

# General terms of sale and delivery

of CDP Bharat Forge GmbH, 58256 Ennepetal

## 1 Place of performance, place of jurisdiction and applicable law

Place of performance and place of jurisdiction for delivery and payment is the location of our branch operation. We reserve the right to assert claims against the customer at his general place of jurisdiction.

Unless agreed to the contrary, the laws of the Federal Republic of Germany are the only ones applicable. Both the application of the Uniform Law on Sales under the Hague Convention and the application of the provisions contained in the UN-Convention on Contracts for the International Sale of Goods of 11 April 1980, CISG, have been excluded.

## 2 Conclusion of contract

To be legally effective any acceptance of contract requires an order confirmation in writing from us. The same applies for all collateral agreements concluded directly or through our agent.

The acceptance of the offer combined with our order confirmation in writing and the conditions contained therein shall constitute the contractual relation.

Expressive protest is raised herewith against any customer purchasing conditions deviating from these "general conditions for sale and delivery". This protest shall also be in effect for the case where the customer has defined a special form for the protest. Has a protest been excluded in the customer's Purchasing Terms and Conditions than the legal provisions with consideration of the DIN EN 10243, DIN EN 10254, DIN 7523-2, DIN 7527 shall replace the formal Terms and Conditions of Purchase and Sale. Any recognition of customer's deviating Terms and Conditions of Purchase will take effect no sooner than after their application has been confirmed by us in writing.

## 3 Prices

Prices are in Euro ex works excluding value added tax and the cost of packaging. Any later reduction of the order volume or later reduction of the quantities agreed for a partial delivery or a decrease of agreed schedule releases will give rise for an increase of the unit-price and the agreed cost portions for the die, if necessary. Our prices are based on the current standard and valid cost estimate factors. Any change in wages and salaries in the metal industry or in the cost for the start material required for the fabrication of the ordered forging or the cost of energy arising between the time of concluding the contract and the agreed date of delivery result in a price adjustment in due consideration of these factors.

## 4 Performance

Under DIN 7523-2 either the forging drawings prepared by ourselves or by the customer, as approved, prior to fabrication of the forgings or the drawings of forgings prepared by the customer are binding for the execution of the forgings in combination with the DIN EN 10243, DIN EN 10254 and DIN 7527.

All forgings bear the CDP identification mark, unless a different identification has been explicitly agreed with the customer.

## 5 Under-delivery or over-delivery

Delivered quantities that deviate from the order are permissible within the tolerances defined by the DIN EN 10254.

## 6 Tooling

We retain title to all tooling and devices prepared for the fabrication of forgings remain – independent of an invoicing of cost portions.

The cost of refreshing, maintenance and appropriate storage plus the risk of tool fracture are born by us.

We undertake to use customer owned tooling for the delivery to this customer only.

We undertake to store the tooling up to three years from the date of the last delivery. After three years we will allow the customer a period of six weeks to give his view about a further storage of the tooling. The retention period ends when no view has been received within this period of six weeks or when no new order has been placed.

Should the prospect for a new order be held out, then the retention period is extended by 1 year. Any customer requesting retention periods exceeding 4 years entitles us to invoice the storage cost. After elapse of the retention period we shall be free to decide what to do with the tooling.

## 7 Inspection and acceptance

The regular inspection of die forgings includes the inspection of the dimensions and material properties in compliance with the forging drawings plus the inspection of the surface non-conformities and surface cracks, inasmuch as the same can be detected by way of a visual control. Kind and extend of additional inspections and the applicable test procedures, like a 100 % hardness test (e.g. Brinell or Rockwell), magnetic crack test and failure testing by ultrasound or others must be agreed separately and shall be specified at detail in the forging drawing or in the order and order confirmation. In case of a specified acceptance the same shall be forthcoming without undue delay upon ready-to-ship notification. The expenditure for personnel and material required for the acceptance shall be born by the customer.

## 8 Payment

Our invoices are payable before the 15<sup>th</sup> of the month following the delivery in cash without deduction. In case of the payment-period being exceeded interest on defaulted payments is invoiced in the amount of 5 % above the discount rate of the European Central Bank. In a case where bills of exchange or cheques are accepted we make the expressive reservation that they will just be accepted and shall be considered as payment with discharging effect no sooner than after their incashment. Discount charges shall be born by the customer.

## 9 Reservation of ownership

Until full payment of all receivables resulting from the business relation between the customer and us has been received, we reserve the ownership to all forgings shipped. The integration of individual receivables into a current invoice plus the formation of a balance and its recognition has no effect on the reservation of ownership. The receipt of the equivalent amount shall be considered as payment by us. In cases where the customer makes a payment by cheque, which results in relation with us – irrespective in which way – in a mutual liability for the amount or a partial amount of the cheque balance being assumed by us, with respect to the reservation of ownership rights only the incashment of the bill of exchange shall be considered as payment. The customer is entitled to a resale of forgings delivered under the reservation of ownership to third parties in the regular course of business. However, he has no right to pledge or transfer the same for reasons of security. It is the customer's responsibility to secure our rights to the forgings delivered under reservation of ownership in case of a resale by taking up credit. Over and above the customer shall transfer to us all receivables from the resale of the forgings delivered under reservation of ownership and this with immediate effect. We hereby accept this transfer of title. Unless this permission is revoked by us, what we are entitled to at any time, the customer continues to be authorized to collect the receivables assigned to us by himself when mature. After revocation of the authorisation to collect the customer shall inform us without undue delay about all details required for a collection of the receivables assigned to us informing the debtor about the assignment.

The customer will proceed with a possible treating or processing of the forgings for us without any obligation resulting therefrom for us. In case of processing, joining, mixing or mingling of the forgings with other goods, which we do not own, we shall then be entitled to the co-ownership in the new object in the same ratio of value as our forgings have as constituent of the other processed goods at the time of processing, joining, mixing or mingling. The customer acquiring this sole ownership to the new object will then allow us a co-ownership of the new object in the same ratio of value as our goods have, which are subject to a retention of ownership, keeping the same for us at no cost. Whenever the forgings delivered under a reservation of ownership are resold jointly with other goods and this irrespective of their condition, then the assignments specified in section 2 and as agreed in advance, shall be applicable in the amount of the value of the forgings only, which are joined with the other goods being object of the delivery contract.

## 10 Date of delivery and delay in performance

The notification of the delivery date is provided to the best of our knowledge but without guaranty. Agreed delivery periods commence with the day of our order confirmation, however, not before clarification of all details required for the order execution. Delivery periods shall be considered as adhered to, when the forgings leave the supplier plant at the agreed point in time, or in the case of a delay in acceptance on part of the customer, are made available in the supplier plant.

We are no subject to a delay in performance when the delivery does not occur in the consequence of circumstances we are not responsible for. We are not responsible for acts of god, strikes and lockouts, accidents or other causes conditioning a partial or full interruption of the work, lack of material, lack of operating supplies, transport problems, problems with the energy supply, operational disturbances in the own operation or the operation of a supplier, which are comparable. In all these cases we are entitled to extend the delivery period by the duration of this hindrance. The customer will be notified about the beginning and the end of such hindrance as soon as possible.

In case of a delay in delivery the customer shall allow for a reasonable period of grace provided with a notice of denial to accept. This period of grace must cover a minimum of 15 working days. After elapse of this period of grace with the same remaining ineffective the customer may assert his right to withdraw from the contract or to claim compensation. This however is restricted to the part of the contract, which has not been fulfilled. The customer shall have no right to fall back on a loss of interest neither in the case of a partial delay nor in case of a delay in performance of the entire contract.

Nevertheless customer's claims for a compensation of damages for a delay in performance definitely exist just in the case when the same have been caused by us, a legal representative or a person employed by us in performing an obligation intentionally or with gross negligence. Unless the person employed in performing obligation is a managing employee, the claims for compensation of damages are limited to double the amount in value of the parts subject to a delay in delivery.

## 11 Refusal of performance, reservation to withdraw

If after conclusion of the contract or thereafter we become aware of the fact that the assets of the customer are subject to a substantial weakening this will give us the right to refuse our performance or to request that the customer will remove the risk to the contractual purposes by way of providing sufficient security. The customer failing to provide such security upon request and within an appropriate period of time entitles us to withdraw from the contract or to claim a compensation of damages.

## 12 Packaging

Objects to be delivered will be packed only when this was specifically agreed.

## 13 Passage of risk

The risk of shipment shall be assumed by the customer. The passage of risk occurs, when the shipment leaves our plant. Whenever a shipment is made by a carrier the passage of risk occurs upon delivery of the same to him.

## 14 Warranty

Customer's complaints must be raised by the customer within the periods specified herein below.

Defects, which are apparent from the outside, will be acknowledged within 6 weeks after the delivery has been received, provided the forgings are still in the same state as delivered.

Inherent defects, which become recognisable no sooner than after the metal removing processing or after the forgings are put to use will be acknowledged only within one year of the delivery being received, provided we are dealing under a commercial contract between businessmen. Otherwise the warranty period applies as provided by law. In this case it must be clearly determined that we are dealing with our delivery. Defective parts will be repaired, replaced at no charge or credited by us upon our choice. No performance of rework or replacement may be requested by the customer when the minimum quantity caused by the defective parts falls short of the minimum quantity specified in the DIN EN 10254. The loss of defective parts in an amount of up to 0,5 % of the ordered quantity, but no less than a minimum of 2 pieces will be at the customer's charge. In a case where the rework or replacement has not lead to the agreed success, as stipulated in the contract, the customer will be entitled to withdraw from the contract.

Processing cost on defective parts will not be compensated for. Any compensation of rework and extra work requires a prior agreement. Claims for compensation expire at the latest one month after the customer's complaints have been refused by us in writing.

The above procedure applies even in cases where goods have been delivered that do not comply with the specification in the contract.

## 15 Exclusion of liability

We limit our liability to intent and gross negligence inasmuch as no violation of a substantial contractual duty is apparent. Any liability for inconsequential, accidental, indirect or constructive damage plus claims for compensation from lost profits has been fully excluded herewith. The liability is limited to double the value of the defective part contained in our delivery, in any case to the predictable typical damage occurring with our part. The liability due to negligent injury of life, body or health remains unaffected thereby.

The execution of special quality and outgoing control entails no simultaneous assumption of the duty to safeguard traffic. We assume that the customer on his part will proceed with the fulfillment of all duties to safeguard traffic. However, should any third party take recourse to our product liability than the customer will hold us free therefrom.

## 16 Industrial property rights

The customer himself is obligated to check the possible violation of industrial property rights, which may be encountered by the placing of an order and, if needed, notify us that for the order we are dealing with parts, which are protected by industrial property rights. He assumes all liability for claims that may be asserted against us by a party entitled thereto for reasons of executing our customer's order.

## 17 Validity of the terms and conditions

The above terms and conditions continue to be in force should one or several of them turn out to be or become ineffective. Otherwise the contractual relation is subject to the DIN EN 10243, DIN EN 10254 and DIN 7527.

## 18 Deviating agreements

Agreements deviating from these presents require to be made out in writing and shall enter into force no sooner than after our order confirmation has been received