

# General Terms & Conditions

## A. General, scope of application

- I. These General Terms & Conditions (hereinafter "GTC") apply to the company **Enpar Sonderwerkstoffe GmbH**, Betriebsweg 10, 51645 Gummersbach, Germany (hereinafter referred to as "Enpar"). All deliveries (hereinafter referred to as "Object of Delivery") and offers of Enpar are effected exclusively on the basis of these GTC, which form an integral part of all contracts which Enpar concludes with its contract partners (hereinafter referred to as the "Customer") for the deliveries and services offered by Enpar. They shall also apply to all future deliveries and services or offers to the Customer, even where they (the GTC) are not separately agreed once more.
- II. These GTC apply with exclusive effect. Customer terms and conditions which differ from, conflict with or supplement these GTC will only become an integral part of a contract when and insofar as Enpar has expressly consented to their applicability. This consent requirement shall for example also apply where Enpar, having knowledge of the Customer's terms and conditions, executes an order for the Customer without demur.
- III. Individual agreements reached with the Customer in individual cases (including supplementary accords, additions and amendments) shall in every case have priority over these GTC. Subject to proof to the contrary, the content of such agreements shall be governed by a written contract or Enpar's written confirmation.
- IV. All declarations and advices which have to be delivered by the Customer to Enpar after conclusion of the contract (e.g. setting of time limits, notice of defects, declaration of withdrawal or reduced payment) must be in writing, that is in written or text form (e.g. by letter, email or fax). This shall be without prejudice to statutory requirements and other verifications, particularly in case of doubt as to the legitimate status of the declaring party.
- V. References to the applicability of statutory provisions shall have clarifying significance only. The statutory provisions shall therefore apply even without such clarification except where they are directly amended or expressly excluded in these GTC.

## B. Offer and conclusion of contract

- I. All Enpar's offers are without obligation and subject to confirmation. This shall also apply where Enpar has supplied the Customer with catalogues, technical documentations (e.g. drawings, plans, calculations, pricing/costing, references to DIN standards), other product descriptions or documents – also in electronic form – to which Enpar reserves title and copyright.
- II. The order by the Customer is deemed to be a binding offer of a contract. Except where the order determines otherwise, Enpar shall be entitled to accept such offer of a contract within a limited period of 2 weeks after receipt thereof.
- III. Acceptance may be effected either in writing (e.g. through an order confirmation) or by delivery of the goods to the Customer.
- IV. Information given by Enpar on the Object of Delivery (e.g. weights, dimensions, practical value, load capacity, tolerances and technical data) and presentations of same (e.g. drawings and illustrations) shall have only an approximately binding effect except where the usability for the contractually intended purpose is conditional on an exact match. The said information shall not represent guaranteed characteristics or features but descriptions or designations of the Object of Delivery. Discrepancies customary for the trade and discrepancies which are due to legal requirements or represent technical improvements, and the replacement of components with parts of the same standard, shall be admissible except where they compromise usability for the contractually intended purpose.
- V. Enpar reserves title or copyright to all the offers and cost estimates it has submitted and to all the drawings, illustrations, calculations, brochures, catalogues, models, tools and other documents and equipment provided to the Customer. The Customer may not make these items, whether as such or the content thereof, accessible to third parties without the express consent of Enpar, nor make said items known, nor use them itself or via third parties, nor reproduce same. On request by Enpar the Customer shall return these items to Enpar in full and destroy any copies that may have been made if and when they are no longer required by the Customer in the normal course of business or if negotiations do not result in the conclusion of a contract. All know-how, inventions, patents or similar rights to which Enpar has title are provided for the purpose of performance of the contract and are not transferred to the Customer.

## C. Delivery periods and dates

- I. The time of delivery is agreed for each individual case or stated by Enpar on acceptance of the order. All delivery times and dates shall be subject to unforeseeable production breakdowns and Enpar receiving its own supplies in timely manner.
- II. Where Enpar cannot adhere to binding delivery times for reasons for which it is not responsible (materials or performance not available), Enpar will inform the Customer thereof without delay and at the same time state the expected new delivery time. If the performance is not available inside the new delivery period, Enpar shall be entitled to withdraw from the contract wholly or in part; any payments made by the Customer by that time will be reimbursed without delay. Non-availability of performance shall, for the present purpose, in particular mean unpunctual delivery by Enpar's supplier where Enpar has concluded a congruent hedging transaction, where neither Enpar nor the said supplier is at fault, or in an individual case where Enpar is not obliged to ensure procurement.
- III. The relevant statutory provisions shall determine when default on delivery has occurred. In every case, however, a warning notice by the Customer shall be necessary. Where Enpar defaults on delivery, the Customer may require flatrate compensation for the loss resulting from default. The compensation amount shall be 0.5% of the net price (delivery value) for each completed calendar week, but a maximum total of 5% of the value of the goods delivered late. Enpar reserves the right to provide evidence that the Customer has suffered no loss or a substantially lower loss than the aforesaid compensation amount.
- IV. The rights of the Customer under section I (Other liability) of these GTC and the legal rights of Enpar, in particular in case of an exclusion of the obligation to perform (e.g. on grounds of contract performance and/or supplementary performance being impossible or unreasonable) shall remain unaffected.

## D. Delivery, shipment, packing and transfer of risk

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- I. Delivery shall be made, except where agreed otherwise, ex works, which is also the place of performance for the delivery and any possible supplementary performance. On request by and at the expense of the Customer, the goods may be shipped to a different destination. Except where otherwise agreed, Enpar shall be entitled to determine the mode of shipment itself (in particular carrier, route, packing). Transport insurance will only be taken out at the Customer's request. It will be conditional on a written order from the Customer stating the insurance amount. The costs of the transport insurance shall be met by the Customer.
- II. The risk of accidental loss and accidental deterioration of the goods shall pass to the Customer not later than the time the goods are handed over to the Customer. In the case of shipment, however, the risk of accidental loss and accidental deterioration of the goods, and also the risk of delay, shall pass at the time the goods are delivered to the forwarder, the carrier or other person or organisation designated for the execution of shipment. If acceptance has been agreed, this shall determine the time of transfer of risk. In other respects an agreed acceptance shall also be subject to the relevant statutory provisions of work and services contract law. The same provisions shall apply to hand-over or acceptance where the Customer is in default with acceptance.
- III. If the Customer defaults on acceptance or fails to fulfil a cooperation obligation, or if delivery by Enpar is delayed for other reasons for which the Customer is responsible, Enpar shall be entitled to require compensation for the loss resulting therefrom, including additional expenditure (e.g. storage costs). This shall be without prejudice to the statutory provisions governing default on acceptance.
- IV. Where customary for the trade, Enpar will supply the goods in packed form and protected against rust; the costs shall be borne by the Customer. Packing, protective and transport equipment will not be returned, with the exception of items on deposit, loading equipment and means of transport. Packing exceeding transport requirements or the use of other special protective materials, e.g. for long-term safekeeping or storage, will be subject to an express agreement.
- V. In the case of damage during transport the Customer must immediately initiate a statement of facts or a written notation to be placed on the transport documents.

### E. Prices

Except where agreed otherwise in an individual case, our current prices, in euros, will apply as at the time the contract is concluded. The terms are ex works, plus statutory VAT and other taxes, fees, customs duty, other official charges, and costs such as transport, packing and acceptance-related costs.

### F. Terms of payment

- I. The purchase price will be due and payable, without deduction, no later than 30 days after invoicing and delivery or acceptance of the goods. If a payment period is stated on the invoice, payment must be made by that time at the latest. If it is agreed that the goods are to be released by the Customer for dispatch (called off) within a specific period after notification of readiness for dispatch, Enpar shall be entitled to invoice the goods as from the time of readiness for dispatch. In this case the purchase price shall be payable 21 days after invoice date. Enpar shall however also be entitled at any time in the course of the current business relationship to carry out partial or full delivery, but only against payment in advance. Enpar shall use the order confirmation, at the latest, to reserve its right to do so.
- II. The Customer shall be in default as of expiry of the payment period referred to above. Interest will then be due on the purchase price at the statutory default interest rate effective at the time. Enpar reserves the right to assert claims for losses of greater extent due to the default. *Vis-à-vis* merchants the claim to interest on arrears (section 353 HGB, German Commercial Code) shall remain unaffected. The Customer shall have rights of offsetting and withholding payment only where its claim has been finally established at law or is undisputed. This shall be without prejudice to the Customer's counter-claims in case of defect, in particular under sentence 2 of subsection VII of section H of these GTC.
- III. If it becomes apparent after conclusion of the contract that the claim to the purchase price is at risk due to the Customer's deficient capacity to make payment (e.g. through an application for the opening of insolvency proceedings), Enpar shall, pursuant to the relevant statutory provisions, be entitled to refuse performance and – where appropriate after setting a time limit – to withdraw from the contract (section 321 BGB, German Civil Code). In the case of contracts on the production of unacceptable items, Enpar may declare its withdrawal immediately, the statutory provisions on the dispensability of the setting of a time limit remaining unaffected.

### G. Retention of title

- I. Enpar reserves title to the Object of Delivery until payment has been made in full of all present and future claims under the contract and in a current business relationship (secured demands for payment). If the Object of Delivery is a processing service, Enpar shall acquire joint title to the article ordered in the invoice value. The following rules for retention of title shall apply in every respect to the joint title.
- II. The goods under retention of title may not be pledged to third parties or assigned as security until the secured claims have been paid in full. The Customer must inform Enpar immediately, in writing, if and when an application has been filed for the opening of insolvency proceedings and where access has been made by third parties (e.g. seizures) to the goods belonging to the Customer.
- III. In case of breach of contract by the Customer, in particular failure to pay the purchase price due, Enpar shall be entitled under the relevant statutory provisions to withdraw from the contract and/or to require surrender of the goods on grounds of retention of title and the said withdrawal. The demand for surrender does not necessarily entail a declaration of withdrawal; instead, Enpar is entitled only to require surrender of the goods and reserve the right of withdrawal. If the Customer does not pay the purchase price due, Enpar may only assert these rights if it has previously, to no avail, set the Customer a reasonable deadline for payment, unless there are statutory provisions which allow Enpar to dispense with setting a deadline.
- IV. The Customer shall until further notice be entitled to resell and/or process the goods that are under retention of title in the course of proper business. In this case the following provisions shall additionally apply:
  1. The retention of title shall extend to include, in their full value, goods resulting from processing, commingling or combining, Enpar being deemed the manufacturer. If, in the course of processing, commingling or combining with goods of third parties, the latter's title continues to be effective, Enpar shall acquire joint ti-

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title in proportion to the invoice values of the processed, commingled or combined goods. In other respects, the same shall apply to the resulting product as to the goods supplied under retention of title.

2. Under the provisions of the previous paragraph, the Customer now assigns to Enpar as security the claims against third parties resulting from the resale of the goods or the product, in the full amount or to the extent of any possible joint title of ours. Enpar hereby accepts said assignment. The Customer's obligations specified in section II shall also apply in respect of the assigned claims.
3. The Customer continues to be authorised, as well as Enpar, to collect claims. Enpar undertakes not to collect claims as long as the Customer fulfils its payment obligations vis-à-vis Enpar, no defects are present in its performance capacity and Enpar does not assert its retained title through exercise of a right referred to in section III. If, however, this is the case, Enpar may require the Customer to make the assigned claims and their obligors known, to provide all the information necessary for collection, to hand over the appurtenant documents and advise the obligors (third parties) of the assignment. Furthermore, in this case Enpar is entitled to revoke the authorisation of the Customer to resell and process the goods that are under retention of title.

### H. Claims for defects

- I. The rights of the Customer in case of defects of quality and title (including short and incorrect delivery and unprofessional assembly or inadequate assembly instructions) are governed by statutory provisions, except where determined otherwise below. Claims for recourse against suppliers are excluded where the defective goods were further processed by the Customer or another entrepreneur, e.g. through installation in another product.
- II. The Object of Delivery conforms to the contract if, at the time of transfer of risk, it deviates not at all or only insignificantly from the agreed specifications. The Object of Delivery's conformity with contract and absence of defect are determined exclusively according to explicit agreements on the quality and quantity of the Object of Delivery ordered. A warranty for a specific purpose of use or a specific suitability is only assumed where this was expressly agreed; in other respects, the risk of suitability and specific use is borne exclusively by the Customer.
- III. The contents of the specifications and e.g. an expressly agreed intended use shall not constitute a warranty; a written agreement is required for the assumption of a warranty.
- IV. In the case of goods sold as downgraded material, e.g. so-called II-a material, the customer is not entitled to claims under warranty regarding the defects stated and those which are normally to be expected.
- V. The Customer's claims for defects are conditional on its having fulfilled its statutory obligations of inspection and complaint (sections 377 and 381 HGB). The Customer must inspect received goods immediately after receipt. Claims for defects shall only be possible if a written complaint is made without delay; complaints about hidden defects must be made as soon as they are detected. In any case, written notice of manifest defects must be given within 5 days of delivery, and the same time limit applies after detection of non-manifest defects through inspection of the goods. If the Customer does not do the proper inspection and/or give notice of defect, liability for a defect which is not properly reported or not in due time is, under the relevant statutory provisions, excluded. After an agreed acceptance has been carried out it is not possible to complain about defects which could have been detected during the acceptance process. Claims under warranty are also excluded where the Customer or third parties carry out inappropriate or unsuitable modifications or repairs to the Object of Delivery.
- VI. In case of complaints the Customer must immediately give Enpar an opportunity and time to examine the Object of Delivery complained about; on request Enpar must be provided with such Object of Delivery or a sample thereof at Enpar's expense. The expenditure necessary for inspection and supplementary performance, in particular transport, road maintenance, labour and material costs and, as appropriate, disassembly and installation costs, shall, under statutory requirements, be met by Enpar provided that there is in fact a defect. If, however, a request by the Customer for the remedying of a defect proves to be unjustified, Enpar may require the Customer to reimburse the costs incurred except where the absence of defect could not become apparent to the Customer.
- VII. Where a quality defect is present, Enpar shall have the option of supplementary performance by way of either delivery of replacements or rectification. This shall be without prejudice to Enpar's right to refuse supplementary performance subject to the relevant statutory conditions.
- VIII. Enpar shall be entitled to make the required supplementary performance dependent on payment by the Customer of the invoice amount due. The Customer shall however be entitled to withhold an appropriate part of the purchase price, the amount being proportionate to the defect. The supplementary performance shall include neither the disassembly of the defective part nor the renewed installation if Enpar was not originally obliged to effect installation.
- IX. If the supplementary performance was unsuccessful, or if the reasonable time limit set by the Customer for supplementary performance expired to no avail or can in law be dispensed with, the Customer may withdraw from the contract or reduce the agreed purchase price. However, if the defect is insignificant there is no right to withdraw.
- X. In the case of a defect of title, Enpar shall have the right of supplementary performance through correction of the defect of title within two weeks of receipt of the goods.
- XI. The following special provisions apply in addition in the case of processing services:
  1. Deviations of dimensions, weight and quality shall be treated as contractually correct performance where they are regarded as permissible by DIN standards or accepted practice (+/- 10%). Other deviations require a separate contractual agreement.
  2. The weight is established on calibrated scales and determines this aspect of the invoicing. Evidence of weight is given by presentation of the weight log. Except where it is usual for individual items to be weighed, the total weight of the shipment shall apply.
- XII. Claims by the Customer for damages or compensation for wasted expenditure shall be dependent on the provisions of the following subsection and are otherwise excluded.

### I. Other liability

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- I. Except where regulated otherwise in these GTC, Enpar is liable under the relevant statutory provisions for a breach of contractual and extra-contractual obligations.
  - II. Enpar is liable for damages – for whatever legal reason – within the limits of liability for fault in the case of wilful intent or gross negligence. In the case of minor negligence Enpar is liable, subject to application of a milder measure of liability, under the relevant provisions of statute law (e.g. for due care in its own affairs) only for
    1. damage or loss resulting from loss of life, physical injury or damage to health,
    2. damage or loss resulting from serious breach of an essential contractual obligation (an obligation which makes the correct performance of the contract possible in the first place and on the fulfilment of which the contract partner relies and is entitled to rely); in this case Enpar's liability is limited to foreseeable damage or loss occurring in standard situations.
  - III. The limitations resulting from subsection II shall also apply to breaches of obligations by persons for whose culpability Enpar is responsible by law. They do not apply where Enpar has intentionally failed to mention a defect or has assumed a warranty for the properties and/or condition of the goods and for claims by the Customer under the German product liability act.
  - IV. The Customer may withdraw from or terminate the contract on grounds of a breach of obligation which does not involve a defect only if Enpar is responsible for the said breach. The Customer does not have an unrestricted right of termination. The statutory requirements and legal consequences apply in other respects.
- J. Time-barring**
- I. The period of limitation for claims on grounds of defects of quality and title is one year as from delivery or making the goods available for collection or as from acceptance.
  - II. This period of limitation shall also apply to contractual or extra-contractual claims for damages by the Customer which are based on a defect in the goods, except where the application of the standard statutory limitation (sections 195 and 199 BGB) would in an individual case lead to a shorter period of limitation. Claims for damages under section I, subsection II, sentences 1 and 2, no. 1 of these GTC and under the said product liability act, however, become time-barred exclusively as laid down in the relevant statutory provisions.
- K. Export controls**
- The Customer undertakes to become familiar with and comply in every respect with all the national, European and international laws, regulations, sanctions and embargoes as most recently amended concerning exports and re-exports, including but not limited to restrictions related to domestic business transactions, brokering services and other bans on circumvention which directly or indirectly affect its (the Customer's) activities (including the resale of our products). This shall also apply to decisions taken inside the voestalpine group – if and insofar as they were made known to the Customer – regarding the delivery of products or services to specified countries, to specified end customers or for specified final uses.
- L. Export certificate**
- If a Customer based outside the Federal Republic of Germany (extra-territorial buyer) or its authorised agent collects goods or ships them to a territory outside Germany, the Customer must submit to Enpar the export certificate necessary for tax purposes. If this certificate is not provided, the Customer will have to pay the VAT rate applicable to deliveries inside the Federal Republic of Germany on the invoice amount.
- M. Applicable law**
- These GTC and the contractual relations between Enpar and the Customer are governed by the law of the Federal Republic of Germany to the exclusion of international unitary law, in particular the United Nations CISG Convention.
- N. Place of performance and jurisdiction**
- The place of fulfilment and jurisdiction for both contracting parties is Gummersbach. Enpar will however also be entitled to bring actions at the place of fulfilment of the delivery obligation, subject to these GTC or to an overriding individual agreement, or at the general place of jurisdiction of the Customer. Overriding statutory provisions, in particular regarding exclusive jurisdictions, shall remain unaffected.
- O. Final provisions**
- If a provision of these GTC is or becomes null and void, this shall not affect the remaining provisions of the GTC. In this case the provision which is or has become void must be replaced only with a provision which serves the intended purpose and is legally admissible.