

General Terms and Conditions of Business of Betz-Chrom GmbH & Co. KG

1. Scope of application, diverging Customer terms and conditions

Our offers, declarations of acceptance, contracts, deliveries and services are governed exclusively by the General Terms and Conditions of Business below ("**GTC**"). Any terms and conditions of Customer conflicting with or diverging from these GTC will not be accepted unless expressly approved by us in writing in a particular case. In the case of continuous business relations these GTC will also apply to all future transactions.

2. Offers, effective contract, written form, confidentiality

2.1 Unless otherwise indicated or agreed, our offers and quotes remain subject to change, especially with regard to prices and delivery periods.

2.2 Customer remains bound to his order for two weeks. A contract becomes effective only upon written confirmation of the order received by us or, notwithstanding sec. 2.3, upon Customer's acceptance of our delivery.

2.3 All orders, declarations of acceptance, changes, amendments and other agreements made prior to or upon the conclusion of a contract will only be effective if set out in writing. Any amendments of a contract shall be laid down in writing.

2.4 Our offers, including annexes, in particular but not limited to pictures, calculations and drawings, may not be made available to any third parties without our consent.

3. Our services, incoming goods inspection, process-related variations, tools

3.1 Our services, especially coatings, are provided in accordance with the specifications agreed in the individual contract, the generally accepted standards of technology, and the applicable DIN standards or generally acknowledged DIN draft standards.

3.2 Unless agreed otherwise, we are not obliged to inspect any incoming goods; in particular, we are not obliged to verify whether the workpieces are in processable condition upon delivery in accordance with sec. 6.3 below.

3.3 Unless agreed otherwise, we are not obliged to verify whether the processed pieces are fit for any particular purpose, especially for incorporation into specific products.

3.4 Unless agreed otherwise, we will not carry out any hydrogen de-embrittlement procedures prior to processing.

3.5 Unless agreed otherwise, we will treat only the outer surfaces of hollow pieces. Corrosion at the untreated surfaces will not be prevented.

3.6 Minor variations of the processed workpieces from any sample underlying the order are immanent to galvanic and chemical processes and form part of our contractual services, including variations due to variations in the quality of the raw materials; this applies mutatis mutandis to any deformation, stress cracks, impairment of the accuracy of dimensions and fit, damage due to atmospheric conditions and damage caused later by residues of the treatment process seeping out of laminations and other inaccessible hollow spaces, which may occur in spite of the professional treatment of workpieces handed over to us.

3.7 Any forming or thermal treatment processes carried out by us or by Customer after the processing of the workpieces may impair the adhesion of the coating. This applies also if a sample galvanized for test purposes was deformed without cracking of the galvanized layer and/or if a thermal treatment carried out for test purposes did not impair the qualities of the coating.

3.8 The processed workpieces are vulnerable to condensation and corrosion (e.g., friction oxidation, stress corrosion cracking, etc.).

3.9 Unless agreed otherwise, any tools, appliances, anodes, etc., which are manufactured by us for purposes of processing the workpieces, remain our property and will not be released to Customer, including where these have been billed separately to Customer. For environmental reasons, we will dispose of any appliances, anodes, etc. six months after their last use at the latest.

4. Prices, additional work, price changes

4.1 Unless otherwise indicated or agreed, our prices are strictly net, in Euro, ex works, exclusive of packaging, shipping and insurance and plus value-added tax as applicable from time to time.

4.2 Our prices apply only to workpieces delivered in processable condition in accordance with sec. 6.3 below. Any additional work that may be necessary, especially but not limited to the removal of paint, oil, grease, tar, old metallic coatings, etc., the subsequent insertion of apertures in hollow pieces and the preparation of test reports, will be remunerated separately.

4.3 Our prices are calculated on the basis of the material, energy and wage costs applicable at the time of conclusion of the contract. If no fixed price has been agreed and the agreed delivery date is more than one month after the date of conclusion of the contract, any increase in the costs specified in the first sentence of this paragraph will entitle us, and any decrease in the costs specified in the first sentence of this paragraph will require us, to reasonably adjust the prices in accordance with the changes in material, energy and wage costs that have occurred. Proof of any such changes in the costs will be submitted to Customer on request.

5. Payment, default in payment, setoff, right of retention

5.1 Except where expressly agreed otherwise, payments are due upon acceptance according to sec. 9.3 or partial acceptance according to sec. 9.4 and upon receipt of the invoice, without any cash discount deductions. In the event of default in payment we will charge statutory default interest at a rate of 8 % above the base rate, without prejudice to any further rights.

5.2 Customer may assert rights of setoff only on the basis of claims that are uncontested, ready for decision or established by final enforceable judgment.

5.3 Customer may assert rights of retention only on the basis of claims from the same contractual relationship which are uncontested, ready for decision or established by final enforceable judgment.

6. Customer's obligations, delivery, defective workpieces, regeneration, storage

6.1 Unless agreed otherwise, Customer is solely responsible to verify that the processed workpieces are fit for their intended use.

6.2 Customer must notify us of the parent material of the workpiece to be processed, the heat treatment, tensile strength, surfaces to be coated and fit, with his order but at the latest prior to the processing of the workpieces by us; unless agreed otherwise, we will not assume any duties of inspection in these respects. Further, Customer has to specify the minimum coat thickness prior to processing by us, at a reading point to be agreed.

6.3 Except where agreed otherwise, Customer will deliver the workpieces to be processed in processable condition at Customer's expense and risk. In particular, the delivered workpieces must be clean and dry as well as free from oil, burned-in and other grease, silicon, synthetics, tar, release agents, old metal coatings, cast crust, moulding sand, scale, oil carbon, welding cinder, graphite and paint (this does not affect the use of freshly applied anticorrosion oils). Further, the workpieces must be free from pores, shrink holes, cracks, laminations, flashes or similar flaws impairing the galvanizing process; threads must be adequately undercut.

6.4 The workpieces to be processed by us must be accompanied by a delivery note precisely indicating the quantity and gross weight.

6.5 Unless agreed otherwise, Customer has to provide us with a test specimen or suitable sample material intended for surface treatment, for a period of at least six weeks prior to processing for test purposes.

6.6 If the workpieces are not in processable condition upon delivery in accordance with sec. 6.3 above or if we are not provided with a test specimen or sample material in accordance with sec. 6.5 above, we may refuse processing, without prejudice to any further claims. If Customer nevertheless insists on the treatment, we are unable to guarantee the flawless processing of the workpieces, in particular any specific dimensional accuracy, durability, adhesion, corrosion resistance, surface cleanliness and colour retention of the pieces to be treated and coating to be applied, including in cases where we regenerate damaged workpieces prior to processing in accordance with an agreement.

6.7 In order to prevent impairment of the qualities of the applied coating, processed workpieces which are not processed further immediately have to be stored properly by Customer, in particular such that they are protected against corrosion.

7. Delivery, delivery deadlines and periods, force majeure, self-supply, deterioration of financial situation, partial deliveries, default

7.1 Except where agreed otherwise, our deliveries are ex works.

7.2 Unless agreed otherwise, all agreed delivery deadlines and delivery periods are without any commitment. A delivery period will start only after all commercial and technical issues have been clarified between us and Customer and Customer has fulfilled all his obligations, in particular delivered the workpieces to be processed.

7.3 In cases of force majeure or other unforeseeable circumstances such as, for instance, lawful strikes or lock-outs, war, import and export bans, shortage in energy or resources, official orders, which temporarily hinder us without any fault on our part or imputable to us from rendering our performance by the deadline or within the period agreed upon, this deadline/period shall be extended in accordance with the duration of the hindrance caused by these circumstances. If such hindrance prevents performance for more than four months, the parties can withdraw from the contract. This shall not affect any statutory rights of withdrawal.

7.4 In the event that we have not received at all or in due time supply of any materials required for the processing, we shall not be in default towards Customer unless we are responsible for having received such supply with delay or not at all. We have the right to withdraw from the contract if it is established that we are not responsible for not having received supply of materials required for processing.

7.5 If it becomes apparent after the conclusion of a contract that our claim to counter-performance is at risk due to lack in financial capacity on Customer's part, we may refuse performance until Customer has made counter-performance or provided security for it. We may set a reasonable deadline for Customer to concurrently counter-perform or provide security, at Customer's choice. Upon expiry of the deadline we will have the right to withdraw from the contract and/or claim damages or reimbursement of expenses if the legal requirements are met.

7.6 We have the right to make partial deliveries to an extent reasonably acceptable for Customer.

7.7 If we are in default with performance, Customer may claim, apart from performance, compensation for the damage caused by the delay in accordance with sec. 11, subject to the condition, however, that the damage characteristic for the contract and foreseeable at the time of conclusion of the contract may not be higher than three times the remuneration owed for the part of the performance we are in default with.

8. Packing, dispatch, transit insurance, passing of risk

8.1 We will pack the processed workpieces only to the extent they were packed when delivered to us, repackaging has been requested and the packing material can be reused. Any packaging above and beyond this requested by Customer will be billed separately and not taken back.

8.2 Unless agreed otherwise, we will dispatch the processed workpieces only upon Customer's request and at Customer's expense. Except as instructed otherwise by Customer, we will choose the carrier at our discretion. The goods will be insured against damage or loss in transit only upon Customer's express request and for Customer's account. If we act as forwarding agent, the German Standard Forwarders' Terms and Conditions (*Allgemeine Deutsche Spediteur-Bedingungen (ADSp)*) apply, which shall prevail over these GTC in the case of any discrepancies.

8.3 The risk of accidental deterioration and accidental loss of the workpieces shall pass to Customer as soon as the workpieces have left our works to be dispatched or have been handed over to the carrier. If Customer fails to accept the processed workpieces in due time although they were offered to him, the risk shall pass to Customer upon receipt of the notice that the goods are ready for dispatch.

9. Pickup, storage charges, acceptance, partial acceptance

9.1 Unless agreed otherwise, Customer must pick up or release for dispatch, without delay, any workpieces which have been notified as ready for pickup or dispatch.

9.2 If pickup or dispatch of the processed workpieces is delayed for reasons within Customer's control, we may bill Customer, starting one month upon receipt of the notice that the workpieces are ready for pickup or dispatch, a storage charge of 1% of the remuneration for the performance in question for each started month, but no more than 5% of the relevant invoice amount. Customer may prove that a smaller loss has been incurred; we may prove that a higher loss has been incurred.

9.3 If there are no major defects and acceptance of the processed workpieces is not excluded by their quality, Customer has to accept the processed workpieces promptly upon delivery. Acceptance may also be declared tacitly, e.g. by putting the processed workpieces to use. The processed workpieces will be deemed accepted if Customer does not declare their acceptance within a reasonable period of time fixed by us, although he is obliged to do so.

9.4 Where reasonably acceptable for Customer, we may request partial acceptance and bill the relevant performances separately. Sec. 9.3 applies mutatis mutandis to partial acceptance.

10. Inspection, warranty claims

10.1 Customer shall inspect the processed workpieces promptly upon receipt and prior to their further processing. If the workpieces are delivered directly to a third party for further processing, Customer shall ensure that they are inspected without delay by such third party.

10.2 Any obvious defects must be reported in writing within 12 days after receipt of the workpieces, any hidden defects must be reported in writing within 12 days after their discovery. If Customer fails to perform the inspection or misses the deadline for reporting defects, the workpiece will be deemed free of defects in view of the defect that has not been reported (in due time), and any rights of Customer based on the defect shall be excluded.

10.3 Warranty is excluded for only insignificant divergence from the agreed quality, for insignificant impairment of the fitness for use and for defects caused after the passing of risk as a result of improper or careless handling (e.g., improper storage, excessive use, other external influences not considered in the contract). Warranty for rejects or deficient quantities of small parts and mass-produced parts is excluded unless the amount of rejects or the deficiency comes to 2.5% or more of the delivered total quantity of workpieces processed by us.

10.4 Unless agreed otherwise, warranty claims based on the assertion that the processed workpieces are not fit for a certain purpose, are excluded.

10.5 In the event of justified complaints, we first have the right to remove the defect or deliver a new workpiece (supplementary performance). If we fail to meet this obligation within a reasonable period of time or if supplementary performance fails despite at least two attempts of supplementary performance or if Customer cannot be reasonably expected to accept supplementary performance, Customer may – without prejudice to the legal right to remedy the defect at his discretion – request a lower remuneration (reduction) or withdraw from the contract.

10.6 Warranty claims become time-barred twelve months after acceptance according to sec. 9.3 or partial acceptance according to sec. 9.4, unless we have acted in bad faith or with intent or unless the defect is covered by a warranty as to quality.

10.7 Customer will be entitled to claims for damages based on defects only to the extent that our liability is not excluded or limited under sec. 11. Any claims based on a defect above and beyond, or other than, those stipulated in this sec. 10 are excluded.

11. Liability

11.1 We accept unlimited liability for damage caused by intent and gross negligence. In the event of a slightly negligent breach of a major obligation or an accessory obligation whose breach puts the

achievement of the contractual purpose at risk or whose fulfilment is essential to the due and proper implementation of the contract and on whose fulfilment Customer could reasonably rely on ("essential accessory obligation"), our liability shall be limited to damage characteristic for the contract and foreseeable at the time of conclusion of the contract. We accept no liability for slightly negligent breaches of accessory obligations which are not essential accessory obligations.

11.2 The above exclusions of liability shall not affect our liability in the event of a warranty as to quality, bad faith, claims arising from injury to life, limb or health, and for product defects under the Product Liability Act. This shall not entail a reversal of the burden of proof to Customer's disadvantage.

11.3 Where our liability is excluded or limited under this sec. 11, this also applies to the personal liability of our employees, members of staff, representatives and vicarious agents.

11.4 To the exception of claims based on tortuous acts, Customer's claims for damages, for which liability is limited under this sec. 11, become time-barred twelve months after the beginning of the statutory limitation period.

12. Contractor's lien, contractual lien, assignment by way of security

12.1 We are entitled by law to a contractor's lien to the workpieces processed by us.

12.2 Notwithstanding the provisions of sec. 12.1, Customer agrees to create for us a contractual lien to the workpieces handed over to us for processing, which serves to secure our remuneration under the contract. Unless agreed otherwise, the contractual lien also applies to claims under earlier contracts to the extent they bear a material, unitary relation to the subject matter of the current contract.

12.3 Where the processed workpieces are delivered to Customer before our remuneration has been fully paid, it is herewith agreed with Customer that co-ownership to such workpieces ("**Security Collateral**") shall be assigned to us in accordance with the value of the Security Collateral relative to our outstanding remuneration in order to secure our claims under this contract and until the remuneration has been fully paid, and that the transfer of possession shall be substituted in that Customer shall safe-keep the Security Collateral for us. This applies mutatis mutandis to Customer's expectant rights to any objects handed over to us for processing, which were supplied to Customer by a third party subject to reservation of title; we have the right to cause the reservation of title to lapse through payment. Any reassignment claims Customer may be entitled to against a third party to which he had previously assigned as a security the objects handed over to us for processing, are herewith assigned to us, and we accept the assignment.

12.4 Customer may not pledge or assign any workpieces on which we hold a lien or any Security Collateral. However, he may resell or process Security Collateral in the ordinary course of business, unless Customer has effectively assigned the claim against his contract partner to a third party in advance. Any processing of Security Collateral by Customer to form a new movable object will be done on our behalf and inure to our benefit, without giving rise to any obligations.

12.5 For the event that Customer acquires exclusive or co-ownership to a unitary new object created by processing, combining, blending or mixing the Security Collateral with other movable objects, Customer herewith agrees to assign to us as security for our claims under this contract, the co-

ownership to the new object in the amount of the co-ownership share we held previously in the Security Collateral.

12.6 If any Security Collateral processed by us or new object obtained from it is resold, Customer must notify his buyers of our security interest.

12.7 To secure our claim, Customer herewith agrees to assign to us all future claims arising from the resale or further processing of the Security Collateral in the amount of our co-ownership share. We herewith accept the assignment. As long as we are owners of the goods, we have the right to retract the authorisation to resell or further process the goods if there is a legitimate objective reason.

12.8 Customer is authorised to collect the claims against his customers arising out of any resale or further processing. Nothing in this shall prejudice our right to ourselves collect such claims, however, we undertake to not collect the claims for as long as Customer duly meets his payment obligations. If Customer fails to duly fulfil his payment obligations and we are, therefore, authorised to collect the claims, Customer will be obliged, on our request, to disclose the assigned claims and their debtors to us, to provide all information required for the collection, to hand over the relevant documents and to notify the customers of the assignment.

12.9 Customer is obliged to notify us without delay of any execution measures levied by third parties concerning the Security Collateral, and to notify such third party without delay of our security interest.

12.10 Customer is obliged to keep the Security Collateral safe, to adequately insure it against fire and theft and to maintain the insurance coverage. Customer agrees to herewith assign to us any claims he will hold against his insurance company in an event of damage or loss, to the extent they relate to Security Collateral; we accept the assignment.

12.11 Upon Customer's request, we will be obliged at our option to release securities if Customer has fulfilled all claims or if the realisable value of all securities granted to us exceeds the total sum of our claims against Customer by more than 10%.

12.12 If Customer has suspended payments not only temporarily, if he files a motion for insolvency against his assets or if insolvency proceedings are instituted against his assets, Customer is obliged to release, on our request, any Security Collateral still owned by us. Furthermore, in the event of Customer acting in breach of the contract, in particular in the event of default in payment, Customer is obliged to release the Security Collateral to us following a payment reminder. Finally, in any of these cases Customer is obliged to promptly provide us with a list of the remaining Security Collateral, including goods that have been processed, and with a list of all claims held against third party debtors.

13. Assignment, place of performance, governing law, place of jurisdiction, severability

13.1 The assignment of any claims against us is excluded. Nothing in this shall affect Sec. 354 a HGB (German Commercial Code).

13.2 Unless agreed otherwise, the exclusive place of performance for all delivery and payment obligations under this contract shall be our domicile if Customer is a merchant.

13.3 These GTC are governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Sales Convention. The German language version of a contract shall be authoritative.

13.4 If Customer is a merchant, a legal person under public law or a public law fund or is domiciled and/or has his habitual abode outside Germany, the court of jurisdiction for our domicile shall have exclusive jurisdiction over any and all disputes arising directly or indirectly from the contractual relationship. However, we may also sue Customer at any other legal place of jurisdiction.

13.5 If any provision is invalid, nothing in this shall prejudice the validity of the remaining provisions of these GTC or of the contract. The contracting parties will replace any invalid provision by a legally valid provision which accomplishes as closely as possible the intended economic purpose of the invalid provision.

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