations
    - excessive strain or use
  - Defects which occur due to force majeure, exceptional outside influences not covered by the contract or due to use of the goods outside their intended normal purpose according to the contract
  - Non-reproducible software defects.
- 8.7 Defects due to the customer's construction rules or the customer's rules on the use of certain materials shall not be covered by the warranty. Neither can defect claims be asserted if the goods are changed by a third party or through the installation of foreign parts, unless the defect has no causal connection with the change or use.
- 8.8 In the case of defective goods or parts thereof that were not manufactured by us, we can be released from our liability by assigning our own warranty claims against the supplier to the customer.
- 8.9 Defects of title which are not founded in the infringement of industrial property rights of third parties (see Item 9) shall be governed by the provisions in this Item 8.

## Industrial property rights and copyrights

- 9.1 We shall not be liable for claims due to the infringement of industrial property rights or third-party copyrights (hereinafter referred to as «property rights») if the property right is or was owned by the customer or a company in which the customer directly or indirectly holds the majority of capital or voting rights.
- 9.2 We shall not be liable for claims arising from the infringement of property rights, unless at least one property right from the property rights family has been published either by the European Patent Office or in one of the following countries: Federal Republic of Germany, France, United Kingdom, Austria or the USA.
- 9.3 The customer must inform us immediately about (alleged) property rights infringements or related risks which come to the customer's attention. At our request, the customer must also allow us – if possible – to deal with legal disputes (also on a non-judicial basis).
- 9.4 We shall be entitled, at our discretion, to either obtain a utilisation right for the product infringing a property right or to change the product in such a way that it no longer infringes the property right or to replace it with a similar product which no longer infringes the property right. This provision shall also apply if the property rights infringement has not yet been legally ascertained or has not been acknowledged by us.
- 9.5 Claims by the customer shall be excluded if the customer is responsible for infringing the property right or does not provide us with adequate support in defending third-party claims.

- 9.6 Claims by the customer shall also be excluded if the products are manufactured according to the customer's specifications or instructions, or the (alleged) infringement of the property right stems from use in connection with another product not originating from our company or the products are used in a way which we could not have foreseen.
- 9.7 Any further claims or claims other than those covered in this Item 8 by the customer due to the infringement of the property rights of third parties shall be excluded if legally permissible.

#### Compensation claims

- 10.1 We shall only be liable for compensation due to the infringement of contractual and non-contractual obligations in the following cases:
- Malicious intent or gross negligence
  - Negligent or intentional physical injury
  - Default in spite of a legally binding agreed delivery period
  - If provision is made for compensation through special manufacturer guarantees
  - Compelling legal liability (e.g. product liability obligation)
- 10.2 The compensation under Item 10.1 shall be limited to direct damage; all liability for indirect damage and consequential damage of any kind whatsoever shall be excluded, if legally permissible.

#### Retention of title

- 11.1 Until such time as all our existing claims against the customer have been completely fulfilled, we shall be entitled to arrange for retention of title of the supplied goods to be entered in the Retention of Title Register at the customer's domicile. The customer shall be obliged to cooperate in entering the goods in the Retention of Title Register and must inform us immediately if the customer or the goods change domicile.
- 11.2 The customer shall be entitled to process or combine the goods which we own in the course of the customer's normal business operations. In order to safeguard our retention of title, we shall acquire joint ownership to the items produced through processing or combining. The customer shall hereby transfer this joint ownership to us. The customer shall be obliged to store the items jointly owned by us free of charge. The joint ownership share shall be based on Art. 726 and Art. 727 of the Swiss Civil Code (ZGB).
- 11.3 The customer shall be entitled to resell the goods in Switzerland in return for a cash payment or under retention of title. In order to safeguard our retention of title, the customer shall assign to us all claims, including incidental rights, accruing to the customer from the resale of the goods, irrespective of whether or not the goods were reprocessed. The customer shall be entitled to collect the assigned claim. We can revoke the customer's rights under this provision if the customer fails to duly comply with its contractual obligations towards us. These rights shall also expire without express revocation if the customer stops making its payments for longer than a temporary period of time.
- 11.4 At our request, the customer must inform us immediately in writing of the party to whom the customer sold the goods in our ownership or joint ownership and what claims accrue to the customer from the resale. The customer must also issue us at its expense, officially certified documents relating to the assignment of the claims.
- 11.5 The customer shall have no entitlement to other disposals of the goods which are under retention of title or which we jointly own, or to disposals of the claims assigned to us. The customer must notify us without undue delay of any seizures or other impairments of rights concerning our wholly or jointly owned goods or claims. Unless they are paid by third parties, the customer shall bear all costs incurred in removing third-party access to goods which are under retention of title or which we jointly own.
- 11.6 In the event of a delay in payment or any other culpable infringement of material contractual obligations by the customer, we shall be entitled to demand the return of the goods which are under retention of title or which we jointly own. If we make use of this right, withdrawal from the contract shall only then occur if we expressly declare this.
- 11.7 An application to open insolvency proceedings shall entitle us to withdraw from the contract and demand the immediate return of the delivery.
- 11.8 If the total value of our existing collateral exceeds our claims by more than 10%, we shall release – at the request of the customer – an amount of this collateral of our own choosing.

#### Secrecy

- 12.1 All business or technical information (including features found in any items or software handed over, and other know-how or experience) provided by us shall be kept secret from third parties unless it is verifiably in the public domain or has been authorised by us for resale by the customer, and must only be shared with persons at the customer's company on a need-to-know basis provided such persons have also committed to maintain secrecy; such information shall remain our exclusive property. The information must not be reproduced or used for commercial purposes without our prior written approval. At our request, all information originating from us (if applicable, including produced copies or recordings) and loaned items must be returned to us or destroyed immediately and in full.
- 12.2 We reserve all rights to the information specified in Item 12.1 (including copyrights and the right to apply for industrial property rights such as patents, utility models, semi-conductor protection, etc.).

#### Terms and conditions of payment

- 13.1 Unless otherwise agreed in writing, payment must be made in Swiss Francs (CHF) within 30 days from the date of the invoice without any deductions. However, we can also make our services dependent on gradual payment (e.g. through cash on delivery or direct bank debit) or an advance payment.
- 13.2 The customer's payment obligation shall only be fulfilled when the amount is credited to our post office giro account or our bank account (value date). Acceptance of bills of exchange or cheques as a means of payment shall be at our discretion. In the case of bills of exchange or cheques, the payment obligation shall be deemed to have been fulfilled when the amounts are credited to us after encashment.
- 13.3 We shall be entitled to offset payments against the oldest due claim.
- 13.4 The customer shall be deemed in default if it fails to pay the amount due by the end of the payment period, with no reminders. If the customer fails to pay by the due date, all our claims from our business relations with the customer shall become due for payment immediately. This right shall not be excluded through extension of the period for payment or acceptance of bills of exchange or cheques.
- 13.5 Late payment or other changes in the customer's circumstances, which endanger payment of our claims, shall entitle us:
- To withdraw from the contract at any time and stop our contractual services or demand their return by the customer
  - To immediately enforce all existing claims against the customer, irrespective of their due date, or demand collateral for the claims
  - To only furnish outstanding services in return for an advance payment, irrespective of the agreements concluded for these services
  - To demand compensation from the customer.
- 13.6 If the customer exceeds the time limit for payment, we shall be entitled to charge default interest amounting to the blank credit interest rate of the Zurich Cantonal Bank. We expressly reserve the right to assert further claims.
- 13.7 The customer shall only be entitled to retain payments or offset counterclaims if its counterclaims are undisputed or are final and absolute.
- 13.8 The place of performance for all payments to be made by the customer shall be our registered office.

#### Applicable law and place of jurisdiction

- 14.1 Subject to different compelling legal regulations, the courts at our registered office (Frauenfeld, Switzerland) shall be exclusively responsible for any kind of legal claims against us. Legal actions by us against the customer shall be taken either at our registered office (Frauenfeld, Switzerland) or at the registered office or domicile of the customer or another competent authority under legal regulations.
- 14.2 All legal relationships between us and the customer shall be subject solely to Swiss law to the exclusion of conflict of law provisions and the United Nations Convention on C