Standard Terms and Conditions of Delivery and Payment of USD Formteiltechnik GmbH

as of January 2022

I. Definition, scope

1. The following Standard Terms and Conditions shall not apply vis a vis consumers. They shall apply for all other customers (hereinafter referred to as orderer) of USD Formteiltechnik GmbH (hereafter referred to as USD).
2. Solely the following Standard Terms and Conditions shall apply. USD shall only recognise any other conflicting or deviating terms and conditions of the orderer when they have expressly been agreed to in writing. This consent requirement shall apply in all cases, even if USD supplies orderer in awareness of orderer's general terms without explicitly rejecting such deviating terms.
3. Any agreements or ancillary agreements deviating from these terms and conditions shall not be valid, unless they are confirmed in writing by USD.
4. These Standard Terms and Conditions shall also apply to future contracts, even if not explicitly referred to them in such future contracts.

II. Offers - offer documents, confirmation of orders

1. If the order is to be qualified as a bid within the framework of § 145 German Civil Code (BGB), USD shall be entitled to accept it within 4 weeks following receipt of such bid.
2. USD shall retain any and all property rights and copyrights for images, drawings, calculations and other documents. This shall also apply to written documents which are designated as "confidential". Any disclosure to third parties shall require the express written consent of USD.
3. A delivery contract shall only be deemed to have been entered on a written confirmation of the order from USD towards the orderer and no later than upon USD's delivery. Data transmission or fax transmission shall be deemed to fulfil the written form requirement. If USD can prove by the submission of a transmission report that it forwarded a declaration by fax or data transmission, it shall be assumed that the orderer received the said declaration.
4. If USD uses teleservices or media services for the purpose of concluding a contract, the orderer waives communication of the information stipulated in the Ordinance according to Art 241 EGBGB (Introductory Law to the German Civil Code) as well as confirmation of receipt of his order. Any orders transmitted electronically shall not be deemed to be received unless they have been retrieved and opened by USD. USD reserves the right to delete orders without opening them. USD's confirmation of such an unopened and deleted order is not to be seen as a legally binding acceptance.
5. Technical alterations and alterations in shape, colour and/or weight of the order are allowed for USD as far as reasonably acceptable for the orderer.

III. Delivery schedule/ Subcontractors

1. In the event of a delivery schedule having been issued the period for acceptance shall be 12 months beginning with the day the order has been confirmed in the event of no other agreement having been made in writing.
2. At the end of such period the remainder of stock may be delivered to the orderer and he shall be obliged to accept the delivered items and to pay the price agreed upon under the respective contract.
3. In the event of a delivery schedule without specifications concerning duration, amounts and dates of delivery, USD can claim a binding specification on these points at the latest 3 months after confirmation of the order.
4. USD may, without orderer's prior consent or approval, engage any third party, e.g. sub-contractor, upstream suppliers etc. for production of products and to fulfil USD's obligations under the respective contract.

IV. Prices – Conditions of payment

1. The basis for the pricing shall be the price lists of USD applicable at the time of confirmation of the order. On this basis the raw material values in accordance with Clause IV shall be calculated, too.
2. All prices quoted by USD shall be deemed to be EXW (ex-works) USD delivery works, Am Rottland 14, D- 58540 Meinerzhagen (INCOTERMS 2020) plus value added tax applicable at the time of billing, without packaging, freight and customs duties; the latter shall be billed separately. USD reserves the right to have the delivery and billing carried out by any delivery works. If the delivery is made in hired containers (cases or other reusable packaging), these must be returned without delay free works; otherwise the containers shall be billed at cost price or at the return shipment costs incurred by USD.
3. Prices are binding and stated in Euros. In relation to consumers VAT is included, but not included and to be added in relation to entrepreneurs. Price alterations shall be admissible if more than four months lie between the conclusion of the contract and the delivery date agreed upon. If salaries and wages, material costs or market unit prices increase thereafter, including but not limited to fluctuations in currency exchange rates, until agreed delivery date, USD shall be entitled to increase the price in a reasonable manner in line with cost increases. The orderer shall only be entitled to rescind the contract, if the price increase exceeds the increase in general costs of living between the order and the delivery dates in a considerable manner. – If the orderer is a merchant, a public law entity or a special federal fund, price changes shall be admissible under the aforementioned provisions if there are more than six weeks between the conclusion of the contract and the delivery date agreed upon.
4. For small orders USD reserves the right to bill an appropriate mark-up.
5. Unless otherwise agreed upon, payments shall become due upon delivery and no later than on receipt of the invoice. With reservation as to the rejection of credit granting, invoices must be paid net within 30 days of the date of invoice. Notwithstanding this provision USD shall be entitled, at any time, to make a delivery dependent on concurrent payment without stating any reasons. If there are good and sufficient grounds, including but not limited to annulment of credit limits in orderer's commercial credit insurance established with USD, delay in payment (*Zahlungsverzug*) etc., USD may demand advance payment and/or cash-on-delivery shipment or the opening of a letter of credit.
6. Cheques and bills of exchange shall only be accepted on account of performance. Moreover, bills of exchange shall only be accepted subject to prior agreement and to their discounting. Discount charges and interest must be remunerated.
7. The day of receipt of payment shall be deemed for all means of payments to be the day on which USD or third parties, who have a claim against USD, may dispose of the amount.
8. The orderer shall not have any offsetting rights unless his counterclaims have been established in a final and conclusive manner and are uncontested or recognised by USD. Moreover, the orderer shall solely be entitled to exercise a right of retention to the extent that his counterclaim is uncontested and based on the same contractual relationship.
9. All payments must be made to USD and not to a representative of USD. Representatives shall not be entitled to collect sums due unless they can submit a corresponding power of attorney.
10. In the event of default of payment by the orderer, USD shall be entitled to retain all deliveries or services.
11. In the event of cessation of payments, executions against the orderer or an application for the initiation of insolvency proceedings, all accounts receivable shall become immediately due for payment.

V. Retention of title

1. USD shall retain all property rights for the delivery items until receipt of full payments of all current and future receivables regarding the business relationship with the orderer.
2. The assertion of the retention of title and the pledging of the delivery items by USD shall not be deemed to be a rescission of the contract unless expressly declared in writing by USD. In the event of delay of payment USD shall be entitled to reclaim the delivered goods and/or to rescind from contract without having set a new date for payment.
3. The orderer shall be entitled to resell the delivery items in the ordinary course of business. It shall likewise retain title vis-à-vis its customers until full payment by the customers. It shall already now assign all accounts receivable to USD in the amount of the purchase price (including value added tax) agreed between USD and the orderer which arise for the orderer as a result of reselling, regardless of whether the delivery items are sold on with or without processing. The orderer shall be entitled to collect these accounts receivable after their assignment. The right of USD to collect the accounts receivable itself shall not be affected; USD undertakes, however, not to collect the accounts receivable as long as the orderer properly meets his payment obligations and is not in default of payment. If the orderer is, however, in default of payment, USD may require the orderer to disclose his assigned accounts receivable and debtors, to make all information available, which is necessary for collection, to submit the corresponding documents and to inform the debtors (third parties) about the assignment.
4. If items under retention of title are not resold, orderer shall be obligated to safeguard the items under retention of title on behalf of USD, to maintain them as needed at its own expense, and to insure them against loss and damage at a level of coverage expected of a prudent businessman, for as long as title is retained. In the event items under retention of title are lost or damaged, orderer agrees to assign its insurance claims to USD.
5. The processing or transformation of the goods by the orderer shall always be for USD. If the delivery items are combined inseparable together with other items which do not belong to USD, USD shall acquire co-ownership of the new item in the proportion of the value of the delivery items to the other inseparable combined items at the time of combination. The parties hereby consent now to the passing of title that would accompany such a combination.
6. If the delivery items are commingled in an inseparable manner with other items which do not belong to USD, USD shall acquire co-ownership of the new items in the proportion of the value of the delivery items to the other commingled items. The orderer shall hold the co-owned items in safe custody for USD. The parties hereby consent now to the passing of title that would accompany such a commingling.
7. The orderer may neither pledge nor transfer the delivery items by way of security. In the event of attachment or seizure or other disposals by third parties, the orderer shall inform USD without delay and provide it with all information and documents which are necessary for it to secure its rights. Enforcement officers and/or third parties must be informed of the property rights of USD.
8. USD undertakes to release the collaterals to which it is entitled when requested by the orderer insofar as the realisable value of the collaterals exceeds by more than 20% the accounts receivable to be secured. USD shall select the collaterals to be released.
9. The orderer has to inform USD immediately about any changes of possession of the supplied goods, personal or business address.

VI. Deliveries, delivery period, delivery quantities, Force majeure

1. Compliance with agreed dates of delivery and performance shall presuppose that all technical issues have been clarified and payments or other obligations of the orderer have been made and/or fulfilled in due time. If this is not the case, the period of time may be extended upon mutual written agreement in a reasonable manner. Periods of delivery shall be

inhibited by a rearrangement or change of article desired by the client. The period shall recommence again when the changes have been approved by the orderer.
2. USD shall deliver the contractual goods to the orderer in accordance with its delivery possibilities, including but not limited, subject to the timely and correct supply by our suppliers. Delivery shall be effected from the respective shipping point in accordance with the general commercial terms specified in the contract, the interpretation of which shall be governed by the INCOTERMS applicable on the date the contract is concluded. Unless expressly agreed otherwise, deliveries are made ex works in accordance with Section IV. 2.
3. Partial deliveries shall be admissible provided that they do not result in any disadvantages in terms of use.
4. If delivery is delayed on the instigation of the orderer, the goods shall be held in safe custody at USD at the risk and expense of the orderer.
5. Force majeure of any kind, unforeseeable production, traffic or shipping disruptions, fire, explosion, natural disasters, flooding or low water levels, unforeseeable shortages of labour, energy, raw material and supplies, strikes, lockouts, war, political unrest, acts of terrorism, acts of government, epidemics, pandemics and incorrect or delayed delivery by suppliers resulting from or arising out of the foregoing or any other hindrances beyond USD's control which diminish, delay or prevent production, shipment or availability of the items or make it an unreasonable proposition, shall release USD from its obligation to perform for the duration and to the extent of that such disruption or hindrance prevails. The delivery period shall be extended in such event for the period of such event. This shall also apply when circumstances like these occur to USD's subcontractors.
6. If the orderer is in default of acceptance or if he violates any other duties to cooperate, including but not limited to an agreed supply of packaging, small load carriers (KLT) etc. in accordance with the conditions as laid down under Section VIII 4., USD shall be entitled to process first orders of third parties and to extend the delivery period in an appropriate manner. Notwithstanding any more extensive claims, USD shall be entitled to demand compensation for the corresponding damage caused to it, including any additional expenditure.
7. For specific orderer products or products not stocked, USD reserves the right to deliver 10 percent more or less.
8. In the event of reworked goods, solely the weights and qualities determined by the reworking company shall be valid.

VII. Default in delivery
1. If USD defaults in delivery, the orderer shall have a claim to payment of flat-rate damages. The latter shall be laid down at 0.5% of the purchase price for each full week of default without, however, exceeding 5%.
2. If USD defaults in respect of a partial delivery, these flat-rate damages shall be calculated on the basis of the purchase price for parts not yet accepted.
3. The orderer shall lose his claim to flat-rate damages if he fails to assert such damages within six months from the time when delivery should have been made.
4. The assertion of any damage caused by delay in performance exceeding flat-rate damages shall be excluded, unless such default is caused by USD intentionally or by gross negligence or if the damage caused by default is the consequence of an essential contractual violation or if a default caused injury to life, body or health.

VIII. Shipment - passing of risk
1. Unless otherwise laid down in the confirmation of order, delivery "ex works" in accordance with Section IV 2. shall be deemed to have been agreed. Shipment shall be at the risk and for the account of the orderer. This shall also apply to return shipments.
2. Packing material shall be invoiced at cost price. Container and wagon rents shall be borne by the recipient.
3. If USD is obliged under the German Packaging Ordinance to take back the packaging used for transport and/or sale, the orderer shall bear the costs for the transport back and the reasonable costs of utilisation or, if this is possible and considered as purposeful by USD, the reasonable costs which arise on top for the reuse of the packaging. The orderer undertakes and confirms upon the placement of his order vis a vis USD to direct any packaging, which is not sent back, to utilisations stipulated under the German Packaging Ordinance.

IX. Industrial property rights
1. The orderer undertakes to inform USD immediately of proprietary rights asserted by third parties concerning the supplied products and to let USD assume legal defence at its own expense. USD shall be entitled to carry out the necessary alterations following proprietary right assertions of third parties at its own expense, even for goods already supplied and paid.
2. If a third party prohibits USD to produce or deliver by referring to an industrial and/or intellectual property right, USD is – in the case of USD not being legally responsible for the infringement – entitled to cease production and delivery until the legal situation has been clarified between the orderer and the third party. In the event of the continuation of the order no longer being reasonable for USD due to the delay, USD shall have the right to withdraw from contract.
3. The orderer guarantees that all services and goods provided by him, in carrying out this contract, including but not limited to samples, drawings etc., are free from industrial and/or intellectual property rights of any third party. The orderer shall indemnify USD insofar from all legal claims of any third party whatsoever including USD's reasonable costs for legal defence.
4. Drawings and samples the orderer has provided USD with will be sent back only on orderer's demand. If no request has been made by orderer within two months after the offer, USD is entitled to destroy the said items.
5. Drafts and proposals for construction of USD may only be imparted with USD's written consent.

X. Remedies in case of defects / Notice period/ Damages / Liability
1. The statutory provisions shall apply to the rights of the purchaser in the event of material defects and defects of title (including wrong delivery and short delivery as well as improper assembly or defective assembly instructions), unless otherwise stipulated below. In all cases, the special statutory provisions shall remain unaffected in the case of final delivery of the products to a consumer, even if the consumer has processed them further (supplier's recourse pursuant to Sections 478, 445a, 445b BGB). Claims from supplier recourse are excluded if the defective product has been further processed by the purchaser or another entrepreneur, e. g. by installation in another product.
2. Notwithstanding § 434 para. 2 sentence 1 nos. 2 and 3 of the German Civil Code (BGB), the freedom from defects of a product shall be determined exclusively by the quality of the respective product agreed between the parties within the scope of a specification. A certain usability of the products as well as the provision of possible accessories or instructions by USD must be expressly agreed between the customer and USD in the respective specification. In the absence of an agreement, the customer cannot invoke a defect if the product is not suitable for the use assumed under the contract. If a product is specified, it shall be deemed to be without material defects, if recognised tolerances due to manufacturing are complied with. Slightly contorted parts, parts with little unevenness or blemish shall also be deemed to be without any defects. Any information provided in product descriptions and product specifications shall not be deemed to be regarded as a guarantee for the nature of the item (*garantierte Beschaffenheitsmerkmale)* or for it retaining a certain quality for a specified time (*zugesicherte Eigenschaft*). Any acceptance of a guarantee or certain quality (*zugesicherte Eigenschaft*) shall require an explicit written agreement of such guarantee with USD.
3. Orderer is entitled to invoke a certain intended purpose of use of the delivered goods only when this has been explicitly agreed upon in writing within the specification. USD neither warrants that a product is suitable for normal use, nor that it has a quality which is usual for items of the same kind and which the orderer can expect, nor that assembly or installation instructions or other instructions are enclosed with the product. Section 434 (3) sentence 1 no. 1, no. 2 and no. 4 of the German Civil Code (BGB) are thus expressly waived.
4. USD must immediately be notified and given notice in accordance with Section 377 of the German Commercial Code (HGB) of obvious defects. In the event of a defect for which USD is responsible, USD shall, at its option, proceed to either subsequent improvement or replacement delivery. In the event of subsequent improvement, USD shall be obliged to bear all expenses incurred in respect of the remedying of the defect and, more particularly, transport costs, shipping costs, labour and material costs, insofar as these costs are not increased by the fact that the subject matter of the purchase is transported to a place different from the place of performance. In the event of the customer being a consumer as provided by § 13 BGB he shall have the choice between either subsequent improvement or replacement delivery.
5. USD reserves the right to two (2) attempts of supplementary performance. If subsequent performance fails, the orderer shall be entitled either to a reduction of the corresponding compensation for this order or to rescind the contract. Insofar as the subject matter of purchase or the work performed lack a warranted or guaranteed property, USD shall be liable under the statutory provisions.
6. If USD is not responsible for specific defects, warranty claims shall be excluded unless a warranted property is lacking.
7. Irrespective of the legal basis, USD shall not be liable for loss or damage (including expenses) suffered by the orderer as a result of USD's slight negligence or the slight negligence of its legal representatives, employees, workers, agents and vicarious agents.
This exclusion shall not apply to claims relating to a breach of material contractual obligations, the fulfilment of which is essential to the proper implementation of the contract and whose fulfilment the Purchaser may therefore normally rely on (cardinal duties).
8. Insofar as USD is liable on the merits for damages pursuant to Section X. No. 5, its liability for all damages and reimbursements, whether contractual, non-contractual or otherwise and regardless of their legal nature, shall be limited in terms of amount to foreseeable damages typical for the respective contract.
9. The above exclusions and limitations of liability shall not apply to claims relating to death, personal injury and impaired health or for claims under the German Product Liability Act. Mandatory provisions of law shall remain unaffected.
10. USD cannot be held responsible for loss or damage attributable to any of the circumstances identified in Section VI No. 5 of these standard terms.
11. Any exclusion or limitation of liability in favour of USD provided under this Section X. shall also inure to the benefit of the legal representatives, employees, workers, agents and vicarious agents of USD arising out of the same cause of action.

XI. Limitation of Time
1. In deviation to § 438 Para. 1 No 3 BGB, claims arising from material defects and legal deficits expire by limitation of time one year after delivery. If acceptance has been agreed, the limitation period starts to run upon issue of acceptance.
2. This shall not apply in case of damage claims arising out of fatalities, physical injuries and harm to health or from Seller's intentional or gross negligent behavior or damage claims under German Product Liability Act

(Produkthaftungsgesetz). In such cases limitation of time shall be governed by the applicable statutory provisions.
3. If, however, the goods are structural elements or are commonly used in construction works and they have caused the defectiveness (construction material), the limitation period is 5 years from the date of delivery in accordance with legal regulations (§ 438 Para. 1 No. 2 BGB). The following also remain unaffected: the separate statutory regulations concerning third party claims in rem (§ 438 Para.
1 No. 1 BGB), malice aforethought on the part of the seller (§ 438 Para. 3 BGB) and claims to supplier's redress (§§ 444, 445b BGB).
4. The foregoing limitations of time under the German Commercial Code also apply to the orderer's contractual and extra-contractual claims to damages based on a defect in the goods, unless application of the regular period of limitation under law (§§ 195, 199 BGB) would lead to a shorter limitation period in a stand-alone case. The limitation periods set by legislation apply to the orderer's claims for damages as per German Product Liability Act (Produkthaftungsgesetz) and per § 8 Para 2 Sentence 1 and Sentence 2 a).

XII. Spare parts
USD shall not be obliged to supply any spare parts after the expiration of the period of time in accordance with Section XIV. 4. of these standard terms, unless a corresponding written agreement has been entered into between USD and the orderer.

XIII. Construction, tools
1. The trouble-free suitability of the construction and the material of the parts to be manufactured by USD shall be determined by the tests and trials of the orderer. All proposals, construction drawings and other documents made available to the orderer by USD, shall remain the property of USD and/or – as the case may be - of USD's supplier and may not be disclosed to third parties without USD's written consent. USD and/or – as the case may be - USD's supplier shall have the sole right to use these construction drawings and any tools and/or equipment manufactured on their basis. The orderer shall be liable for the legality of the use of drawings, sketches, models etc. provided to USD.
2. Models, moulds, dies, extrusion tools, installations and other operating equipment shall be invoiced separately. They shall remain the sole property of USD and/or – as the case may be - of USD's supplier at any time respectively even if a portion of the cost has been invoiced to the orderer and he paid a sum upon such invoice.

XIV. USD's right to withdrawal
In case of an unforeseen event,,in accordance with Sec. VI. 5. of these standard terms, USD shall not be responsible for changes the economical significance or the content of the contractual services considerably or has considerable effects on USD's business and if after conclusion of the contract the promised service turns out to be impossible to render for USD at no fault of USD, USD shall have the right upon expiration of a reasonable period of time to withdraw partly or completely from contract. USD shall not have the said right to withdrawal when this is not economically bearable for the orderer. This clause does not affect further statutory rights to withdrawal.

XV. Exclusion of Information Duties towards non-consumer orderers
If the orderer is not regarded as consumer, the information duties of USD under Section 312i Abs. 1 Sentence 1 Nr. 1 to Nr. 3 of the German Civil Code (BGB), where USD would be obliged to inform the orderer as follows; 1. Provide appropriate, effective and accesible technical means, the orderer may use to correct typing errors before he submits his order; 2. To provide the orderer with several information as set forth under Article 246c of the Introductory Statue to the German Civil Code (EGBGB) timely and in a clear manner prior to the order and 3. To confirm the receipt of his order without undue delay electronically, shall be explicitly excluded.

XVI. Miscellaneous
1. Unless expressly otherwise agreed, the registered office of USD shall be the place of performance.
2. If the orderer is a merchant, a public law entity or a special federal fund, the place of jurisdiction shall be the competent court at the place of business of USD excluding cases where a competent court is designated by mandatory statutory provisions. USD shall, however, be entitled to sue the orderer in line with mandatory statutory provisions also before any other admissible court.
3. The present standard terms and conditions and all legal relationships between USD and the orderer shall be, to the extent legally permitted, exclusively governed by the laws of the Federal Republic of Germany, excluding the rules on private international law and the United Nations Convention on Contracts for the International Sale of Goods (CISG)..
4. Should a provision of these terms and conditions or part of such a provision be or become invalid, the remaining provisions and/or the remaining part of the provision shall remain valid.
5. The contractual language shall be German. If the contracting partners use any other language, the German wording shall prevail.