

General Terms and Conditions of Delivery and Service for the purchase of spare parts, assembled spare parts groups or tooling (GTCDS spare parts)

(As of December 2019)



1. Scope

- 1.1. These General Terms and Conditions of Delivery and Service for the purchase of spare parts, assembled spare parts groups or tooling (GTCDS spare parts) apply exclusively to all contracts we conclude with a customer for the purchase of spare parts, assembled spare parts groups or tooling and for related pre-contractual obligations, unless otherwise expressly agreed in writing. Other business or purchase conditions are not part of the contract, even if we do not expressly object to them. This also applies if we provide our services to the customer without reservation, despite having knowledge of conflicting or deviating conditions or if we refer to them in individual correspondence.
- 1.2. Even if not expressly referred to when similar contracts are concluded in ongoing business relationships, our GTCDS shall solely apply in the same version as that which can be downloaded by the customer at https://mall-herlan.wifag-polytype.com/fileadmin/user_upload/metal_packaging/data/Data_Protection/MH_CS_GTCDS_spare_parts.pdf upon placement of an order, unless the contractual parties agree otherwise in writing. The current version of the GTCDS will also be sent to the customer on request in printed form, free of charge.
- 1.3. These GTCDS do not apply to consumers according to Section 13 German Civil Code (Bürgerliches Gesetzbuch - BGB).

2. Conclusion of contract, offer documents

- 2.1. Our offers are subject to change and are non-binding, unless the offer is described in writing as binding.
- 2.2. An offer only becomes legally binding through a contractual agreement signed by both parties or by written order confirmation, and when delivery of the contractually agreed upon service commences. We can request written confirmation of verbal contractual declarations of the customer. Our written acceptance of the binding purchase offer (order confirmation) can also be given by email (electronically).
- 2.3. Unless otherwise stated or agreed, all information provided by us is limited to the time of the customer's request.
- 2.4. We reserve property rights and copyrights to illustrations, drawings, calculations, tools and other documents. This also applies to written documents that are designated as "confidential". The customer requires our express written consent before these documents can be passed on to third parties or used for third parties.

3. Object of the contract, warranties, changes to service

- 3.1. The scope, type and quality of our deliveries and services shall be determined by our order confirmation or the agreement signed by both parties; otherwise by our offer. Other details or requirements will only become part of the contract if the contractual parties agree to these in writing or we have confirmed them in writing. Subsequent changes to the scope of services require agreement in writing or our express confirmation in writing.
- 3.2. Product descriptions, illustrations and technical data are specifications of services, but do not constitute warranties. A warranty requires an explicit declaration in writing. Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing.
- 3.3. We reserve the right to make minor changes to services, provided these are minor changes to services that are reasonable for the customer. In particular, customary deviations in terms of quality, quantity, weight or other deviations are to be accepted by the customer, even if the customer refers to brochures, drawings or illustrations when

ordering, unless expressly agreed as a binding quality.

4. Service time, delays, partial services, place of performance

- 4.1. Unless otherwise agreed in writing, EXW Wöschbacher Str. 33, 76327 Pfinztal, Germany applies to the delivery of spare parts/assembled spare parts groups/tooling in accordance with Incoterms 2020.
- 4.2. We are entitled to make partial deliveries if this is reasonable for the customer.
- 4.3. The delivery period is understood to be the expected delivery times, subject to correct and timely delivery from our suppliers. Unless otherwise expressly agreed, the delivery times specified in the offer or in the order confirmation are approximate.
- 4.4. The delivery deadline is considered to have been met if the spare part/assembled spare parts group/tooling is set for dispatch by the deadline.
- 4.5. Delivery times begin with the order confirmation being sent by us, but not before all commercial and technical queries have been cleared up between the customer and ourselves and the customer has fulfilled all of its duties (e.g. by providing the required regulatory approvals or making the agreed down payments).
- 4.6. Subsequent requests for changes made by the customer shall extend the delivery time until we have checked their feasibility and for the period necessary to implement the new requirements.
- 4.7. In the event of force majeure and other inevitable, exceptional circumstances beyond our control, e.g. in the event of material procurement difficulties, operational disruptions, strikes, lockouts, lack of means of transport, official interventions, energy supply difficulties, etc. - even if they occur with upstream suppliers - the delivery period shall be extended by the duration of the impediment and an aforementioned start-up time if the supplier is prevented from fulfilling its obligations in good time. If delivery becomes impossible or unreasonable due to the aforementioned circumstances, we will be released from our delivery obligation. In this case, the customer cannot make any claims for damages.
- 4.8. If a foreseeable delay occurs in delivery for the aforementioned reasons, we will inform the customer immediately and state the expected postponed delivery date.
- 4.9. In the event of a delay in delivery for other reasons, the customer must remind us in writing after the delivery period has expired, specifying the order number and setting us a reasonable grace period.

5. Terms of payment, late payment, offsetting

- 5.1. Unless otherwise agreed in writing, all payments are due without deductions 10 days after the invoice date and must be made to the paying agent specified by us. Bank charges are borne by the customer.
- 5.2. If the customer is in arrears with an agreed payment, we can, without prejudice to our other rights
 - a) postpone the fulfilment of our other obligations towards the customer until payment has been received or other services have been rendered
 - b) declare outstanding debts due for payment and charge interest on arrears in the amount of 9 percentage points above the base rate per month from the due date. The benchmark for the base rate is the rate for the most recent major refinancing operation by the European Central Bank before the first calendar day of the relevant half-year. The assertion of additional damage caused by delay remains unaffected.
- 5.3. The customer can only offset claims that are undisputed or legally established by us. The customer can only assign claims from this contract to third parties with our prior

consent. The customer is only entitled to a right of retention or an objection to the non-fulfilled contract within the respective contractual relationship.

- 5.4. Circumstances that occur after the conclusion of the contract and that significantly influence the calculation basis in an unforeseeable manner and are beyond our sphere of influence entitle us to adjust the agreed price to an amount that only takes these circumstances into account. This applies in particular to changes in the law, official measures, price increases by our upstream suppliers and currency fluctuations. This price adjustment is based on the same calculation as originally agreed and is not used to increase profits.
 - 5.5. If we receive unfavourable information about the customer's financial situation or credit-worthiness after the contract has been concluded, we can make processing and delivery conditional upon a reasonable advance payment by the customer or on a security deposit or bank guarantee - unless prepayment is required anyway.
- ## 6. Retention of title
- 6.1. The spare parts, assembled spare parts groups or tooling remain our property until all receivables due to us from the business relationship with the customer have been paid in full. The receivables also include receivables from current accounts.
 - 6.2. The customer is obliged to treat the goods under retention of title with care for the duration of the retention of title. In particular, the customer is obliged to adequately insure the goods against fire, water and theft damage to their replacement value at their own expense. The customer assigns to us all claims for compensation from this insurance. We accept the assignment. If an assignment is not permitted, the customer hereby irrevocably instructs its insurer to make payments solely to us. Further claims by us remain unaffected. The customer must provide us with proof of conclusion of the insurance upon request.
 - 6.3. The customer is only permitted to sell the goods subject to retention of title in the ordinary course of business. The customer is not entitled to pledge the goods that are subject to retention of title, to assign them as security or to make other dispositions that endanger our property. In the event of seizures or other interventions by third parties, the customer must notify us immediately in writing and provide all the necessary information, inform the third party about our property rights and participate in measures taken by us to protect the goods that are subject to retention of title. The customer bears all costs for which it is responsible, which must be used to revoke this seizure and to recover the goods, if they cannot be collected from the third party.
 - 6.4. The processing or modification of the goods subject to retention of title by the customer is always carried out for us. The customer's entitlement to the goods subject to retention of title continues with the processed or modified item. If the goods are processed, combined or mixed with other items that do not belong to us, we acquire co-ownership of the new item in proportion to the value of the delivered goods to the other processed items at the time of processing. The customer stores the new items for us free of charge. The same provisions apply for the item that has been subject to processing, modification or combining as for the goods subject to retention of title.
 - 6.5. At the customer's request, we are obliged to release the collateral to which the customer is entitled, insofar as the realisable value of the collateral, taking into account bank valuation discounts, exceeds our claims from the business relationship with the customer by more than 10%. The valuation is based on the invoice value of the goods subject to

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- retention of title and the nominal value of claims.
- 6.6. For deliveries of goods in other legal systems, in which the retention of title regulation according to this paragraph does not have the same security effect as in the Federal Republic of Germany, the customer hereby grants us a corresponding security right. If further declarations or actions are necessary, the customer will make such declarations and take such actions. The customer will participate in all measures that are necessary and beneficial for the effectiveness and enforceability of such security rights.
- 7. Notification and inspection obligation; general obligations of the customer**
- 7.1. Insofar as is feasible in the ordinary course of business, the customer shall undertake to have all of our deliveries and services examined by a competent employee as soon as possible after delivery or provision or as soon as they become available, and to notify us immediately in writing of any obvious and/or recognised defects with a precise description of the defect. If the customer fails to notify us, the goods shall be deemed to have been approved, unless there is a defect that was not obvious during the inspection. If such a defect becomes evident later, notification must be received as soon as the defect is discovered; otherwise the goods shall also be deemed to have been approved with regard to this defect. The rights of the customer remain unaffected if the defect was maliciously concealed by us.
- 7.2. The customer acknowledges that we depend on their full cooperation to successfully and punctually perform our deliveries and services. The customer therefore undertakes to provide all the information required for performing the delivery and service in a timely and complete manner.
- 7.3. The customer undertakes to test our deliveries and services thoroughly for usability in the specific application before commencing with productive use, and to carry out a functional test before delivering its products to its customers. This also applies to delivery items that the customer receives free of charge as an addition or as part of the warranty.
- 7.4. The customer takes reasonable precautions in the event that we fail to provide all or part of our deliveries and services properly (e.g. through fault diagnosis, regular checking of results, emergency planning).
- 8. Incorrect orders**
- 8.1. Spare parts that the customer orders incorrectly or does not require are generally not accepted as returns or credited towards subsequent orders.
- 8.2. Should there be an individual agreement between the contractual partners for returning unwanted spare parts, the customer must bear the return shipping costs as well as a flat fee for re-storage in the amount of 15% of the original spare part sale price. Generally, only unused and new parts can be returned.
- 9. Warranty for defects**
- 9.1. Our deliveries and services meet the agreed quality and are suitable for the contractually agreed upon usage, or, in the absence of such agreed upon quality, are fit for normal use. In the absence of an express additional agreement, it is solely guaranteed that our deliveries and services are free from defects according to the current state of the art. The customer is solely responsible for the suitability and safety of our deliveries and services for an end customer application. A minor reduction in quality is not taken into account.
- 9.2. The warranty is excluded:
a) if our products are not properly stored, installed, commissioned or used by the customer or third parties,
b) where there is natural wear and tear,
c) in the event of improper maintenance by the customer or third parties,
d) if unsuitable equipment is used,
e) in the event of damage caused by repairs or other work carried out by the customer or third parties that we have not expressly approved.
The burden of proof regarding the absence of these grounds for exclusion lies with the customer.
- 9.3. In addition, the rights of the customer in regard to defects is based on it properly exercising its duties of notification and inspection in accordance with point 7.1 and reporting hidden defects in writing immediately after discovery.
- 9.4. In the event of material defects, we initially carry out subsequent performance. Subsequent performance is carried out at our discretion by eliminating the defect, by delivering goods or rendering services that do not have the defect, or by showing ways to avoid the effects of the defect. The customer must accept at least two attempts by us to remedy the situation. An equivalent new product version or the equivalent previous product version that does not show the defect shall be accepted by the customer as subsequent performance if this is considered reasonable.
- 9.5. The customer shall support us in the analysis of errors and elimination of defects, in particular by specifically describing any problems that arise, providing us with comprehensive information and granting us the time and opportunity necessary for eliminating the defects.
- 9.6. If we incur additional costs as a result of our services being changed or incorrectly operated, we can request that they be reimbursed. We can demand reimbursement of expenses if no defect is found. The burden of proof lies with the customer.
- 9.7. If the expenses required for the purpose of remedying the defect increase, in particular in relation to transport, travel, labour and material costs, we shall not be obliged to bear them, insofar as the expenses increase due to the delivery item being subsequently transferred by the customer to a different location other than the delivery address, unless the transfer corresponds to its contractual and intended use. Personnel and material costs that the customer claims due to defects in our services are to be calculated on a net cost basis.
- 9.8. If the customer incurs expenses for the removal of the defective item and the installation or fitting of the repaired or delivered defect-free item within the scope of subsequent performance, we shall bear these proven costs up to a maximum of 1.5 times the net price of the specific defective item.
- 9.9. If we ultimately refuse subsequent performance or if subsequent performance ultimately fails or is unreasonable for the customer, the customer may either withdraw from the contract within the framework of the statutory provisions and the contractual requirements or reduce the remuneration appropriately and in addition, within the framework of the provisions on limitation of liability under point 10, demand compensation for damages or reimbursement of expenses if we are at fault.
- 9.10. The mere replacement of a spare part does not constitute an acknowledgement of a defect per se.
- 10. Liability; limitation of liability**
- 10.1. We only pay compensation or reimburse wasted expenses, regardless of the legal reason (e.g. from legal or similar legal obligations, material and legal defects, delay, breach of duty and unlawful act) if we are at fault and, unless the relevant individual contract stipulates otherwise, to the following extent:
a) Liability for intent and warranty is unlimited.
- b) In the event of gross negligence, we shall be liable in the amount of the typical and foreseeable damage. c) In other cases, we shall only be liable for breach of an essential contractual obligation, for claims for defects and for delay, and only in the amount of typical and foreseeable damage. We are liable within the context of our existing business liability.
- 10.2. According to case law, essential contractual obligations (cardinal obligations) are obligations, the fulfilment of which enables the contract to be properly executed in the first place and on the observance of which the contractual partner can regularly rely.
- 10.3. We are not liable for loss of profit, loss of production, loss of earnings, loss of orders and other indirect damage and/or consequential damage, regardless of the legal reason.
- 10.4. The statutory regulations apply to injuries to life, limb and health and to claims arising from the Product Liability Act.
- 10.5. Our right to contest the charge of contributory negligence on the part of the customer remains open.
- 11. Limitation period**
- 11.1. The limitation period is
a) for claims arising from repayment of the purchase price and withdrawal or reduction, one year from delivery of the goods;
b) for claims due to material defects in the presence of a purchase agreement, one year, starting from delivery of the goods;
c) one year for claims arising from defects of title; if the defect of title is a material right of a third party, on the basis of which the goods can be reclaimed, the statutory limitation periods apply;
d) in the case of other claims for damages or reimbursement of wasted expenses or delay, one year, starting from the point at which the customer became aware of the circumstances on which the claim is based or would have become aware even without gross negligence.
The limitation shall take effect at the latest on expiry of the limitation period.
- 11.2. However, the statutory limitation periods always apply to damages and reimbursement of expenses arising from intent, gross negligence, warranty, malice as well as injuries to life, body and health and claims arising from the Product Liability Act.
- 12. Social clause**
- In determining the amount of any claims for compensation to be fulfilled by us from or in connection with a contractual delivery or service, our economic situation, the type, scope and duration of the business relationship, any contributory causation and/or fault on the part of the customer and any particularly unfavourable installation location of the goods must be taken reasonably into account to our benefit. In particular, the replacement services, costs and expenses that we are to bear must be in a reasonable proportion to the value of the supplied part.
- 13. Export controls**
- 13.1. The services or deliveries mentioned in the order confirmation are subject to sanctions under export law. Offered goods that are subject to the regulations on export control under German or international law due to their nature, their final destination or their intended use can be subsequently cancelled by us. The same applies to sanctions against people, groups and financial resources. If necessary, official approvals must be obtained from us.
- 13.2. When passing on our goods or the services we provide to third parties, the customer is obliged to observe and comply with the applicable national and international regulations on export control law.

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13.3. Before passing on our goods or services to third parties, the customer is obliged to ensure, by means of suitable checks and measures, that such passing on or provision does not violate embargo regulations, in particular those of the European Union and the United States of America, also taking into account possible prohibitions of circumvention.

13.4. The customer indemnifies us completely from all claims, which are asserted from the recipient's failure to observe the aforementioned export control obligations, and undertakes to compensate us for the damage and expenses resulting therefrom.

14. Place of fulfilment; choice of law; place of jurisdiction

14.1. Unless otherwise agreed, the place of performance for all services from the contract is our registered office (Wöschbacher Straße 33, 76327 Pfinztal, Germany).

14.2. German law applies, including the UN Sales Convention (UN Convention on Contracts for the International Sale of Goods - CISG).

14.3. The place of jurisdiction for all disputes arising from and in connection with this contract is Karlsruhe (Karlsruhe-Durlach District Court or Karlsruhe District Court), insofar as the customer is a business person, a legal entity under public law or a special fund under public law or similar or if its registered office or place of business is outside Germany. We are also entitled to bring legal action at the customer's registered office and at any other permissible place of jurisdiction.

15. Severability clause

Should a provision of these GTCDS be or become ineffective or should these GTCDS be incomplete, the validity of the remaining provisions shall remain unaffected. The contractual partners will replace the ineffective provision with a provision that comes as close as possible to the meaning and purpose of the ineffective provision. The same shall apply to any contractual loopholes.

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