

SWISS FOUNDRY ASSOCIATION GVS

General Conditions of Sale and Delivery (GCSD) 2005 Edition



1. General Provisions

- .1 The present General Conditions of Sale and Delivery (GCSD) define the binding legal basis for contracts between customer and foundry as long as no otherwise specifically agreed upon written clauses exist.
- .2 The GCSD rule out all contrary clauses formulated in whatever way by the customer, unless accepted in writing by the foundry.

2. Design of Castings

If not expressly otherwise agreed, the foundry is not the designer of the castings it manufactures and therefore accepts no responsibility for the design.

3. Tenders and Orders

- .1 The customer's request for a tender must be accompanied by technical specifications.
- .2 The foundry's tender cannot be considered firm unless expressly accompanied by a term of validity.
- .3 The foundry is not bound to execute an order until after it's express written acceptance of the contract.

4. Research and Proposals

- .1 The foundry's rights of ownership of its fabrication research results are not transferred to the customer through the sale of castings.
- .2 The foundry reserves the right to charge the customer for its preliminary fabrication research if no order is received within three months after the submission of the results.
- .3 The customer may not use the results himself or divulge them without express agreement of the foundry.

5. Fabrication Tooling

- .1 All fabrication tooling (patterns, core boxes, strickleboards, gauges, usage or control devices, foundry instruments, etc.) which is provided by the customer must be clearly marked for assembly purposes and has to be delivered to the location stipulated by the foundry free of charge. The customer takes complete responsibility for the exact agreement between the fabrication tooling and the plans, drawings and technical specifications.
- .2 When the customer orders the production of fabrication tooling from the foundry, the order is executed only with the customer's agreement and at the customer's cost, which will be levied according to the foundry's production engineering expenses.
- .3 The foundry reserves the rights of ownership as well as intellectual rights including know-how of fabrication tooling it has designed or improved.
- .4 The fabrication tooling will be returned to the customer on demand, provided full payment has been made for the castings manufactured. If they remain in store at the foundry, they are stored free of charge at the foundry for five years starting from the completion of the last order. The customer is responsible for insurance. After the five years the foundry has the right to - after formally notifying the customer - either destroy the equipment or send it back to the customer at the customer's expense. Further storage is only possible upon reimbursement by the customer.

6. Inserts

The customer is solely responsible for the inserts he provides (and which are meant to be incorporated in the mold before casting); and they should be in immaculate condition. They should be delivered to the foundry free of charge in sufficient quantities (ordered amount + 10%).

7. Delivery Schedules

- .1 Delivery times are reckoned from the date of the confirmation of the order by the foundry, but under no circumstances before the date of arrival in the foundry of the customer's patterns, strickleboards and tooling, together with the necessary technical documentation.
- .2 The binding character of the delivery time must be expressly defined without ambiguity with the customer; without such an express definition the time is deemed approximate.
- .3 In the case of factory breakdowns, force majeure, or defectiveness the foundry is released from adherence to the delivery dates. This is also valid if the above-mentioned hindrances occur during a delay or because of a sub-contractor.
- .4 Under no circumstances may the customer claim damages of any sort resulting from non-compliance of delivery dates.

8. Packaging

- .1 Unless another arrangement is previously expressly agreed upon between the foundry and the customer packaging is invoiced by the foundry and paid for by the customer, after which it becomes the property of the customer.
- .2 Containers, frames, pallets and other packing materials which are the property of the foundry must be returned by the customer carriage paid and in good order within 30 days of receiving them, in default of which they are invoiced by the foundry.
- .3 If the packing material used by the foundry is the property of the customer, it must be returned in good order by the latest at a date previously agreed upon with the foundry, to one of the locations designated by the latter.
- .4 The obligatory legal regulations remain reserved.

9. Delivery and Risk Assumption

- .1 The delivery of the castings is always considered to take effect at the foundry, (as per Incoterms 1990), whatever contractual stipulations exist on payment of transport costs.
- .2 If it is not possible to deliver castings or if no instructions have been given about their destination, delivery is considered completed by a simple notice that they are available, at which time they will be invoiced and stored at the expense and risk of the customer.
- .3 The risk is assumed by the customer from the moment of the above-mentioned notice of availability.

10. Transport

In all cases the foundry undertakes despatch and transport only on behalf of the customer, who will reimburse the foundry, on receipt of the invoice, for all carriage charges. The customer therefore, since he incurs the risks of all these operations, is responsible for checking on arrival the condition, the quantity and the weight of the castings supplied and their conformity to the delivery note. The customer is also responsible for all transport insurance.

11. Price

- 1 In principle, the contractual delivery prices exempt of tax are valid from the moment they leave the factory.
- 2 The prices are either fixed, or as per contractual agreement on a sliding scale that may be periodically adjusted according to any changes in production costs.

12. Conditions of Payment

- 1 Payments are deemed made at the head office of the foundry. In the absence of contrary agreement the net payments without cash discount are due within 30 days of invoicing.
- 2 Every delay in payment, after one written reminder, incurs interest charges at the discount rate of the Swiss National Bank plus a surcharge of 4 additional percentage points.
- 3 The claims of the foundry invoiced to the purchaser may only be set-off if the foundry has accepted in writing the purchaser's counterclaims or if they are ultimately legally binding.

13. Weight

Castings sold by weight are invoiced according to their effective weight independently of indicative weight references in the tender and the contract.

14. Quantities

In principle, the delivery quantities agreed upon by foundry and customer are valid, especially with hand-casted pieces. For long runs a small difference in the number of castings ordered and those delivered is allowed. In the absence of other agreements it is permissible for the foundry to deliver and invoice a number of castings above or below 10% of the total number ordered.

15. Control and Acceptance

- 1 The customer assumes full responsibility for the design of the castings. He alone therefore decides the technical specifications which determine all details of the castings to be manufactured.
- 2 Should the customer desire acceptance, the arrangements should be defined in writing by the latest at the time of the confirmation of the contract.
- 3 Acceptance by the customer of the foundry's proposals aimed at improving the specification cannot in any way be construed as a transfer of responsibility.
- 4 In the case of execution of composite castings or composite castings welded at the foundry the contract parties must reach an agreement as to the limitation of each component as well as the expansion of the composition of the composite zones.
- 5 In the absence of other agreement the foundry is only obliged to check the castings by simple visual examination.
- 6 The customer should expressly accept sample castings, in so doing approving commencement of long-run serial fabrication.

16. Guarantee

- 1 In case of any complaint by the customer concerning the delivered castings, the foundry reserves the right to examine the castings on the spot.
- 2 The guarantee given by the foundry, after agreement with the customer, consists of:
 - a credit or credit note to the customer for defective castings;
 - or the replacement of said castings;
 - or repair, respectively amend the said castings.
- 3 Under penalty of losing the right to the guarantee defined above, the customer is obliged to examine the delivered merchandise upon arrival, and to immediately notify the foundry in writing of any non-conformance of castings and demand explicitly the replacement or repair of the pieces in question. The guarantee is valid for 12 months from the delivery date.

17. Exclusion of further liability

- 1 All contract violations and legal consequences thereof, as well as all claims by the customer, on whatever grounds, are ruled by the present general conditions. In particular, all claims to damage compensation, price reduction, lost handling costs, cancellation or withdrawal from the contract are excluded. Under no circumstances are claims of the customer to damage compensation, that are not incurred to the actual delivery object (product defect damage) such as breaks in production, loss of use, direct or indirect damages, installation costs or recall costs. This liability exclusion does not apply to illegal purposes (intentions) or grave negligence by auxiliary staff. Further guarantee and/or liability claims by the customer are not valid.
- 2 This liability exclusion does not apply if it is contrary to a compulsory law (for ex. product liability).

18. Reservation of Ownership

If a finished product is delivered to the customer before payment of the amount stipulated by the contract, the product remains the property of the foundry until total payment is effected, insofar as the law of the area where the delivery is effected permits. In particular, the customer authorises the foundry, at the moment of the conclusion of the contract and at the customer's expense, to inscribe reservation of ownership in the official registers, books, or analogous documents required by the authorities of the country concerned and to complete all the necessary formalities.

19. Industrial Ownership

The foundry assumes no responsibility for the execution of orders according to drawings, sketches, or other information provided by the customer. These orders are only filled with the full and entire responsibility of the customer for matters of intellectual property (patents, patterns and trademarks). The customer should indemnify the foundry in all cases.

20. Applicable Law/ Jurisdiction

The contracts are exclusively under **material Swiss law**, with the exception of the Convention of the United Nations covering international merchandise sales contracts (Vienna Convention) of 11.4.1980.

Jurisdiction for all disputes rising between the foundry and the customer is the **foundry's head office**. The foundry equally reserves the right to refer the matter to the Tribunal of the customer's head office.