



## GENERAL TERMS AND CONDITIONS OF SALE

Status: Juni 2023

### 1. Validity

- 1.1. These General Terms and Conditions of Sale (GTCS) shall apply to all business relationships of the respective contracting MUSASHI company with its customers ("Purchaser"). The respective contracting MUSASHI company is the company designated in the offer or the order; either MUSASHI EUROPE GmbH, MUSASHI Bad Sobernheim GmbH & Co. KG, MUSASHI Bockenau GmbH & Co. KG, MUSASHI Grolsheim GmbH & Co. KG, MUSASHI Luechow GmbH, MUSASHI Hann. Münden Holding GmbH, MUSASHI Hann. Muenden Forging GmbH, MUSASHI Leinefelde Machining GmbH & Co. KG, MUSASHI Leinefelde Forging GmbH & Co. KG or MUSASHI Hann. Muenden Machining GmbH & Co. KG. There is joint and several liability of the MUSASHI companies and such joint and several liability is not established by these General Terms and Conditions of Sale.
- 1.2. These GTCS apply exclusively. Deviating, conflicting or supplementary general terms and conditions of the Purchaser shall only become part of the contract if and insofar as we have expressly agreed to their validity in writing.
- 1.3. The requirement of explicit consent shall apply in any case, in particular even if we carry out the delivery without reservation in the knowledge of the Purchaser's GTC or if the Purchaser refers to their GTC in the context of the order and we do not expressly object to this.
- 1.4. The GTCS shall only apply if the Purchaser is an entrepreneur (§ 14 of the German Civil Code), a legal entity under public law or a special fund under public law.
- 1.5. The GTCS apply in particular to contracts for the sale and/or delivery of movable goods, irrespective of whether we manufacture the goods ourselves or purchase them from suppliers (§§ 433, 650 of the German Civil Code). The GTCS shall apply in the current version as published on our website also as a framework agreement to future contracts without us having to refer to them again in each individual case.
- 1.6. Individual agreements with the Purchaser (including ancillary agreements, supplements and amendments) shall take precedence over these GTCS. A written contract or our written confirmation shall be authoritative for the content of such agreements. In case of doubt, commercial clauses shall be interpreted in accordance with the Incoterms® issued by the International Chamber of Commerce (ICC) in Paris in the version valid at the time of conclusion of the contract.
- 1.7. Legally relevant declarations and notifications made by the Purchaser after conclusion of the contract (e.g. setting of deadlines, notifications of defects, declaration of withdrawal or reduction) must be made in writing. Written form within the meaning of these GTCS includes written and text form (e.g. letter, e-mail). Legal formal requirements and further proof, in particular in case of doubt about the legitimacy of the declarant, shall remain unaffected.
- 1.8. References to the applicability of statutory provisions are for clarification purposes only. Even without such clarification, the statutory provisions shall therefore apply unless they are directly amended or expressly excluded in these GTCS.

### 2. Formation of the contract

- 2.1. Our offers are subject to change and non-binding. This applies in particular if we have provided the purchaser with catalogues, technical documentation or other documents and product descriptions and to which we reserve ownership rights and copyrights.
- 2.2 The order of the goods by the Purchaser shall be deemed to be a binding offer of contract. Orders can be placed in writing or by electronic data interchange (EDI). Unless otherwise stated in the order, we are entitled to accept this contractual offer within 14 days of receipt.
- 2.3 Acceptance shall be made in writing or by electronic data interchange (EDI), or by delivery of the goods to the Purchaser.



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### 3. Deliveries, place of performance, delivery periods, delay in delivery

- 3.1. Delivery shall be Ex Works from our place of business (Incoterms® 2020), which is also the place of performance.
- 3.2. The delivery time is agreed individually or provided by us at the time of acceptance of the order.
- 3.3. If we are unable to meet binding delivery deadlines for reasons for which we are not responsible (non-availability of the service), we will inform the purchaser of this without delay and notify him of the expected new delivery deadline. If the service is also not available within the new delivery period, we shall be entitled to withdraw from the contract in whole or in part; we shall immediately refund any consideration already paid by the Purchaser. A case of non-availability of the service in this sense shall be deemed to be in particular the non-timely self-delivery by our suppliers if we have concluded a congruent covering transaction, in the event of other disruptions in the supply chain, for example due to force majeure, or if we are not obliged to procure in the individual case.
- 3.4. "Force Majeure" means the occurrence of an event or circumstance which prevents us from performing one or more of our obligations under the contract if that hindrance is beyond our reasonable control and it could not reasonably have been foreseen at the time of entering into the contract and the effects of the hindrance could not reasonably have been avoided or overcome by us. In the absence of proof to the contrary, the following events affecting a party shall be presumed to satisfy the above mentioned conditions of this clause: (i) War (declared or undeclared), hostilities, attack, acts of foreign enemies, large-scale military mobilisation; (ii) Civil war, riot, rebellion and revolution, military or other seizure of power, insurrection, acts of terrorism, sabotage or piracy; (iii) Monetary and trade restrictions, embargo, sanctions; (iv) Lawful or unlawful acts of government, compliance with laws or governmental orders, expropriation, seizure of works, requisition, nationalisation; (v) Plague, epidemic, natural disaster or extreme natural event; (vi) explosion, fire, destruction of equipment, prolonged breakdown of transportation, telecommunications, information systems or power; (vii) General unavailability or reduced availability of goods and media (electricity, gas, etc.) required for production; and (viii) General labour disturbances such as boycotts, strikes and lockouts, slowdowns, occupation of factories and buildings.
- 3.5. Whether we are in delay in delivery or not, shall be determined in accordance with the statutory provisions. Irrespective of the statutory provisions however, we shall only be in delay of delivery upon receipt of a reminder by the Purchaser.
- 3.6. The rights of the Purchaser under Clause 8 of these GTCS and our statutory rights, in particular in the event of an exclusion of the obligation to perform (e.g. due to impossibility or unreasonableness of performance and/or subsequent performance), shall remain unaffected.

### 4. Prices, terms of payment

- 4.1. Unless otherwise agreed in individual cases, our prices current at the time of conclusion of the contract shall apply, plus packaging and plus statutory VAT.
- 4.2. Our prices are not fixed prices, but include variable price components for material, alloys, energy. The calculation of the price shall be agreed separately. In the absence of a separate agreement, the variable price component shall be calculated by us in accordance with generally recognised indices.
- 4.3. If the delivery is made to a place other than the place of performance at the request of the Purchaser, the Purchaser shall bear the transport costs and the costs of any transport insurance requested by the Purchaser.
- 4.4. Any customs duties, fees, taxes and other public charges shall be borne by the Purchaser.
- 4.5. The purchase price is due and payable within 14 days from the date of invoice and delivery or acceptance of the goods. However, we are entitled at any time, also within the framework of an ongoing business relationship, to make a delivery in whole or in part only against advance payment. A corresponding reservation will be declared at the latest with the order confirmation.
- 4.6. Upon expiry of the payment deadline, the Purchaser shall be in default. During the period of default, the purchase price shall bear interest at the applicable statutory default interest rate. We reserve the right to assert further damage caused by default. Our claim to the commercial due date interest (§ 353 of the German Commercial Code) against merchants remains unaffected.



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- 4.7. In particular, in the event of default of payment on part of the Purchaser, we shall be entitled to payment of a lump sum in the amount of 40 euros in accordance with § 288 section 5 of the German Civil Code. This shall also apply to instalment or other partial payments. The lump sum per clause 1 shall be set off against any claim of damages if and to such extent that the claim of damages consists of legal expenses incurred for the pursuit of our receivables.
- 4.8. The Purchaser shall only be entitled to rights of set-off or retention insofar as his claim has been legally established or is undisputed. In the event of defects in the delivery, the counter rights of the Purchaser shall remain unaffected, in particular in accordance with paragraph 8.8, clause 2 of these GTCS.
- 4.9. If, after conclusion of the contract, it becomes apparent (e.g. by filing for insolvency proceedings) that our claim to the purchase price is jeopardised by the purchaser's inability to pay, we shall be entitled to refuse performance in accordance with the statutory provisions and - if necessary after setting a deadline - to withdraw from the contract (§ 321 of the German Civil Code). In the case of contracts for the manufacture of non-fungible items (custom-made products), we may declare withdrawal immediately; the statutory provisions on the the lack of necessity for the setting of a deadline remain unaffected.

### 5. Retention of title

- 5.1. We retain title to the goods sold until full payment of all our present and future claims arising from the purchase contract and an ongoing business relationship (secured claims).
- 5.2. The goods subject to retention of title shall not be pledged to third parties or assigned as security before full payment of the secured claims. The Purchaser must inform us immediately in writing if an application is made to open insolvency proceedings or if third parties (e.g. seizures) have access to the goods belonging to us.
- 5.3. In the event of conduct by the Purchaser in breach of contract, in particular in the event of non-payment of the purchase price due, we shall be entitled to withdraw from the contract in accordance with the statutory provisions or/and to demand the return of the goods on the basis of the reservation of title. The demand for return does not at the same time include the declaration of withdrawal; rather, we are entitled to demand only the return of the goods and to reserve the right of withdrawal. If the Purchaser does not pay the purchase price due, we may only assert these rights if we have previously set the Purchaser a reasonable deadline for payment without success or if setting such a deadline is dispensable according to the statutory provisions.
- 5.4. Until revoked, the Purchaser is authorised to resell and/or process the goods subject to retention of title in the ordinary course of business. In this case, the following provisions shall apply in addition.
  - The retention of title extends to the products resulting from the processing, mixing or combining of our goods at their full value, whereby we are deemed to be the manufacturer. If, in the event of processing, mixing or combining with goods of third parties, their right of ownership remains, we shall acquire co-ownership in proportion to the invoice values of the processed, mixed or combined goods. In all other respects, the same shall apply to the resulting product as to the goods delivered under retention of title.
  - The Purchaser hereby assigns to us by way of security the claims against third parties arising from the resale of the goods or the product in total or in the amount of our possible co-ownership share in accordance with the above paragraph. We accept the assignment. The obligations of the Purchaser stated in the preceding paragraph shall also apply in respect of the assigned claims.
  - The Purchaser shall remain authorised to collect the claim in addition to us. We undertake not to collect the claim as long as the Purchaser meets their payment obligations towards us, there is no deficiency in their ability to pay and we do not assert the reservation of title by exercising a right in accordance with clause 5.3. If this is the case, however, we may demand that the Purchaser informs us of the assigned claims and their debtors, provides all information necessary for collection, hands over the relevant documents and informs the debtors (third parties) of the assignment. Furthermore, in this case we are entitled to revoke the authority of the Purchaser to further sell and process the goods subject to retention of title.
  - If the realisable value of the securities exceeds our claims by more than 10%, we shall release securities



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of our choice at the request of the purchaser.

### **6. Additional provisions for assigned receivables by factoring**

Insofar as we have notified the Customer of an assignment of our receivables in favour of BFS finance GmbH, the following provisions shall apply with priority over any other or contradictory clauses of these GCTS:

- 6.1 Our accounts receivable have been assigned to BFS finance GmbH, Verl. Payments with the effect of discharging the debt can only be made to BFS finance GmbH. The bank details are specified in the note in the invoice.
- 6.2 Until complete payment of all outstanding receivables, the goods remain property of Musashi. The debtor is revocably authorised to resale; any claims to payment of the purchase price arising from the resale are herewith assigned to us. If a current account relationship exists between the Musashi and the debtor in accordance with Section 355 of the German Commercial Code, the assignment in advance also covers the approved balance. Any processing or transformation of the purchase item by the debtor is always made for us. If the purchase item is processed or connected with other items not owned by us, we acquire co-ownership of the new item at the ratio of the value of the purchase item to the other processed items at the time of processing. If the purchase item is mixed with other items not owned by us, we acquire co-ownership of the new item at the ratio of the value of the purchase item to the other mixed items at the time of mixing. If the debtor's item is to be regarded as main item, the debtor must assign pro rata co-ownership to us.
- 6.3 Assertion of the reservation of title does not require withdrawal from the Agreement unless the debtor is a consumer.
- 6.4 In the event of default with more than one receivable, all receivables due from the debtor will immediately be due for payment.
- 6.5 The debtor's conditions (of purchase) apply only insofar as they are not contrary to the General Terms and Conditions. An opposing prohibition of assignment is herewith expressly objected.
- 6.6 We are entitled to assign the claims arising from our business relationship.

### **7. Tool costs, tool ownership**

- 7.1. If the tools necessary for the manufacture of the goods are provided by us, they shall also remain in our possession and property.
- 7.2. The Purchaser shall pay us a fee for the provision of the tools to be agreed between the parties.
- 7.3. Any costs of maintenance and repair as well as replacement of our property shall be borne by us up to the agreed output quantity.
- 7.4. The Purchaser shall have no claim to the surrender of the tools which are (co-)owned by us.

### **8. Specifications, claims for defects**

- 8.1. The exact surface colour of our products depends on the raw materials available to us and is also subject to variations due to individual processing steps. Such variation is inherent in our products, does not impair their functional suitability and does not constitute a deviation from the contractual specification. The Purchaser is free to negotiate limit samples for an appropriate surcharge.
- 8.2. Our products comply with the applicable law and regulations of the Federal Republic of Germany at the time of their delivery to the purchaser.
- 8.3. The statutory provisions shall apply to the rights of the Purchaser in the event of material defects and defects of title (including incorrect and short delivery as well as improper assembly/installation or defective instructions), unless otherwise stipulated in the following. In all cases, the statutory provisions on the sale of consumer goods (§§ 474 ff. of the German Civil Code) shall remain unaffected.
- 8.4. The basis of our liability for defects is based primarily on the agreed quality of the goods (including accessories and instructions). All product descriptions and manufacturer's specifications which are the subject of the individual contract or which were publicly announced by us (in particular in catalogues or



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- on our Internet homepage) at the time of the conclusion of the contract shall be deemed to be an agreement on quality in this sense. Insofar as the quality has not been agreed, it is to be assessed according to the statutory regulation whether a defect exists or not (§ 434 III of the German Civil Code). However, we accept no liability for public statements made by our suppliers or other third parties (e.g. advertising statements made by sales representatives or sub-suppliers). A warranty for a specific purpose is only awarded if this has been expressly agreed in the contract.
- 8.5. As a matter of principle, we shall not be liable for defects of which the Purchaser is aware at the time of conclusion of the contract or is not aware due to gross negligence (§ 442 of the German Civil Code). The Purchaser's claims for defects shall furthermore be subject to the condition that it has complied with its statutory duties of inspection and notification of defects (§§ 377, 381 of the German Commercial Code). In the case of building materials and other goods intended for installation or other further processing, an inspection must in any case be carried out immediately before processing. If a defect becomes apparent during delivery, inspection or at any later time, we must be notified of this in writing without delay. If the purchaser fails to properly inspect the goods and/or give notice of defects, our liability for the defect not reported or not reported in time or not reported properly shall be excluded in accordance with the statutory provisions. In the case of goods intended for incorporation into other goods, attachment or installation, the exclusion of warranty rights shall also apply if the defect only became apparent after the corresponding processing as a result of the breach of one of above mentioned obligations; in this case, in particular, the Purchaser shall have no claims for reimbursement of corresponding costs ("removal and incorporation costs").
  - 8.6. If the delivered item is defective, we may first choose whether to provide subsequent performance by remedying the defect (rectification) or by delivering a defect-free item (replacement). If the type of supplementary performance chosen by us is unreasonable for the Purchaser in the individual case, they may reject it. Our right to refuse subsequent performance under the statutory conditions remains unaffected.
  - 8.7. We are entitled to make the subsequent performance owed dependent on the Purchaser paying the purchase price due. However, the Purchaser shall be entitled to retain a reasonable part of the purchase price in relation to the defect.
  - 8.8. The Purchaser shall give us the time and opportunity required for the subsequent performance owed, in particular to hand over the goods complained about for inspection purposes. In the event of a replacement delivery, the Purchaser shall return the defective item to us at our request in accordance with the statutory provisions; however, the Purchaser shall not have a claim for return. Subsequent performance shall not include the dismantling, removal or disassembly of the defective item or the installation, fitting or assembly of a defect-free item if we were not originally obliged to perform these services; claims of the Purchaser for reimbursement of corresponding costs ("dismantling and assembly costs") shall remain unaffected.
  - 8.9. We shall bear or reimburse the expenses required for the purpose of inspection and subsequent performance, in particular transport, travel, labour and material costs and, if applicable, removal and installation costs, in accordance with the statutory provisions and these GTCS, if a defect is actually present. Otherwise, we may demand reimbursement from the Purchaser of the costs incurred as a result of the unjustified request to remedy the defect if the Purchaser knew or could have known that there was actually no defect.
  - 8.10. If a reasonable period to be set by the Purchaser for subsequent performance has expired unsuccessfully or is dispensable in accordance with the statutory provisions, the Purchaser may withdraw from the purchase contract or reduce the purchase price in accordance with the statutory provisions. In the case of an insignificant defect, however, there is no right of withdrawal.
  - 8.11. Claims of the purchaser for reimbursement of expenses pursuant to § 445a para. 1 of the German Civil Code are excluded unless the last contract in the supply chain is a consumer goods purchase (§§ 478, 474 of the German Civil Code) or a consumer contract for the provision of digital products (§§ 445c p. 2, 327 para. 5, 327u of the German Civil Code). Claims of the Purchaser for damages or reimbursement of futile expenses (§ 284 of the German Civil Code) shall also exist in the event of defects in the goods only in



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accordance with the following Sections 9 and 11.

### 9. Other liability

- 9.1. Insofar as nothing to the contrary arises from these General Terms and Conditions of Sale, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of a breach of contractual and non-contractual obligations.
- 9.2. We shall be liable for damages, irrespective of the legal grounds, within the scope of fault-based liability, in the event of intent and gross negligence. In the event of simple negligence, we shall be liable, subject to statutory limitations of liability (e.g. care in own affairs, insignificant breach of duty), only
  - a) for damages resulting from injury to life, body or health
  - b) for damages arising from the breach of an essential contractual obligation (obligation, the fulfilment of which makes the proper execution of the contract possible in the first place and on the observance of which the purchaser regularly relies and may rely); in this case, however, our liability is limited to compensation for the foreseeable, typically occurring damage.
- 9.3. The limitations of liability resulting from clause 9.2 shall also apply to third parties as well as in the event of breaches of duty by persons (also in their favour) for whose fault we are responsible in accordance with the statutory provisions. They do not apply insofar as we have fraudulently concealed a defect or a guarantee for the quality of the goods has been assumed and for claims of the purchaser under the German Product Liability Act ("Produkthaftungsgesetz").
- 9.4. The purchaser may only withdraw from the contract due to a breach of duty which does not consist of a defect if we are responsible for the breach of duty. A right of termination for convenience on the part of the Purchaser (in particular pursuant to §§ 650, 648 of the German Civil Code) is excluded. In all other respects, the statutory requirements and legal consequences shall apply.
- 9.5. If a claim is made against the Purchaser on the basis of strict liability in accordance with non-mandatory law vis-à-vis third parties, we shall assume liability vis-à-vis the Purchaser to the extent that we would also be directly liable. Section 254 of the German Civil Code shall apply accordingly to the compensation for damages between us and the Purchaser. This also applies if a claim is made directly against us.
- 9.6. We shall be liable for measures taken by the Purchaser to avert danger (e.g. recall) in accordance with the statutory provisions.

### 10. Property rights

- 10.1. We shall be liable for claims arising from the infringement of industrial property rights and applications for industrial property rights (protective rights) published in the Federal Republic of Germany at the time of delivery of the contractual goods if we are at fault.
- 10.2. This shall not apply insofar as we have manufactured the delivery items according to drawings, models or other equivalent descriptions or specifications provided by the Purchaser.
- 10.3. Insofar as we are liable pursuant to para 10.2 the Purchaser shall indemnify us against claims of third parties.
- 10.4. We and the Purchaser shall notify the other without delay of any risks of infringement and alleged cases of infringement that become known and give the other the opportunity to counteract corresponding claims by mutual agreement.
- 10.5. Claims of the Purchaser for damages or reimbursement of futile expenses shall only exist in accordance with paragraph 9 and are otherwise excluded.

### 11. Limitation

- 11.1. Notwithstanding § 438 section 1, no. 3 of the German Civil Code, the general limitation period for claims arising from material defects and defects of title shall be one year from delivery. Insofar as acceptance has been agreed, the limitation period shall commence upon acceptance.
- 11.2. If the goods are a building or an object which has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from



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delivery in accordance with the statutory provision (§ 438 para. 1 no. 2 of the German Civil Code). Other special statutory provisions on the limitation period (in particular § 438 para. 1 no. 1, para. 3, §§ 444, 445b of the German Civil Code) shall also remain unaffected.

11.3. The above limitation periods of the law on sales also apply to contractual and non-contractual claims for damages of the Purchaser based on a defect of the goods, unless the application of the regular statutory limitation period (§§ 195, 199 of the German Civil Code) would lead to a shorter limitation period in the individual case. Claims for damages by the Purchaser pursuant to paragraph 9.2 Sentence 1 and Sentence 2 (a) as well as pursuant to the Product Liability Act shall become time-barred exclusively in accordance with the statutory limitation periods.

### 12. Confidentiality, other property rights

12.1. The Purchaser and we are obliged to treat all information that is not in the public domain and that becomes known through the business relationship as strictly confidential.

12.2. Drawings, models, templates, samples and similar objects shall not be handed over or otherwise made accessible to third parties.

12.3. Each party shall retain ownership and any rights to the documents or data carriers provided by it, in particular to technical documentation and offer documents. Reproductions and disclosure of such documents or data carriers shall only be permitted with the consent of the transferring party.

12.4. Models, templates, samples, goods and other items provided or supplied by us shall not be observed, examined, tested or dismantled or otherwise taken apart in order to determine their composition and components without our prior consent.

### 13. Termination of long-term supply relationships

13.1. If a long-term supply relationship exists between us and the Purchaser, the Purchaser shall only be entitled to terminate the relationship by giving proper notice of termination within a reasonable period of time, even if no express contract has been concluded.

13.2. The supply relationship shall be deemed a long-term supply relationship if it has existed for at least 1 year.

13.3. The period of notice for ordinary termination is at least 9 months.

13.4. After the declaration of termination and up to the termination of the supply relationship, the Purchaser shall be obliged to call off the same volume as it called off on average in the last 9 months before the declaration of termination.

### 14. Choice of law and place of jurisdiction

14.1 The law of the Federal Republic of Germany shall apply to these GTCS and all legal relationships between us and the Purchaser to the exclusion of the UN Convention on Contracts for the International Sale of Goods.

14.2 If the Purchaser is a merchant within the meaning of the German Commercial Code, a legal entity under public law or a special fund under public law, the exclusive - including international - place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the registered office of the contracting MUSASHI company. The same shall apply if the Purchaser is an entrepreneur within the meaning of § 14 of the German Civil Code. However, we are also entitled in all cases to bring an action at the place of performance of the delivery obligation in accordance with these GTCS or a prior individual agreement or at the general place of jurisdiction of the Purchaser. Overriding statutory provisions, in particular on exclusive competences, shall remain unaffected.