

## **General Terms and Conditions of Sale GF Casting Solutions**

### **1 General**

- 1.1 These General Conditions shall apply to all, including future, business between Purchaser and the respective supplying companies of the GF Casting Solutions Division (hereinafter referred to as "GF").
- 1.2 Changes and amendments to these Conditions shall be valid only if made in writing.
- 1.3 The written form shall include all methods of communication in the form of text (such as Telefax, E-Mail, EDI, etc.). This paragraph may be modified or waived only by a separate agreement between the Parties in the form of text.
- 1.4 No other conditions shall be valid even if not expressly rejected. Performance of the contract – even if without reservation – by GF does not constitute acceptance of such conditions.

### **2 Acceptance of Contract**

Agreements for the supply of Goods (orders and acknowledgements of order) and call-offs, including any changes or modifications thereof shall be made in writing.

### **3 Scope of Delivery, Dimensions, Weights, Technical Specifications**

- 3.1 Unless otherwise agreed, binding call-offs shall be notified 3 months prior to the date of delivery.
- 3.2 Dimensional deviations within trade practice, deviations in weight of up to +/- 10% necessitated by foundry technology as well as - in case of serial deliveries - changes in volume up to +/- 10% are permissible.
- 3.3 Technical specifications given by GF are to be considered as approximations customary in the trade and not as expressly warranted characteristics, unless expressly designated as such.

### **4 Subcontracts**

- 4.1 GF shall be entitled to subcontract the manufacture of the Goods to third parties.

- 4.2 Subcontracting of specifically designated safety parts ("D-parts") for automotive applications shall require the prior written consent of Purchaser, which shall not be unreasonably withheld.

## **5 Price, Terms of Payment, Retention of Title**

- 5.1 The prices shall be quoted ex works (as defined in the Incoterms issued by the International Chamber of Commerce), excluding packaging, freight, insurance and VAT.
- 5.2 The Parties are committed to constant quality improvements and cost reductions.
- 5.3 In case of changes to the Goods required by Purchaser and/or for deliveries after expiry of serial production, and/or in case of purchases falling short of agreed or target volumes, the prices shall be adjusted accordingly.
- 5.4 In case of long-term contracts of more than 12 months' duration, changes in cost factors such as wage-, material-, energy-, freight or logistics costs, each Party shall be entitled to request a reasonable adjustment of the prices taking proper regard of these factors.
- 5.5 In case of premature termination of the contract by Purchaser, GF shall be entitled to a reasonable compensation of its unpaid services and unamortised investments in machines and tools.
- 5.6 In case of faulty supplies, the Purchaser shall be entitled to a proportionate withholding of payments until the contract is properly fulfilled. Should a mere part shipment have no economic interest to Purchaser, he shall be entitled to withhold the entire payment.
- 5.7 The Purchaser shall only be entitled to set off any amounts due against counterclaims which are either acknowledged by GF or finally awarded to Purchaser.

## **6 Ownership of Technical Documents**

The ownership and copyright in all technical documents supplied to the other Party shall remain vested with the supplying Party.

## **7 Confidentiality, Publicity**

- 7.1 Neither Party shall disclose nor make use of any commercial or technical information received from the other Party in the course of their business transactions, to the extent said information is not in the public domain.
- 7.2 Drawings, patterns, templates, samples and similar objects may not be supplied to or otherwise be made accessible to unauthorised third parties. Copying of such objects is permitted only to the extent necessary for the performance of the contract and in accordance with the pertinent copyright law.

- 7.4 The parties shall ensure that Subcontractors are bound accordingly.
- 7.4 Any reference to the business relationship between the Parties in advertising or publicity materials shall require the other Party's prior written consent.
- 7.5 The aforementioned obligations shall expire 36 months following the expiry of the business relationship between the Parties. In addition, they shall not apply to the extent information or data are required to be disclosed by order of a public authority or of a court of competent jurisdiction or in connection with the defence in any suit brought against the disclosing Party.

## **8 Development Results**

- 8.1 The know-how disclosed by GF in the course of the bidding process shall be fully protected pursuant to Article 7. The technical concept submitted by GF in the bidding phase shall neither be used by Purchaser for its own benefit nor disclosed to third parties.
- 8.2 In case the order for the long-term supply contract is not awarded to GF, Purchaser shall reimburse to GF the development costs it has incurred, including the costs for the design and manufacture of test-tools or prototypes.

## **9 Delivery Period, Dispatch and Passing of Risk**

- 9.1 Agreed delivery times and dates are binding. Delivery periods or -dates are considered to have been met upon receipt of the Goods by Purchaser.
- 9.2 In case the delivery is not effected "EXW" or according to a similar arrival clause according to the Incoterms issued by the International Chamber of Commerce as in force on the date of delivery, GF shall, in time, make the Goods ready for loading and dispatch.
- 9.3 In any event, the risk shall pass to Purchaser latest when the Goods have left GF's works, even if GF is responsible for their transport.

## **10 Delayed Delivery**

In case of delays in delivery, GF, to the extent permitted by law, shall not be liable to Purchaser for indirect or consequential damages, such as loss of profit or loss of production.

## **11 Force Majeure**

Force majeure, labour disputes, turmoil, acts of government and other unforeseeable events beyond its control (such as interruption of the manufacturing process, insolvency of a subcontractor, rejects or remediation work, which, despite the affected Party's best efforts render timely performance of the contract impossible) shall exonerate the affected Party for the duration of the disturbance from the further performance of the contract. This shall also apply in case the force majeure or the other unforeseeable events occur when the affected Party is already in delay with the performance of its obligations. To the extent it can reasonably be required, the Parties shall be obliged to notify the other Party

immediately in the event of force majeure or any other unforeseeable event and to adapt, in good faith, the mutual obligations to the changed conditions.

## **12 Prototypes and Tools**

12.1 The costs for prototypes and tools (specific machining equipment, tools, moulds, patterns, templates, etc.) shall - unless otherwise agreed - be invoiced separately. The same applies to tools to be replaced due to wear and tear related to the order.

12.2 Should Purchaser during the manufacture of the prototype or the tools terminate or suspend the performance of the contract, he shall bear all pertinent costs incurred by GF up to the date of termination or suspension.

Subject to the foregoing, the costs for maintaining and storing as well as the risk of damage to or destruction of the tools shall be borne by GF.

12.3 Specific tooling for a particular order shall, even if paid by or being the property of the Purchaser and placed at GF's disposal, remain in GF's possession until the contract is properly fulfilled. Thereafter, Purchaser may request the return his tools, to the extent he has fulfilled his contractual obligations.

12.4 GF shall store the tools free of charge for 3 years following the last delivery to Purchaser. Thereafter, GF shall invite Purchaser in writing to give GF, within 6 weeks, all necessary instructions regarding the further handling of the tools. GF's obligation to store the tools shall end, if the required instructions are not given within the aforementioned 6 weeks period or if no new order is being placed. Upon expiry of GF's obligation to store the tools, GF shall be entitled to dispose of them. The disposal costs of tools being the property of Purchaser shall be for Purchaser's account.

The above shall not apply to the extent GF is obliged to the further supply of spare parts.

12.5 Tools, used specifically for the order, may be used by GF for the manufacture and sale of goods to third parties only subject to Purchaser's prior written consent.

## **13 Cast-in Parts**

13.1 Parts to be cast-in supplied by Purchaser must have the agreed dimensions and be ready to be cast-in. Costs for remedial work shall be for Purchaser's account.

13.2 The number of parts to be cast-in must exceed the number of Goods ordered by 10%. Rejects, which are not attributable to GF shall be replaced by Purchaser free of charge.

## **14 Quality and Documentation**

14.1 The Goods supplied by GF correspond to the state of the art and comply with applicable safety rules and the agreed technical specifications. Changes to the Goods shall require the prior written consent of Purchaser.

First samplings of automotive parts shall be made in accordance with the corresponding VDA-Regulations. Irrespective thereof, GF shall subject the Goods to a permanent quality control. The Parties shall keep each other informed of possibilities to improve the quality of the Goods.

- 14.2 In case of automotive parts specifically designated as such in technical documents or separate agreements, e.g. by adding the designation "D" (safety parts subject to special documentation), GF shall record, when, how and by whom the Goods were tested with regard to the features to be documented and what results the required quality tests have yielded. The testing documents are to be stored for a period of 10 years and are to be submitted to Purchaser at its request.

GF shall, to the extent legally possible, bind its subcontractors and sub-suppliers accordingly.

- 14.3 To the extent authorities responsible for the safety of motor vehicles require access to the production process and the testing documents of Purchaser in connection with the review of Purchaser's compliance with legal requirements, GF, at the request of Purchaser, agrees to give these authorities the same access to its works and provide all reasonable assistance.

## **15 Notification of Defects**

- 15.1 Defects in the Goods discovered by Purchaser in the ordinary course of its business shall immediately be notified to GF in writing. To this extent GF hereby waives its right of estoppel in case of late notification.
- 15.2 Reservation is being made for Purchaser's obligation to inspect incoming Goods with regard to identity, quantity and apparent transport defects by taking random samples. If GF supplies raw castings, Purchaser is obliged to inspect the raw castings for defects that become apparent only after machining.
- 15.3 In case acceptance- or first sample tests have been agreed, Purchaser shall be barred from notifying defects which could have been detected by Purchaser during the acceptance- or first sample tests.

## **16 Warranty**

- 16.1 GF warrants the compliance of the Goods with the agreed technical specification, said warranty being exclusive and in lieu of any implied or statutory warranty.

In case GF is to manufacture the Goods according to drawings, specifications, samples, etc. of Purchaser, Purchaser shall bear the risk that the Goods are fit for the intended purpose.

- 16.2 GF shall not be liable for defects caused by misuse, faulty assembly or commissioning by Purchaser or third parties, normal wear and tear, faulty treatment nor for defects caused by improper modifications by Purchaser or third parties.

16.3 In case defective Goods have been supplied, Purchaser shall, before the start of its manufacturing process (machining or assembly) first give GF the opportunity to sort out, repair or replace defective Goods, unless such prior actions are unduly burdensome on Purchaser. In case GF is not carrying out the required remedial action or in case of delays of GF, Purchaser may terminate the pertinent portion of the contract and return the defective Goods to GF at GF's risk and cost.

In case of urgency, Purchaser may, after consultation with GF, carry out the remedial action himself or through third parties. The pertinent costs shall be for GF's account.

In case of repeated supplies of Goods showing the same defect, Purchaser, after prior written notice and in case of a renewed delivery of defective Goods, may cancel the entire contract.

16.4 In case a defect, despite the Purchaser having fulfilled his obligation to inspect the Goods and to notify any defects, is not detected before the start of Purchaser's manufacturing process, Purchaser, in addition to his rights according to Article 16.3 may claim compensation for the additional costs incurred only to the extent the assumption of such costs has been explicitly agreed between the Parties.

16.5 At GF's request and cost, Purchaser shall return all Goods to be replaced.

16.6 The right of recourse of Purchaser according to 445a, 445 b and § 478 of the German BGB or § 933 b of the Austrian ABGB, is excluded.

## 17 General Limitation of Liability

17.1 The liability for serial damage (including but not limited to recall campaigns) is limited to the max. annual turnover per serial damage. This shall apply to production stoppages mutatis mutandis. Liability for lost profits is excluded.

17.2 GF's duty of indemnification shall be excluded to the extent Purchaser has validly excluded its liability towards its clients. As far as permitted by law, Purchaser shall exert his best efforts to enter into limitation of liability agreements also for the benefit of GF.

17.3 In case of delivery of defective parts GF will compensate Purchaser for the reasonably and demonstrably incurred warranty costs.

17.4 Any liability for consequential loss and consequential costs is, as far as legally permissible, excluded. The Purchaser shall indemnify GF from any potential claim of third parties in this respect,

- if serial production is taken up under field conditions without successful trial by the Purchaser or the end customer and / or
- to the extent a third party not belonging to the GF group produces the products according to the development results for the Purchaser.

17.5 The foregoing limitation of liability does not apply in case of statutory liability based on wilful misconduct, gross negligence, claims arising from guarantees, in the event of harm to life, bodily injury or harm to health of a person or damage to private property.

## **18 Statute of Limitations of Liability and Warranty Claims**

Subject to longer time periods provided by mandatory statutory law, liability- and warranty claims of Purchaser shall be time-barred after 2 years following the receipt of the Goods by Purchaser.

## **19 Industrial Property Rights**

19.1 GF shall be liable for the infringement of third party industrial property rights by the Goods if at least one of the industrial property rights forming part of the pertinent IP-family has been published in the country of GF's place of business, by the European Patent Office, in a EU-state or in the United States.

19.2 GF shall indemnify and hold Purchaser and his customers harmless from and against all claims resulting from the infringement of such third party industrial property rights.

19.3 Exception is being made to the extent GF has manufactured the Goods according to drawings, patterns, similar descriptions or data of Purchaser without knowing or having a duty to know that the Goods are infringing third party rights.

To the extent GF, based on the preceding paragraph, is not liable, Purchaser shall indemnify and keep GF harmless from and against all third party claims.

19.4 The Parties shall immediately inform each other of any infringement or alleged infringements coming to their attention. They shall further co-ordinate their defence against such claims.

19.5 The aforementioned liability and indemnification does not extend to loss of profits or damage resulting from loss of production.

## **20 Reservation of title**

20.1 GF retains ownership of all goods supplied by GF until full payment of GF's claims arising from the business relationship; all deliveries are deemed to be a coherent delivery transaction. In the case of current accounts, the reserved title also serves as security for the balance claim of GF.

20.2 Processing or transformation of the Goods supplied by GF by Purchaser is always carried out for GF. If the Goods supplied are processed or inseparably combined or mixed with objects not belonging to GF, co-ownership of the new object shall be acquired in proportion to the value of the Goods supplied by GF to the other processed objects at the time of processing or in proportion to the value of the goods supplied by GF to the other combined or mixed objects at the time of combination or mixing. If the Goods are combined or mixed by Purchaser with other objects to form a single object and if the other object is to be regarded as the main object, Purchaser is obliged to transfer co-ownership to GF on a pro rata basis insofar as the main object belongs to Purchaser. Purchaser shall detain the sole ownership or co-ownership on behalf of GF.

- 20.3 If Purchaser resells the delivered Goods as intended, he hereby assigns to GF all claims against his customers arising from the sale, including all ancillary rights, in the amount of the invoice amount to which GF is entitled (including value added tax) until all claims of GF have been paid in full. If Purchaser places the claim from a resale of the delivered Goods in a current account relationship existing with his customer, the current account claim is assigned to GF in the amount of the recognized balance, the same applies to the causal balance in the event of insolvency of the Purchaser. The assignment is made irrespective of whether the delivered Goods have been resold without or after machining. At GF's request, Purchaser is obliged to inform Purchaser's customers of the assignment and to provide GF with the information and documents necessary for GF to assert GF's rights. Purchaser is entitled to collect the assigned claims in the ordinary course of business. Purchaser is not permitted to further assign these claims within the scope of a factoring scheme. The right to collect expires upon filing for insolvency of the customer's assets.
- 20.4 GF will release the collateral held by GF to the extent that its value exceeds the receivables to be secured by more than 10 % in total.

## **21 Miscellaneous**

- 21.1 Each Party shall be entitled to the premature termination of the unfulfilled portion of the contract, if the other Party fails to pay its bills as they become due, or in case insolvency-, receivership- or similar proceedings have been instituted against the other Party.
- 21.2 If any part or these General Conditions of Sale or of an agreement between the Parties is or becomes invalid, such determination shall not affect the validity of the remaining provisions of these conditions or of an agreement between the Parties and to this extent the provisions of these Conditions and of any agreement between the Parties are declared to be severable. The Parties shall exert their best efforts to replace the invalid provision by a legally enforceable provision coming closest to the original intention of the Parties.

## **22 Choice of Law, Venue, Place of Performance**

- 22.1 The contract between GF and Purchaser shall in all respects be governed by the law applicable to the relevant subsidiary of GF without regard to any conflict of laws provisions therein. The United Nations Convention on Contracts for the International Sale of Goods, CISG, does not apply.
- 22.2 Place of performance of the contract shall be GF's place of business.
- 22.3 Exclusive place of jurisdiction shall be GF's place of business. GF, however, shall be entitled to bring actions in any other court of competent jurisdiction.





GF Casting Solutions Mettmann GmbH, D-40803 Mettmann  
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GF Casting Solutions Werdohl GmbH, D-58791 Werdohl  
GF Casting Solutions Herzogenburg Iron GmbH, A- 3130 Herzogenburg  
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