



General Terms and Conditions of Sale and Delivery

BESSEY Tool GmbH & Co. KG
Mühlwiesenstraße 40
74321 Bietigheim-Bissingen
Germany

BESSEY Präzisionsstahl
Vertriebsgesellschaft mbH
Mühlwiesenstraße 40
74321 Bietigheim-Bissingen
Germany

BESSEY Präzisionsstahl GmbH
Mühlwiesenstraße 40
74321 Bietigheim-Bissingen
Germany

I. Scope of validity

- (1) Our **General Terms and Conditions of Sale and Delivery** (GTC) apply exclusively. As of 2017/02/01, they shall replace all of our prior GTCs, and are published on the publicly accessible area of our website.
- (2) We do not recognise conditions from the contractual partner, which contradict or deviate from our GTC, unless their validity has been explicitly approved in writing. Our GTC shall apply even if we carry out delivery without reservation, in the knowledge that the contractual partner's conditions contradict or deviate from our General Terms and Conditions.
- (3) Our GTC shall only apply to companies, legal entities under public law and to special assets under public law, in accordance with § 310 Para. 1 of the German Civil Code (BGB).
- (4) All contractual agreements between us and the contractual partner, which exist alongside this GTC, must be in the written form.

II. Concluding of contracts and deliveries

- (1) Orders from the contractual partner should be understood as legally binding offers, which are accepted by our (order) confirmation or delivery of the goods in question. Acceptance of the order is subject to availability of the goods.
- (2) After orders have been successfully accepted by us, the contractual partner may only make changes with our consent and upon agreeing to bear the associated costs.

III. Long-term and call-off contracts, price adjustments

- (1) Open-ended contracts can be terminated by giving 6 month's notice.
- (2) During the term of a long-term contract (contracts with a term of more than 12 months and open-ended contracts), if significant changes occur to the general cost of labour, materials or energy, either contractual party is entitled to demand a reasonable adjustment of the price, to take account of these factors.
- (3) If no binding order volume has been agreed upon, the non-binding order volume (target volume) anticipated by the contractual party for a given period of time is taken as the basis for the calculation. If the contractual partner accepts less than the target volume, we are entitled to raise the per unit price proportionately. If they take up more than the target volume, we shall reduce the per unit price proportionately, provided that the contractual partner provides notice of the increased demand at least 3 months before date of delivery.
- (4) In the case of call-off supply contracts, barring agreements to the contrary, we must be notified of the binding volumes at least 2 months before date of delivery. Additional costs due to a delayed call-off order or through subsequent changes to the call-off order in terms of time or volume, caused by our contractual partner shall be borne by them; our calculations in this matter are definitive.

IV. Confidentiality

- (1) The contractual parties are obligated to treat as confidential all information not in the public domain, which they obtain or acquire from the respective other contractual party in the course of the business relationship, and to use it only for the jointly pursued purpose. Such information may include, for example, the name and content of a project, schedules, objectives and ideas for the execution of a project, knowledge and deliverables of a project, and unpublished commercial or intellectual property rights. The contractual parties mutually pledge neither to pass this information onto third parties nor to make it accessible to third parties in another form, as well as taking all reasonable precautions to prevent access to this information by third parties. This obligation commences as soon as they are made aware of said information, and shall end 36 months after the termination of the business relationship. The obligation to maintain confidentiality also covers all employees of the contractual partner.
- (2) There is no obligation to confidentiality where the information in question is demonstrably common knowledge or becomes common knowledge without the involvement of the contractual party who is obliged to maintain confidentiality, or is obtained legally by a third party not subject to the obligation to confidentiality, or where it is already known by the recipient at the time it is acquired, is developed by them independent of the disclosure, or must be released by the receiving party due to their being obligated to do so by a national court or national authorities.

V. Property rights

- (1) Regardless of the existence of property rights, the mutual exchange of information or the handover of data, drawings, prototypes and similar does not grant any rights of property, licensing, reproduction, usage or other rights.

VI. Prototypes and manufacturing equipment

- (1) Unless otherwise stated, we are entitled to invoice production costs for prototypes and manufacturing equipment (tools, moulds, templates, etc.) separately in addition to the price for the supplied goods. This also applies to manufacturing equipment which must be replaced due to wear.
- (2) Unless otherwise stated, we shall bear the cost of regular maintenance and proper storage, as well as the risk of damage or destruction of the manufacturing equipment.
- (3) If the contractual partner suspends or terminates the contract while the prototype or manufacturing equipment is being produced, they shall bear all production costs incurred until that point in time.

- (4) Even if the contractual partner has paid for it, manufacturing equipment shall remain in our possession at least until the delivery contract has been processed. After this, the contractual partner is entitled to demand the manufacturing equipment, if an amicable arrangement can be reached as to the time when they will be surrendered, and provided that the contractual partner has fulfilled their contractual obligations to their full extent.
- (5) After the final delivery to our contractual partner has taken place, we retain manufacturing equipment for three years, free of charge. After this period has elapsed, we may request in writing that our contractual partner express their will on the subsequent use of the equipment, within 6 weeks and likewise in writing. Our duty of safekeeping shall come to an end, without substitution, if the contractual partner does not declare their wishes or place a new order by the time this period has elapsed.

VII. Prices

- (1) Our prices are to be understood in euros, excluding VAT, packaging, carriage, postage and insurance.

VIII. Terms of payment

- (1) Our invoices are due for payment within 30 days net or within 8 days with 2% discount, from the invoice date.
- (2) The are entitled to demand reasonable instalment payments, plus the legally applicable VAT.
- (3) If you wish to avail yourself of the discount provision, both invoices and credit notes will be discounted. The contractual partner has no right to a deduction if they are in arrears to us with other payment obligations.
- (4) Bills of exchange and cheques shall only be accepted if there is a corresponding agreement to do so, only on account of performance, and on condition that they can be discounted. Discount charges are calculated from the day that the billed amount falls due. No warranty is provided for the on-time presentation of the bill of exchange or cheque, or for raising a bill protest.
- (5) If some of the goods supplied to our contractual partner are indisputably defective, our contractual partner is still obligated to make payment for the portion of the goods which was free of defects, unless a partial delivery is demonstrably not in their interest. Apart from this, the contractual partner may only offset counterclaims or assert a right of retention, which have been legally determined and are uncontested.
- (6) If our contractual partner is in default of payment to us, after written notification, we may refuse to fulfil our obligations until said payments have been received.
- (7) If, after the contract is concluded, our claim to payment is jeopardised due to any lack of ability to pay on the part of our contractual partner, we may refuse our services and determine a reasonable period, within which our contractual partner must make payment or provide collateral against delivery. If the period expires without result, we are entitled to withdraw from the contract and to demand compensation.

IX. Delivery

- (1) Unless otherwise agreed, we deliver "ex works". Notification of readiness for despatch or pick-up by us is vital for maintaining the delivery date or period.
- (2) The delivery period commences on the day that the order is received by us, however not before full clarification of all details of the execution, and shall be extended appropriately where delays are caused by force majeure is involved (see XV).
- (3) Partial deliveries by us are permissible, provided that this is reasonable to the contractual partner. Each of these will be billed separately.
- (4) Excess or short deliveries due to production processes are permissible, to within a tolerance of 10 percent of the total order volume. The total price will change according to the size of the shortage/excess.

X. Despatch and transfer of risk

- (1) Once we have provided notification that goods are ready for despatch, must be accepted by the contractual partner without delay. Otherwise, we are entitled to despatch or store it at the expense and risk of the partner, at our own discretion.
- (2) In the absence of an agreement to the contrary, we shall select the means and route of transport.
- (3) Once the goods are handed over to the railway, haulier or are placed in storage, however at least when they leave the works or warehouse, the risk is transferred to the partner, including where we have undertaken delivery.

XI. Packaging not subject to system participation

- (1) The recipient is responsible for the legally compliant disposal of packaging that is not subject to system participation and for keeping the corresponding records.



XII. Delayed deliveries

- (1) If we are able to foresee that the goods cannot be delivered within the delivery period, we will inform the contractual partner in writing without delay, explaining the reasons for this, as well as stating an estimated delivery deadline, where possible.
- (2) If delivery is delayed due to force majeure (see XVI) or through the action or omission by the contractual partner, the delivery period shall be extended by an amount appropriate to the circumstances.
- (3) The contractual partner is only entitled to withdraw from the contract if we have not met the delivery deadline and they have set a reasonable extension period for us without result.

XIII. Retention of title

- (1) We retain title to the goods supplied by us until all accounts receivable per the business relationship have been discharged by the contractual partner.
- (2) While the title for the goods being supplied by us has yet to be transferred to our business partner, they must treat the received goods with care and insure them at their own expense for the replacement value, against theft, fire and water damage.
- (3) The contractual partner is entitled to resell the goods received from us in the course of normal business, provided that they fulfil their obligations per the business relationship with us in a timely manner. However, they may neither pledge the retained goods, nor offer them as security. They are also obligated to ensure our rights upon the credited resale of the retained goods.
- (4) The contractual partner shall transfer all accounts receivable and rights derived from the sale or hire - if necessary authorised by us - of goods, on which we are entitled to rights of retention, to us by way of security with immediate effect in the amount of the jointly agreed final invoice sum (including VAT). We hereby accept the transfer. The contractual partner is authorised to collect these transferred accounts.
- (5) If the contractual partner does not fulfil their payment obligations from the business relationship with us, particularly if they are in default of payment or have filed an application to open insolvency proceedings on their assets, the authority of the contractual partner to collect shall be void, even without it being expressly revoked by us; in such a case, we may demand that the contractual partner notify us of the transferred accounts and their debtors, give us all the information and relevant documents necessary for collection, and that they inform the debtors of the transfer.
- (6) In the case of breaches of duty by the contractual partner, particularly for default of payment, once a reasonable extension period has been set and has passed without result, and in cases determined by law even without an extension, we are entitled to withdraw from the contract and take back the goods. The partner is obligated to surrender them. We are also entitled to withdraw from the contract if an application is filed to open insolvency proceedings on the partner's assets.
- (7) The contractual partner shall perform any machining or processing of the retained goods on our behalf. If the retained goods are processed using other objects, which do not belong to us, or inseparably mixed, then we shall acquire co-ownership of the new item created in the ratio of the billed value of the retained goods to the other processed or mixed objects at the time of processing or mixing. If our goods are combined with other moving objects, to form a single thing, or inseparably mixed and if the other thing is viewed as the main component, the contractual partner shall proportionately grant us co-ownership, provided that the main component belongs to them. The contractual partner shall maintain ownership or co-ownership on our behalf. In all other respects the same shall apply to the item created by processing or combination or mixing as to the retained goods.
- (8) The contractual partner must inform us immediately about any enforcement measures related to the retained product by third parties, accounts transferred to us or other securities, and hand over the documentation required for an intervention. This also applies to infringements of any other kind.
- (9) Upon request from our contractual partner, we are obligated to release any securities we are entitled to, where their value exceeds the accounts receivable being secured by more than 20%.

XIV. Material defects

- (1) The contractual partner is obligated to inform us unprompted, in advance of making an order, as to the specific intended use of the ordered goods, and particularly to provide information to us if any deviation is anticipated from normal usage conditions.
- (2) The quality of our goods is determined exclusively by the agreed technical supply specifications. In the event of our having to supply in accordance with drawings, specifications, samples and the like provided by our contractual partner, the latter will assume the risk of fitness for the intended use. The condition of the goods in accordance with the contract is determined as at the time of transfer of risk (see X).
- (3) Information and illustrations contained in brochures and catalogues are, in accordance with usual trade practice, regarded as non-binding approximations unless they have been expressly described by us as binding. Any material defects in respect of any defect deriving from unsuitable or improper use, defective assembly or operation by the partner or third parties, normal wear and tear, defective or negligent handling, will also be excluded as the consequences of unsuitable modifications or repairs undertaken by the partner or third parties without our approval. The same shall apply to defects which only reduce the value of the goods or their fitness for their intended use to an insignificant extent.
- (4) Unless otherwise explicitly agreed in writing, the statute of limitations for claims for material defects shall be 12 months, from the transfer of risk.
- (5) Our contractual partner's rights in respect of material defects assume that they have properly fulfilled their obligations according to § 377 of the German Commercial Code (HGB) to examine and file complaints about the goods.

- (6) Where it is specifically agreed that the goods are to be accepted after completion or that initial samples are to be tested, notification of defects which could have been discovered by the contractual partner under careful acceptance or testing of initial samples is excluded. The goods and initial samples are considered accepted and/or acknowledged if the contractual partner raises no objection within 14 days of the agreed acceptance and / or test date, or if no such date has been agreed, on receipt of the goods and / or initial samples and an appropriate request from us.
- (7) We must be given the opportunity of assessing the notified defect. The goods complained of must be returned to us immediately; we will assume the transport costs where the notice of defect is justified. If our contractual partner fails to observe these obligations, or carries out modifications to the goods, which are the subject of the complaints, without our consent, he will lose any claims for material defects.
- (8) In the event of notice of defect which is justified and made at the due and proper time, we will, at our choice, make improvements to the goods complained of or supply a replacement free of defect.
- (9) In the event of our failing to meet these obligations, or failing to do so within a reasonable time in accordance with the terms of the contract, the contractual partner shall set in writing a final deadline within which we must fulfil our obligations. In the event of this period expiring without result, the contractual partner may demand reduction of the price, withdraw from the contract or himself carry out, or have the necessary subsequent improvement carried out by a third party at our cost and risk. There shall be no reimbursement of costs if the expenses increase because the goods have been brought to another place after delivery by us, unless this means that the goods are being used as they were intended to be.
- (10) The contractual partner has statutory rights of recourse against us only in so far as they do not impact on any agreements reached with its customer, which go beyond the statutory claims for defects. In addition, the conditions of the aforementioned and following paragraphs apply to all rights of recourse.

XV. Liability

- (1) We do not accept any liability for damages owing to the breach of non-significant contractual obligations, if we, our legal representatives or agents are only guilty of simple negligence. In the case of financial losses, our liability shall be limited to that which is typically provided for by the contract, unless we are guilty of wilful intent or gross negligence. Insofar as our liability is excluded or limited, this is also applicable to the personal liability of our employees, workers, personnel and representatives. None of the aforementioned exclusions of liability apply to damages due to loss of life, bodily injury, or health impacts. This does not affect our liability in accordance with the German Product Liability Act and due to the granting of guarantees. These liability provisions apply accordingly to our tortious liability.
- (2) As a distributor and retailer, the contractual partner must ensure that the goods are used in the proper manner. This involves in particular informing the purchaser, providing direction on their use, as well as passing on product information literature received from us. Should these obligations not be satisfied, the contractual partner shall release us from all claims which can be traced back to their omission.

XVI. Force majeure

- (1) Acts of God, industrial disputes, disturbances, official measures, non-arrival of deliveries from our suppliers and other unpredictable, unavoidable and serious events will release the contractual parties from their duty to perform for the duration of the disturbance and to the extent of their effect. This is also applicable where these events occur at a time when the contractual partner concerned is in default, unless the delay is caused intentionally or by gross negligence. The contractual parties are obliged, so far as is reasonable, to provide the necessary information immediately and in good faith to adjust their obligations to the changed conditions.

XVII. Final provisions

- (1) Should individual provisions of these GTC be incomplete or invalid, this shall have no impact on the validity of the remaining provisions. In such a case, the two parties to the contract are obligated to agree on a legally acceptable revision, which comes as close as possible to reproducing the economic purpose of the invalid provision. If the provision is invalid due to its exceeding or not meeting a permitted numerical or value-based limit, the legally permissible limit shall apply.
- (2) The place of fulfilment for all obligations from the contractual relationship is Bietigheim-Bissingen, Germany.
- (3) The legal relationship between the contractual partner and us are exclusively subject to the law of the Federal Republic of Germany, to the exclusion of the UN Convention on Contracts for the International Sale of Goods.
- (4) The place of jurisdiction is Bietigheim-Bissingen, Germany, unless a different exclusive jurisdiction is prescribed by law. We also have the right to initiate legal proceedings at the contractual partner's registered office.

XVIII. Information according to the Consumer Dispute Settlement Law (VSBG)

- (1) We are not willing or obliged to participate in dispute settlement proceedings before a consumer enforcement agency within the meaning of the Consumer Dispute Settlement Law.