

**General Terms and Conditions of Business and Delivery for GALVANOFORM Gesellschaft  
für Galvanoplastik mbH;  
Limitation of Liability (see point 7)**

## **1. General**

- (a) Our deliveries, services and quotations are based exclusively on the present terms of business and delivery.
- (b) Our terms of business and delivery shall have exclusive validity; conditions set out by the customer, which oppose or deviate from our terms and conditions, shall not be recognised by us unless we expressly agree to their validity in writing. Our terms and conditions shall also have exclusive validity should we render the service to the customer without reservation whilst knowing that conditions set out by the customer exist which oppose or deviate from our terms and conditions.
- (c) Our terms and conditions of business and delivery apply only to companies as defined by section 310(1) of the German Civil Code (BGB).
- (d) Our terms and conditions shall also apply to all future business with the customer, even if they are not expressly agreed to again.
- (e) We reserve all rights of ownership and copyright, as well as all other property rights, for calculations, drawings, plans, illustrations and other documents. This also applies for all other documents and information which are classed as “confidential”. The customer requires our express written consent before passing these on to third parties.

## **2. Conclusion of contract**

- (a) All agreements which are made between us and the customer for the purpose of executing a contract are laid down in writing by Galvanoform in the corresponding contract, the present general terms and conditions of business and delivery and the order confirmation.
- (b) Drawings, measurements, weights, illustrations and other technical specifications, as well as performance data, which feature on the Internet, in prospectuses, catalogues, brochures, price lists, other communications or other letters, are only approximate and are therefore not binding. They are and first become binding only when laid down in writing in the corresponding contract or confirmed in our order confirmation. Our employees are not authorised to make verbal amendments, modifications or subsidiary agreements or to give verbal promises which go beyond the content of the written contract.
- (c) Our quotations are always non-binding unless expressly defined as binding.

## **3. Prices and payment conditions**

- (a) Fixed prices quoted by us are only binding based on the information available to us at the time the quotation was given. Should the bidding documents be supplemented or altered, the fixed price shall no longer be valid. Remuneration shall then be determined either according to hours worked and materials used or a new quotation, to be prepared by us, or alternatively according to current market rates.
- (b) We reserve the right to make reasonable alterations to our prices should increases or decreases in costs arise, in particular due to collective wage agreements or changes to prices of materials, following conclusion of the contract. We shall provide proof of this to the customer on demand.
- (c) Provided nothing different is stated in the order confirmation, our prices are “ex-works” and exclude packaging; this shall be invoiced by us separately.
- (d) All Prices are excluding VAT; VAT shall be displayed separately on the invoice at the statutory rate on the day the invoice is issued.
- (e) Provided nothing different is stated in our order confirmation, payments are due net (without deductions) within 30 days from the invoice date. A payment shall only be deemed as having

been made once we are able to dispose freely of the sum. Statutory regulations apply relevant to the consequences of a default of payment.

- (f) Agreements with regard to payment by instalments must be drawn up in writing. Should payment by instalments be agreed upon, all instalments are to be paid within the stipulated period. Should the customer fall into arrears with just one instalment, the total that remains outstanding shall be due immediately in one lump sum.
- (g) Payments by bill of exchange shall only be permitted following special arrangement. Bills of exchange and checks shall always only be accepted on account of payment but not in lieu of payment. In the case of protest of a bill of exchange or check, we may demand immediate payment in cash concurrent to the return of the check or bill of exchange.
- (h) The customer shall only be entitled to a set-off should his counterclaim be legally established, undisputed or recognised by us, even if complaints or counterclaims have been lodged. The customer shall only be authorised to exercise a right of retention should his counterclaim be founded on the same contractual relationship.

#### **4. Delivery; failure to deliver**

- (a) Delivery dates or deadlines which are not expressly agreed as binding are exclusively non-binding particulars.
- (b) The commencement of the delivery time stated by us presupposes that all technical matters have been clarified.
- (c) Compliance with our supply obligations further presupposes that the customer shall satisfy all his obligations in a timely and orderly manner. Defence of non-fulfilment of the contract remains reserved.
- (d) Part delivery and services shall be permitted to a reasonable extent.
- (e) We shall be liable in accordance with legal provisions should the underlying contract be a fixed-date deal. We shall also be liable in accordance with legal provisions should the customer be entitled to claim that his interest in continued fulfilment of the contract has ceased owing to a failure to deliver for which we were responsible.
- (f) Furthermore, we shall be liable in accordance with legal provisions should the failure to deliver be founded on a wilful or grossly negligent breach of contract for which we are responsible; negligence on the part of our representatives or vicarious agents is to be attributed to us. Provided the failure to deliver is not founded on a wilful breach of contract for which we are responsible, our liability for damages shall be limited to foreseeable damages that may typically arise.
- (g) We shall also be liable in accordance with legal provisions should the failure to deliver for which we are responsible be founded on an intentional breach of an essential contractual obligation; in this case, liability for damages shall, however, be limited to foreseeable damages that may typically arise; negligence on the part of our representatives or vicarious agents is to be attributed to us.
- (h) Further legal claims and rights of the customer, provided they are mandatorily stipulated, remain reserved. The liability of Galvanoform in cases of default is subject to the limitations on liability as stipulated under point 7 of these terms and conditions.

#### **5. Transfer of risk – shipment/packaging**

- (a) Loading and shipment take place uninsured at the risk of the customer. We shall make every effort to consider the requests and interests of the customer with regard to the mode and route of despatch; additional costs arising from this – even when delivery is arranged carriage paid – shall be borne by the customer.
- (b) In accordance with the German Packaging Ordinance, we shall not take back any kind of packaging, including packaging for transportation, with the exception of pallets and transport crates. The customer must take care of disposal of the packaging at his own cost

- (c) Should despatch be delayed at the request of or owing to negligence on the part of the customer, we shall store the goods at the cost and risk of the customer. In this case, notice of the order being ready for despatch is equal to the despatch itself.
- (d) At the request and cost of the customer, we shall insure the delivery with transportation insurance.

## **6. Guarantee, liability for defects**

- (a) The composition of a goods item shall exclusively be that agreed as the product description and included in our quotation and order confirmation. Further characteristics – in particular the suitability of the product for a specific purpose - must expressly be agreed separately. In comparison, public statements, sales pitches or our advertising in no way represent product composition details which comply with the contract.
- (b) We shall only be liable for the lack of warranted characteristics insofar as the warranty pursues the purpose to protect the customer against consequential damages arising from the absence of precisely these characteristics. Through making reference alone to DIN or EN norms or comparable norms, their content shall not become a warranted characteristic.
- (c) Customer claims based on defects always presuppose that these duly comply with his obligations to examine and give notice of a defect in accordance with section 377 of the German Commercial Code (HGB).
- (d) Should a goods defect for which we are responsible be present, we shall be entitled to deliver supplementary performance either by removing the defect or by delivering a new product which is free from defects, at our choice. In the case of a removal of the defect, we shall be obliged to bear all expenses necessary for the purpose of removing the defect, in particular costs for transport, travel, work and materials, provided that these are not increased through the goods being transported to a location other than that of the place of performance.
- (e) Claims for damages, due to a defect relating to the following conditions may only be asserted by the customer should the supplementary performance fail. The customer's right to enforce further claims for damages relating to the following conditions remains unaffected by this.
- (f) We shall be liable in accordance with legal requirements should we negligently breach an essential contractual obligation; in this case, the liability for damages shall, however, be limited to foreseeable, typically arising damages.
- (g) We shall have unlimited liability in accordance with legal requirements for negligent injury to life, limb or health; this also applies for mandatory liability in accordance with the German Product Liability Act.
- (h) Within the extent that we have provided a guarantee of the composition and/or durability of goods or components, we shall also be liable within the scope of this guarantee. For damage which is founded on the lack of guaranteed composition or durability, but does not immediately occur in the goods, we shall only be liable should the risk of such damage be clearly covered by the composition and durability warranty.
- (i) Unless something different be settled hereinbefore, liability shall be excluded.
- (j) The limitation period for claims based on defects shall amount to 12 months, calculated from the transfer of risk. This shall not apply in the case of injury to life, limb or health attributable to us, our legal representatives or our vicarious agents, or should we or our legal representatives have acted wilfully or with gross negligence, or should our simple vicarious agents have acted wilfully.
- (k) Further liability for damages - regardless of the legal nature of the asserted claim – shall be excluded. This particularly applies for damages claims arising from negligence when concluding contracts, owing to other neglect of duty or owing to criminal claims for compensation of material damage pursuant to section 823 of the German Civil Code (BGB). The liability of Galvanoform is further subject to the limitation of liability as laid down under point 7 below.

- (l) Should liability for damages on the part of Galvanoform be excluded or limited, this shall also apply with respect to the personal liability for damages of our employees, representatives and vicarious agents.

## **7. Limitation of liability, exemption from liability**

- (a) In accordance with these terms and conditions of business, and the contract which underlies them, we shall only be liable for the condition as stipulated in the contract of the article of sale delivered by us. Warranty claims or damages claims for consequential damages from the customer which go beyond this, namely for lost profit, loss of production, and other financial loss arising for the customer or his clients, are excluded.
- (b) In general, the following applies regardless of the legal justification: the possible liability of Galvanoform for warranty and/or damages shall be limited in amount for every article of sale to a maximum sum which corresponds to the value of the individual tool delivered.
- (c) This limitation of liability also applies for the personal liability of the employees, legal representatives and vicarious agents of Galvanoform.

## **8. Safeguards**

- (a) We shall retain ownership of the goods until all payment requirements in the supply contract have been fulfilled, including all requirements for follow-up orders and repeat orders. Should the customer engage in conduct which is in breach of the contract, in particular a default in payment, we shall be entitled to withdraw the goods. A withdrawal of goods by us shall not constitute a rescission of contract unless this has been expressly stated by us in writing. A seizure of goods by us shall always constitute a rescission of contract. We shall be authorised to exploit the goods after their withdrawal; the exploitation proceeds are to be deducted from the customer's liabilities – less reasonable exploitation costs.
- (b) The customer shall be obliged to handle the goods carefully; in particular he shall be obliged to adequately insure them against damage caused by fire, water and theft up to their replacement value and at his own cost. Should maintenance and inspection work be necessary, the customer shall be obliged to carry this out at his own cost and in good time.
- (c) The customer shall be entitled to sell and/or to use the goods subject to retention of title in ordinary business, provided that he is not in default of payment. Pawning or assignment as security shall not be permitted. Debts arising from a resale or other legal justification (insurance, unauthorised action) relating to the goods subject to retention of title (including all balance claims for current accounts) shall be transferred to us by the customer in full (inc. VAT) at this point by way of security; we hereby accept the transfer. We revocably authorise the customer to collect the debts transferred to us for his invoice, in his own name. The direct debit instruction may be revoked at any time should the customer fail to correctly meet his payment obligations. The customer shall also not be authorised to assign this debt for the purposes of collection of debts by means of factoring, unless the obligations of the factor should be simultaneously established as effecting the consideration to the amount of the debts for as long as debts from us exist vis-à-vis the customer.
- (d) Processing or transformation of the goods subject to retention of title by the customer shall always be carried out for us. Should the goods subject to retention of title be processed by other articles of property that do not belong to us, we shall acquire joint ownership of the new property in relation to the value of the goods subject to retention of title (final invoice amount inc. VAT) for the other processed articles of property at the time of processing. The same applies for the new articles of property resulting from processing as for the goods subject to retention of title.
- (e) In the case of seizure or other actions on the goods subject to retention of title by third parties, the customer shall be obliged to inform us immediately in writing in order that we may institute proceedings in accordance with section 771 of the German Code of Civil Procedure (ZPO). Should the third party not be in a position to reimburse us with the judicial

and extra-judicial costs of an action in accordance with section 771 of the ZPO, the customer shall be liable for the loss incurred by us.

- (f) We commit ourselves to unblock the securities to which we are entitled, at the customer's request, should the realisable value of our securities exceed the debts to be secured by more than 10%; it shall be incumbent upon us to select the securities to be unblocked.
- (g) Should facts become known to us following conclusion of the contract, in particular a default in payment with regard to earlier deliveries, which, in accordance with proper commercial discretion, indicate that our pecuniary claim shall be at risk through a lack of ability to perform on the part of the customer, we shall be entitled, with an appropriate deadline being set by the customer at his choice, to demand payment or corresponding securities without delay, and to withdraw from the contract in case of refusal, in which case payment of the invoices for part deliveries which have already been completed shall become immediately due.

### **9. Place of performance, place of jurisdiction, choice of law, language**

- (a) Should the customer be a businessman, our place of business in Lahr shall therefore be the exclusive place of jurisdiction for all disputes arising from the contracts concluded between us and the customer; we shall, however, also be entitled to bring an action against the customer at his place of residence and/or business.
- (b) Provided that nothing different be stated in the order confirmation, our place of business in Lahr shall be the place of performance for all deliveries and payments relating to the contracts concluded between us and the customer.
- (c) The law of the Federal Republic of Germany shall have exclusive validity; validity of the UN sales convention (CISG) and the law governing the conclusion of international contracts of sale relating to movable property shall be excluded.
- (d) The language of contract shall be German. This also applies in cases where the parties exchange translations in another language before, during or following conclusion of the contract for the purpose of comprehensibility, or correspond with one another partly in the customer's language. These circumstances offer no connecting factor with regard to international private law.