

General Terms and Conditions

CNC Fertigungs GmbH

Terms of Purchase

§ 1 Scope

1.1 The following Purchasing Terms for CNC Fertigungs GmbH (hereinafter referred to as “CNC”) shall become subject matter of the contract and apply to all business dealings between CNC and the contractual partner (hereinafter referred to as “Supplier”). For orders involving tool designs, the Special Terms attached to these Purchasing Terms shall additionally apply.

1.2 Any terms of the Supplier that conflict or deviate from these Purchasing Terms shall not be recognised by CNC, unless CNC has in individual cases expressly consented in writing.

1.3 Upon beginning to carry out an order the Supplier shall declare himself in complete agreement with the following purchasing terms.

1.4 These Purchasing Terms shall apply even if CNC unreservedly accepts a delivery from the Supplier with knowledge of any deviant terms of the Supplier.

1.5 These Purchasing Terms shall also apply for all future orders to the Supplier, even if the orders are made without any express reference to this clause.

1.6 Any and all agreements reached between CNC and the Supplier for the purpose of fulfilling the contract shall be set down in this contract.

1.7 These Purchasing Terms shall only be valid in relation to an entrepreneur within the meaning of § 310 subparagraph 1 of the BGB (*German Civil Code*).

§ 2 Orders – Contract Conclusion

2.1 Orders shall be made in writing, by fax or electronically (e-mail). The content of any spoken agreements or those made by telephone shall only be binding in cases of doubt if they have been subsequently confirmed by CNC in writing, by fax or electronically (e-mail).

2.2 The supplier shall be obligated to confirm the orders placed by CNC in writing within a period of 3 work days with the inclusion of the binding delivery date and price. A contract shall only come into existence if agreement is reached concerning the basic points (especially price and delivery time).

2.3 The resulting written correspondence shall only be conducted with our Purchasing Department. Inquiry and order numbers are to be included.

2.4 CNC shall reserve intellectual property rights and copyrights for all images, drawings, calculations and other documents which have been made available to the Supplier. Third parties may only be given access to the bidding documents if CNC has given its express consent in writing. Any such documents shall only be used for the manufacture of orders and must be returned unasked after order completion with the assurance that no copies have been made. Such documents are to be kept secret from third parties. The Supplier shall be liable for any damage to CNC resulting from the breach of these duties.

2.5 The standards, guidelines and design specifications cited by CNC shall be valid in their most recent versions. Work standards, guidelines and design specifications are to be requested by the Supplier in a timely manner if these have not already been made available or been given to the Supplier.

§ 3 Prices – Terms of Payment

3.1 The price listed on the order shall be binding. In the absence of any written agreement otherwise, the price shall include free delivery including any packaging and insurance. The statutory value-added tax shall not be included in the price.

3.2 Invoices can only be processed by CNC if these include the corresponding order number. The invoice must correspond in content with the delivery note. For any settlement of accounts, the number of items, dimensions, weights, or similar information determined during the receiving inspection shall be decisive.

3.3 If nothing is otherwise agreed in writing CNC shall pay the invoiced amount within 14 days with a 3 % discount or the net amount after 45 days. CNC shall select the method of payment.

3.4 CNC shall have the right to set off or to retain to the extent provided for by statute.

§ 4 Delivery Time

4.1 The delivery date stated on the order shall be binding and observed unconditionally by the Supplier.

4.2 Delivery acceptance shall take place Monday to Thursday from 7:30am to 4:30pm and Friday until 4:00pm. Acceptances outside of these times shall only occur upon prior agreement between the Supplier and CNC.

4.3 The Supplier shall be obligated to immediately inform CNC in writing, giving the reason and estimated length of delay, if circumstances occur or are identified which result in an inability to observe the agreed delivery time.

4.4 If the Supplier fails to communicate this information he may not cite any such impeding circumstances as a reason to CNC.

4.5 In the case of a delivery delay, for which the Supplier is responsible, CNC shall have the right to demand a contractual penalty in the amount of 0,5 % of the delivery value per full week, however, not more than a total of 5 % of the delivery value. CNC shall also have the right to impose a contractual penalty alongside performance. CNC shall obligate itself to declare reservation of the right to impose a contractual penalty on the Supplier within 10 work days at the latest, starting from receipt of the delayed delivery. CNC shall reserve the right to assert any further legal claims and rights. Any contractual penalty paid shall count toward a damage compensation claim.

§ 5 Shipping – Transport Requirements

5.1 Any and all costs and expenses for shipping or packaging shall be included in the price.

5.2 If it is agreed that shipping or packaging costs are to be covered by CNC, shipments up to 30 kg are to be sent by TNT Express (customer account number to be requested at CNC) or post or express parcel post according to the lowest fee listed in the schedule of shipping fees. If in agreement with CNC shipping is to occur through a forwarder paid for by CNC, only the particular forwarding agent or its correspondent specified by CNC shall be commissioned with the transport. Should there be no shipping requirements on hand, these are to be requested from CNC.

5.3 Bulky goods (e. g. cast-iron work pieces, steel sheets etc.) are to be equipped with the appropriate shipping and/or suspension equipment, depending upon the requirements set down by the UVV (*Industrial Accident Prevention Regulations*) and the Berufsgenossenschaft (*Employers' Liability Insurance Association*). The Supplier shall be liable for any and all consequences arising from a failure to observe or comply with the relevant transport requirements.

5.4 On the day of shipment a specific notification of dispatch is to be submitted to CNC for each shipment giving exact information on the contents according to number of items, weights, dimensions etc. as well as the order number assigned by CNC with the date. A packing slip with the same information is to be included with the goods. The Shipper shall be liable for any and all consequences resulting from the failure to comply with the aforementioned shipping requirements.

§ 6 Passage of Risk

6.1 To the extent nothing is otherwise agreed in writing the delivery is to be free of charge. The passage of risk shall occur upon delivery of the item to the appointed receiving center.

6.2 The Supplier shall be obligated to list the order number assigned by CNC and the order date on all shipping documents and delivery notes. Should the Supplier fail to comply CNC shall not be responsible for any delays in processing.

§ 7 Warranty – Claims based on Defects

7.1 The Supplier shall guarantee that the object being delivered has no defects, possesses the characteristics agreed upon or guaranteed, is without faults which decrease or negate the value or suitability for the usual use or that specified under the contract, and that it corresponds to the generally accepted technical standards.

7.2 CNC shall be obligated to inspect the goods within an appropriate period of time for any and all defects in quality and quantity. A notification of defects shall be considered sent in a timely manner to the Supplier if it has been received within five workdays, starting from the receipt of the goods in the case of obvious defects or in the case of hidden defects from their identification. To this extent, the Supplier waives the right to object due to a belated notice of defects.

7.3 CNC shall be entitled to the full statutory warranty claims. In each instance CNC shall have the right, according to choice, to demand the elimination of the defect or delivery of a new item. CNC shall expressly reserve the right to damage compensation, particularly damage compensation instead of performance.

7.4 CNC shall have the right to arrange for rectification of the defects at the expense of the Supplier if there is a risk of delay or due to particular urgency it is no longer possible to inform the Supplier of the defect and the impending damage and to set a deadline for supplementary performance by the Supplier. CNC shall obligate itself to inform the Supplier of this without delay.

7.5 The period of limitation shall be 36 months, starting from the passage of risk.

§ 8 Product Liability – Indemnity – Liability Insurance

8.1 To the extent that the components delivered by the Supplier are responsible for product liability claims, the Supplier shall indemnify CNC against damage compensation claims asserted by third parties.

8.2 The Supplier shall be obligated to reimburse any and all expenses arising from or in connection with a recall campaign considered necessary by CNC and from the view of a prudent businessman to justifiably prevent greater damage. The expenses to be reimbursed shall also include the internal costs incurred by CNC. Other statutory claims shall remain unaffected by this.

8.3 The Supplier shall be obligated to take out product liability insurance for the duration of the contract with a minimum amount of coverage of 5 million per damage to persons/damage to property – blanket coverage. Should CNC have further claims for damage compensation, these shall remain unaffected by this.

§ 9 Act of God – Interruption of Operations

9.1 In cases of acts of God, labour disputes, inculpable operational disruptions, unrest, government decrees, and other events outside the control of CNC, CNC shall have the right to appropriately delay acceptance of delivery or service or to withdraw in part or in whole from the contract. Any claims of the Supplier for damage compensation may not be derived from this.

§ 10 Industrial Property Rights

10.1 The Supplier shall vouch that in connection with the delivery no third-party rights, trademarks, copyrights, or other intellectual property rights held by third parties have been infringed upon.

10.2 Should claims be asserted by third parties against CNC due to use or possession of the delivered goods, the Supplier shall be obligated to indemnify CNC from these claims upon the first written demand to do so.

10.3 The duty to indemnify on the part of the Supplier shall refer to all expenses necessarily incurred by CNC, for or in connection with the claims asserted by third parties.

10.4 The period of limitation shall be 10 years, starting from contract conclusion.

§ 11 Reservation of Title /Ownership of Tools

11.1 The manufacturing aids provided by CNC such as models, samples, dies, tools, templates, mould, drawings and suchlike shall remain the property of CNC. Diverse work or alterations shall be undertaken by the Supplier for CNC. If goods, the ownership of which is reserved by CNC should be worked with other objects not belonging to the Supplier, CNC shall acquire co-ownership of the new item in the proportion of the value of its object (purchase price plus VAT compared to the other processed objects at the time of processing).

11.2 Any and all manufacturing aids provided by CNC may not be sold to third parties, pledged, otherwise passed on or used for third parties without written consent from CNC. The same shall apply for the objects produced using said manufacturing aids. These may only be delivered to CNC, if CNC has not issued written consent for use otherwise.

11.3 After order fulfilment the manufacturing aids shall be returned to CNC without special prompting. Where the models are kept shall depend in each case on the particular written agreement.

§ 12 Court of Jurisdiction – Place of Performance

12.1 The place of performance for the deliveries shall be the receiving center designated by CNC in the order. Moreover, the corporate seat of CNC shall be the place of performance.

12.2 For all present and future claims arising from the business relationship the court of jurisdiction shall exclusively be that for the corporate seat of CNC. Despite this, CNC shall have the right to also sue the Supplier at the court with jurisdiction over his place of business.

12.3 Applicable law shall be that of the Federal Republic of Germany. The UN CISG shall not apply.

§ 13 Final Provisions

13.1 Amendments and supplements to the contracts binding the parties as well as the appendices to these shall require written form in order to be valid. This requirement for written form shall also apply to any waiver of this requirement.

13.2 Legally binding declarations shall only be valid in relation to CNC if they have been given or accepted by authorised representatives.

13.3 The Supplier may not assign in part or in whole the rights and obligations arising from this contract to third parties without the written consent of CNC.

13.4 The Supplier shall be obligated to consider the orders placed by CNC and the resulting work as business secrets and to treat these as confidential.

13.5 The Supplier may only refer to the business relationship with CNC in any advertising if CNC has given its express consent in writing.

Terms of Sale for CNC Fertigungs GmbH

§ 1 Scope

1.1 The following Sales Terms for CNC Fertigungs GmbH (hereinafter referred to as “CNC”) shall apply to all business dealings between CNC and the contractual partner (hereinafter referred to as “Buyer”). All offers submitted by CNC and contracts between CNC and the Buyer shall be concluded based exclusively on the following terms of sale. By awarding a contract, the Buyer declares himself in full agreement with these terms. These Terms of Sale shall also apply to future business dealing even when these terms have not been expressly agreed upon again.

1.2 Any terms of the Buyer that conflict or deviate from these here shall not be recognised by CNC, unless CNC has expressly consented to their validity in writing.

1.3 These Sales Terms shall apply even if CNC, with knowledge of any conflicting or deviant terms of the Buyer, unreservedly carries out delivery of an order to the Buyer.

1.4 Any and all agreements reached between CNC and the Buyer for the purpose of fulfilling the contract shall be set down in this contract.

1.5 These Terms of Sale shall only be valid in relation to an entrepreneur within the meaning of § 310 subparagraph 1 of the BGB (*German Civil Code*).

§ 2 Offers, Offer Documents and Contract conclusion

2.1 The order shall only be considered accepted when it has been confirmed by CNC in writing, by fax or electronically (e.g. email); until this occurs, any offer by CNC is non-binding.

2.2 Orders placed by telephone or telegraphically, spoken orders, supplements, changes etc. shall require written confirmation by CNC in order to be valid. The sending of confirmations by fax shall suffice. Electronic form (email) shall be an acceptable replacement for written form.

2.3 CNC shall be obligated to immediately inform the Buyer if an order has not been accepted.

2.4 Dimensions, weights, images, designations and drawings shall only be binding for order fulfilment if this has been expressly confirmed in writing.

2.5 CNC shall reserve the material and intellectual property rights to images, drawings, diagrams and other documents. Said documents shall not be made accessible to third parties without permission from CNC and shall be returned unasked if no contract comes into existence, or otherwise upon demand, with the assurance that co copies have been made. The Buyer shall be liable for any use of the drawings in his possession that is contrary to this provision.

2.6 The Buyer shall vouch that the working drawings presented by him do not infringe upon the rights of third parties. CNC shall not be obligated to verify whether any third party industrial property rights are violated or not through offers made based on the working drawings submitted in the case of order fulfilment. Should liability exist on the part of CNC despite this, the Buyer shall indemnify CNC against damage claims. Should third parties citing property rights forbid the manufacture and delivery of such items, CNC shall have the right – without being obligated to verify the legal grounds – to cease any further activities and in the case of culpability on the part of the Buyer demand damage compensation.

§ 3 Prices and Terms of Payment

3.1 Prices shall be non-binding and understood as net price in EUR. The prices shall be valid “ex works”, excluding packaging and transport, which shall be invoiced separately. The statutory value-added tax shall not be included in the price. This shall be listed separately on the invoice in the statutory amount valid on the date of invoicing.

3.2 CNC shall have the right to adjust the prices according to the cost increases that occur between order placement and delivery.

3.3 Assembly costs are not included in the price and shall be calculated by CNC based on work done according to the current hourly rates for assembly work.

3.4 Changes in design or customer requirements which result within the context of the design models shall be invoiced in addition by CNC.

3.5 If not otherwise stated on the order confirmation, payments are due without deductions 10 days after invoicing.

Payments are to be made in cash without any deductions, free of transaction charges to CNC.

CNC will not accept any bills. The acceptance of checks shall take place only as payment. The fees for discounting and collection shall be covered by the customer.

3.6 The statutory provisions shall apply in regard to the consequences of payment default.

3.7 The Buyer shall have right to set off only if his counterclaims have been recognised by court judgement, are undisputed or recognised by CNC. In addition the Buyer shall only be allowed to exercise the right to retain to the extent that his counterclaim rests upon the same contractual relationship.

3.8 Despite any contradictory terms of the Buyer CNC shall have the right to initially count payments toward older debts. If expenses and interest have been incurred through the delay in payment, CNC shall have the right to initially count the payments toward the expenses, then the interest, and finally toward the principal claim.

3.9 In the case of foreign orders cash payments are to be made in EUR to the appointed receiving office. Charges to the receiving office for CNC are to be reimbursed by the Buyer.

§ 4 Delivery Time

4.1 Begin of the delivery time set by CNC assumes the clarification of all details regarding fulfilment.

4.2 The observance of the duty to deliver also assumes the on-schedule and proper performance of the contractual duties of the Buyer, in particular the timely delivery of drawings, models, auxiliary materials and the adherence to the agreement payment terms. The right to assert the defense of lack of performance of the contract is reserved.

4.3 Should the Buyer fall into default of acceptance or culpably breach other duties to cooperate, CNC shall have the right to demand compensation for damage sustained as a result of this including any additional expenses. The right to assert further claims or rights is reserved.

4.4 CNC shall expressly reserve the right to make partial deliveries.

4.5 CNC shall be liable as provided for under statute if a delivery delay is caused by an intentional or grossly negligent contractual breach on the part of CNC. Liability on the part of its representatives or vicarious agents is to be imputed to CNC. If the delay in delivery is based on a negligent breach of the contract for which CNC is responsible the liability for damage compensation shall be limited to the foreseeable damage that typically occurs. The limitation shall also be valid if the delay in delivery caused by CNC is based on the culpable breach of a basic contractual duty.

4.6 The liability of CNC in the case of delayed delivery shall be limited within the scope of a fixed amount of compensation for delay for each full week of delay to 0.5% of the overdue delivery value, a maximum however of 5% of the overdue delivery value.

§ 5 Passage of Risk

5.1 To the extent that nothing else arises from the order confirmation, the delivery shall be agreed upon as “ex works”.

5.2 Should the Buyer so desire CNC shall take out transport insurance for the delivery. Any expenses incurred shall be covered by the Buyer.

5.3 If shipping or acceptance becomes delayed or impossible due to a circumstance for which the Buyer is responsible and through no fault of CNC risk shall pass to the Buyer upon sending the readiness for dispatch or acceptance. The Buyer shall be liable for any damage or additional expenses incurred.

§ 6 Warranty Claims / Limitation of Liability

6.1 CNC shall guarantee that the products are free of faults. The manufacture, development and design shall be done with due diligence and to the best of knowledge.

When manufacturing takes place based on drawings provided by the Buyer, CNC shall only be liable for fulfilment according to the drawings.

6.2 The warranty rights of the Buyer shall assume that he has properly fulfilled his duties to inspect and give notice of defects according to § 377 of the HGB (*German Commercial Code*) and has notified CNC of any defects without delay. Notification of the defect to the extent that it is obviously recognisable, is to take place in writing immediately, at the latest however five days after receiving the object being delivered. Notification of a hidden fault is to take place in writing immediately upon discovery; otherwise the claim for rectification of defects shall be precluded.

6.3 If a defect or fault is present, rectification or replacement delivery shall take place according to the choice of CNC.

6.4 Should supplementary performance fail, the Buyer shall have the right to choose to withdraw from the contract or to demand a reduction.

6.5 CNC shall be liable as provided for by statute only if the Buyer asserts damage compensation claims which are based on wilful intent or gross negligence, including the wilful intent or gross negligence of its representatives or vicarious agents. To the extent that no intentional contractual breach can be imputed to CNC, the liability for damage shall be limited to the typically occurring foreseeable damage.

6.6 CNC shall be liable according to the statutory provisions, if CNC has culpably breached a basic contractual duty; however, in this case the liability for damage shall also be limited to the typically occurring foreseeable damage.

6.7 If the Buyer has a claim to compensation for damage instead of performance, the liability of CNC shall be limited to compensation for the typically occurring foreseeable damage.

6.8 To the extent nothing else has been otherwise agreed upon liability shall be precluded.

6.9 The period of limitation for warranty claims shall be 12 months, starting from the passage of risk.

6.10 Liability for defect shall not apply if the Buyer has not given CNC the opportunity for supplementary performance or replacement delivery within an appropriate period of time.

6.11 If verification of the notice of defects shows that no case covered by warranty exists, the costs are to be covered by the Buyer.

§ 7 Liability

7.1 Any further liability for damage compensation than that intended under § 6 shall be precluded without regard for the legal nature of the asserted claim. This shall apply particularly to damage compensation claims arising from *culpa in contrahendo*, due to other breaches of duty, or due to tort claims for compensation for damage to property in accordance with § 823 of the BGB (*German Civil Code*). This limitation shall also be valid if the Buyer demands compensation for wasted expenses in place of asserting the claim for damage compensation instead of performance.

7.2 To the extent liability for damage compensation is precluded or limited in relation to CNC, this shall also apply to the personal liability for damage compensation of the employees, workers, staff members, representatives and vicarious agents.

§ 8 Right of Withdrawal

8.1 The Buyer may withdraw from the contract if overall performance becomes definitively impossible for CNC prior to the passage of risk or a case of inability to perform exists.

8.2 The same right of the buyer shall exist in the case of delivery delay by CNC and the expiration of an appropriate grace period set in writing by the Buyer or if the rectification of such a defect is refused by CNC.

8.3 In addition, should the contract be cancelled in mutual agreement, the Buyer shall bear the costs incurred by CNC up to this point in time.

8.4 Should it become known to CNC after contract conclusion that the Buyer is in such an unfavourable financial position that the claim for payment by CNC is endangered, CNC may then demand advance payment or security in return for service and after the expiration of a grace period of 14 days declare that CNC shall withdraw from the contract or demand damage compensation.

§ 9 Act of God – Interruption of Operations

9.1 Acts of God, unrest, labour strikes, lockouts etc. as well as significant operational disruptions occurring through no fault of CNC, including on the part of subcontractors of CNC, shall lead, for their duration and for the duration of eliminating the operational consequences, to an appropriate extension of the delivery deadline. If delivery should become impossible due to disruptions of this kind, CNC shall have the right to withdraw in part or in whole from the contract. Any claims of the Buyer for damage compensation may not be derived from this.

§ 10 Reservation of Title

10.1 CNC shall reserve right to title to the object being delivered until payment of any and all demands, even future ones, arising from the business relationship with the Buyer.

10.2 In the case of payment default or financial collapse on the part of the Buyer, CNC shall have the right to take back the object being delivered. The taking back of the object being delivered shall entail a withdrawal by CNC from the contract. After return of the object for delivery, CNC shall have the authorisation to exploit. Any proceeds resulting from said exploitation shall be counted toward any liabilities of the Buyer (minus appropriate exploitation costs).

§ 11 Court of Jurisdiction and Place of Performance

11.1 The place of performance shall be the corporate seat of CNC.

11.2 For all present and future claims arising from the business relationship the court of jurisdiction shall exclusively be that for the corporate seat of CNC. Despite this CNC shall have the right to also sue the Buyer at the court of jurisdiction over his place of business.

11.3 Applicable law shall be that of the Federal Republic of Germany. The UN CISG shall not apply.