

**General Terms and Conditions for Sale and Delivery of Gentil  
Hartmetallwerkzeuge GmbH  
for Tools, Special Tools According to the Guidelines and the Conditions of  
VDMA and the Precision Tools Association**

**I. OFFER**

1. The documents belonging to the offer, like pictures, drawings, weight and dimensional information, are only approximate, unless they are clearly marked as binding. Gentil Hartmetallwerkzeuge GmbH (hereinafter called "the seller") reserves the right of ownership and the copy right for cost estimates, drawings and other documents, which may not be disclosed to third parties. The seller is obligated to disclose to third parties, drawings marked confidential by the purchaser, only after getting their (the purchaser's) approval.
2. The purchaser assumes sole responsibility for the documents (like drawings, gauges, samples, or similar) to be delivered by them. The purchaser has to make sure that the drawings submitted by them for execution of the order do not infringe on third party industrial property rights. The seller is not liable to verify if they infringe on third party industrial property rights by issuing offers based on the working drawing handed over to them in case of order execution. If a liability of the seller still should result from order execution, the purchaser will indemnify the seller for all damages. This does not apply in case of deliberate intention or gross negligence of the owner or of executive employees.
3. Samples will be provided only against payment.

**II. SCOPE OF DELIVERY**

1. The written order confirmation of the seller is binding for the scope of delivery, or – if no order confirmation is issued in due course – in case of an offer by the seller with a due date for acceptance, the due acceptance of the offer by the purchaser.
2. If special tools are ordered the order quantity may vary by +/- 10% or min 2 pieces. Only the actually shipped quantity will be billed.

**III. PRICE AND PAYMENT**

1. Unless specified otherwise, prices are ex works, however excluding packing, freight/postage, insurance and VAT.
2. All prices are quoted in Euro.
3. Payments are to be made net, without deduction of charges or fees, to our account within a period of 30 days from invoice date, also in case of partial

deliveries. Repairs and contract work have to be paid immediately upon receipt of the invoice.

4. Packing and shipping will be done according to our best knowledge, but without any liability.
5. We reserve the right to change the prices in case of changes of the manufacturing cost.
6. The purchaser will be granted the right to retain or offset payments with counter-claims only if and when their counter-claims are undisputed or have been legally decided.
7. Bills and cheques are accepted in lieu of payment only, all discounting or collection fees will be borne by the issuer.

#### **IV. DELIVERY LEAD TIME**

1. The delivery lead time starts with the date of sending out the order confirmation, however, not before all documents, acceptances and approvals to be provided by the purchaser have been submitted, or – in case of an agreed down payment – not before the payment has been received by the seller.
2. The delivery lead time is considered observed if – at the agreed date - the goods to be shipped have left the seller's premise, or if the seller has informed the purchaser that the goods are ready for shipment.
3. The delivery lead time will be adequately extended in case of industrial action, especially strike and lockout, or in the event of unpredictable obstacles outside the sphere of influence of the seller, as far as such obstacles are verified to have a decisive influence on the completion or delivery of the delivery item. This will also apply if the events happen at or to subcontractors. Also, the seller will not be held liable for the aforementioned situations if they occur during an already existing delay. In important cases the seller will inform the purchaser of the start and the end of such obstacles as soon as possible.

If the shipment – respectively the acceptance – are delayed upon request of the purchaser, the seller will start to charge to them the cost incurred due to the delay one month after the notification that the goods are ready for shipment or acceptance. The adherence to the agreed delivery lead time is based on the assumption that all contractual obligations are met by the purchaser.

4. There is no claim of the purchaser to damages in case of the seller's failure to keep the delivery date.

#### **V. TRANSFER OF RISK AND ACCEPTANCE**

1. The risk is passed to the purchaser at the latest when the delivery items are dispatched, also and even when partial shipments are made or if the seller has accepted to perform other services, e.g. absorb the shipping cost or execute the shipment and setup.

Upon request and at the expense of the purchaser the seller will insure shipment against theft, breakage, transportation, fire and water damage as well as other insurable risks.

2. If the purchaser is liable for the conditions causing a delay in the shipment the risk will pass to the purchaser on the date the seller notifies the buyer of the readiness for dispatch. However, the seller has to take out the insurances requested by the purchaser at their own expense.
3. The shipped items have to be accepted by purchaser even if they show non-essential flaws, notwithstanding the rights described in Section XI.
4. Partial shipments can be made.
5. Deviations from the shipping list or the invoice have to be made known to the seller immediately upon receipt of the goods.

## **VI. RETENTION OF TITLE**

1. The seller retains the title to the delivered items until all claims of the seller against the buyer arising from the business relationship including future claims, also arising from contracts concluded at the same time or later, have been satisfied.

This applies also, if individual or all claims of the seller have been included in a running account and the balance has been stated and accepted. In case of a repudiatory breach of contract by the purchaser, in particular in case of delayed payment, the seller is entitled – after prior reminder – to take back and the purchaser is obliged to return the delivered item(s). Taking back or seizure of the delivered item by the seller – except in the case of the contracts covered by hire purchase law – constitutes a rescission from the contract only if and when the seller clearly states so in writing. In case of seizures or other third party interventions the purchaser has to inform the seller without delay in written form.

2. The purchaser is entitled to sell the delivered item in the ordinary course of business. However, at that moment, the purchaser assigns all receivables including any ancillary rights resulting from the sale to the buyer or third parties. The purchaser will still be entitled to collect these receivables even after the assignment. The seller's right to collect the receivables themselves remain inviolate.

However, the seller undertakes not to collect the receivables as long as the purchaser timely discharges all payment obligations.

The seller may request that the purchaser notify him of the assigned receivables and their respective debtors, make available all information required for the collection, including the relevant documents, and inform the debtors of the assignment.

3. The seller undertakes to release security interests granted by the purchaser in case their value exceeds the unpaid receivables by more than 25%.
4. The seller is entitled to insure the delivered items at the purchaser's expense against theft, fire, water and other possible damage, unless the purchaser can prove that they have themselves taken out respective insurance cover.
5. The purchaser may neither pledge nor collateralize the delivered items. In case of seizure or confiscation or other third party dispositions the purchaser will inform the seller immediately.
6. If in connection with payment of the purchase price by the purchaser an obligation to accept a bill of exchange is established for the seller, the reservation of title including all agreed special clauses, and other agreed security interests only expire when the payment is cleared by the purchaser as payer.
7. The seller is entitled to withdraw from the contract and immediately ask for the return of the delivered item if the purchaser has filed an application to open insolvency proceedings on his assets.

## **VII. LIABILITY FOR DEFECTS OF THE DELIVERED ITEM**

The seller is liable – to the exclusion of further claims, however without prejudice to Section IX – for defects of the delivered items (including the lack of expressly warranted properties) as follows:

1. The seller will – at his discretion – repair or replace those parts that prove to be unusable or the usability of which is substantially impaired within a period of 6 months (in case of multiple shifts within a period of 3 months) after shipment due to circumstances prevailing before the transfer of risk – especially defective design, bad materials or deficient workmanship. The existence of such defects has to be made known to the seller in written form without delay. Replaced parts become the seller's property.

The seller can only be held liable for defects of the material supplied by the purchaser if the defects could have been detected by applying professional care.

If the shipment is delayed through no fault of the seller the liability expires at the latest 12 months after transfer of risks.

For any essential third-party product, the seller's liability will be limited to the assignment of liability claims due to him by the supplier of the procured product.

In case of production in accordance with drawings provided by the purchaser the seller is only liable for execution in accordance with the drawing provided.

2. The purchaser's right to enforce claims for defects expires in all cases from the point of time of the complaint made in good time within 6 months, at the earliest however, at the expiry of the warranty period.
3. No warranty is given for damage resulting from any of the following causes: improper or inappropriate use, faulty installation or assembly and/or initial

operation on the part of the buyer or third parties, natural wear and tear, improper or negligent handling, inappropriate operating resources, substitute materials; chemical, electrochemical or electrical influences provided that these are not attributable to the seller.

4. In order for the supplier to undertake the repairs or replacements which appear to be necessary at his discretion the purchaser shall notify the seller and allow sufficient time and opportunity, otherwise the seller is released from liability for defects. Only in urgent cases that jeopardize operational safety and to avoid excessive damages, of which the seller needs to be informed immediately, or when the seller is in delay with rectifying the defects does the purchaser have the right to rectify the defect himself or have a third party do the repair and to demand appropriate compensation for his costs.
5. If the claim proves valid the seller will cover the cost of the replacement part including shipping cost. All other cost will be borne by the purchaser.
6. The warranty period for the replacement part and the repair will be 3 months, however at least until the expiry of the original warranty period of the supplied item.
7. In case of improper modifications or commissioning work on the part of the purchaser or a third party without prior consent of the supplier, no liability will be accepted for any and all consequences arising the aforementioned action.
8. Any further claims of the purchaser, especially any claim of compensation for damages other than those to the supplied item itself are excluded.

This exclusion of liability shall not apply in case of wilful intent or gross negligence of the owner and the executive staff of the supplier and in case of physical injury or cases where liability applies according to the product liability act. Furthermore, the exemption will not apply in cases where product properties are missing that were expressly warranted, when the purpose of warranting the said product properties was to protect the purchaser against damages not affecting the supplied item itself.

#### **VIII. SPECIAL TERMS FOR MACHINING ORDERS (FINISHING, REDRESSING, REDESIGNING AND RECONDITIONING OF TOOLS)**

In addition to or deviating from the general terms and conditions of sale and delivery the following will apply to such machining contracts:

1. The invoices have to be settled immediately and without discount
2. The seller will not assume any liability for the properties and behaviour of the provided material. His right to receive compensation remains unaffected.

When the material becomes unusable by a faulty machinery of the processor, the right for remuneration of the processor and any claims for compensation of the purchaser shall be null and void. This exemption from liability will not apply in case of wilful intent or gross negligence of the owner or of executive staff.

## **IX. OTHER LIABILITIES**

As far as a liability of the seller exists, for whatever legal ground, this liability shall be limited to an aggregate amount of 5% of the value of the supplied items. This exemption from liability shall not apply in case of wilful intent or gross negligence of the owner and the executive staff of the supplier and in case of physical injury or cases where liability applies according to the product liability act.

## **X. PLACE OF JURISDICTION**

3. Place of jurisdiction and place of performance for delivery and payment is Aschaffenburg.
4. In case of any disputes arising directly or indirectly from the contractual relationship, including action arising out of a bill, legal proceedings shall be instituted at the court having jurisdiction for us

## **XI. BINDING EFFECT OF THE CONTRACT**

1. Delivery conditions of the purchaser which conflict with these above mentioned conditions, are not binding on us, even if we have not expressly objected to their content.
2. The above terms and conditions shall remain binding even if individual provisions stated otherwise in the offer and/or the order confirmation are ineffective. Only German Law will be applied for their interpretation.

As of January 2014