

**General Terms and Conditions of  
Contracts, Services and Delivery of  
Härtereie Reese Brackenheim GmbH  
for Companies  
Status: January 2011**

**1. Scope**

1.1

These General Terms and Conditions of Contracts and Delivery shall apply exclusively to companies within the meaning of § 14 BGB [Civil Code] i.e. natural persons or legal entities that purchase the goods or service for commercial or professional purposes.

1.2

The terms and conditions set forth below shall apply exclusively to our business relations with our customers, also with respect to information and consultancy. Where our General Terms and Conditions are implemented in a transaction with a customer, they shall also apply to all further business relations between the customer and ourselves unless otherwise expressly agreed in writing. Differing terms and conditions of the customer shall only apply if expressly acknowledged by us in writing. Our silence regarding such differing terms and conditions shall not be deemed in particular to be acknowledgment or consent, and this shall also apply to future contracts. Our General Terms and Conditions shall apply in place of any conditions of purchase of the customer, also where such conditions of purchase stipulate that acceptance of an order is deemed to be the unconditional recognition of its conditions of purchase, or we supply, after the customer has indicated the validity of its general terms and conditions of purchase, unless we have expressly waived the validity of our own General Terms and Conditions. By accepting our order confirmation, the customer expressly acknowledges that it waives its legal objection derived from the conditions of purchase.

1.3

If general agreements are concluded by the parties, these shall take precedence. They shall be supplemented by these General Terms and Conditions unless more specific regulations are agreed.

**2. Information / Advice / Characteristics of the services**

2.1

Information and explanations regarding our services shall be provided solely on the basis of our experience to date. Values specified in this context shall be deemed average values of our work results.

2.2.

We only assume an obligation to provide advice on the basis of a separate, written consultancy agreement.

2.3

Reference to standards, similar technical regulations and technical information and descriptions of our services in quotations and brochures and our advertising shall only represent a characteristic of our service when we have expressly declared the condition to be a "*characteristic of the service or the result of the service*"; these are otherwise non-binding general specifications of service.

2.4

We shall only be deemed to have given a guarantee if we have designated a characteristic and/or the outcome of the service as "*guaranteed by law*".

2.5

Where samples are processed or supplied, remuneration in accordance with our general remuneration terms for processing or supplying samples shall be deemed agreed in the absence of any differing agreement. These terms shall be made available to the customer at any time free of charge.

2.6

We shall assume no liability for the usability of the results of our service for the customer's intended purpose other than liability prescribed by law unless we have agreed otherwise in writing with the customer.

**3. Specimens / Samples**

Properties of specimens or samples manufactured shall only become an integral part of the contract if *expressly* agreed in writing. The customer is not authorised to use and pass on specimens or samples. Our specimens and samples shall remain our property unless purchase was expressly agreed, and may not be used or made available to third parties without our written consent. All copyrights, design rights and utility model rights to samples or specimens shall remain with the holders of the right despite the samples and specimens being provided to the customer.

#### **4. Conclusion and subject matter of a contract / Guarantee / Taking delivery**

##### 4.1

Our quotations are subject to change unless they are expressly designated binding or contain binding commitments. They are requests to customers for orders. A contract is created - also in day-to-day business - only when we confirm the customer's order in writing or text form (i.e. also by telefax or email). Where delivery is made immediately, our confirmation can be replaced by our invoice.

##### 4.2

Our order confirmation shall be binding for the subject matter of the contract.

##### 4.3

The required heat treatment shall be carried out after the order is placed on the basis of the information given in 4.7 as a service with the necessary due diligence and appropriate means. Heat treatment shall not be expected to produce a specific result e.g. in the form of absence of distortion, cracks, surface hardness, hardening depth, full hardening, suitability for electroplating etc., in particular because of possible different hardenability of the material used, hidden defects, unfavourable shape or any changes in the previous work process.

##### 4.4

All agreements, collateral agreements, assurances and contract amendments shall only be valid when given in writing. This shall also apply to cancellation of the written form requirement. Verbal amendments or modifications of the contract shall be invalid. This shall not affect the precedence of an individual agreement (§ 305 b BGB).

##### 4.5

In the event of call orders or acceptance delays caused by the customer, we shall be authorised to manufacture the total quantity ordered immediately or carry out the entire works that are the object of the order immediately. After the order is placed, no change request from the customer can therefore be considered unless this was expressly agreed.

##### 4.6

The customer must advise us in writing in due time prior to conclusion of the contract of any special requirements of our products.

##### 4.7

All workpieces delivered for heat treatment must be accompanied by an order or delivery note which contains the following information:

a) designation, quantity, net weight, value of parts and type of packaging;

b) material grade (designation of the standard respectively steel quality label and steel producer);

c) the heat treatment requested, in particular aa) for case-hardening steel according to DIN 6773 either the required carburization depth with limit carbon content (e.g. CD 0.35 = 0.8 + 0.4 mm) or the required case hardening depth with reference hardness value and surface hardness (e.g. CHD 550 HV1 = 0.2 – 0.4 mm, surface hardness = min. 700 HV5);

bb) for heat treatable steels the required tensile strength. Unless otherwise agreed, the ball indentation test according to Brinell on the surface shall be decisive to determine tensile strength;

cc) for tool steel and high-speed steel the required Rockwell or Vickers hardness;

dd) for nitralloy the required nitriding case depth (NCD);

ee) for induction and flame hardening the required case hardening depth (CHD) with hardness reference value and surface hardness and the location of the area to be hardened;

ff) for salt-bath nitrocarburising and fast gas nitriding either the treatment time or the required thickness of the connecting zone;

d) information on the required test method, test body and test load (cf. DIN test standards);

e) other information or regulations necessary to ensure the success of the treatment (see DIN 6773, DIN EN 10 052, DIN 17021, DIN 17023). Where partial hardening is required, drawings must be attached indicating the places that have to remain hard or soft. If similar workpieces are manufactured from different molten steel, this must be specified.

In the same way, special requirements of dimensional stability or surface finish must be indicated on the delivery documents. The customer must specifically indicate welded or soldered workpieces and workpieces with hollow bodies.

##### 4.8

We shall give no guarantees.

##### 4.9

If shipment of the work result is delayed at the customer's request or for reasons for which the customer is responsible, we shall

be authorised to store the goods, beginning on expiry of the period set in the written notice that the goods are ready for shipment, and to invoice the costs incurred for this at 2% of the net invoice amount of the stored goods for each month or part thereof. This shall not affect the assertion of any further rights. The customer shall have the right to prove that no costs or considerably lower costs were incurred.

## **5. Delivery time / Default in delivery / Testing**

### 5.1

Binding delivery dates and periods must be agreed expressly and in writing as binding. We shall make every endeavour to meet delivery dates and periods that are not binding or approximate (approx., about etc.). This shall also apply to service periods.

### 5.2

Delivery and/or service periods shall begin with the customer's receipt of our order confirmation but not before all details about the performance of the order are clarified and all other requirements to be fulfilled by the customer are met, in particular advance payments or securities agreed are paid or provided in full. This shall apply to delivery and/or service dates. If the customer requests changes after placing the order, a new, reasonable delivery and/or service period shall begin when we confirm the change.

### 5.3

Deliveries may be made prior to expiry of the delivery period. The date of delivery for obligations to be performed at the debtor's place of business shall be deemed the date on which the products are reported ready for shipment, otherwise the date on which the products are sent. The foregoing stipulations do not authorise us to make partial deliveries.

### 5.4

The customer's interest in our performance shall lapse for lack of any other written agreement only if we fail to deliver material parts or deliver with delay.

### 5.5

The delivery and/or service period shall be extended by a reasonable period of time for procedural reasons – also within the scope of a default in delivery – where unforeseen obstructions occur which the contractor could not avert despite exercising the due diligence reasonably expected of the contractor. Un-

foreseen obstructions shall be deemed in particular any multiple treatment of the object being processed which was not initially recognised as being necessary.

### 5.6

If we default in delivery, the customer must first set us a reasonable extension of time of at least 8 working days - unless this is unreasonable - to perform the contract. If this elapses in vain, damage claims for breach of duty - for whatever reason - shall exist only as stipulated in 5.8. and 11.

### 5.7

We shall not be in default as long as the customer is in default in fulfilling its obligations towards us; this shall also include obligations under other contracts.

### 5.8

If the customer incurs damage due to our default, the customer shall have the right, to the exclusion of further claims, to request compensation for default. This shall amount to 0.5% for each full week of delay, in total however 5%, of the value of that part of our complete delivery and/or complete service which cannot be provided on time or according to the contract as a result of default. Further compensation by us for damage caused by default is excluded. This shall not apply in the case of a guarantee of delivery or service, a fraudulent or intentional act by us, in the case of damages for injury to life, limb or health and default in the case of an agreed, fixed delivery date or service date within the legal meaning.

### 5.9

Before leaving our hardening plant, the heat-treated goods shall be tested as customary in the industry and, if applicable, according to the customer's specifications. Further tests and analyses shall only be performed by special agreement. Our outgoing goods inspection shall not release the customer from its obligation to perform an incoming goods inspection.

## **6. Force majeure / Delivery subject to punctual delivery to us on the part of our sub-contractors**

### 6.1

If we do not receive a delivery or service from our sub-contractors to allow us to provide our service and/or delivery which is due from us under the contract, despite due and proper stocking, for reasons for which we are not

responsible, or it is incorrect or not in due time, or events of force majeure occur, we shall notify our customer in writing or text form in due time. In such case, we shall be authorised to postpone the delivery for the duration of the obstruction, or to rescind the contract in whole or in part for that part of the contract not yet fulfilled if we have met our foregoing duty to provide information and have not assumed a procurement risk. Events of force majeure are strikes, lock-outs, official intervention, power shortages and shortages of raw materials, transport bottlenecks through no fault of our own, company obstructions not due to us e.g. fire, water and damage to machinery and any other obstructions that considered objectively were not caused by our negligence.

#### 6.2

If a delivery and or service date or delivery and/or service period is agreed with binding force and the agreed delivery or service date or the agreed delivery and/or service period is exceeded due to events according to 6.1., the customer shall be authorised after a reasonable extension of time has elapsed in vain to rescind the contract for that part of the contract not yet fulfilled, if the customer cannot be objectively expected to adhere further to the contract. The customer shall have no further claims, especially claims for damages, in this case.

#### 6.3

The above provision according to 6.2 shall apply accordingly if a customary delivery and service period was exceeded for the reasons stated in 6.1, also without contractual agreement of a fixed delivery and/or service period.

### **7. Shipment / Passing of risk**

#### 7.1

Unless otherwise agreed, the goods to be heat-treated must be delivered by the customer and collected upon completion by the customer at its expense and risk. Unless otherwise agreed in writing, deliveries shall be shipped therefore ex works, and any shipment by us if agreed, uninsured. In the case of an obligation to be performed at the debtor's place of business, and in the case of an obligation to be performed at the debtor's place of business where the debtor must dispatch the goods, deliveries shall be shipped at the customer's risk and expense.

#### 7.2

We reserve the right to choose the route and means of transport where shipment is agreed. We shall, however, endeavour to take the customer's wishes into account with respect to the route and type of shipment. Any additional expenses as a result - also where delivery freight paid is agreed - shall be borne by the customer. If shipment is delayed at the customer's request or through the customer's fault, we shall store the goods at the customer's expense and risk. In this case, notice that the goods are ready for shipment shall be deemed equivalent to shipment.

#### 7.3

The risk of accidental loss or accidental deterioration shall pass to the customer when the products to be delivered are handed over to the customer, forwarder, freight carrier or other firms entrusted with shipping the products but at the latest when the products leave our works, warehouse or office unless performance of the obligation at the creditor's place of business is agreed. The foregoing shall also apply if an agreed partial delivery is carried out.

#### 7.4

If delivery is delayed because we assert our right of retention due to the customer's default in payment in whole or in part or due to another reason for which the customer is responsible, the risk shall pass to the customer at the latest as of the date the customer is notified that the goods are ready for shipment.

### **8. Notice of defects / Breach of duty / Warranty**

#### 8.1

If the heat treatment is unsuccessful through no fault of our own because e.g. the customer provided the information required in 4.7 incorrectly in whole or in part, we were not aware and could not have been aware of any hidden defects in the workpiece prior to performing the heat treatment, or because properties of the material used, the shape or condition of the workpieces delivered made successful heat treatment impossible but we were unaware and could not have been aware of this, remuneration for the treatment must nevertheless be paid. Any subsequent treatment required shall be invoiced separately according to the above conditions.

## 8.2

The customer must give us written notice of recognisable material defects immediately but at the latest 12 days after collection, in the case of delivery ex works, otherwise after delivery. Notice of hidden defects must be given to us immediately after they are discovered but at the latest within the warranty period under 8.7. A defect that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty due to material defects. This shall not apply in the case of a fraudulent or intentional act by us, in the event of injury to life, limb or health, or the assumption of a guarantee for absence of defects or liability according to the Produkthaftungsgesetz [Product Liability Act].

## 8.3

The transport operator must also be notified of any material defects recognisable on delivery, and the recording of the defects must be arranged by the transport operator. The notice of defects must include a description of the defect which must be specified as far as possible by the customer. A notice of defects that fails to comply with requirements of time shall exclude any claim by the customer for breach of duty due to defects. This shall not apply in the case of a fraudulent or intentional act by us, in the case of injury to life, limb or health or the assumption of a guarantee for the absence of defects, or liability according to the Produkthaftungsgesetz.

## 8.4

When handling, processing, combining or mixing with other goods begins, the products delivered shall be deemed approved by the customer according to the contract. Before any of the above activities begin, the customer shall be responsible for clarifying through appropriate checks in terms of scope and method whether the delivered products are suitable for the intended processing purposes, process purposes and other purposes.

## 8.5

The customer must give immediate notice in writing of any other breach of duty, setting a reasonable time limit for remedy, before the customer asserts any further rights.

## 8.6

We shall remedy any defects for which the customer itself is responsible, and eliminate

any unjustified complaints on behalf of and at the expense of the customer, if the customer is a businessman within the meaning of the Handelsgesetzbuch [Commercial Code].

In the case of any complaint, the contractor must be given the opportunity to examine the object of complaint.

## 8.7

We shall provide a warranty for breach of duty due to defective performance, in particular defects in workmanship, over a period of 1 year – unless otherwise expressly agreed – beginning on the date of the passing of the risk (see 7). If the customer refuses to accept or take delivery, the warranty shall begin on the date of the subsequent notification of readiness for delivery. This shall not apply to damage claims arising from a guarantee, the assumption of a procurement risk, from injury to life, limb or health, a fraudulent or intentional act, or if longer periods are compulsory by law, in particular for defects in a structure and workpieces that were used for a structure according to their customary manner of use and caused its defectiveness.

## 8.8

If the customer or a third party rectifies a defect incorrectly, we shall not be liable for the resulting consequences. This shall also apply to any modifications of the delivery item undertaken without our prior consent.

## 8.9

If we carry out straightening work at the customer's request, we shall not provide a warranty for any breakage that occurs. In the same way, when using insulants against carburisation or nitriding, we shall not warrant their success.

## 8.10

Further claims by the customer for or in connection with defects or consequential damage caused by a defect, for whatever reason, shall exist only subject to the provisions of paragraph 11 unless these are damage claims resulting from a guarantee which is intended to cover the customer against the risk of any defects. In this case too, however, we shall be liable only for typical and foreseeable damage.

## 8.11

Our warranty and liability arising herefrom shall be excluded if defects and damages

connected therewith cannot be proven to be due to defective performance. This shall not apply in the case of fraudulent or intentional conduct on our part, or injury to life, limb or health, or liability according to the Produkthaftungsgesetz.

Warranty and liability arising herefrom shall be excluded in particular with respect to the consequences of incorrect use or exceptional wear and tear of the products, excessive use or inappropriate storage conditions, for example, the consequences of chemical, electromagnetic, mechanical or electrolytic influences that do not correspond with expected average standard influences.

#### 8.12

Claims based on defects shall not exist in the case of a minor deviation from the agreed or customary condition or usefulness.

#### 8.13

Breach of duty, especially in the form of material defects, shall only be recognised when given in writing.

### **9. Prices / Payment terms / Objection of uncertainty**

#### 9.1

All prices are on principle quoted net in EURO and exclude packaging, freight ex works, and value added tax at the legally valid rate which shall be borne by the customer.

#### 9.2

Services that are not an integral part of the agreed scope of delivery shall be charged, unless otherwise agreed, on the basis of our respectively valid general price lists.

#### 9.3

We are authorised to unilaterally increase remuneration reasonably (§ 315 BGB) where material procurement costs, wage and ancillary wage costs as well as energy costs and costs due to environmental charges are increased, if more than four months elapses between conclusion of the contract and delivery. Such an above-mentioned increase shall be excluded if the increase in costs for the above-mentioned factors is set off by a reduction in costs for factors other than those mentioned above with respect to the overall cost burden for the delivery. If the above-mentioned cost factors are reduced without the increase in costs being set off by the increase in other above-mentioned costs, this

reduction in costs shall be passed on through a price reduction.

#### 9.4

If, according to the contract, we bear the freight charges by way of exception, the customer shall bear any additional costs arising from increases in freight rates after the contract was concluded.

#### 9.5

Unless otherwise agreed, our invoices shall be payable within seven working days of delivery of the goods or provision of the service, without deduction of any kind.

#### 9.6

If the customer fails to make payment, the customer shall be in default, even without a reminder, within 8 working days of delivery or provision of the service.

#### 9.7

Once in default, default interest shall be charged of 8% above the respective base rate when the claim for payment falls due.

#### 9.8

The date payment is received by us or credited to our account shall be deemed the payment date. We reserve the right to assert damage in excess of this.

#### 9.9

The customer's default in payment shall cause all claims for payment under the business relationship with the customer to become due immediately. Regardless of any agreements to defer payments, agreements on the term of bills of exchange or payment by instalment, in this case all the customer's liabilities due to us shall become due for payment immediately.

#### 9.10

If payment terms are not met or circumstances known or recognisable that in our proper commercial judgement give rise to justified doubt about the customer's creditworthiness, also including such facts that existed when the contract was concluded but which were unknown to us or did not have to be known to us, we shall be authorised, notwithstanding further statutory rights in such cases, to cease further work on current orders or delivery and to request advance payments or the provision of securities which are acceptable to us for deliveries still outstanding and, after expiry of a reasonable

extension of time to provide such securities in vain, to rescind the contract, irrespective of other statutory rights. The customer shall be obliged to reimburse us for all damages incurred by the non-performance of the contract.

#### 9.11

The customer shall have a right of retention or right of set off only with respect to those counter-claims that are not disputed or have been recognised by declaratory judgment.

#### 9.12

The customer can only exercise a right of retention if its counter-claim relates to the same contract.

#### 9.13

We shall only accept bills of exchange offered as an exception by way of express agreement and only on account of performance. We shall make discount charges from the due date of the invoice until the maturity date of the bill of exchange as well as charge costs for the bill of exchange. The customer must bear interest and the costs for the discounting or redemption of bills of exchange. With regard to bills of exchange and cheques, the date of their redemption shall be deemed the payment date. In the event of our company's bank refusing to discount a bill of exchange or in the event of reasonable doubt that a bill of exchange will be discounted during the term of the bill of exchange, we shall be entitled to request immediate payment in cash while taking back the bill of exchange.

### **10. Right of lien**

We shall have a right of lien on the customer's workpieces as soon as they are handed over for heat treatment for all current and future claims against the customer.

### **11. Liability / Exclusion of liability / Limitation of liability**

#### 11.1

The customer shall be responsible in terms of the heat treatment to be performed for the workpieces being manufactured according to sound engineering practice, for the correctness and completeness of the information required under 4.7 and for heat treatment instructions adapted to any later intended use. Until we receive notification to the contrary from the customer, we can rely on the fact that the customer for its part shall carry

out the necessary tests to comply with its legal duty to implement safety precautions.

#### 11.2

We shall be liable – unless an individual agreement was concluded that takes precedence – for damages not related to methods arising from treatment methods which we suggested to the customer and the customer approved.

#### 11.3

We shall also not be liable for any shrinkage that occurs to a reasonable extent during the hardening process of mass-produced articles and small parts which is customary in the industry and related to the process.

#### 11.4

We shall *not* be liable, in particular not for claims by the customer for damages, for whatever legal reason, and/or for breach of duty from the obligation and tort.

#### 11.5

The above exclusions of liability under 11.2 to 11.4 shall not apply if statutory liability is obligatory, and:

- in the case of own intentional or grossly negligent breach of duty and intentional or grossly negligent breach of duty by legal representatives or vicarious agents;
- in the case of violation of material contractual obligations (*see below*);
- in the event of injury to life, limb or health, also caused by legal representatives or vicarious agents;
- in the case of default if delivery and/or service by a fixed date was agreed;
- where we have assumed a warranty for the workmanship of our goods or the outcome of a service, or a procurement risk, and in the case of liability under the Produkthaftungsgesetz.

*“Material contractual obligations”* are obligations that protect the legal positions of the customer which are material to the contract

and which have to be granted to the customer under the contract in terms of subject matter and purpose. Material contractual obligations are also obligations whose fulfilment makes the due performance of the contract possible in the first place, where the customer regularly relies on and may rely on compliance with such obligations.

#### 11.6

In cases other than those specified in 11.5, we shall be liable for all damage claims asserted against us or reimbursement of expenses under this contractual relationship for negligent breach of duty, for whatever legal reason, but not in the case of slight negligence.

#### 11.7

In the event of liability under 11.6 above and liability without negligence, especially given initial impossibility and defects of title, we shall be liable only for typical and foreseeable damage.

#### 11.8

Liability for indirect damages and consequential damage caused by a defect shall be excluded unless we have violated a material contractual obligation, or we, our executives or vicarious agents are reproached for intentional or grossly negligent breach of duty or a case of injury to life, limb or health exists.

#### 11.9

Our liability, except in the case of utilisation of a guarantee, assumption of a procurement risk, fraudulent intent, intent, and injury to life, limb or health and other differing liability amounts prescribed by law, shall be limited in total to a maximum amount of liability of EUR 100,000.-- for each claim. Any further liability shall be excluded.

#### 11.10

Exclusion resp. limitation of liability according to 11.2 to 11.9 above shall apply to the same extent for the benefit of executive and non-executive employees and other vicarious agents as well as our sub-contractors.

#### 11.11

Claims by the customer for damage from this contractual relationship may only be asserted within a preclusion period of 1 year as of commencement of the statutory limitation period. This shall not apply if we are responsible for fraudulent intent, intent or gross negligence, and shall not apply to claims for

injury to life, limb or health and violation of a guarantee, and in the event of a claim arising from tort.

#### 11.12

There is no connection between the reversal of the burden of proof and the foregoing stipulations.

### **12. Place of performance / Legal venue / Applicable law**

#### 12.1

Place of performance for all contractual obligations is our company's registered office except where an obligation to be performed at a creditor's place of business is assumed. Any disputes arising hereunder shall – as far as admissible by law – be settled exclusively before the court of law competent for the location of our registered office. We shall also have the right, however, to bring an action against the customer at its general legal venue.

#### 12.2

The law of the Federal Republic of Germany shall apply exclusively to all legal relationships between the customer and ourselves, to the exclusion in particular of the UN Sales Convention (CSIG).

### **13. Severability clause**

If any current or future provision of the contract is or shall become invalid/void or unenforceable in whole or in part for reasons other than the provisions relating to the law of general terms and conditions according to §§ 305 to 310 BGB, this shall not affect the validity of the remaining provisions of this contract unless the performance of the contract - also in consideration of the following provisions - would present an unreasonable hardship for either party. This shall also apply if, after the contract is concluded, it is found to have a gap that requires filling. The parties shall replace any invalid/void/unenforceable provision or gap that requires filling for reasons other than the provision relating to the law of general terms and conditions according to §§ 305 to 310 BGB by a valid provision that takes account of the legal and economic content of the invalid/void/unenforceable provision and the content of the contract as a whole. § 139 BGB (partial nullity) is expressly excluded. If the invalidity of any provision is due to a measure of performance or time (time limit or date) stated therein, a measure which most closely corresponds to the original measure in a legally admissible way must

be agreed for this provision. This shall not affect § 306 (2) BGB (application of statutory provisions where a clause of general terms and conditions is invalid).

**Note:**

**In accordance with the provisions of the Bundesdatenschutzgesetz [Federal Data Protection Act], we draw attention to the fact that our accounting is maintained on EDP equipment, and that we also in this respect store data received as a result of the business relationship with the customer.**

**Brackenheim, 18 January 2011**