

## General Terms and Conditions of Sale and Delivery

### Hubert Stüken GmbH & Co. KG

#### 1. Miscellaneous

The legal relationships between Hubert Stüken GmbH & Co. KG (hereinafter referred to as „STÜKEN“) and the Customer are exclusively limited to the General Terms and Conditions of Sale and Delivery as detailed below and shall take precedence over any and all previously issued General Terms and Conditions (Customer or sub-contractor).

#### 2. Quotation and Contract Conclusion

All STÜKEN offers are subject to change without prior written or verbal notification. Resultant orders, conclusions and supply calls as well as any amendment or supplement to such must be made in writing and shall only become binding when confirmed in writing by STÜKEN. Verbal agreements, which are made before or upon conclusion of the contract must also be confirmed in writing by STÜKEN in order for them to be legally enforceable.

#### 3. Quantity Determination

STÜKEN's written order confirmation is required to verify acceptance of quantity ordered. Shipment deviations from ordered quantity are permitted up to +/- 10 %.

The values determined by STÜKEN in the outgoing goods inspection shall be decisive for the numbers of units, weights and dimensions, subject to any other proof being provided. In the event that the number of units is determined by STÜKEN through reference weighing then this shall also be decisive if the actual number of units deviates up to 1 % due to measurement tolerances, etc. In this case the Customer shall neither be entitled to an additional delivery nor to any reduction and damages.

#### 4. Date of Delivery or Shipment

Delivery date shall not be binding unless, a binding delivery date has been expressly agreed upon in the contract. Firm deals (§ 376 sect. 1 HGB - German Commercial Code) must be expressly agreed upon in writing. A binding delivery date is deemed to have been observed if the object of delivery has either been handed over by STÜKEN to a shipping agent, freight forwarder or any other person or institution appointed to execute the dispatch or the Customer has been informed by STÜKEN that the goods are ready for dispatch.

The delivery date shall be postponed by a reasonable period of time, if the Customer is in arrears with his payment or any other obligations towards STÜKEN. Should conditions dictate, the delivery date may be postponed until such time that the Customer resumes a current payment status or until such time that technical and commercial issues have been satisfactorily clarified.

In the case of a late performance by STÜKEN the Customer may only withdraw from the contract, assert a claim for damages besides the performance and damages instead of the performance (§§ 323 sect. 1, 280 sect. 2, 281 sect. 1 BGB - German Civil Code) if default has occurred and the Customer has in addition to this fixed an appropriate final deadline for the performance. This final deadline is to be fixed in writing.

Damages for a breach of the obligations may only be demanded by the Customer in the case of wilful intent, gross negligence, because of injury to life, the body or the health or due to the breach of essential contractual obligations.

Should the Customer assert damages caused by default, then these shall be limited for each full month of the default to 1/2 %, for a maximum however of 5 %, of the value of that part of the total delivery, which can not be delivered or used on time due to the default.

In the event that the dispatch is delayed for reasons for which STÜKEN may not be held responsible then the Customer, beginning from one month after the notification of readiness of dispatch, shall be invoiced for the costs incurred for storage with at least 1/2 % of the invoice amount per month, insofar as the Customer shall not prove that no damages have been incurred whatsoever or that the damages were far less significant.

#### 5. Transfer of Ownership

Ownership of goods and all related risk and responsibility shall pass onto the Customer upon shipment of goods from STÜKEN and indeed also then, if partial deliveries take place or STÜKEN has assumed other services, e.g. the dispatch costs or carriage.

If requested by the Customer the consignment will be insured at his cost by STÜKEN against theft, breakage, transport, fire and water damages as well as other insurable risks.

In the event that the dispatch is delayed due to circumstances, for which the Customer may be held responsible, then the risk shall pass onto the Customer on the day of the readiness for dispatch; STÜKEN undertakes, however, at the request and at the cost of the Customer to procure the insurances which the Customer requests.

Partial deliveries by STÜKEN are permitted.

The Customer is obligated to purchase the total quantity of ordered goods within six months of the date of the contract. In the event that the Customer fails to issue releases for the total order quantity within this period, STÜKEN reserves the right to ship all remaining product or to withdraw from the contract. In such instance, the Customer is obligated to pay the original contract price less any non incurred costs. STÜKEN also reserves the right to invoice for any discount which was extended to the Customer based upon original order quantity.

#### 6. Production Tooling Equipment

The Customer is obligated to pay associated tooling costs as detailed in pertinent STÜKEN quotations. STÜKEN retains ownership of all tooling and production equipment.

#### 7. Force Majeure

Force majeure, industrial disputes, unrest, measures by authorities and other unforeseeable, unavoidable and serious events release STÜKEN for the duration of the disturbance and to the extent of their impact from the obligations of performance. This shall also apply if these events occur at a point in time, at which STÜKEN is in default of the performance. STÜKEN undertakes to provide the necessary information within the framework of that which is deemed as reasonable and to adapt its obligations to the changed circumstances in good faith.

#### 8. Pricing

Unless otherwise confirmed in writing, STÜKEN pricing is „ex-works“ including loading but excluding packaging. Value added tax shall be added to quoted pricing in the amount and manner as legally required.

In the event of significant circumstances which dictate price alterations (raw material, wages, labor or other cost factors), STÜKEN reserves the right to implement pricing revisions.

#### 9. Terms of Payment

Unless otherwise agreed upon and confirmed in writing, payment is to be made by cheque or bank transfer immediately on receipt of goods, without any reductions, free of charges to the bank account of STÜKEN. VAT in the valid applicable rate will be due and payable upon invoicing.

In case of default in payment, STÜKEN shall be entitled to charge default interest at a rate of 9 percentage points above the base interest rate. The same shall apply in the event that payments are granted a respite. The assertion of further damages shall not be excluded.

It is not permitted to retain the payment or to set these off against any counter claims of the Customer contested by STÜKEN.

#### 10. Liability for Material Defects

The liability of STÜKEN shall be limited to the agreed characteristics only (customer specification). Any applicable legal or normative requirements resulting from the special application must be clearly identified by the Customer and confirmed by STÜKEN.

The responsibility for suitability and function lies exclusively with the Customer. The Customer shall fully inform STÜKEN, especially in the case of legal requirements, about the exact function as well as special requirements resulting from the use of the delivered STÜKEN products in the Customer's product, in written form before placing the order. Confirmation of the facts shall be made exclusively in writing by STÜKEN.

The Customer undertakes to examine the goods immediately on receipt. STÜKEN is to be informed of any instance of non-conforming product immediately in writing no later than 10 days after receipt of goods. Non-visible defects are to be notified in writing no later than 10 days after being ascertained. In the case of a delay in the notification of the default there shall no longer be any warranty whatsoever.

Claims for defects shall not exist in the case of a mere insignificant deviation of the agreed quality and in the case of a mere insignificant impairment of the usability.

A desired heat treatment is carried out with the necessary care and appropriate means. Success of heat treatment, for example for absence of warpage and cracks, surface hardness, hardness penetration, curing,

electroplating process etc., is not guaranteed in particular due to possible variations in hardenability of the material used, latent defects, disadvantageous shaping or because of any possible customer induced changes in the previous workflow.

If heat treatment is unsuccessful without STÜKEN being responsible because STÜKEN was unaware of hidden faults in the raw material prior to the heat treatment or could not know about them or because properties of the material used, the shape or the condition of the workpieces hindered a successful heat treatment without STÜKEN knowing about this and could not know this, the piece price has to be paid nonetheless. Required subsequent treatments are charged separately under the above mentioned conditions.

Prior to shipment the goods are checked in the customary scope or to the customer's specifications, respectively, at the STÜKEN facility. Further tests and analyses are carried out only by special agreement. The outgoing inspection at STÜKEN does not release the buyer from his obligation to an incoming inspection.

Furthermore they shall not exist in the following cases:

Unsuitable or improper use, faulty assembly by the Customer or a third party, natural wear and tear, faulty or negligent handling, excessive use, unsuitable production equipment and facilities, substitute materials, chemical, electro-chemical or electrical influences, insofar as they are not the result of a fault of STÜKEN.

In the case of justified complaint STÜKEN is entitled to choose to correct the fault or provide a substitute delivery (subsequent performance). In order to carry out all measures which STÜKEN may deem necessary at their own reasonable discretion, the Customer undertakes after coordination with STÜKEN to allow the necessary time and opportunity, otherwise STÜKEN is released from the liability for defects.

In the event that STÜKEN is not in the position to correct the fault or provide a substitute delivery or according to § 439 sect. 3 BGB is entitled to refuse the subsequent performance, or there shall be a delay in the subsequent performance beyond a reasonable deadline, for which STÜKEN is responsible, or should the subsequent performance fail twice, then the Customer is entitled to choose to either withdraw from the contract or to demand a corresponding reduction in the purchase price. STÜKEN shall be released from any liability for any consequences resulting from any changes or further processing undertaken for instance on the part of the Customer or a third party without the prior consent of STÜKEN.

In the event that a claim for subsequent performance is asserted against the Customer by his buyer or their buyers the Customer undertakes to give STÜKEN the opportunity to carry out the subsequent performance personally within a reasonable period of time. The Customer undertakes to impose this obligation on his buyer accordingly. Should the Customer be in breach of this obligation STÜKEN may reduce the reimbursement of expenses to the amount, which would have been incurred in the case of an own subsequent performance.

Other claims of the Customer, in particular a claim for the replacement of damages, which have not been incurred on the object of delivery itself, are excluded. This exclusion of liability shall not apply in the case of wilful intent, gross negligence as well as in the case of culpable breach of essential contractual obligations, due to injury to life, the body or the health or in the case of a liability according to the German Product Liability Act. The claim for damages due to the breach of essential contractual obligations is, however, limited to the contractual-typical, reasonably foreseeable damage, which is in turn limited to a maximum of the value of the goods in the delivery concerned, insofar as the limitation is not excluded due to an act of wilful intent or gross negligence or due to an injury to life, the body or the health.

Warranty claims expire after 12 months. This does not apply if longer periods are mandatory by law, particularly for deficiencies in a building or product used in a building according to its general purpose causing the deficiencies. For damages resulting from injury to life, limb or health and in case of intent or gross negligence or other breach of essential contractual obligations (i. e. obligations whose fulfillment allow for the proper execution of the contract in the first place and on whose observance the customer regularly relies and may rely) caused by the legal representatives or executives of STÜKEN, sentence no. 1 does not apply.

The statutory consequences of a breach of the commercial obligation for inspection and complaint (according to § 377 and § 378 HGB) shall remain unaffected by this.

## **11. Reservation of Title**

STÜKEN reserves the right to the property for the delivered object until all payments under the contract of delivery have been made in full.

The Customer may neither pledge nor assign the delivered object for security. He must inform STÜKEN immediately in the case of pledges as well as seizure or any other disposals by third parties.

Should the Customer breach the terms of the written contract, including delinquent payment, STÜKEN reserves the right to reclaim the goods and the Customer agrees to return said goods to STÜKEN.

STÜKEN's assertion of the reservation of title as well as the pledging of the delivered object shall not be deemed as a withdrawal from the contract.

Further processing or rework of STÜKEN goods by the Customer may only be performed subsequent to receipt of written authorization from STÜKEN. Should the STÜKEN goods be further assembled or combined with other product/components which are not the property of STÜKEN, Customer shall grant to STÜKEN partial ownership of the created product in relation to the value of the STÜKEN goods to the created product.

The Customer is entitled to sell the delivered goods - also after further processing - in usual and proper business transactions. However, he undertakes to reserve the right to ownership until his purchase price claim has been paid in full. Independent of this the Customer hereby assigns already the accounts receivable against his buyer to which he is entitled from the resale with all secondary rights to STÜKEN. In the event of the resale after processing the assignment shall apply as in the amount of the sale value of the reserved goods of STÜKEN. The buyer is entitled to collect the assigned accounts receivable from the third party buyer, undertakes however to remit these to STÜKEN immediately. STÜKEN reserves the right to also collect the account receivable directly from the third party buyer, who is to be named for this purpose.

STÜKEN shall insofar release the securities held by him as their value shall exceed the accounts receivable to be secured by more than a total of 20 %.

## **12. Confidentiality**

All documents, which are produced by STÜKEN or made available by the Customer - such as samples, drawings, models, data as well as other information and similar documents made available - are, insofar as they are not clearly determined for the public, not to be made accessible to third parties.

STÜKEN also undertakes not to make the afore-mentioned documents and objects accessible to third parties and not to use these for any other purpose than that as agreed in the contract. STÜKEN also undertakes to store these objects at their own costs during the performance of the contact.

## **13. Property rights of third parties**

The product is manufactured according to the customer's specifications. STÜKEN can therefore accept no liability that the product manufactured by STÜKEN on behalf of the buyer is free of third party rights. Thus, the buyer warrants an exemption in the event that during the course of carrying out the order STÜKEN has to intervene in the property rights of third parties and STÜKEN is supposed to be held reliable in this regard by the production and delivery of the ordered goods.

## **14. Place of Performance**

Place of performance and location of the contract fulfillment is considered the STÜKEN facility.

## **15. Court of Jurisdiction**

All disputes arising from this agreement shall be settled by German Law at the „Landgericht Bueckeberg“. STÜKEN further reserves the right to invoke litigation at the Customer facility location.

## **16. Applicable law**

In addition to the contractual provisions the decisive law of the Federal Republic of Germany shall apply exclusively for the legal relationships of domestic parties, with the exclusion of conflicting laws.

## **17. Escape Clause**

In the event that one or more provisions of these terms and conditions of sale and delivery shall be or become unenforceable this shall have no effect on the validity of the remaining provisions and on the contract as a whole.