

# Surpro GmbH GTCT

General terms and conditions of trade

Valid starting from 01.05.2015

## 1. General remarks and area of validity

1.1 All deliveries and services, including consultations, information and offers, are subject to these general terms and conditions of trade. They are subject of all agreements, concerning our offered deliveries and services, concluded with a contracting party (hereinafter referred to as "customer"). They will also be valid for all future deliveries, services or offers, even if they have not been declared separately again. The terms and conditions of trade are only valid if the customer is an entrepreneur (§ 14 BGB), a corporate body under public law or a special fund under public law.

1.2 Trading conditions of the customer or a third party will not apply, even if we do not separately object to its validity in an individual case. And even if we do refer to a writing which contains or refers to the trading conditions of a customer, it is no acknowledgement of the validity of those.

1.3 References regarding legal regulations are only significant for declaring the avoidance of doubt. Even without such a declaration the legal regulations are valid if they have not been changed directly or have been explicitly excluded in these terms and conditions of trade.

## 2. Offer, completion of a contract and included services

2.1 Our offers are without obligation and subject to confirmation, if they have not been marked as obligatory or contain a certain term of acceptance. We can accept orders within 14 days after receipt of the offer.

2.2 Solely significant for the legal relationship between us and the customer is the concluded written contract including these terms and conditions of trade. The contract fully displays all agreements between the contracting parties concerning the contractual item. Verbal commitments made by us before conclusion of a contract are legally obligating; verbal agreements between the contracting

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parties are going to be replaced by the written contract, if it does not obviously appear that they will bindingly continue to have an effect.

2.3 To become effective, amendments and changes of the agreement, including these terms and conditions of trade, are required to be in written form. Our employees, except general manager and authorized representatives, are not permitted to make any varying verbal agreements. In adherence of the written form, a transmission via fax or mail is sufficient.

2.4 In case we have to produce according to the customers specifications, the customer has to provide detailed drawings with specified dimensions and tolerances and (if necessary) implementation and control regulations and - if possible or explicitly agreed - samples. Production is based upon the documents which were provided by the customer. Without special agreement we do not check if a production based upon the provided documents will result in products that are suitable for the intended purpose by the customer.

2.5 Samples will only be sent to the customer on separate account and if there is an explicit agreement. In case we have provided the customer with samples and other models, or we name analyses, regulations in accordance with DIN or other foreign quality-regulations, or provide any other information regarding the products, those solely serve the purpose of definition and prevail only approximately, if the purpose is not exactly specified in the contract.

2.6 Requests of change, after conclusion of contract, can only be considered in consideration of our other contractual obligations. The customer will have to bear any additional costs that occur because of the requested changes. Furthermore we cannot be held responsible for any delays in the completion of the products, regarding the requested changes.

2.7 We are allowed to dispose, or make other use, of leftover or waste material, whether it is our own or has been sent to us by the customer on account for use or handling. Such a usage does not result in

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any kind of customer claims.

2.8 It is an essential condition that lathe-works and other materials, which have been sent to us for machining, are in a condition that allows conventional machining. Otherwise we are entitled to choose whether we advance the price according to the complication or withdraw from the contract.

2.9 Variations according to custom and usage as well as other changes concerning construction, conception or shape of delivery items, changes in design, dimensions and extent of delivery during period of delivery remain reserved, as long as the goods will not be considerably changed and those changes are acceptable for the customer. We explicitly reserve the right of acceptable changes based on technological advances, changes in legal regulations as well as improvement of the delivery. Increased or short deliveries of ten percent of the ordered amount are permissible. In any case the actual delivered amount will be taken into account.

2.10 When performing coating-services, we have fulfilled our duty when 95% of the substrates present a coating which is in accordance with the contractual specifications and the substrates themselves are without damage.

2.11 According to case no. 2.10 we are entitled to dispose of all further substrates which have either been damaged in the production process or which present a coating that does not meet the contractual specifications. Such a disposal does not result in any kind of customer claims.

### 3. Prices and terms of payment

3.1 Valid are the agreed prices at completion of the contract, and especially those specified in the order confirmation. According to the agreement with the customer, the prices may be accounted as basic prices with the addition "plus precious metal", or as basic prices already including the value of precious metal (as specified in the valid offer). Charged will be the valid price for precious metal at the time of delivery. All prices are in Euro if no other currency has been explicitly agreed in written form. If

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not declared otherwise those prices are exclusive VAT. VAT will be separately declared in the invoice in the current legal amount.

3.2 Prices are valid ex works plus packaging and export shipments are plus custom, fees and other public charges. Additional or special services will be charged separately.

3.3 Cash discount for prompt payment is precluded from the start, if not individually agreed otherwise.

3.4 We reserve the right to decently adjust our prices for those goods of a shipment, which are scheduled for shipment within four month after conclusion of contract, in case of wage and salary adjustments of more than 5% and/or price changes for raw materials of more than 5% which influence the total costs of the goods. On customers request we will provide information considering single cost elements and their relevance for the total price. In case of a price adjustment of more than 5%, the customer has the right to withdraw from the contract within two weeks after receipt of our notification, if there are still services to be rendered by us.

3.5 Concerning lathe-works or materials that have been sent to us, it is a precondition that those allow a treatment in the same way as commercial competing products. Otherwise we are entitled at our own discretion whether to reject the fulfilment of the assignment or to adjust the prices according to the additional complication.

3.6 The invoice amounts are payable without deduction within 14 days, if not agreed otherwise in written form. Significant for the date of payment is receipt of money in our account. Cheques are only valid after encashment. In case the customer does not make payment when due, a default interest in the amount of the base interest rate (according to §247 BGB) plus 8 percentage points will be added to the due amount at delay of payment. The assertion of a higher default interest and other damages in case of delayed payment will remain unaffected.

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3.7 We are entitled to perform or render deliveries or services only for advance payment or security deposit, in case any kind of circumstances become known to us, after conclusion of the contract, which may significantly decrease the customer's creditworthiness and because of which payment of the outstanding bills is endangered.

3.8 A compensation of counterclaims of the customer or a withholding of payments because of such counterclaims is only legitimate if those counterclaims are undisputable or legally recognized.

## 4. Tools

4.1 The customer can not make demands and has no rights regarding the tools, used or manufactured by us within the purpose of producing the goods, even if he bears the costs partial or in whole.

4.2 After completion of a contract, tools (according to no. 4.1) remain within our property and can be used by us at our convenience.

4.3 If not explicitly agreed in written form between the contractual parties, that all goods manufactured with the individually manufactured tool (according to no. 4.1) have to be delivered solely to the customer, we are allowed to make common use of the tool. If there have been no re-orders within three years after delivery of the last order, we are free to destroy the tools.

## 5. Delivery and period of delivery

5.1 Deliveries take place ex works.

5.2 Deadlines and dates of deliveries and services held out in prospect by us are only approximate, unless an explicit deadline or date of delivery has been confirmed or agreed upon. As far as dispatching has been agreed upon, the deadlines and dates of delivery relate to the moment of delivery of the goods to the forwarder, carrier or any other third party assigned with transportation.

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5.3 The time for delivery begins at the earliest with receipt of all documents that are necessary for execution of the order.

5.4 We can demand - because of the customer's delay all our rights remain unaffected - a prolongation of delivery and service deadlines as well as a postponement of dates of delivery and service equal to the period of time in which the customer does not meet his contractual obligations towards us.

5.5 We can not be held responsible for the liability of the impossibility of delivery or delay in delivery, if these occur because of act of nature beyond control or any other unforeseen events beyond control if those have not been predictable at the moment of conclusion of the contract, e.g. use of force of any third parties against persons or goods - even if this happens with our suppliers - ; acts of sovereignty including monetary measures and measures of trade; difficulties in procurement of materials or energy and any other kinds of stoppage with us or our suppliers which we are not responsible for; delay in transit; strike and legitimate lockout with us our suppliers or carriers; shortage of personnel, energy or raw materials; difficulties in procurement of essential official authorizations; regulatory actions or failed, incorrect or delayed delivery by suppliers. If such events significantly impede or render delivery or service impossible and if the interference is not temporary, i.e. of more than 90 days, we are able to withdraw from the contract. In case of temporary impediments the delivery and service deadlines prolong or the dates of delivery or service are postponed according to the period of impediment in addition to an appropriate start-up period. If, in consequence of the delay, an acceptance of delivery or service is unreasonable for the customer, he may withdraw from the contract through an immediate written statement.

5.6 We are entitled to make partial deliveries, if:

- A partial delivery is useable for the customer in accordance to the purpose specified in the contract
- A delivery of the remaining ordered goods is guaranteed
- No additional effort and expense emerge because of this for the customer (except we agree to bear those additional costs)

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5.7 A delay of delivery occurs - if not otherwise arranged beforehand - according to the legal regulations. In any case a reminder notice by the customer is essential.

5.8 In case we are in default with delivery or service or a delivery or service is impossible, no matter for what reason, our liability for compensation is limited according to no. 5.9 and no. 10 of these terms and conditions of trade.

5.9 In case of a delayed delivery the customer is entitled to claim only a generalised compensation of the damage caused by delay. The generalised sum is 0.5% of the net price (delivery value) for each full calendar week of delay, but in total no more than 5% of the value of the delayed delivered goods. It is left to us to provide evidence, that there was no, or significantly less, damage afflicted to the customer than the value of the above mentioned generalised sum.

6. Place of execution, shipment, packaging, passing of risk, acceptance of goods

6.1 Place of execution for all liabilities of the contractual relationship is D-25554 Wilster, if not otherwise specified. In case we owe the installation as well, place of execution is the place where the installation has to take place.

6.2 Dispatch type and packaging are subject to our conscientious discretion, if not individually specified otherwise.

6.3 The risk passes to the customer at the latest with in the moment of handover of the goods to the forwarder, carrier or any other third party involved in transportation (significant is the start of embarkation). This applies also, if partial deliveries take place or if we carry out other individual services (e.g. shipment or installation). In case dispatch or handover are delayed in consequence of a circumstance caused by the customer, the risk passes to the customer from that day on, on which the delivery item had been ready for dispatch and the customer was notified about that by us. The

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same applies if an agreed quantity has not been called forward, in whole or in parts, by the customer within an agreed deadline. In case no deadlines have been agreed concerning a delivery on call, all call-off orders for delivery have to be placed by the customer within one year's time after conclusion of contract.

6.4 After passing of risk the customer bears the costs of storage. If storage is with us, storage costs are 0.5% of the invoice total of the stored goods for each passed week, but in total no more than 5% of the invoice total. The right of assertion and the proof of additional or lower storage costs remains reserved.

6.5 Only if explicitly requested by the customer and on his account, the consignment will be insured against theft, breakage, damage afflicted by transport, fire and water or any other insurable hazards.

6.6 As far as an acceptance has to take place, the item of purchase is considered to be accepted when:

- The act of delivery is fulfilled
- We have indicated this to the customer, referring to the notional acceptance of 6.6, and requested him to accept
- Twelve business days have passed since delivery or installation or if the customer has started using the item of purchase and (in this case) six days have passed since delivery or installation
- The customer has refused acceptance within a certain period of time, because of any other reason than a sufficiency indicated by us, that makes usage of the purchased item impossible or affects it significantly

## 7. Trademark rights

7.1 If we produce delivery items according to the customer's specifications, especially according to drawings or samples, we assume no liability that those items do not violate industrial or intellectual rights of a third party. Should any third party reclaim any rights because of such a violation, with reference to goods produced as specified above, the customer is obliged to take all claims, which occur

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because of this particular violation, off us.

7.2 Except for the case specified in no. 7.1, we guarantee according to no. 7.2 - 7.5 that the delivery items are free of industrial or intellectual rights of any third parties.

7.3 The customer is obliged to immediately send us a written notice, in case any claims referring to the violation in no. 7.2 are made towards him. Without prior agreement on our part the customer is not entitled to acknowledge such claims, to reach a settlement about this, to relinquish remedies or to make any statements rushing the proceedings. If we contradict the claim because of its reason and/or amount, the customer is committed to defend himself on our instruction and account.

7.4 In case the delivery goods infringe industrial or intellectual rights of a third party we will make changes or replacements to the delivery items on our choice and account, in a way that rights of a third party will be infringed no more, but also in a way that the delivery items will still be according to the functions specified in the contract; or we will procure the usufruct for the customer by conclusion of a licensing agreement. If we do not succeed within an appropriate period of time, the customer is entitled to withdraw from the contract or to appropriately reduce the purchasing price. The customer can only claim damages according to the limits of no. 9 and no. 10 of these terms and conditions of trade.

7.5 In case a violation of rights occurs because of products manufactured by others and delivered by us, we will choose to either claim our rights against the manufacturer and supplier on account of the customer, or assign the claim to the customer. Claims can only be held against us (referring to no. 7), if a judicial enforcement of the above mentioned claims against manufacturer and supplier have been unsuccessful, or have no prospect of success, because of insolvency for example.

7.6 Drawings, data sheets or any other information which are subject to secrecy and which we provided the customer with, may not be made accessible to a third party, especially not to competing

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companies, without our explicit written approval.

## 8. Reservation of ownership

8.1 The reservation of ownership, arranged with this no. 8, hedges all our current and future accounts against the customer, according to the existing delivery affiliation between the contractual partners (including current account balance claims based on mutual accounts limited to this particular delivery affiliation).

8.2 All goods we deliver to the customer remain our property until full payment of all secured claims. The goods as well as those superseding, according to this term, will hereinafter be called rescue property.

8.3 The customer stores the rescue property free of charge for us.

8.4 The customer is entitled to process or sell rescue property before/until the event of enforcement (no. 8.9) in accordance with the regulations of business operations. Pawning and collateral assignment are inadmissible.

8.5 If the rescue property is processed by the customer, it is agreed that the processing takes place in our name and on our account as manufacturer and that we acquire direct ownership or - in case processing happens with materials of several owners or the value of the processed item is above the value of the rescue property - co-ownership (fractional ownership) on the newly created item, in proportion of the value of the rescue property to the value of the newly created item. In case no such acquisition of property occurs with us, the customer already now transfers his future property or - in the relationship mentioned above - co-ownership of the newly created item to us for good measure. If the rescue property is inseparable mixed or combined with other goods to a consistent item and one of the other items is to be looked at as the essential, we assign, as far as we own the essential, partial co-ownership to the customer of the consistent item of the above mentioned relationship.

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8.6 In case of resale of rescue property, the customer already now - if we have a partial co-ownership on the rescue property, according to the co-ownership share - transfers the active debts against the purchaser to us for good measure. The same applies to any other active debts, which take the place of the rescue property or arise in respect of the goods, e.g. insurance claims or claims because of unauthorized action in case of loss or destruction. We revocable authorize the customer to collect active debts transferred to us on his own account. We are entitled to revoke this authorization only in the event of enforcement.

8.7 If a third party accesses the rescue property, especially by seizure, the customer immediately indicates our ownership and informs us about the circumstances to enable our enforcement of property rights. In case the third party is unable to refund us all judicial and extrajudicial expenses occurring in this context, the customer is liable for payment.

8.8 We will release the rescue property as well as items replacing it or active debts of our choice, as far as their feasible value exceeds the amount of the secured active debts by 10%.

8.9 If we withdraw from the contract in case of behaviour contrary to the agreement by the customer - especially delay of payment - we are entitled to reclaim the rescue property.

8.10 We reserve the property or copyright on all offer documents, drawings, images, descriptions, calculations, and other documents we have made available to the customer. Without our explicit authorization the customer may neither make those available to a third party nor publish them or use or copy them by himself or through a third party. He has to completely give those documents back to us on our demand, when they are no longer needed by him for ordinary business use or when negotiations do not lead to conclusion of a contract. Potential copies of those, made by the customer, are to be destroyed in such a case; except for storage within the legal duty to preserve records as well as data storage for security reasons according to common data protection.

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## 9. Warranty, material deficiencies

9.1 Immediately after delivery to the customer, or a third party specified by him, the delivered goods have to be carefully examined. They are considered to be approved of if there is no written notice of defect, in regard to obvious defects or other defects which have been detectable at an immediate and thorough examination, been sent to us within seven business days after delivery of the goods, if not individually specified otherwise, or within seven business days after detection of a defect or any other earlier point in time on which the defect became obvious to the customer in ordinary use without closer examination. On our demand the goods about which there have been complaints have to be sent back to us free of transportation charges. If the notice of defect is justified we refund costs of the most reasonable shipping route; this does not apply in case the costs increase because the goods happen to be somewhere else than the place according to the regulations of use.

9.2 In case of material deficiency of the delivered goods we are committed and entitled to choose within an appropriate period of time to first rework or replace those defective goods. The customer can only withdraw from the contract or appropriately reduce the purchasing price, if the supplementary performance failed. That is the case only if two attempts of supplementary performance have failed or if a supplementary performance is impossible or unacceptable for the customer.

9.3 If a deficiency is based upon our fault, the customer may claim compensation for damages with reference to the preconditions specified in no. 10.

9.4 In case deficiencies with components of other manufacturers occur, which we are not able to eliminate because of rights of licence or actual reasons, we will choose to assert warranty claims towards the manufacturer and supplier for the customers account or assign those to the customer. Warranty claims towards us only exist with such deficiencies under miscellaneous preconditions and in reference to these terms and conditions of trade, if a settlement in court of the above mentioned claims towards the manufacturer and supplier have been unsuccessful or are hopeless because of

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insolvency. During the period of legal proceedings the limitation of actions of the customer's warranty claims towards us is delayed.

9.5 The warranty is dropped in case the customer modifies the delivery item (or makes a third party modify it) without our approval, and a removal of deficiency becomes impossible or unacceptably difficult because of this. In any case the customer has to bear the costs of remedy of defects, which have additionally occurred because of the modification.

9.6 If in a given case a delivery of used goods has been agreed with the customer, this only takes place to the exclusion of any warranty for material deficiencies.

## 10. Compensation for damages on liability for fault

10.1 Our liability for compensation, no matter on what legal basis, but particularly because of impossibility, delay, deficit or false delivery, violation of a contract, violation of responsibilities at contract negotiations and wrongful act, is limited according to this no. 10, as far as culpability is a matter.

10.2 We can not be held responsible for liability in case of ordinary negligence of our entities, legal representatives, employees or any other agents, in so far as it is no violation of essential contractual obligations. Contractually essential are obligations which are supposed to enable an in-time delivery of goods free of essential defects as well as obligations of consultation, protection and care which are supposed to enable a conventional usage of the goods by the customer or to protect life and limb of the customer's personnel or his property from substantial damage.

10.3 As far as we are liable for compensation for damage according to no. 10, this liability is limited on damages which have been predictable, at conclusion of the contract, as a possible consequence of violations of the contract, or which we should have been able to predict during usage with care and attention. Indirect and consequential damages, which occur in consequence of defective delivery

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items, are replaceable only if such damage usually is to be expected by usage according to regulations.

10.4 In case of liability for ordinary negligence our obligation to pay compensation for property damage and further consequential financial losses is limited to an amount of 2,000,000.00 € for each event of damage or loss, even if a violation of essential contractual obligations is involved.

10.5 As far as we have to coat substrates of the customer and damages to the substrates occur within the process of handling or if the coating does not present the agreed specifications of the contract, we are entitled to dispose of the affected substrates. As far as this, customer claims for damages are ruled out; unless the substrates became unusable because of deliberate or reckless delinquency on our part.

10.6 The above mentioned exclusions and limitations of liability are valid in the same extent in favour of our entities, legal representatives, employees or any other agents.

10.7 As far as we provide technical information or do consultative work and these information or consultations are not included in the by us owed agreed contractual scope of services, this happens to the exclusion of any liability.

10.8 The limitations of no. 10 are not valid for our liability because of deliberate behaviour, guaranteed quality features, injury to life, body or health or according to product liability law.

## 11. Statutory limitation

11.1 By way of derogation from § 438 par. 1 no. 3 BGB, the annual statutory limitation for claims because of material deficiencies and deficiencies in title is one year after delivery. As far as an acceptance has been agreed upon, the statutory limitation begins with the moment of acceptance.

11.2 In case the good is a structure or a thing which has been used for a structure, according to its

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usual manner of use, and has caused the deficiency (building material), the statutory limitation is five years after delivery, according to legal regulations (§438 par. 1 no. 2 BGB). Special arrangements for in rem claims for surrender of third parties remain unaffected (§ 438 par. 1 no. 1 BGB), when fraudulent behavior on our side occurs (§438 par. 3 BGB) and for claims in suppliers recourse at final delivery to a user (§479 BGB).

11.3 The above mentioned statutory period of limitations of sales law are also valid for contractual and non-contractual compensation claims of the customer which are based upon a defect of the delivery item, unless in an application of regular statutory period of limitation (§§ 195, 199 BGB) would cause a shorter period of limitation in an individual case. The periods of limitation according to the law of product liability remain unaffected in any case. Otherwise only the statutory limitations are valid for compensation claims of the customer, according to no. 10.

## 12. Concluding remarks

12.1 If the customer is a businessman in terms of the code of commercial law, a corporate body under public law or a special fund under public law, the solely - national as well as international - place of jurisdiction for all disputes emerging directly or indirectly from the contractual relationship is our place of business in Wilster. Nevertheless we are entitled to institute legal proceedings at the customer's place of business.

12.2 As far as it is not otherwise specified in these terms and conditions of trade, the customer needs our authorization to transfer his contractual claims against us to a third party.

12.3 The relations between us and the customer are solely subject to the law of the Federal Republic of Germany. The agreement about contracts about international purchase of goods of the United Nations of the 11th of April 1980 does not apply.

12.4 As far as the contract or these terms and conditions of trade contain regulatory gaps, those

**Do you have questions regarding our general terms and conditions or other stipulations? Call us - we're there for you.**

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legally effective regulations will apply as agreed and fill in the gaps which would have been agreed between the contracting parties according to the commercial target of the contract and the purpose of these terms and conditions of trade, if the regulatory gap would have been known to them.

12.5 We indicate that we will file data from the contractual relationship according to § 28 Federal Data Protection Act for the purpose of data processing, and that we reserve the right to transfer those data to third parties (e.g. insurance companies) if this is necessary for performance of the contract.

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