

## **Heiche General Terms and Conditions for surface treatment, Feb 2016**

### **1. Scope**

(1) All deliveries and works shall be carried out in accordance with the following conditions. Conditions laid down by the Customer that deviate from the following conditions shall only be deemed binding upon our express written agreement.

(2) Delivery of goods by us shall in no way constitute our acknowledgement of the Customer's General Terms and Conditions.

(3) The conditions herein shall apply to all future business, even if they have not been attached to the correspondence referring to such future order.

(4) These General Terms and Conditions shall apply to companies only.

### **2. Offers and Orders**

(1) Our offers are subject to alteration and are non-binding, in so far as they are not expressly specified otherwise.

(2) The offer and/or the order confirmation, including the accompanying documentation such as images, descriptions and drawings, specified measurements and weights, are approximations, unless they are expressly specified to be otherwise.

(3) Orders shall be considered binding by us, only when we confirm them in writing or when we fulfil them. Our order confirmation shall be relevant for the terms of contract. The order confirmation can also be made in the form of an invoice delivered with the goods. If the customer objects to the contents of the order confirmation, he must lodge objections immediately. Otherwise the contract will be concluded in accordance with the order confirmation. Verbal additional agreements shall apply only when confirmed in writing.

### **3. Prices and Conditions of Payment**

(1) Prices specified in offers and order confirmations are non-binding; they shall apply ex works and exclude freight, postage, insurance and value added tax. Invoicing shall occur according to our prices valid on the day of delivery.

(2) Our prices shall apply exclusively to correctly constructed, manufactured and delivered parts. Additionally required work, such as removing paint, oil, grease, tar, old metal coatings, and the subsequent addition of openings and cavities, in addition to the production of test reports, shall be invoiced by us on a time-and-material basis if no other agreement has been made.

(3) We maintain the right between conclusion of contract and delivery to raise our prices, should cost factors (actual costs) affecting the end price such as raw materials, material costs or energy costs increase by more than 2%. We shall invoice the applicable prices on the date of delivery. The same shall apply to orders placed without express prior price agreement.

(4) Transport insurance shall be procured upon request by the Customer only and the costs of same shall be borne by the Customer.

(5) In case of delay in payment by the Customer we may withhold further supplies and may claim cash before delivery or claim a security to our discretion.

(6) Furthermore, we shall have the right to forbid the Customer to dispose of the goods, to take back any unpaid goods at the cost of the Customer; subsequent deliveries shall only be executed with advance payment.

### **4. Security Interest**

(1) We are entitled to a statutory supplier's right of lien on the parts reworked by us. Irrespective of same, the Customer hereby vests a contractor's lien in us for the purpose of securing our claim for the surface treatment of sent-in parts in accordance with the Customer's order. Unless stipulated otherwise, the contractual lien shall also extend to claims from earlier work, or goods or services delivered.

(2) In the interests of securing our claim for payment, the Customer hereby already assigns his claims from the resale or the re-processing of the said goods to the amount of the value of the goods to us. We hereby accept the assignment of these claims.

(3) We undertake to release the securities to which we are entitled at our option, when the recoverable value of the securities exceeds the value of the claims to be secured by 10 %.

### **5. Delivery Time**

(1) The delivery period begins on the day of our order confirmation, nevertheless not before all details of order fulfillment have been clarified, and in particular not until all documentation has been received from the manufacturer.

(2) We shall not be held liable for any delays of delivery or rendering of services which are a result of force majeure or any other events, which substantially complicate the delivery for us not only temporarily or which make it impossible – such as strike, lockout, official orders and failure of our own suppliers to deliver punctually, also when such hindrance occurs at our suppliers or their suppliers –, even if binding times of delivery are agreed. Such occurrences shall give us the right to extend the delivery

time to a reasonable extent including an appropriate starting time or the right to terminate the contract with respect to the non-fulfilled part as a whole or in part.

(3) If the event of force majeure takes more than three months, the Customer shall be entitled to withdraw from the contract as to the non-fulfilled part, provided that the Customer has given us in writing an adequate period of grace. If the delivery time is prolonged or if we should be released from our obligation, the customer has no right to derive compensation claims from same. We can only plead the aforementioned circumstances if we inform the Customer promptly of same.

(4) The fulfilment of our delivery obligations requires that the Customer meets his obligation duly and in time.

(5) In the event of a delay in delivery, the Customer shall be entitled to withdraw from the contract only upon having first given us in writing an adequate grace period of at least four weeks.

(6) The claims for damages for delay of delivery shall be in accordance with the provisions in Article 11 (damages, reimbursement of expenses) and restricted to same. The provisions in Article 11 that state an exclusion or limitation of our liability shall not apply to time deals.

(7) If the Customer is in default of acceptance or if it infringes other duties of cooperation we shall be entitled to claim for damages incurred to us including additional expenditures. In this case, the risk of accidental loss or of accidental degradation of the item purchased transfers to the Customer at the point in time in which the Customer's delay in acceptance commences.

(8) We shall have the right of early delivery.

(9) We shall be entitled to undertake partial deliveries and performances, unless the partial delivery or partial performance is of no interest to the Customer.

## **6. Dispatch and Passing of Risk**

(1) Unless agreed otherwise the Customer shall deliver the parts for processing to us free of charge. We provide the finished goods for collection. Should the send-in goods be collected by us upon request by the Customer, the Customer is liable for any damages in transit. The Customer is at liberty to insure these risks.

(2) The risk of any damages shall pass to the Customer as soon as the purchased items are shipped; this shall also apply in exceptional cases of freight-free delivery. Furthermore, the passing of risk shall apply when the supplied

parts are transported by our own transportation personnel.

(3) Should the delivery be delayed as a result of circumstances beyond our control, the risk shall pass to the Customer on the date of readiness for shipping.

(4) In the event that we follow shipment instructions issued by the Customer, we do not assume any responsibility and the shipment shall be for the account and at the risk of the Customer; this shall not apply in case of intent or gross negligence.

(5) Goods which are announced ready for dispatch have to be collected at the latest after ten days by the Customer. If the goods are not collected, we are entitled to store the goods at our discretion at the cost and risk of the Customer or claim storage costs according to § 354 German Commercial Code.

## **7. Scope of Obligation of Performance, Defects**

(1) Our contractual obligations shall not exceed your actual ordering of specific surface treatment carried out by us as a standard procedure and which produces typical results. Any other duties due which lie outside the scope of work or beyond the results of standard procedure (for instance, the development of special processes, the attainment of particular properties, the guarantee of suitability for particular uses, the guarantee of suitability in relation to particular mechanical and chemical stresses) shall only be carried out by us upon express written agreement and individual pricing. Alterations and new standards in surface norms are to be brought to our attention, otherwise the status of manufacturing at the time of the offer shall apply. The duty to provide information and advice (irrespective of whether same constitutes a principal contractual obligation or an accessory contractual obligation) shall only apply to us on express prior written agreement and individual payment.

(2) Send-in parts from the Customer shall be made available to us ex-works (DDP – Incoterms 2000) in a timely manner and with a free-of-charge quantity premium of at least 5%. For send-in parts, the number of rejects and shortfalls should be included in calculations, to a maximum each of 3% of the number of delivered parts. As long as the number of rejects and shortfalls remains within this range, our performance shall be deemed contractually compliant. Claims made on quantities of under 3% of the sum of delivered parts shall not be included in 8-D-Reports.

(3) The send-in parts are to be delivered to us free of faults. Fault-free parts are specified as

follows: fault-free basic material without cracks or pores; a dense, unbroken surface after mechanical working, free of blowholes and grinding marks, drawing defects or laminations; a surface free of casting film, scale, oil carbons, paint, graphite, film, moulding sand, oil, grease, silicone, welding residues and other residues; threads must be accurately undercut.

(4) Should the parts not be made up to these standards, we shall have the right to refuse them or to withdraw from the contract. If the Customer insists on proceeding with the process nevertheless, or in the event that the material delivered to us for surface treatment is deemed technically unsuitable for the given surface treatment for reasons that are not apparent, we shall not be made liable for specific dimensional accuracy, adhesiveness, colour retention and corrosion-prevention characteristics of the layer applied, as far as the fault lies in the unsuitability of the materials and is not due to our intent or gross negligence. If the faulty nature of the parts is not detected prior to processing, we shall not be liable to produce successfully-processed parts, as long as we have not acted intentionally or with gross negligence.

(5) As a result of the electroplating the surface, pores, scratches, crack, grooves, impact points, signs of expansion, structural faults and serious impurities in the metal surface cannot be removed or rectified. The Customer is responsible for ensuring the preconditions are met so that electroplating can be carried out effectively during surface treatment. We shall be obligated to an inspection of the incoming materials only if such inspection is expressly agreed.

(6) We guarantee professional processing of the surface, in terms of material and workmanship according to state-of-the-art technology and the valid or generally accepted drafts of DIN regulations. During electroplating and chemical processing as well as due to quality fluctuations in the raw material, deviations from the agreed production sample are sometimes unavoidable. The work shall be carried out without tempering.

(7) Hollow parts shall be electroplated on the outer surface only, except in special cases where express agreement to electroplate the hollow interior has been made. Corrosion which occurs immediately on the untreated surfaces shall not constitute a liability for defects. Surface-treated material is vulnerable to condensate and frictional corrosion. It must be properly packaged, stored and transported.

(8) For the surface thickness, the agreed measurement points shall apply. At a contract

value of 1,000.00 Euro, the customer shall receive a surface thickness measurement log or an SSN-Test free of charge; for a contract value of less than 1,000.00 Euro, we shall invoice the Customer 50.00 Euro for the provision of same. Offers with a contract value of more than 1.000,00 shall include an initial sample test report on request. Approval of parts according to PPAP procedure and other requirements according to automobile standards shall be invoiced on a time and materials basis.

(9) We shall only be liable for faults of a technical functional nature, not for optical faults on surfaces. Should the optical characteristics of a surface be deemed part of our contractual obligations, this shall be expressly agreed in writing.

(10) Customer specifications shall be tested by us according to the industrially-proven Heiche testing standard. Additional testing with a higher standard must be agreed separately.

(11) For offers pertaining to anodizing, the following applies: copper, lead and siliceous alloys affect the anodizing layer. Such alloys shall be processed in accordance with the standard process, unless we receive precise specifications on the composition of the alloy. For aluminum casting at a layer thickness of >8 µm, burning (damage) of the part may occur.

(12) Packaging must provide adequate passive ventilation. If the Customer insists on packaging which does not allow air circulation, we shall not be liable for corrosion. The customer is at liberty to provide evidence that the corrosion would have occurred regardless of the lack of air circulation in the packaging.

## **8. Liability for Defects (Warranty)**

(1) The Customer must carefully inspect the goods without delay after their arrival at the destination point and is obliged to notify the Supplier of detectable faults within one week of detecting them. Unnoticeable defects are to be reported to the Supplier without undue delay after detection. Any further processing performed by the Customer on the delivered parts shall release us of all warranty obligation for such defects that are detectable during a reasonable incoming goods inspection and testing, no matter whether we deliver to the Customer itself or to a Third Party upon request of the Customer. This does not apply if we are culpable of intent or gross negligence.

(2) The Customer is obliged to supply proof of faults and to give us the opportunity to check same. Should the Customer not fulfil this obligation, the delivery shall be deemed approved.

(3) The quality of our work lies within the normal requirements of surface finishing. Minor deviations from the agreed character, or minor impairment to usability shall not be deemed faults. During electroplating and chemical processing as well as due to quality fluctuations in the raw material, deviations from the agreed production sample are sometimes unavoidable.

(4) The sent-in parts which are to be processed by us must be accompanied by a delivery note containing the exact address, number of pieces and total weight. The stated gross weight shall not be binding for us even if it is significant for the Customer. We shall be liable for missing parts only if the respective receipt is documented by a delivery note signed by us and if the risk for the missing parts has been transferred to us.

(5) We shall not be liable for faults which occur during the processing of sent-in parts which rise from the behaviour of the material due to its inherent characteristics.

(6) We shall give no guarantee for the light resistance of the colours. Slight colour differences of the goods due to alloy deposit are permissible. We shall also not be liable for colour changes which arise due to painting, heat treatment or thermal effects. Due to natural conditions, the anti-corrosive nature of electroplating for a given period of time can not be foreseen and therefore not guaranteed.

(7) We shall not guarantee adhesion in the event that the material is deformed after surface treatment, equally not when probation electroplated parts have been deformed without the occurrence of flaking of the electroplated layer and the Customer, despite being advised of the risk of flaking, ordered this process nevertheless.

(8) In the event that particular quality standards are required (e.g. thermal resistance and bending applications), this must be ordered in writing. If such specifications are not communicated in writing, all guarantees associated with such quality requirements shall not apply. In particular, the dimensional accuracy of von threads or similar constructions shall then only be guaranteed whereby exact written specifications have been supplied.

(9) We shall not be liable for sent-in parts or third-party parts.

(10) In the event that the Customer or third parties make inappropriate changes or carry out inappropriate repair work, liability for the resulting consequences is excluded. Moreover, the burden of proof lies with the Customer, that the damage alleged by him had already occurred prior to the transfer of risk.

(11) In the event that the Customer demands supplementary performance in the form of

rectification or subsequent delivery if the goods supplied by us are deemed faulty, we shall choose whether follow-up performance shall involve rectifying the defect or replacing the delivery. In the event that post-processing of the completed parts cannot be carried out due to technical reasons, we shall be obliged to provide post-processing only whereby the Customer delivers the required parts again. We shall not be liable for the cost of such parts given the comparatively low value added of our processing.

(12) We are not obliged to bear costs incurred for the purpose of supplementary performance, including but not limited to transportation costs, travel costs, work and material costs, in so far as such expenses increase due to the delivery of parts to an address other than the company delivery address specified in the contract documentation. This shall not apply if such delivery is in accordance with the intended use of the item.

(13) The customer cannot withdraw from the contract due to faults of our performance. The right to the reduction of the price remains unaffected thereof. The right to withdraw from the contract remains unaffected if our supplementary performance fails.

(14) The statutory Customer's right of recourse against the Supplier shall only exist to the extent that the Customer has not reached any agreements with his buyer which go beyond the statutory warranty claims.

(15) For damage compensation and cost reimbursement claims No. 11 of this contract (damages, reimbursement of expenses) shall apply. Any further or other Customer's claims as stated in No. 11 of this agreement against us or our assistants due to defects are excluded.

(16) Claims for defects are subject to a limitation period of twelve months. The period shall commence upon the transfer of risk in accordance with § 438 paragraph 2 BGB (German Civil Code). The above provisions do not apply if the law in accordance with § 438 paragraph 1 no. 2 BGB (Objects Generally Utilized in Structures), § 479 paragraph 1 BGB (recourse claim) and § 634 a BGB (building defect) mandates longer terms. This reduction of the period of limitation shall not apply to damage compensation claims arising from damage caused to life, from personal injury or health damages and shall also not apply in the event of gross culpability on our part.

## **9. Liability for Defects on Sent-in Parts and Faults in Parts-Processing**

- (1) The Customer is obliged to insure the sent-in parts in accordance with their value in particular against theft, fire, water damage, etc.
- (2) In the event that more than the agreed reject rate 3 % of the work pieces are made unusable for which we are responsible, we shall undertake the processing of similar replacement parts with the exclusion of any consequential claims. The basis for calculating the reject rate is the sum of delivered parts within a calendar year.
- (3) If parts sent in become unusable during the processing as a result of material defects or other defects, the processing costs incurred by us must be reimbursed.

### **10. Consulting**

- (1) Providing consulting to the Customer is only binding in the event that it relates directly to the use of our deliveries and services and that such consulting is based on comprehensive information provided by the Customer to us on the intended and actual use.
- (2) We shall be liable for errors in consulting exclusively under the provision of clause No. 11.

### **11. Damage Claims, Expenses Claims**

- (1) Damage claims, regardless of the legal reason, excluding damage claims according to §§ 1, 4 of the product liability law shall be excluded, unless the damage is due to intent or gross negligence or the damage is due to the absence of a guaranteed condition. In cases of breaches of major contractual obligations or cases of injury to life, bodily injury or health damage we shall be liable also for slight negligence.
- (2) Liability shall be limited to predictable and contract-typical defects. These limitations shall not apply when legal representatives or executives of our company cause a damage intentionally or grossly negligent. Moreover, the limitation shall not apply when legal representatives or executives have infringed on essential contractual obligations or if we are liable for injury to life, bodily injury or health damage, or if we are liable for the absence of a guaranteed condition.
- (3) Any claims for the refund of expenses are excluded under the conditions specified in paragraph 1 for damage claims.
- (4) No change of burden of proof to the disadvantage of the Customer is connected with the preceding provisions.

### **12. Offsets and Retentions**

- (1) The Customer has an offset right only in the event that its counterclaims are undisputed or have been finally determined by a court. The

right of retention will only exist as long as it is based on the same contractual conditions.

### **13. Place of Performance, Place of Jurisdiction, and Applicable Law**

- (1) The place of performance is our place of business.
- (2) The place of jurisdiction shall be our place of business.
- (3) German Law shall apply. The rules on the conflicts of laws which refer to foreign law shall not apply.
- (4) Should one or more of the provisions within these General Terms and Conditions or the contracts related to them become invalid, the remaining terms and conditions shall remain untouched. Should, as a result of the invalidity, additions and interpretations of these General Terms and Conditions of contract be necessary, these shall be drawn up such as to achieve as closely as possible the economic purpose of the invalid Clause.