



**GGP Metalpowder AG**

Kaiserstraße 30 • 90763 Fürth • Germany

2012/12/31

## **ALLGEMEINE VERKAUFSBEDINGUNGEN**

### **STANDARD TERMS AND CONDITIONS FOR THE SALE OF GOODS AND/OR SERVICES**

#### **1. Preamble**

These Standard Terms and Conditions of GGP Metalpowder AG (hereinafter referred to as “GGP”) for the Sale of Goods and/or and/or Supply of Services shall exclusively apply, save as varied by express agreement accepted in writing by both parties.

The offer, order acknowledgement, order acceptance of sale of any products covered herein is conditioned upon the terms contained in this instrument. Any conditional or different terms proposed by the buyer and/or client (buyer and client hereinafter referred to as “buyer”) are objected to and will not be binding upon GGP unless assented in writing by GGP.

These conditions shall govern any future individual contract of sale between GGP and the buyer to the exclusion of any other terms and conditions subject to which any such quotation is accepted or purported to be accepted, or any such order is made or purported to be made, by the buyer.

Any typographical, clerical or other error or omission in any sales literature, quotation, price list, acceptance of offer, invoice or other document of information issued by GGP shall be subject to correction without liability on the part of GGP.

The provisions of these Standard Terms and Conditions extend to standard contract conditions which are used in a contract with a merchant in the course of business only.

#### **2. Orders and Specifications**

No order submitted by the buyer shall be deemed to be accepted by GGP unless and until confirmed in writing by GGP or GGP’s representative within 14 days after submittal.

The quantity, quality and description of and any specification for the goods shall be those set out in GGP’s quotation (if accepted by the buyer) or the buyer’s order (if accepted

by GGP). Any such specification, sales literature, quotation etc. shall be strictly confidential and must not be made available to third parties.

The buyer shall be responsible for GGP for ensuring the accuracy of the terms of any order submitted by the buyer, and for providing GGP any necessary information relating to the goods within a sufficient time to enable GGP to perform the contract in accordance with its terms.

If the goods are to be manufactured or any process is to be applied to the goods by GGP in accordance with a specification submitted by the buyer, the buyer shall indemnify GGP against all loss, damages, costs and expenses awarded against or incurred by GGP in connection with or paid or agreed to be paid by GGP in settlement of any claim for infringement of any patent, copyright, design, trade mark or other industrial or intellectual rights of any other third party which results from GGP’s use of the buyer’s specification.

GGP reserves the right to make any changes in the specification of the goods which are required to conform with any applicable statutory requirements or, where the goods are to be supplied to GGP’s specification, which do not materially affect their quality or performance.

#### **3. Price of the Goods**

The price of the goods and/or services shall be GGP’s quoted price or, where no price has been quoted, the price listed in GGP’s published price list current at the date of acceptance of the order.

GGP reserves the right, by giving notice to the buyer at any time before delivery, to increase the price of the goods to reflect increase in the cost to GGP which is due to any factor beyond the control of GGP (such as foreign exchange fluctuation, currency regulation, alteration of duties, significant increase in the costs of material or other



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costs of manufacture) or any change in delivery dates.

Except as otherwise stated under the terms of any quotation or in any price list of GGP, and unless otherwise agreed in writing between the buyer and GGP all prices are given by GGP on an ex works basis, and where GGP agrees to deliver the goods otherwise than at GGP's premises, the buyer shall be liable to pay GGP's charges for transport, packaging and insurance.

The price is exclusive of any applicable value added tax (VAT), which the buyer shall be additionally liable to pay to GGP.

#### 4. Terms of payment

The buyer shall pay the price of the goods and/or services within 7 days after receipt of GGP's invoice without any deductions. Payment shall be effected by inter bank payment transaction only; no cheque or bill of exchange will be considered as fulfilment of the payment obligation.

It may be agreed between the parties that the buyer has to deliver a letter of credit issued by his bank (or any bank acceptable to GGP). In this individual case it is assumed that any letter of credit will be issued in accordance with the Uniform Customs and Practice for Documentary Credits, 2006 Revision, ICC Publication No. 600.

If the buyer fails to make any payment on the due date then, without prejudice to any other right or remedy available to GGP, GGP shall at its discretion be entitled to:

- cancel the contract or suspend any further deliveries to the buyer; or
- charge the buyer interest on the amount unpaid, at the rate of 8 per cent per annum above the base interest rate from then being valid, until payment in full is made. The buyer shall be entitled to prove that the delay of payment caused no or little damage only.

#### 5. Delivery

Delivery of the goods shall be made by the buyer collecting the goods at GGP's premises at any time determined by GGP after GGP has notified the buyer that the goods are ready for collection or, if some other place for delivery is agreed by GGP, by GGP delivering the goods to that place.

Where delivery of the goods is to be made by GGP in bulk, GGP reserves the right to deliver up to 3% more or 3% less than the quantity ordered without any adjustment in the price, and the quantity so delivered shall be deemed to be in the quantity ordered.

If or any reason whatever GGP fails within such time of effecting delivery, the buyer shall be entitled by notice in writing to GGP to fix a deadline after the expiry of which the buyer shall be entitled to terminate the contract.

If the buyer fails to accept delivery on due date, he shall nevertheless make any payment conditional on delivery as if the goods had been delivered. GGP shall arrange for the storage of the goods at the risk and cost of the buyer. If required by the buyer GGP shall insure the goods at the cost of the buyer.

#### 6. Transfer of Risks

Risk of damage to or loss of the goods shall pass to the buyer as follows:

- in the case of goods to be delivered otherwise than at GGP's premises, at the time of delivery or, if the buyer wrongfully fails to take delivery of the goods, the time when GGP has tendered delivery of the goods;
- in the case of goods to be delivered at GGP's premises ("ex works", Incoterms 2000) at the time when GGP notifies the buyer that the goods are available for collection.



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### **7. Retention of Title**

Notwithstanding delivery and the passing of risk in the goods, or any other provision of these conditions, the property in the goods shall not pass to the buyer until GGP has received payment in full of the price of the goods and all other goods agreed to be sold by GGP to the buyer for which payment is then due.

After termination of the contract GGP shall have absolutely authority to retake, sell or otherwise deal with or dispose of all or any part of the goods.

Until such time as the property in the goods passes to the buyer, the buyer shall hold the goods as GGP's fiduciary agent, and shall keep the goods properly stored, protected and insured.

Until that time the buyer shall be entitled to resell or use the goods in the ordinary course of its business, but shall account to GGP for the proceeds of sale or otherwise of the goods including insurance proceeds, and shall keep all such proceeds separate from any moneys or properties of the buyer and third parties.

Buyer and GGP agree that buyer hereby assigns to GGP by way of security any claims arising under a resale of the goods.

If the goods are processed or reshaped by the buyer and if processing is done with goods that GGP has no property in, GGP shall become co-owner of the goods. The same shall apply if GGP's goods are completely reshaped and mixed with other goods.

If third parties take up steps to pledge to otherwise dispose of the goods, the buyer shall immediately notify GGP in order to enable GGP to seek a court injunction in accordance with § 771 of the German Code of Civil Procedure. If the buyer fails to do so in due time he will be held liable for any damages caused.

GGP shall on demand of the buyer release any part of the collateral if the value of the collateral held in favour of GGP exceeds the value of the claims being secured. It is to GGP's decision to release those parts of the collateral suitable for him.

### **8. Warranties and Exclusion Clauses**

The buyer shall examine the goods as required by German Law (§ 377 of the German Commercial Code) and in doing so check every delivery in any respect.

GGP warrants that all goods delivered will be free from any material defect and conform to agreed specifications.

GGP shall not be liable for the goods being fit for a particular purpose to which the buyer intends to put them, unless otherwise agreed upon in writing.

The above warranty is given by GGP subject to the following conditions:

- GGP shall not be liable in respect of any defect in the goods arising from any design or specification provided by the buyer;
- GGP shall not be liable under the above warranty if the total price for the goods has not been paid by the due date of payment;
- the above warranty does not extend to parts, materials or equipment manufactured by or on behalf of the buyer unless such warranty is given by the manufacturer to GGP.

This warranty does not cover defects in or damage to the products which are due to improper storage (e.g. oxidation due to too long storage) or improper maintenance, misuse, neglect or any cause other than ordinary commercial application. Any discharge from liability will be void if a defect results from a negligent or intentional breach of contract on part of GGP. The same applies if GGP may be held responsible for the breach of any further essential contractual obligation.



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Any claim by the buyer which is based on any defect in the quality or condition of the goods or their failure to correspond with specification shall be notified to GGP within reasonable time from the date of delivery. The buyer is entitled to demand the delivery of any substitute goods or remedy.

Where any valid claim in respect of any goods which is based on any defect in the quality or condition of the goods or their failure to meet specification is notified to GGP in accordance with these Conditions, GGP shall be entitled at GGP's sole discretion to either replace the goods free of charge or remedy the goods. If GGP is neither ready nor able to either remedy or replace the goods the buyer shall be entitled at the buyer's sole discretion to claim for a reduction of price or the cancellation of the contract.

**9. Indemnification Claims, Liability**

Any claims towards compensation for loss, damage and costs incurred by it, regardless of the legal ground, are excluded, except GGP shall be liable by law, in particular

- According to product liability law, which is limited to EUR 10 Mio, and to EUR 5 Mio in case of extended product liability, and/or
- in case of intent, gross negligence and personal injury.

**10. Miscellaneous Clauses**

GGP reserves the right to improve or modify any of the products without prior notice, provided that such improvement or modification shall not affect the form and function of the product.

These Standard Terms and Conditions supersede and invalidate all other commitment and warranties relating to the subject matter hereof which may have been made by the parties either orally or in writing prior the date hereof, and which shall become null and void from the date of the contract is signed.

These Standard Terms and Conditions shall not be assigned or transferred by either party except with the written consent of the other.

Each party shall be responsible for all its legal, accountancy or other costs and expenses incurred in the performance of its obligation hereunder.

If any of these Standard Terms and Conditions, in whole or in part, is unenforceable, the enforceability of the remaining Standard Terms and Conditions (or the remaining part) will not be affected.

These Standard Terms and Conditions have been executed in both, German and English language. Both versions shall be equally authentic. In case of any discrepancies or differences in interpretation between the English and German version, the German version shall prevail.

**11. Applicable Law; Place of Jurisdiction**

This agreement shall be governed by and construed in accordance with German law and each party agrees to submit the jurisdiction of the courts having jurisdiction for GGP.

GGP shall have the right to bring a claim before a court at the buyer's principal place of business or at its discretion before any other court being competent according to any national or international law.