

I. STC/Validity and conclusion of contract

1. The terms and conditions below apply only to entrepreneurs as defined in § 310 I German Civil Code (BGB) (the “customer”).
2. Contracts relating to deliveries materialise solely on the basis of the terms and conditions (“STC”) below. TSP does not recognise the Customer’s terms and conditions that are contrary to or differ from our STC, unless we expressly consented to their validity in writing. These STC also apply if we, cognisant of the Customer’s terms and conditions that are contrary to or differ from ours, perform the delivery or service to the Customer unreservedly.
3. Supplemental agreements and differing agreements require our confirmation in writing in order to be valid.
4. These STC also apply to all future transactions with the Customer and thus to the entire business relations with the Customer, including those in the future.

II. Conclusion of contract

1. Our electronic, written or verbal proposals do not constitute an offer in the legal sense; they are only an invitation to the Customer to place an order. The Customer is bound by his order 2 weeks after we have received it. A contract does not materialise until we have confirmed the order in writing, albeit not later than when the Customer accepts the delivery. Our proposals and confirmations of order are invariably subject to a positive credit check on the Customer and contingent on punctual and proper delivery from our suppliers.
2. TSP’s proposals are always subject to change without notice.

III. Industrial property rights, copyright

TSP has industrial property rights/copyright to the products incl. drawings, sketches, descriptions, design drawings, 3-D tool data, CAD/CAM data, technology data and similar documents. The copyright and ownership of all services performed by TSP remain the property of TSP. The Customer may use design drawings within the contractual framework.

IV. Quality, delivery periods, delay in delivery

1. Only TSP’s written information determines the scope and time of a delivery and the agreed quality.
2. Delivery (except for operating materials pursuant to IV.3) is agreed as ex works Augsburg (EXW Incoterms 2010). The Customer bears the costs and risk of transportation, as well as the loading and packaging costs. The Customer is responsible for compliance with any preclusive periods (e.g. under the ADSp terms).
3. Operating materials, in particular, injection moulding tools and moulds planned and drawn up in the Customer order, remain at the production site (if necessary abroad, usually China) and are kept there by TSP for three years without any further remuneration. In this respect, deliveries are EXW production site; the Customer can arrange transportation to himself at his own expense and risk.

4. Transport packaging and other packaging under the Packaging Ordinance are not taken back. The Customer bears the costs of disposing of the packaging.
5. The delivery periods stated by us are agreed as only approximate. The beginning of the delivery period stated by us is contingent upon all technical questions having been clarified. A delivery period stated by us begins with the date of issue of the corresponding confirmation, albeit not before the Customer has furnished the due documents, licences and approvals, and the agreed down-payment has been received.
6. The delivery period extends commensurately in the event of industrial action measures and in the event of unforeseen obstacles beyond our control, provided such obstacles have considerable influence as proven on the production or delivery of the delivery item. This also applies if such circumstances occur at our suppliers. We will notify the Customer as soon as possible of the beginning and end of such obstacles.
7. TSP is entitled to make partial deliveries and invoice such partial deliveries.
8. In the case of delay in delivery due to ordinary negligence, TSP is liable only up to 5% of the invoice value affected by the delay, albeit at all events limited to foreseeable, typically occurring loss or damage.
9. If the delay is due to gross negligence or intent, we are liable under statutory provisions, albeit limited to foreseeable, typically occurring loss or damage, unless there is intentional breach of contract on our part.
10. We are liable under statutory provisions if the underlying contract of purchase is a fixed date transaction or the Customer has lost interest in the further performance of contract as a consequence of the delay in delivery, as long as we are responsible for such delay.

V. Examining the goods

The Customer is required to examine the goods without undue delay for completeness, conformity with the delivery documents and the order, and for defects, and to claim discernible variances and defects without undue delay in writing. Unless a complaint is made within 4 working days of receipt by the Customer, the delivery is deemed contractual, unless the variance was not discernible despite careful examination. Moreover, defects discernible upon delivery must be noted down in accordance with § 438 German Commercial Code (HGB).

VI. Prices and payment

1. The price stated in our confirmation of order applies. Prices are net, „ex works“ plus statutory Value Added Tax, transportation and packaging costs. With regard to operating materials, IV.3. applies.
2. We reserve the right to increase our prices accordingly if there are increases in costs after the conclusion of contract, particularly owing to increases in the prices of materials or exchange rate fluctuations. We will prove these to the Customer upon request.

3. Payments are due 7 days after the invoice date without any deduction. If the Customer exceeds the terms of payment granted, we are entitled to withhold our services, further rights notwithstanding.
4. The withholding of payments or set-off owing to any counterclaims on the Customer's part is admissible only if the counterclaims are legally effective (established in law) or uncontested by us.

VII. Moulds/tools/provision of materials

The purchase price agreed for the manufacture or delivery of moulds includes only the costs of the sample, with the Customer having to provide the testing and processing equipment at his own expense. The Customer has to provide tools/plastic granules for sampling of the moulds. Alterations requested by the Customer after handover/sampling, further samples, etc. are to be remunerated additionally, unless they are carried out as part of legitimate claims for supplemental performance against TSP.

VIII. Reservation of title

1. We reserve the ownership of the delivery items until the receivable for the respective delivery item has been paid in full.
2. The Customer is obliged to handle the delivery items with care; in particular, there is an obligation to insure them adequately at the Customer's expense against fire, water and theft damage.

IX. Liability for defects

1. The assertion of the Customer's rights relating to defects is contingent upon his having duly and properly fulfilled his obligations to examine and to notify defects. In the event of the sale of used goods, any warranty is excluded, unless it is a matter of loss or damage arising from injury to life, limb or health, or the loss or damage is due to an intentional or grossly negligent breach of duty.
2. If and when the Customer is entitled to make claims, TSP is entitled initially to opt between rectification by remedying the defect(s) or making a replacement delivery. If we are not prepared or not in a position to rectify the defect(s), or the rectification is delayed beyond reasonable time limits owing to reasons for which we are responsible, or should the rectification fail at least three times in another way, or the Customer cannot be reasonably expected to accept this, the Customer is entitled to opt between rescinding the contract or demanding a corresponding reduction in the purchase price.
3. Should the Customer rescind the contract, he is required to have the benefits derived up until the rescission deducted. The benefit of use for the period up until the rescission is calculated pro rata based on the purchase price and the standard total useful life of the goods, unless the use was only limited or not possible at all owing to the defect. This does not affect both parties' right to prove lesser or greater benefit of use. A minor defect does not entitle the Customer to rescind the contract.

4. Should the outcome of scrutinising a notice of defect be that there is no defect of quality, we are entitled to invoice the Customer a flat-rate administration/processing fee. This does not affect the Customer's right to prove a lesser expense than that invoiced.
5. Warranty claims lapse in 12 months, calculated from the transfer of risk. Our processing of a notice of defects from the Customer is no acknowledgment of the defect(s). Processing a notice of defects results only in a suspension of the period of limitation, provided the statutory requirements for this are met. This does not entail a recommencement of the period of limitation. This also applies if, in response to a notice of defects from the Customer, we carry out a rectification (repair or replacement delivery). A repair can influence solely the period of limitation of the defect occasioning the repair and possibly new defects arising due to the repair. This does not affect the Customer's rights under §§ 478, 479 German Civil Code (BGB).

X. Total liability

1. Unless stated otherwise below, the Customer's claims other than those under IX. are excluded, regardless of the legal grounds. In particular, we are not liable for loss or damage sustained by the delivery item itself, for lost profit or other pecuniary losses sustained by the Customer.
2. This exemption from liability does not apply if the cause of the loss or damage is due to intent or gross negligence on our part or on the part of one of our vicarious agents or legal representatives, or we are in breach of a cardinal contractual duty through negligence. Nor does it apply if we fraudulently concealed a defect or took on a guarantee regarding the quality of the goods..
3. In the case of ordinary negligence, our liability for damages is limited to foreseeable loss or damage, at most to the sum insured under our product liability insurance. We are willing to let the Customer review our policy upon request.
4. The claims lapse in 12 months from the transfer of risk. The same applies to compensation claims for consequential loss or damage, unless claims for fraudulent concealment of a defect arising from tort or liability claims for intent are made.
5. Liability for damages beyond that which is provided for above is excluded, irrespective of the legal nature of the claim asserted. This does not apply to claims for injury to life, limb or health, claims under the German Product Liability Act, or to claims arising from a criminal offence or in the event of impossibility for which we are responsible.

XI. Assignment

The assignment of any claims whatsoever of the Customer's against us arising from the business relationship requires our approval in writing.

XII. Export, anti-corruption

1. All products and technical know-how are supplied by us in compliance with the AWG/AWW/EC Dual-Use Regula-

tion currently applicable and with US export regulations, and are intended to be used and remain in the country of delivery agreed with the Customer. Should the Customer intend to re-export products, he is obliged to comply with US, European and national export regulations.

2. The Customer has to find out for himself the currently applicable provisions and regulations (Federal Office of Economics and Export Control (Bundesamt für Wirtschaft und Ausfuhrkontrolle), Germany, and/or Bureau of Industry and Security, USA, respectively). Regardless of whether the Customer indicates the final destination of the products delivered, it is up to the Customer under his own responsibility to obtain any requisite licence from the appropriate foreign trade authorities before he exports such products. We have no obligation to give advice or provide information.
3. The Customer is liable in full should he fail to comply with the pertinent provisions or export licence conditions.

XIII. Moldflow simulations

1. With any Moldflow simulation service contracted/rendered, TSP's role is solely in an advisory capacity. TSP will submit suggestions and recommendations for improvement and assist the interpretation of results. Decisions on whether and how components or tool designs are to be altered are to be taken solely by and under the sole responsibility of the Customer.
2. TSP points out that a Moldflow simulation can only be a means of pre-optimising the tool design and, if necessary, the injection moulded parts, but is not a representation of the reality. Hence the results and findings from the simulation are only trends, and do not constitute absolute or agreed values. Invariably, fluctuations in batches of plastics and unforeseen fluctuations/external influences cannot be mapped out.
4. In general, Moldflow simulations are carried out solely on the basis of the data supplied by the Customer; in this respect, too, TSP is not liable, it accepts the data without checking them. Due and proper Moldflow simulation is contingent on material data being provided by the material manufacturer and the recommended processing parameters specified by the material manufacturer; in this respect, too, TSP is not liable, it accepts the data without checking them. It is imperative that the Customer supplies the product data in tool position, or alternatively vertically oriented to another axis (then z-axis, not immediately clamp force direction).
7. Should the Moldflow simulation flag up problem areas on the injection moulded parts resulting in an alteration to the design, to confirm the alteration a second simulation run has to be ordered by the Customer, as otherwise the results of the simulation may be distorted and misinterpreted.
8. TSP will provide the Customer with an HTML report containing all relevant points; there will be no description in text form of the particular simulation result. The drawing up of a detailed report with a description and interpreta-

tion of each simulation partial result can be additionally ordered as a PPT.

XIV. Other provisions

1. Supplemental agreements must be made in writing. The same applies to the waiving of the requirement for the written form. Should any of the above provisions be invalid, this will not affect the validity of the rest of the contract and of the other provisions.
2. Once the contract has been fulfilled, TSP is permitted to name the Customer and the project as a reference/in advertising.

XV. Jurisdiction and place of performance, applicable law

1. The place of performance for all obligations arising from the contractual relationship is Augsburg.
2. Augsburg is the legal venue for all legal disputes arising from the contractual relationship as well as relating to its existence and validity vis-à-vis traders; TSP is, however, entitled to sue the Customer at his registered domicile.
3. The entire contractual relationship is subject solely to the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods.