

A. General provisions

These are the General Terms of Delivery of the company Kind & Co., Edelstahlwerk, GmbH & Co. KG for the deliveries and services in the field of contract processing (hereinafter: Delivery).

- of ascertaining the tensile strength, unless otherwise agreed;
- cc) in the case of tool steels and high-speed steels, the desired level of hardness according to Rockwell or Vickers;
- cd) in the case of nitriding steels, the required nitriding case depth;
- ce) in the case of induction hardening and flame hardening, the required surface hardening depth, with reference hardness value and surface hardness and the position of the region to be hardened;
- cf) in the case of salt bath nitrocarburizing and short-time gas nitrocarburizing, either the duration of the treatment or the desired compound layer thickness;
- d) details of the desired test procedure, the test facility and the test load (see DIN test standards);
- e) any additional information or requirements necessary for the success of the treatment (see currently also DIN ISO 15787, DIN EN 10052, DIN 17021-1, DIN 17023).

I. Conclusion of the contract

1. Our deliveries are exclusively carried out based on the following terms and conditions. General Business Terms of the customer shall only apply even in the event that no objection is filed if we have explicitly confirmed these in writing. This shall also apply to other orders within the framework of the future business relationship.
2. Our offers are non-binding and without obligation.
3. Orders of the customer are only binding for us if we have confirmed these by an explicit declaration. A failure to reply to an order does not represent any acceptance. The same shall also apply to commercial letters of confirmation, no matter in which form they were sent.
4. Our declarations aimed at the conclusion, amendment to or termination of contracts require a written form; however, no qualified electronic signature is required insofar as not otherwise agreed with the customer.
5. We reserve all exploitation rights of a kind under property and copyright law to all documents created by us (drawings, offers, cost estimates, etc.). The customer is not entitled to make these documents accessible to third parties unless we have approved this in writing. We reserve the right to request that all documents are returned. The documents are to be handed over by the customer without request if a contract for the delivery is not concluded.

When partial hardening is required, drawings must be attached showing which areas must be hardened and which must remain soft. If similar workpieces are produced from different molten steel casts, this must be stated. Likewise, any particular requirements relating to dimensional accuracy or the surface condition must be noted on the delivery documents. The customer must in particular point out any welded or soldered workpieces and any which contain sealed volumes. The contractor shall, within the scope of its knowledge, check the content and completeness of the information from the customer. The contractor shall notify the customer in the event of justified doubts as to a successful heat treatment.

II. Terms of payment

1. The prices confirmed by us shall apply. These only relate to the pure processing wage. We shall charge value added tax in addition to the prices, which are deemed excluding the costs for the packaging, delivery, shipment and insurance, insofar as this is to be paid according to the statutory regulations. Insofar as essential changes occur to the order-related costs after conclusion of the contract an agreement shall be reached concerning the reasonable adjustment to the prices. For possible additional services which are to be provided we are entitled to reimbursement of the incurred costs as well as to a remuneration which is additionally to be paid. Cost estimates will be remunerated separately.
2. The payment is to be made immediately after the invoicing.
3. A payment has to be made without deduction of cash discount in the manner that we may dispose over the amount on the day of maturity. The customer may only offset against undisputed claims or claims which have been declared final and binding. The customer is only entitled to rights of retention if they are based on the same contractual relationship.
4. In case the payment term is exceeded, interests at a rate of 9%-points above the basic rate of Deutsche Bundesbank (§ 247 BGB [German Civil Code]) will be charged.
5. In case of justified doubts about the creditworthiness of the customer as well as with default of payment we are moreover entitled to request collateral or advance payments. We are further entitled to deem all claims resulting from the business relationship due and payable with immediate effect. If the customer does not satisfy our request for the provision on of collateral or advance payments we are entitled to exercise the cancellation under the exclusion of claims of the customer for compensation.
6. The legal provisions on default in payment shall remain unaffected.

With mechanical contract processing:

- a) description, number of units, net weight and nature of the packaging and drawing, value of the parts;
- b) material quality (standard designation or internal material designation and steel manufacturer) as well as strength in the delivery condition;
- c) if heat treatment is requested the regulations B.1.4 concerning the heat treatment shall apply accordingly from letter c.

The contractor shall, within the scope of its knowledge, check the content and completeness of the information from the customer. The contractor shall notify the customer in the event of justified doubts as to a successful mechanical contract processing.

In case of contract deformation:

- a) description, number of units, net weight, process parameters as well as target dimensions, value of the parts;
- b) material quality (standard designation or internal material designation and steel manufacturer);
- c) with requested heat treatment, the parameters of the temperature control;
- d) further details or regulations which are necessary for the success of the treatment (DIN 7527).

The contractor shall, within the scope of its knowledge, check the content and completeness of the information from the customer. The contractor shall notify the customer in the event of justified doubts as to a successful contract deformation.

III. Collaterals

We are entitled to a right of lien to the workpieces of the customer handed over to us for all existing, future, conditional and limited claims. The legal consequences of §§ 1204 ff. BGB and the Bankruptcy Code shall apply accordingly.

B. Execution of the delivery

I. Pre-requisite for the delivery

1. We are entitled to make partial deliveries. This shall not apply if partial deliveries are deemed unreasonable for the customer.
2. The workpieces of the customer which are handed over to us must have the usual condition and consist of material which can be processed well. Insofar as this is not the case we are entitled to remuneration of the necessary additional expenses. This shall not apply if we have informed the customer of the additional expenses and it cancels the contract to which it is to be entitled. In this case we are entitled to payment of the work which is performed until the cancellation.
3. Possible material waste will only be refunded if this was explicitly requested by the customer when the order was placed.
4. All workpieces which are handed over for contract processing must be accompanied by an order or delivery note containing the following information (a distinction is made between contract heat treatment, mechanical contract processing and contract deformation):

II. Delivery dates

1. Our delivery dates are non-binding insofar as not otherwise explicitly agreed with the customer in writing as a binding delivery date. The pre-requisite for the adherence to delivery dates is that the customer hands over to us all documents, objects, workpieces and possibly necessary permits. A further pre-requisite is the compliance with the payment obligations of the customer.
2. Insofar as the customer does not satisfy its agreed obligations to open a letter of credit, provide a domestic or foreign certificate, make an advance payment in time or insofar as there are unforeseeable impediments (example: multiple treatment which is not initially recognisable) we are entitled to postpone our delivery deadlines and dates by a reasonable extent irrespective of our rights from default, in line with the time of the delay. The plea of the non-fulfilled contract remains reserved.
3. In case of an agreement of a binding delivery date the customer has to grant a reasonable final deadline two times in total. Insofar as the second final deadline is not adhered to either the customer is entitled to cancel the contract. This shall only apply if the delay in the delivery was caused by us. The respective setting of a final deadline has to be carried out in writing.
4. The time of the sending ex works is decisive for the adherence to the delivery deadlines and dates. If the object of delivery cannot be picked up without this being our fault the delivery deadlines and dates shall be deemed as adhered to with the report that the goods are ready for shipment.
5. Events of Force Majeure shall suspend the respective contractual party from the contractual obligation as long as the interference continues owing to the Force Majeure. Deemed as Force Majeure is in particular an industrial dispute, strike, lock-out, unforeseeable interference to operation, a measure of a sovereign authority, unavoidable shortage of raw materials as well as other events for which we are not responsible. The event of Force Majeure is to be reported to the other contractual party immediately. By no earlier than six weeks after receipt of this report both contractual parties are entitled to cancellation. Further claims are excluded. Other rights to withdraw from the contract not connected to Force Majeure circumstances shall remain unaffected.
6. In the event of the default the customer can request compensation insofar that it proves that it has suffered damages from the delayed delivery. The compensation is 0.5% for each completed week of the delay, a maximum however of 5% of the agreed net price for the object or part of the delivery which was not delivered (in case of partial delivery).
7. Further claims for damages or reimbursement of expenses of the customer, no matter whether in addition to or instead of the fulfilment, are excluded. This shall not apply with the liability owing to mandatory statutory stipulations for wilful intent, gross negligence or the

In case of contract heat treatment (in accordance with the General Business Terms for contract hardening of the Industrial Association of Hardening Technology):

- a) description, number of units, net weight and nature of the packaging, value of the parts;
- b) material quality (standard designation or internal material designation and steel manufacturer);
- c) the desired heat treatment, particularly
 - ca) in the case of carburizing steels pursuant to DIN ISO 15787, either the required carburization depth with carbon content limit (e.g. carburization depth 0.35 = 0.8 + 0.4 mm) or the prescribed carburization hardening depth with reference hardness value and surface hardness (e.g. carburization hardening depth 550 HV1 = 0.2 - 0.4 mm, surface hardness = minimum 700 HV5);
 - cb) in the case of hardened steels and tool steels, the required tensile strength or the Brinell hardness. The Brinell hardness test on the surface shall be conclusive for the purposes

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injury to the life, the body or the health. Accordingly liability is assumed – insofar as permitted by law – for the foreseeable damages.

III. Supply to us, Shipment, packaging and passing of risk

1. Unless otherwise agreed, the workpieces of the customer have to be supplied to us at the customer's costs and risk.
2. The risk shall principally pass to the customer with the acceptance. If the processed pieces are sent to the customer without an acceptance having previously been carried out the risk shall pass to the customer with the despatch, by no later than when the goods leave our plant. This shall also apply in the event of partial deliveries. The payment and the objection which was not filed against a hardening test result shall be deemed as an acceptance.
3. If the customer does not accept the work within a reasonable deadline set by us, it shall be deemed as accepted.
4. If an acceptance is agreed on a date and if the customer does not appear on this date the workpiece shall be deemed as accepted.
5. The acceptance cannot be refused because of insignificant defects.
6. If the processed pieces are sent to the customer, and if customary in the trade, we will supply the goods packed and protected from corrosion; the cost shall be borne by the purchaser. We take back packaging, protection and/or transport aids. The purchaser's costs for return transport or for his own disposal of packaging will not be borne by us. Any extra packing beyond that required for transport or any other special protection, e.g. for long-term storage, must be explicitly agreed.

IV. Claims for defects

1. Guarantees are principally not given. Specifications, descriptions, public statements, the agreed intended use, the agreed durability or condition as well as standards shall not substantiate any guarantee either.
2. The customer has to examine the workpiece immediately after receipt. Claims for defects shall only exist if the defects are reported in writing within a reasonable deadline from the passing of the risk. Deemed as reasonable is a deadline of one month. With hidden defects the deadline shall begin with the discovery of the defect, by no later however than by the expiry of the warranty period according to number 7. After execution of an actual acceptance the report of defects, which could be determined with the acceptance, were excluded.
3. Insofar as the report of defects is unjustified we can request from the customer reimbursement of the expenses incurred by the unjustified report of defects.
4. Claims for defects shall not exist with only insignificant deviations from the agreed condition or with merely insignificant impairments to the usability. The defect must have existed when the risk was passed.
5. The customer has to grant us a reasonable final deadline for the remedy of the defect. We have the choice to perform the subsequent improvement. In the event of the subsequent satisfaction we are obliged to bear all expenses which are necessary for the purpose of remedying the defects, in particular transport, route, labour and material costs insofar as these are not increased by the fact that the workpiece was taken to another location than the place of performance. We shall bear the necessary expenses up to a maximum amount of the agreed remuneration. If the second subsequent improvement fails the customer can cancel the contract or reduce the remuneration. A subsequent improvement shall be deemed as failed after the second unsuccessful attempt if it cannot be derived otherwise in particular from the type of the object or the defect or the other circumstances. Further claims of the customer are excluded.
6. The claims of the customer for defects shall lapse by a change, processing or any other intervention of the customer or each third party in the processed objects. This shall not apply if we approve or have permitted the change, processing or the other intervention in writing.
7. The statute-of-limitations for the claims for defects is one year from the passing of risk insofar as not otherwise determined by mandatory regulations or laws. No new statute-of-limitations shall begin due to a subsequent improvement.
8. The warranty periods and restrictions shall also apply to a possible subsequent treatment.
9. No shortage claims can be made in respect of waste occurring to a reasonable extent in the hardening process in respect of mass-produced articles and small parts which is normal in the trade and caused by the process. If straightening operations are carried out at the customer's request, we shall give no warranty at this time. Neither can we assume any warranty for the success with the application of insulating means against carburization or nitriding.
10. The customer shall assume the warranty towards us that the work requested by it does not infringe possible industrial property rights of third parties. Insofar as a third party asserts the infringement of a property right towards us we are entitled to discontinue the work without having to examine the legal position. The customer has to reimburse possible damages suffered from an infringement.

C. General limitations of liability

1. We shall be liable in cases of wilful intent or gross negligence according to the statutory provisions. Incidentally we shall only be liable according to the Product Liability Act, owing to the injury to life, the body or the health. The claim for damages for the breach of essential contractual duties is limited to the typical foreseeable damages for the contract, the liability for loss of production and loss of profit will be excluded insofar. The liability for damages by the object of delivery to legal assets of the customer, e.g. damages to other objects, is however excluded completely. The regulations of sentences 3 and 4 of this paragraph shall not apply insofar as there is wilful intent or gross negligence or liability is assumed owing to the injury to life, the body or the health or insofar as an exception a guarantee was assumed for the condition.
2. The regulations of the afore-mentioned paragraph shall cover damages in addition to the service and damages instead of the service, no matter for which legal reasons, in particular owing to defects, the breach of duties from the debt relationship or from illicit act. They shall also apply to the claim for reimbursement of fruitless expenses. The liability for delay is however determined according to Section II numbers 6 and 7.

3. The customer shall indemnify us in the event of a claim asserted owing to producer liability.
4. All existing claims for damages and/or claims for reimbursement of expenses shall become statute-barred, insofar as regulations which are mandatory by law do not determine otherwise, within one year from passing of the risk.
5. Where our liability is excluded or restricted, this shall also apply to the personal liability of our employees, workers, staff, legal representatives and vicarious agents.
6. The statutory provisions as to the burden of proof shall remain unaffected hereby.

D. Miscellaneous

I. Export control, check of sanction lists, proof of export, certification documents

1. Shipments and services (contract fulfilment) shall be under the provision that fulfilment is not restricted by any national or international regulations, in particular export control regulations and embargoes or any other restrictions.
2. The contract partners are obliged to provide all information and documentation required for export, intra-EU-transfer and/or import. Delays caused by export checks or licensing procedures shall override any lead times or deadlines stipulated. If any required licenses cannot be obtained for certain items, the contract shall be considered not concluded regarding the respective items; any claims for damages in this regard and due to the aforementioned failure to observe deadlines shall be excluded.
3. Upon acceptance of our products and services, the customer guarantees that all national and European, as the case may be, also US export regulations are complied with. This shall apply in particular for deliveries to/into sensitive purchaser or end-user countries. All embargoes have to be strictly observed. The sanction lists have to be precisely checked and complied with. Upon request, the customer must prove to us that the sanction lists are checked with suitable software programs.
4. If a customer not resident in the Federal Republic of Germany (customers out of the territory) or his agent collects the materials processing under contract and transports or sends these to the territory abroad, the customer shall provide us the proof of export requested by the tax authorities. If this proof of export certificate is not supplied, the customer shall pay the value added tax at the rate applicable to deliveries within the Federal Republic of Germany.
5. The absence of proper entry certification documents by intra-community deliveries will result in a subsequent charge of the applicable sales tax, which will reflect the appropriate tax rate.

II. Applicable law

The law of the Federal Republic of Germany applies under the exclusion of the "Convention of the United Nations of 11 April 1980 concerning the international Sale of Goods" (CISG).

III. Place of performance and place of jurisdiction

1. The place of performance is the place of our executing plant, for the payment obligation of the customer however Wiehl/Bielstein.
2. The place of jurisdiction for both contractual parties is Gummersbach. We are also entitled to file an action against the customer at its general place of jurisdiction.

IV. Partial invalidity

Should one provision of these terms and conditions and the reached agreements be or become invalid this shall have no effect on the validity of the contract on the whole. Insofar as the provision concerned is not replaced by statutory law the contractual parties undertake to replace the invalid provision by a regulation which shall as far as possible correspond herewith in terms of the financial success.

According to the General Data Protection Regulation (EU 2016/679), we hereby confirm that data required in the framework of handling the business will be processed and stored accordingly. Personal data will be treated confidentially.