

## General terms and conditions of the

### **Company UPT Optik Wodak GmbH (in the following to be referred to as: UPT)**

These terms and conditions solely apply to the business transactions between the company UPT and enterprises / enterprisers, but not to business transactions between UPT and private end customers.

#### *I. Validity of these conditions and scope of liabilities*

**1.)** The scope and details regarding delivery obligations, as well as the entire remaining contractual relationship between UPT and the orderer, are subject to the following conditions.

These also apply to any future business relations between UPT and the orderer. Should UPT apply a new version of the terms and conditions, the orderer will immediately be informed before any new possible orders are confirmed.

At the latest, these terms and conditions apply once our services have been accepted. Any conflicting confirmations made by the orderer, with reference to his own terms and conditions and/or purchasing specifications, are herewith rejected and will not be included in the contract.

**2.)** All offers are subject to change and non-binding. The conclusion of contract only becomes effective with the written approval by UPT.

**3.)** The ownership and copyright law of all documents related to the offer remain in the hands of UPT. These documents are not to be made available to third parties in any way and must immediately be returned to UPT if demanded, especially in the case that the order is not made.

#### **II. Terms of payment**

**1.)** Unless stated otherwise, UPT is bound to the prices quoted in the offers 14 days after the orderer has received said offers. Prices are quoted ex works plus applicable VAT. Charges for packaging and shipment are therefore not included herein.

**2.)** Provided that agreements to ship the delivery item have been made, any costs for packaging and delivery are charged separately at the expenses of the orderer. Unless agreed otherwise, the choice of shipping and packaging methods are left up to UPT.

**3.)** The quoted amounts are to be paid directly and strictly net (without deductions) within 14 days after the invoice has been received. This also includes quoted amounts for wage labour and prototypes.

For the manufacture of sample/test tools and standard moulds the following part payment conditions apply:

Payment of

- 40 % after order has been received,
- 40 % after sampling,
- 20 % after release

of the respective invoice amount.

In the above mentioned cases of part payment, the invoice is sent to the orderer immediately once the order has been received. The respective part payments are to be paid within 14 days after the orderer has placed an order and has received the invoice and/or after the orderer has examined / released the order.

The invoice becomes valid 3 days after being sent (according to the date on the post stamp), unless the orderer can prove that he has received the invoice on a later date.

Once the payment period has expired, the orderer is in default, § 286 sec.2 No.1, sec.3 German Civil Code.

**4.)** Should the orderer be in default with an agreed part payment (see section 3), or in the case that reasonable doubts concerning the orderer's ability or willingness to meet financial obligations arise due to certain facts (e. g. the institution of enforcement measures against the orderer or the institution of insolvency proceedings of the orderer's assets), then the entire outstanding amount is immediately payable.

**5.)** In the case of default, the pending claim is charged with 8% points interest above the base lending rate according to § 247 sec. 1 Civil Code, § 288 Civil Code. The assertion or proof of a higher interest rate and / or of further damages remain unaffected by this.

**6.)** Withholding of payments and / or setoff due to possible counterclaims of the orderer are excluded, provided that counterclaims do not remain unchallenged or legally determined.

#### **III. Terms of delivery**

**1.)** Any agreed delivery terms will commence only once all technical and remaining details have been agreed upon with the orderer. UPT is entitled to make part deliveries, provided that this is reasonable for the orderer considering the type of item being delivered and that the orderer does not explicitly reject this. The delivery period decided in an offer remain valid for 14 days.

**2.)** Provided that the shipment of the delivery item has been agreed upon, dispatching the item on time is enough to comply with the agreed delivery terms. To guarantee due payment, it is also vital that UPT inform the orderer concerning the item's readiness for collection from ex works.

**3.)** Should unpredictable incidences occur, regardless of whether they occurred on UPT's premises or on those of a sub supplier, an agreed delivery period will be extended accordingly. The following cases will particularly be considered as reasonable causes of delay: system malfunctions, strikes, defective goods, and also the delayed delivery of necessary raw materials and/or components.

UPT will inform the orderer immediately about these facts and about the estimated necessary extension of the delivery period. Should the delivery and/or extension of term, considering all circumstances of the case, be unacceptable for the orderer, the orderer may withdraw from the contract; in this case, both the interests of UPT and the orderer are to be appropriately considered.

**4.)** If it is not possible to make the delivery immediately due to reasons on behalf of the orderer, UPT reserves the right to charge the orderer at least 0,5% of the net amount invoiced for the costs resulting from storage for every begun month. The orderer has the right to prove that none or only marginal costs have occurred. Once an appropriate extension period made for the orderer has expired, UPT has the right to withdraw from the contract and to demand compensation for damages instead of payments. In this case, damages in place of payments amount to 15% of the agreed net invoiced amount; in this case also, the orderer has the right to prove that none or only marginal damages have resulted out of these circumstances.

**5.)** If the delivery is delayed by the fault of UPT, and if an additional respite of 6 weeks has expired, the orderer may withdraw from the contract. The enforceability of damage claims is excluded; Section V. (Warranty/ Damages) paragraph 7 S.3 and S.4 shall remain unaffected by this.

**6.)** If the orderer is in default of payment or any other significant contractual obligations, liability of the company UPT is suspended.

#### **IV. Transfer of risks**

**1.)** At the point of passing the delivery item to the orderer, the risk is transferred to the orderer. If the item is shipped, the risk is transferred to the orderer at the point when the delivery item is passed to the shipper or other person determined to carry out the shipment.

**2.)** In the case that the pick-up / shipment is delayed due to circumstances which are not the fault of UPT, the risk is transferred to the orderer as soon as he has been informed in writing that the item is ready to be collected / shipped.

**3.)** The orderer may request that UPT insure the goods against all kinds of transit damages at the expenses of the orderer. The costs for insurance are invoiced to the orderer at the net cost price.

#### **V. Warranty / Damages**

**1.)** UPT guarantees that its products are free of damages at the passing of risks, especially of manufacture and/or material defects. The measurements of respective products may be subject to customary deviations within DIN standards 16901 and 10110. Furthermore, other deviations may occur which are within an agreed range of tolerance or are regarded as generally customary and tolerable in these types of trades. In the case that the above mentioned customary deviations are unacceptable to the orderer, the orderer will point this out to UPT while placing the orders, and thus particularly demand a confirmation of the measurements from UPT. Should UPT be unable to carry out the order due to this, the orderer will immediately be informed. Any warranty claims prescribe one year after the passing of risks has taken place; section 4 remains unaffected by this.

**2.)** All faults will be eliminated by UPT, whereby any claims of the orderer deviating from this are excluded by the (successful) supplementary performances generated by UPT; the type of supplementary performances to be made are decided upon by UPT. If the remedy involves an inappropriate amount of effort or if the remedy fails, UPT has the right to deliver an adequate replacement (additional delivery). If the supplementary performance is not made within an appropriate period of grace, the orderer may demand adequate abatement (reduction of the purchase price) or choose to withdraw from the contract, provided that the orderer has announced this in the grace period notification.

**3.)** A guarantee of quality and / or durability will not be warranted under any circumstances.

**4.)** The orderer is obligated to check that all deliveries / products of the company UPT are complete and also to check for faults immediately once the item has been received. Should parts be missing or obvious faults be determined, the orderer must inform UPT about this immediately. Covert faults must be noted immediately. Otherwise, the delivery is seen as accepted. § 377 of the German Commercial Code is explicitly referred to here.

**5.)** UPT does not guarantee that the delivery item is suitable for the intended purpose of the orderer.

**6.)** In cases of entrepreneur's recourse, § 478 of the German Civil Code and its related legal warranty regulations apply; the preceding restrictions of the warranty rights do not apply.

The exemption and/or restriction of damage claims according to paragraph 7, as well as the application of § 377 of the German Civil Code, remain unaffected hereby. Should the orderer decide or plan to sell on the products / deliveries to customers according to §§ 474 et sqq. of the German Civil Code, or deliver these to businesses who on their part sell on the products to customers, the orderer will inform UPT about this prior to conclusion of contract. By separate agreements the company UPT and the orderer can then exclude the recourse of the orderer and / or reduce it to the above mentioned (restricted) warranty claims, in the case that the orderer is entitled to an equal claim to compensation in this agreement, for example through lump sum reduction of the purchase price.

7.) If there are no other issues, any further (warranty) claims of the orderer, especially regarding claims for damages, are excluded. UPT is not liable for defects that did not occur on the delivery item itself, particularly not for consequential harm caused by defect, for loss of profits and any other financial losses of the orderer or for unpredictable unusual damages. These disclaimers are not valid if the damages were made intentionally or occurred due to gross negligence or in cases of negligent breaches to the life, body and health of a person, or in cases of breach of essential contractual obligations (cardinal obligations). In all cases, the damage claim is limited to the damages that usually occur in these types of business dealings, except where the damage of life, body and health is involved.

## **VI. Retention of title / Securities**

1.) Until all claims UPT is entitled to receive from the orderer according to the respective contract / order have been fulfilled, the company UPT is warranted the following securities, which may be released upon request of the orderer, as long as their actual value exceeds UPT's claims by more than 20%.

2.) Until full payment has been received, all goods remain in possession of UPT. Handling or alterations are always made for UPT as the manufacturer, though without any obligations for UPT.

3.) The orderer reserves the right to process and alienate the reserved goods in according course of business, as long as he is not in default of payment to UPT. Hypothecation or transfer of securities is prohibited.

For precautionary reasons, the orderer entirely hands over the claims resulting out of the reselling or other legal reason (insurance, tortious acts) of reserved goods (including any balance claims from current accounts) to UPT. UPT entitles the orderer to collect the claims that were passed on to UPT in his own name but on behalf of UPT's invoice, though this may be revoked at any time. UPT may revoke the collection authorisation if the orderer does not comply with his payment obligations.

4.) Should third parties have any kind of access to the reserved goods, the orderer will point out to them that they belong to UPT and also inform UPT immediately about this.

5.) If the orderer acts contrary to contract – especially in cases of default of payment – UPT reserves the right to retract the reserved goods or, if necessary, demand the orderer to pass on the claim for surrender from third parties. The retraction of reserved goods by UPT is not equivalent to withdrawal from the contract.

6.) If UPT deems it necessary due to the specific nature of the particular case, the orderer must guarantee security of payment for UPT's claims through absolute, irrevocable and unlimited guaranty of a bank or savings bank; the guaranty has to be up to the amount of the respective gross order value, whereby the company UPT will make the decision according to equitable discretion (§ 315 of the German Civil Code). UPT also has the right to demand this kind of security after conclusion of contract, until the entire balance of the respective invoice has been paid.

Hereby, we record the usual stipulations with the client, which are also customary in our industry. Those stipulations have been in force since our company had been founded:

Contractual stipulations consist of three components: order, General Terms and Conditions of Business as well as the common practice usual with us or our industry respectively.

The ownership and the authority of disposal of the special tool as well as the copyright with all related documents, e. g. construction documents, will be transferred to the ownership of the client nonrestrictively after full payment of the performance (see also the General Terms & Conditions).

The special tool will be marked with the client's name as an expression of his or her ownership and authority of disposal.

The client agrees upon a constitutum possessorium with the contractor as to the transfer of ownership of the special tool. Also this will be documented (publicity) by marking it with the client's name.

The client may inspect the storage of the special tool at any time.

Thus, the special tool designated to the client, i. e. the special tool in the ownership of the client, may not be provided to another company, neither within the country nor abroad, in order to manufacture items.

The special tool can and will only be used for orders by the client.

The special tool will be insured by the contractor at his own cost against fire and theft. The expenses arising from this are part of the price calculation.

The special tool and all related documents will remain with the contractor only in order to be able to execute potential follow-up orders (the constitutum possessorium will continue to persist).

## **VII. Limitation of liability**

Claim for damages, irrespective of the legal basis, are excluded both against UPT, as well as against its vicarious agents, unless the damages are intentional or due to gross negligence or in cases of damage of life, body and health of

a person due to gross negligence or in the case of breaches of important contractual obligations (cardinal obligations). In all cases, the claim for damages is limited to damages that are usual to occur in these kinds of dealings and excludes cases of injury to the life, body and health of a person.

**VIII. Applicable law, jurisdiction, writing and severability clause**

**1.)** For these terms and conditions and the entire privity of contract between UPT and the orderer, the German law applies. The application of international law, particularly UN Convention on Contracts for the international sale of goods (CISG), is hereby excluded. Furthermore, the application of law of the state in which the orderer is based – in the case it is outside the German Republic – is excluded.

**2.)** Should a regulation in these terms and conditions or a regulation within any other agreements be or become ineffective, the effectiveness of all other regulations or agreements remains unaffected. The ineffective clause is replaced by one which comes closest to the intended regulation in economical and legal terms. This also applies if only part of a clause should be or become ineffective.

**3.)** Nuremberg is exclusively court of jurisdiction for any conflicts arising directly or indirectly from this contractual relationship. Nuremberg is place of fulfilment, according to the respective current business address of the company UPT.

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