

Terms and Conditions of Sale and Delivery

Effective from March 2020



1. Offer

Offers are always non-binding. The diagrams included in the offer documentation, as well as measurement, weight and packaging information are non-binding.

2. Order placement

All our deliveries and services are exclusively provided subject to the following Terms and Conditions of Sale and Delivery and terms of payment listed in the order confirmation. By placing an order, the client declares that he agrees to our Terms and Conditions of Sale and terms of payment. Any purchase, payment or business terms or conditions of the client which contradict or deviate from our Terms and Conditions are not recognized, unless we expressly agree in writing that the client's Terms and Conditions shall apply on an individual basis.

Amendments, oral or telephone agreements, as well as undertakings made by travelling sales staff or representatives, are only valid if we confirm them in writing.

A contract to deliver is only concluded after we have confirmed the order in writing. We reserve the right not to accept orders and requests without providing an explanation. Once orders have been confirmed, they are binding.

Order cancellations or postponements are only valid as far as they are confirmed in writing by us. The client will be invoiced for any costs incurred up to that point.

In case of doubt, prices are valid free carrier (FCA), excluding freight, customs, import duties and packaging, plus VAT, if applicable, at the statutory rate.

Should the applicable cost factors change significantly following submission of the offer or order confirmation before delivery, we will make contact to order to adjust the price.

3. Delivery

Our transport insurance policy, or that of the client (special agreement), covers the goods during transport and in the event of any return. The same shipping method shall be used for returns as that used for dispatch.

Unless otherwise agreed, FCA place of dispatch Incoterms 2010 shall apply exclusively (see information in the offer/order confirmation).

The client undertakes to take account of this fact accordingly for the supplier evaluation.

The client is responsible for meeting, checking and observing the legal and official requirements for potential export, import and transit countries (e.g. during the final assembly, assembly, etc.).

Unless otherwise agreed, the supplier shall select the appropriate packaging, shipping method and shipping channel.

Reasonable partial deliveries made by the supplier as well as acceptable deviations from the agreed order quantities of up to plus or minus 10 % are permitted.

3. a Provisions

Should materials be provided, they must be delivered on time at the cost and risk of the client in enough quantities and in perfect condition.

In the case of materials provided without test certificates, the supplier shall assume that the client has complied with his duties to inspect and give notice of defects arising from the German Commercial Code [HGB] and no further tests are required. In this case, the supplier must be informed of this and exempted from his inspection duty in writing.

Should these requirements not be fulfilled, the agreed delivery time shall be reasonably extended accordingly. Any resultant additional costs (e.g. production interruptions) must be borne by the client.

3. b Acceptance obligation

The client undertakes to accept the quantities resulting from process capability analyses and process approvals (of any kind) irrespective of the result of initial sampling.

Should the client not adhere to his acceptance obligation despite a reasonable deadline, the supplier reserves the right to scrap the goods and invoice the client for the accrued costs.

4. Delivery time

By giving notice of readiness for shipping, the delivery period is deemed observed where the shipment is delayed or infeasible through no fault of the supplier.

4. a Delay in delivery

Events of force majeure entitle the supplier to postpone the delivery for the duration of the hindrance and a reasonable recovery time or withdraw from the agreement in part or in full based on the non-fulfilled part. Force majeure includes strikes, lockouts and unforeseeable, unavoidable circumstances, e.g. operational disruptions, which render it impossible for the supplier to deliver on time despite reasonable efforts.

The supplier shall notify the client without undue delay if force majeure occurs. The supplier shall strive to minimize any inconvenience to the client as far as possible.

5. Warranty

5. a Liability for material defects

The purchaser shall promptly (within a maximum of a week) carry out an inspection after delivery to the destination, provided this is feasible in the orderly course of business, and, if a defect is identified, send a written notice of defects to the seller without delay. Should the client fail to submit the notice of defects, the goods shall be considered approved.

Claims for defects become time-barred 12 months after transfer of risk. The statutory limitation period applies for compensation claims in the case of intentional acts and omissions, and gross negligence as well as in the case of injury to life, limb and health, which results from an intentional act or omission or grossly negligent breach of duty on the part of the user.

Warranty rights of the customer require that he has properly fulfilled his duty to inspect and give notice of defects according to Section 377 HGB. Should the client have acquired pre-contractual knowledge of defects / not reserve the corresponding rights upon acceptance, there is no legal basis for notice of defects.

Claims for defects do not arise in the event of only minor deviations from agreed characteristics, in the event of only minor impairment of usability, in the event of natural wear and tear, as well as in the event of losses which occur after the transfer of risk as a result of defective or negligent treatment, excessive use, unsuitable operating equipment or on the basis of particular external influences which are not presupposed according to the agreement.

Unauthorized self-remedy of defects, subsequent work or improper handling by the purchaser or a third party on behalf of the purchaser result in the loss of any right to assert claims for defects pertaining to compensation, withdrawal or reduction of the purchase price.

In the event of parts used outside of the application approved by the supplier or in other environments or use or installation conditions other than provided for in the specification or non-specified intended use, the customer cannot submit a claim for a material defect.

5. b Condition and durability

Information on the condition and/or durability acts as a performance description and should not be understood as a condition or durability warranty. No warranty or liability is provided or assumed for the purposes of warranty law for the effectiveness or suitability of the intended purpose of the goods.

5. c Defect rectification / replacement

In spite of the exercise of the utmost care, should the delivered goods have a defect which was already present at the time of transfer of risk, we shall rectify the defect, provided notice of defects was provided in good time, or provide a replacement at our discretion. We shall always be granted the opportunity to render subsequent performance within an appropriate period. Should the subsequent performance fail, the client may withdraw from the agreement or reduce the payment price. Replaced parts must be handed over or returned.

5. d Transfer of warranty claims / recourse

Only the direct purchaser can assert warranty claims, and these cannot be transferred to third parties. Recourse rights of the purchaser against us only exist to the extent that the purchaser has not reached any agreements with his clients beyond the mandatory statutory claims for defects and require the fulfillment of the obligations of the purchaser, particularly compliance with duties to give notice of defects.

Claims of the client due to expenses, particularly transport, road, labor and material costs, required for the purposes of subsequent performance are excluded, to the extent that expenses are increased because the goods delivered by us were subsequently placed at a location other than the branch of the client, unless the transfer corresponds to their intended use.

5. e Loss quantity control

For technical reasons, a varying proportion of lost quantities is produced during the processing of the goods provided by the customer. These lost quantities are discarded by P3 - Plating Precision Pforzheim. We refer to our loss quantity regulation.

6. General liability limitations

All claims of the client for compensation of any kind regardless of their legal nature - are excluded, provided that the supplier did not act deliberately or with gross negligence. This also applies to claims arising from non-contractual liability, from the violation of secondary contractual or legal obligations. On the basis of binding contractual or statutory differing bases of claims and irrespective of culpable breach of fundamental contractual obligations, as well as liability without fault according to the German Product Liability Act, the supplier is only liable if an intentional act or omission, gross negligence or injury to life, limb or health can be proven to him, his executive employees or vicarious agents. This does not entail change of the burden of proof to the disadvantage of the client.

7. Right of the supplier to withdraw

Unforeseeable technical difficulties, which relate to the type of the order and render its performance unreasonable for us, entitle us to withdraw from the contract.

A warranty for assured characteristics does not exist where it has not been explicitly made in writing.

Should the impossibility arise through the fault of the client, we shall be entitled to withdraw.

8. Retention of title

The goods sold remain our property until full payment of all our claims arising from the terms and conditions, including future claims.

In the event of outstanding invoices, our retention of title - agreed upon in line with the above terms and conditions - shall serve as security for our outstanding balance.

The client may only sell our goods subject to retention of title within the course of orderly business practices. Pledging goods subject to retention of title and transferring them by way of security is not permitted.

Insofar as a further sale of our goods subject to retention of title did not take place in exchange for cash, the client hereby assigns his purchase price claim against the purchaser to us by way of security. We accept the assignment.

Until further notice the client is authorized to collect the claims assigned to us provided this is held in trust for us until he properly fulfils his payment obligations to us.

If the client defaults on payment, we are entitled to disclose the assignment and demand payment from the third party to us. On request, the client must arrange for us to be sent all documents and information required to assert the claim. Should the client receive his claims from the further sale of our goods via an existing genuine or non-genuine current account relationship with his clients, he hereby assigns his claims to the account balance recorded and acknowledged for his benefit, as well as any surplus (final lump-sum balance) existing upon termination of the current account relationship to us in advance by way of security in the amount of the price of our resold goods invoiced by us. In the event of behavior contrary to the contract on the part of the purchaser, in particular defaulting on payment, we shall be entitled to take back the goods subject to retention of title or, where required, demand assignment of surrender claims of the purchaser against third parties. Recall or seizure of the goods subject to retention of title by us does not constitute withdrawal from the agreement, provided that the German Consumer Credit Act does not apply. We undertake to release the securities to which we are entitled pursuant to the aforementioned provisions at our discretion in the event that their value exceeds the claims to be secured by 15% (may be supplemented).

9. Return of goods

In the event of goods being returned, regardless of the legal grounds, a credit note will be issued. In doing so, we reserve the right to make deductions based on:

- the external condition of the goods at the time of return (e.g. due to costs of any necessary retouching work during the storage period, damaged or unsightly original labels),
- a reduction in value that occurs in the time between delivery and return as a result of obsolescence or further technical development.

The customer is free to prove that a discount is not justified or is only justified to a significantly lesser extent.

10. Creditworthiness

If we acquire knowledge of circumstances which question the creditworthiness of the purchaser, particularly if the purchaser does not honor a cheque or bill of exchange or ceases his payments, we shall be entitled to withdraw from the agreement or declare that the entire remaining debt is due for payment, even if we have accepted cheques or a bill of exchange is not yet due for payment.

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11. Prices and payment terms

The prices are non-binding and in Euro. They exclude costs for FCA shipments place of dispatch (see Offer/order confirmation section above), statutory VAT, packaging and postage. Should we incur unforeseeable labor or material costs before the order is executed, we reserve the right to adjust our prices accordingly without charging any additional profit.

Should the deadline for payment not be met, the purchaser shall be required to pay a surcharge at the normal banking interest rate, however, at least 9 percentage points above the base rate according to Section 288 (2) German Civil Code [BGB]. The same applies in the event of delayed notice of acceptance.

All costs incurred due to delayed payments such as reminder fees, legal costs and the like shall be borne by the purchaser. Bills of exchange must be eligible for discounting and re-discounting and are only accepted based on explicit agreement and on account of payment, taking into account discount charges and other exchange costs.

In the event of default in payment, we shall be entitled to withdraw from the agreement or claim compensation at our discretion.

The purchaser's offsetting, retention rights and right to reduce the purchase price are only valid, even if notice of defects has been given or counter claims are asserted, in the event that the counter claims have been adjudicated and found to exist by res judicata court judgment or are undisputed.

Should the basis for pricing change, we reserve the right to carry out price adjustments.

Should the client commission us with to deliver goods on a fixed date and is then not prepared to accept these goods, we shall set him a reasonable extension period. Thereafter we are entitled to store the goods in a warehouse at the client's expense and charge the full value of the goods. We calculate the VAT indicated on our invoices based on the legally determined rate applicable at the time of invoicing in accordance with Section 12 (1) of the German Value-Added Tax Act [UStG].

12. Protection of copyright

Our drafts, templates and the like are our intellectual property and may not be used by the purchaser, even if no special property rights exist for this, in the form of imitation or reproduced in another way.

Each violation of this shall render the purchaser liable to pay damages.

Should the supplier have to deliver according to drawings, templates or models of the client, the client shall be responsible for ensuring that no property rights of third parties are violated in the destination country of the goods.

The client hereby indemnifies the supplier against all claims of third parties and, where required, shall pay compensation for losses incurred. Should the supplier be prohibited from producing or delivering by a third party on the basis of a property right belonging to it, the supplier is entitled - without verifying the legal situation - to cease work until the legal situation is clarified by the client and third party.

Should continuation of the order become unreasonable for the supplier due to the delay, he shall be entitled to withdraw.

The supplier holds the copyright and, where applicable, industrial property rights, particularly all usage and exploitation rights to the model, tools and devices, drafts and drawings designed by him or third parties in his order.

13. Data protection

The client declares his consent to the collection, processing, use and forwarding of his data to third parties, provided this is necessary for the purpose of service provision on the part of the supplier.

14. Place of fulfilment, jurisdiction, legal validity

By irrevocably accepting these terms and conditions, the purchaser acknowledges that he is a businessperson as set out in Section 1 HGB and declares his irrevocable agreement with the following terms and conditions regarding the place of fulfilment and jurisdiction. In case of doubt, the German version of these terms and conditions is binding.

The place of fulfilment for delivery, payment and exclusive jurisdiction for all legal disputes arising from the contractual relationship, its origin and pertaining to its validity is our place of business, provided nothing to the contrary emerges from the order confirmation.

The contractual relationship is exclusively subject to German law with the exclusion of the United Nations Convention on Contracts for the International Sale of Goods (CISG) and German private international law.

Amendments and additions to concluded agreements must be made in writing and be signed to be valid, this also applies to the revocation of the written form requirement. Additional verbal agreements are ineffective.

In the event of amendments to individual conditions, the remaining conditions of these Terms and Conditions of Sale shall remain valid. The validity of the Terms and Conditions of Sale shall remain unaffected by the invalidity of individual conditions. Where applicable, the ineffective clause shall be replaced by a clause that comes closest to the ineffective clause in a legally permissible manner.