

## terra-S GmbH Terms and Conditions

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### 1. General conditions of contract

1.1. All offers and agreements are subject to the contractual conditions below; work orders shall also only be accepted and executed according to our written order confirmation or the terms and conditions of sale given below, unless a differing regulation has been agreed to in individual cases. In cases where agreements differing from our written confirmation have been made, the client must provide proof of these. Our offers are non-binding, unless the text of the offer provides for a time limit.

1.2. Our terms and conditions shall also apply to future transactions with there being no requirement for an explicit agreement in every individual situation.

1.3. Unless our terms and conditions are the object of the contractual agreement either wholly or partially, we reserve ownership of the goods delivered in accordance with Section 10.

1.4. Opposing terms and conditions from the purchaser shall not be binding for us, even if they are not explicitly objected to.

1.5. Submitted documents, including drawings, illustrations and similar items, shall remain our property and shall only be permitted to be used for the purpose stated in the contract. Unless the contract purpose opposes it, these documents must be returned upon request.

1.6. The order shall become binding for the purchaser once the latter signs it. Agreements made orally by one of our employees shall require a written confirmation from us in order to be valid.

1.7. Where we are legally entitled to demand compensation on account of non-performance of the contract, we can demand a flat amount of 10 per cent of the order total. We and the client both reserve the right to provide evidence of damages more or less than that amount.

1.8. We reserve the right to withdraw from the contract if execution of the order becomes impossible as a result of strike, lockout, an unforeseeable, missing delivery or other unforeseeable events.

### 2. Order confirmation

2.1. Order confirmation is provided with reference to the technical details and calculations currently available.

2.2. Changes to this technical data at the client's behest must be agreed to and occur at the client's expense. The extent and expense of the changes carried out shall determine the amount of the costs invoiced.

### 3. Delivery

3.1. We set and specify delivery dates with due care, taking into account the typical process for manufacturing. The delivery period shall begin once all individual matters pertaining to the order have been completely resolved unless this stands in opposition to an individual agreement.

3.2. The delivery deadline shall be postponed appropriately, even when delivery is already delayed, in the event of unforeseen hindrances that we, despite all reasonable care in the given circumstances,

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have been unable to avert, whether these hindrances have occurred in our facilities or with one of our subcontractors, e.g. disruption to operations, delayed supply of important raw materials, strike or similar. The same applies if, after conclusion of the contract, an extension of the production time is required due to a modification of technical details by the client.

3.3. Shipment shall be made to the place specified by the recipient at the latter's risk. The risk of deterioration or accidental loss of the goods shall be transferred to the client upon shipment, even if the shipment is made using our vehicles. Shipments shall be insured only at the express request of the client. Where a shipment is made using our means of transport, our liability will be determined by the relevant legislation.

3.4. Partial deliveries are also acceptable unless an arrangement has been made to the contrary or they would be of no value to the client. Partial deliveries can also each be invoiced as separate deliveries.

### **4. Prices**

4.1. Where no special price agreement has been made for a specific delivery, the delivery prices applicable on the day of ordering will apply.

4.2. Price information is subject to the statutory value added tax applicable on the day of delivery.

4.3. Prices are applicable for delivery ex works. Prices do not include freight, customs or insurance.

4.4. Should special requests or changes be desired after conclusion of the contract, the associated costs that arise may be invoiced separately. The same applies in the event that technical details not known at the time of concluding the contract are later specified and require additional expense.

4.5. We reserve the right to change prices four months after conclusion of the contract should there be unforeseeable changes in our working situation, whether they occur in our facilities or with one of our subcontractors, e.g. an above-average increase in the price of raw materials, alloy surcharges or similar.

### **5. Payment terms**

5.1. All invoice amounts are due 30 days after the invoice date unless a differing arrangement has been made.

5.2. A discount of two per cent is granted for pre-payment. This does not apply to payments by bill of exchange or if the recipient is in arrears with payment for earlier deliveries. In commercial dealings, standard bank interest becomes payable as of the invoice due date without the need for a payment reminder.

5.3. Permission for partial payments can be revoked if payment for a permitted instalment is more than one week in arrears. Costs for discounting bills of exchange are incurred at the client's expense and are payable immediately.

5.4. Registering a complaint about a partial performance does not form an entitlement to withhold payment for the part not the subject of complaint unless this part is of no value to the client.

5.5. Should the recipient fall into arrears with his/her payment obligation to us, we will, irrespective of

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other rights, be entitled to assert our right of retention for outstanding deliveries. This also applies to deliveries related to separate orders.

5.6. In the situation described in Clause 5.4 above, we are entitled to make our delivery dependent on step-by-step cash payment, irrespective of other rights. The recipient shall retain the right to avert this cash payment requirement by presenting an open-ended, directly enforceable guarantee issued in Euros by a German bank according to international standards.

5.7. We are also entitled to demand payment step by step as per Clause 5.5 if, after conclusion of the contract, we gain knowledge of circumstances that give rise to a justifiable concern of punctual payment being endangered. The right of the client to avert this obligation by presenting a directly enforceable guarantee as defined in Clause 5.5 remains unaffected.

5.8. Where the conditions described in Clauses 5.4 to 5.6 are present, the agreed delivery periods are prolonged according to the delay arisen.

## **6. Service performance**

6.1. Our products correspond with the advertised level of quality and are guaranteed to function flawlessly when used correctly.

6.2. Changes to the construction and finish, deviations from drawings and catalogues and the like are not grounds for complaint unless they go against the purpose of the contract.

6.3. Dimensional and other tolerances are determined by standard commercial practice and technical feasibility.

## **7. Warranty**

7.1. Complaints must be made in writing within eight days of receiving the goods and include specific information on the claimed defect, if it is identifiable. Defects that appear later must be claimed immediately.

7.2. The warranty provided for defects arising from unsuitable or improper usage, incorrect assembly by the recipient or third parties, normal wear and tear or incorrect or negligent treatment shall be just as little as it is for the results of modifications or assembly by the client or third parties carried out improperly and without the agreement of the supplier.

7.3. For justified defects, we are entitled to make a replacement delivery. If a defect is not resolved within one month or a replacement delivery is not made by the same time, the client can demand withdrawal from the contract or reduction of the purchase price after setting a grace period of one month. These deadlines shall be postponed correspondingly if it is necessary for technical or operational reasons unless the contract purpose will not be achieved or will be seriously endangered by a further postponement of the deadline. The deadline shall not apply if we cannot resolve the defect. Claims for compensation can only be asserted when the requirements listed in Clause 8.1 have been met.

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7.4. Should it turn out that the recipient is responsible for a defect in need of repair, we will be entitled to invoice the client for our improvement work.

### 8. Liability

8.1. We do not assume any liability beyond the warranty rights listed in Section 7, including for consequential damages. All contractual claims arising from delayed payment, impossibility of performance, culpable breach of secondary obligations and *culpa in contrahendo* are thus excluded unless the damages have been caused intentionally or through gross negligence by our company or one of our managers.

8.2. Also excluded are all claims arising from impermissible actions, including for product liability, even if these are addressed against one of our employees, unless our company, a manager or, where a claim is made against an employee, that employee him/herself has acted with intention or gross negligence. This disclaimer does not refer to claims that are supported by the German Product Liability Act (*ProdHaftG*).

8.3. The following applies in relation to non-merchants: compensation claims according to the clauses above are excluded only if and when we or our agents can be blamed for intention or gross negligence regarding the damages incurred.

### 9. Retention of title

We shall, in all cases, retain title to the goods delivered by us to the extent described hereunder:

9.1. The goods delivered shall remain our property until complete payment of the purchase price, including ancillary costs, and furthermore, until payment of all demands, irrespective of their legal grounds, and until redemption of all bills of exchange and cheques given by the client as payment. In the event that payment dates are missed, we shall be entitled to demand return of the goods after providing notice and granting a grace period of at least 10 days. If the recipient becomes insolvent, the obligation to provide notice and a grace period will be void.

9.2. The recipient is entitled to use the goods as intended and sell them in the ordinary course of business. This right becomes void if the recipient becomes insolvent. If the recipient falls into arrears, the right to intended usage or onward sale of the unpaid goods can be revoked.

9.3. It is prohibited for the recipient to pledge or collateralise the delivery object. If the delivery object is pledged or seized by third parties, the client must inform us immediately.

9.4. In the event that the delivery object is resold, whether it is modified or unchanged, the recipient thereby already assigns its claim against the proceeds, amounting to the invoice amount, to us.

9.5. If the security exceeds our claim by more than 20 per cent, we shall undertake to release the goods as we see fit.

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9.6. If goods are taken back through this retention of title, their utilisation will result in a corresponding credit on the recipient's account.

### 10. Final provisions

10.1. Should individual clauses or parts of clauses amongst the clauses listed above be invalid, the validity of the remaining provisions will remain unaffected.

10.2. Unless an arrangement has been made to the contrary, all obligations must be performed at the company's registered location. The place of jurisdiction in commercial dealings is agreed as the registered location of the company. This also applies to cheque and bill of exchange claims.

10.3. The Company's place of jurisdiction also applies if the client does not have a general place of jurisdiction in Germany, moves its place of residence or usual abode away from Germany after concluding the contract or if its residence or usual abode is unknown at the time of filing legal action.

10.4. The entire legal relationship is subject to German law.

### 11. Data storage

In accordance with Section 28 of the German Federal Data Protection Act (*BDSG*), we would like to inform you that the data required for doing business is processed and saved using an EDP system.