



LISTEMANN

perfecting materials

Issue: Jan. 2014 Rev1

Page: 1 of 2

General Terms and Conditions for Processing Orders

1. Scope

- 1.1 These general terms and conditions (GTC) as well as supplementing leaflets are binding if the offer or order confirmation of *Listemann AG Werkstoff- und Wärmebehandlungstechnik* or *Listemann Technology AG (LISTEMANN)* refers to their validity and if they are made known to the contracting partner. Different conditions on the part of the customer are valid only if expressly accepted in writing by *LISTEMANN*.
- 1.2 The terms are applied on the thermal processes heat treatment, brazing, sintering, thermal spraying and electron beam welding which are offered as service (treatment) as well as consultancies thereof which *LISTEMANN* performs according to guidelines (instructions and technical specifications) using the customer's material against payment within the scope of order processing.
- 1.3 If one of the GTC terms were to be totally or partly invalid it will not influence the validity of the other GTC terms. The contracting parties will replace this term with a new one to best assure the legal and economic success.

2. Coverage of services

LISTEMANN's services are listed at the bottom of the order confirmation. Services which are not included will be invoiced separately.

3. Placing of orders and information obligation

- 3.1 The order must contain all important details such as item description, amount, measurements, weight, material description, pre-treatment as well as treatment and inspection instructions.
- 3.2 The necessary technical documents for the treatment must be given to *LISTEMANN* by the customer either via letter, fax or e-mail. *LISTEMANN* will not face problems due to missing, false or imprecise information.
- 3.3 The customer informs *LISTEMANN* before contract formation if the contractual items are subjected to the regulations of the Schweizerische Güterkontrollgesetz (GKG) and/or Kriegsmaterialgesetz (KMG) and/or to the US Export Control according to EAR (Export Administration Regulations) and/or ITAR (International Traffic in Arms Regulations) or to other country-specific regulations for Dual-Use items or armaments.
- 3.4 *LISTEMANN* must be informed in due time in case of changes in the material composition and the pre-treatment.
- 3.5 As soon as *LISTEMANN* accepts the treatment order (order confirmation or start of work) this contract is valid.

4. Delivering goods and inspection of goods received

- 4.1 Upon delivery (DDP according INCOTERMS 2010) the customer must state the amount and description of the goods on an accompanying paper (delivery note). The following additional information is necessary on the pro-forma invoice (except Liechtenstein and Switzerland): unit price and total amount, number of units, gross and net weight, country of origin, means of transportation upon delivery and requested means of transportation upon consignment return.
- 4.2 *LISTEMANN* acts on the assumption that the delivered goods and materials have no defects and are working properly. *LISTEMANN* makes an inspection regarding weight, quantity as well as evident defects. There is no liability for further inspection. Discrepancies and defects are immediately reported to the customer to give him an adequate period of time to decide about further action.

5. Tools, jigs and gauges

- 5.1 It is up to *LISTEMANN* to provide the tools and the necessary facilities.
- 5.2 Special tools (jigs, gauges, measuring systems) have to be provided by the customer. These tools will remain his property and will be given back upon delivery of the order. In case *LISTEMANN* has to produce special tools, *LISTEMANN* can invoice an adequate part of the tooling costs to the customer, but will maintain ownership of these tools.

6. Prices

- 6.1 Prices are net prices, ex-work according to INCOTERMS 2010, excl. value-added tax and packaging, payable in Swiss Francs or another currency stated by *LISTEMANN* without any deductions.
- 6.2 The customer must either bear the costs for all kind of taxes, fees, customs duties and such as charged per contract, or the customer must refund the costs to *LISTEMANN* against evidence in case *LISTEMANN* had been responsible for them.
- 6.3 An adequate price adjustment follows if
 - there were changes in materials and in the processing of the goods because the instructions or the specifications given by the customer did not correspond to actual conditions or were incomplete
 - the type or scope of services stated in the order confirmation had changed in any way.
- 6.4 In case of necessary additional services (like special pre-treatment or special devices) before starting the thermal treatment, *LISTEMANN* will inform the customer about additional costs.

7. Terms of payment

- 7.1 The terms of payment are stated respectively on the order confirmation and the invoice. The duty of payment is fulfilled as soon as the total agreed price is paid to *LISTEMANN*.
- 7.2 No interests will be reimbursed in case of advanced payment.
- 7.3 In case of delayed delivery beyond the control of *LISTEMANN* the dates of payment will remain unchanged.
- 7.4 If the customer does not keep the agreed payment terms, he will be invoiced with default interest without a particular reminder. The default interest will be according to capital procurement costs within the customer's country, with a minimum 5% p.a.
- 7.5 Keeping back or shortening payments due to complaints, disagreements or requirements on the part of the customer which are not expressly stated and accepted is not permitted. The customer can invoice his counterclaims only if there is a special agreement in writing.

8. Right for retention

- 8.1 If the customer does not keep the terms of payment *LISTEMANN* can take advantage of their right of retention of goods still in production or finished products still in their possession.
- 8.2 The customer bears the risk of damage or loss for the retention goods. *LISTEMANN* is not forced to insure them.
- 8.3 If the customer does not settle the outstanding claims within 90 days, *LISTEMANN* is allowed to sell the retained goods freehand after informing the customer of it.

9. Delivery date

- 9.1 As soon as *LISTEMANN* receives the goods and the accompanying information according to 3.1-3.4 the delivery deadline begins.
- 9.2 Accepting orders with a set delivery date cannot be considered as acceptance of the delivery date.
- 9.3 The delivery date will be prolonged in case of any impediments, which cannot be prevented by *LISTEMANN* even if they apply the necessary carefulness, regardless of the problem's origin being *LISTEMANN*, the customer or a third party.
- 9.4 For contract penalties for late deliveries a written agreement is necessary.
- 9.5 In case of late delivery the customer has no right to withdraw from the contract. *LISTEMANN* is herewith excluded from being liable for damages created by minor delays for which they are responsible. For further damages caused by delay the maximum liability cannot exceed the payment agreed upon.



LISTEMANN

perfecting materials

Issue: Jan. 2014 Rev1

Page: 2 of 2

General Terms and Conditions for Processing Orders

- 9.6 In case of illegal intention or gross fault by *LISTEMANN* this restriction is not applicable. However, it is applicable in case of illegal intention or gross negligence on the part of any auxiliary workers.
- 10. Transfer of value and risk**
- 10.1 Value and risk are transferred at the latest with the delivery ex-work of the treated goods to the customer.
- 10.2 If the delivery is being delayed because the customer is asking for it or for reasons beyond the control of *LISTEMANN*, customer has to bear the risk from the date on which the delivery was originally planned. From this moment on the goods are stored and insured at the cost and risk of the customer.
- 11. Shipment, transportation and insurances**
- 11.1 Particular requests regarding shipment, transportation and transportation insurance have to be announced in due time. The customer has to bear the transportation costs as well as the risks. The customer has to take care for any insurance against all kinds of damages.
- 11.2 Complaints about shipment or transportation must immediately be directed to the last freight carrier upon receipt of the order or transport documents by the customer.
- 12. Inspection and acceptance of the goods**
- 12.1 *LISTEMANN* will usually inspect the goods before shipment according to the prevailing state-of-the-art technology. Further inspections requested by the customer have to be agreed upon and the customer has to pay for them.
- 12.2 In case a brazing treatment is performed the purchaser is obliged, before and after processing or before use of the treated items, to check the brazed joints according to required properties, i.e. tightness and mechanical strength. An inspection by *LISTEMANN* will be performed only if agreed separately before placing of order.
- 12.3 *LISTEMANN* will issue a treatment and inspection protocol against payment on customers request only.
- 12.4 *LISTEMANN* only checks the compliance with the specified criteria, but not the performance of the treated goods. *LISTEMANN* is not obligated to supervise the products.
- 12.5 The customer has to prove eventual complaints and has to show the rejected goods if *LISTEMANN* so wishes. Complaints have to be made to *LISTEMANN* as follows:
- in case of evident defects immediately, at the latest 4 weeks after delivery.
 - in case of hidden defects immediately after discovery, at the latest 6 weeks after delivery.
- 12.6 If no complaints are being made within this period of time, the treated goods pass for being accepted.
- 12.7 Acceptance of the goods is valid if the customer rejects them unrightfully.
- 12.8 The customer has to check the treatment and inspection protocol according to clause 12.3 and has to complain about eventual discrepancies immediately. If he does not, the protocol passes for being accepted.
- 12.9 In case of any shortcomings on the treated goods the customer has only the rights and entitlements according to clause 13 (liability for processing imperfections).
- 13. Liability for processing imperfections**
- 13.1 In case of proved treatment shortcomings the customer is entitled to having the goods mended and *LISTEMANN* has the right to mend the goods if technically possible. *LISTEMANN* has to bear all the costs for mending the goods.
- 13.2 If it is technically impossible to mend the goods, *LISTEMANN* has to refund completely or partly, however, at least up to the treatment value at the time of the complaint.
- 13.3. On all compensations, especially value level of indemnity, the economical circumstances of the contract partners, character, scale and duration of business relationship as well as the value of the treatment have to be considered adequately in good faith.
- 13.4 Rejects due to false material and treatment details by the customer are no shortcomings. There is a tolerance of rejects amount of max. 3% of the whole order for serial parts, unless separately agreed upon.
- 14. Exclusion of liability for processing imperfections**
- 14.1 *LISTEMANN* is not liable for discrepancies and damages due to late, false, incomplete or imprecise details or due to improper treatment instructions in the ordering which are being declared unsuitable by *LISTEMANN*.
- 14.2 *LISTEMANN* won't assume responsibility for failures and damages that, notwithstanding proper handling, have originated from non-conformal design or assembling of the items, from material failure as well as from non-suitability of the materials for the foreseen purpose, difference in hardenability of used materials, other hidden defects and impact by previous treatments or change of previous processes for the foreseen purpose. In this category are included: cracks, distortion due to hardening (deformation, change in dimension), mechanical strength or tightness of brazed and/or welded joints, density and non-porosity of sintered components, damages due to aligning work and to improper machining (subsequent treatment), and damages to production parts already treated elsewhere.
- 14.3 The customer has no rights to claims for process imperfections except those clearly stated in clause 13.
- 15. Exclusion of further liabilities**
- 15.1 All claims on the part of the customer, with the exception of those expressly stated in these conditions, whatever the legal reason they stem from, particularly any claim to compensation for damage not clearly listed, reduction or withdrawal from the contract are hereby excluded. The customer has absolutely no right to lay claim to compensation for damages not resulting from treated goods, such as namely production breakdown, application loss, loss of orders, lost profit as well as other indirect or direct damages. These restrictions are not valid in case of illegal intentions or gross negligence on the part of *LISTEMANN*; however they are valid in case of illegal intentions or gross negligence on the part of auxiliary workers.
- 15.2 The customer releases *LISTEMANN* from all non-contractual claims of third parties for product liabilities. Claims of recourse on the part of the customer against *LISTEMANN* for non-contractual claims of third parties for product liabilities are hereby excluded.
- 16. Applicable law**
- All legal proceedings are subjected to Swiss Law. Vaduz is the selected legal domicile.