



LISTEMANN

perfecting materials

Issue: April 2020 Rev0

Page: 1 of 2

General Terms and Conditions for Deliveries and Services

1. Scope of application

- 1.1. These General Terms and Conditions for Deliveries and Services ("GTC") shall apply to all contracts for deliveries and services of Listemann AG Werkstoff- und Wärmebehandlungstechnik and Listemann Technology AG ("*LISTEMANN*"). These GTC shall apply exclusively. Conflicting, deviating or additional terms and conditions of the Buyer are only valid if they have been explicitly accepted by *LISTEMANN* in writing.
- 1.2. Deliveries and services in the sense of these GTC include especially the thermal processes heat treatment, brazing, sintering, thermal spraying and electron beam welding as well as consulting in this regard.

2. Scope of delivery and services

Deliveries and services of *LISTEMANN* are listed conclusively in the order confirmation. Services not included are charged separately.

3. Order placement and information obligations; Export control

- 3.1 The order must contain all information important for *LISTEMANN*, such as article description, number of pieces, dimensions, weight, material specification, pre-treatments, as well as treatment and testing specifications.
- 3.2 Changes in material composition and pre-treatment must be communicated to *LISTEMANN* in time and agreed upon with *LISTEMANN*.
- 3.3 Offers by *LISTEMANN* are subject to confirmation. The contract is considered concluded when *LISTEMANN* accepts the order of the Buyer by order confirmation or begins with the execution of the agreed delivery or service.
- 3.4 The technical documents necessary for the execution of the contractually agreed delivery and service must be made available to *LISTEMANN* by the Buyer. *LISTEMANN* is not liable for damages caused by missing, wrong or inaccurate information; the liability according to clause 11 remains unaffected. Delivery and service deadlines are automatically extended in a reasonable scope if the Buyer does not meet his contractual obligations or other obligations or duties to cooperate.
- 3.5 Offers by *LISTEMANN* regarding the production, processing or treatment of goods are subject to the provision that their fulfilment is not subject to any restrictions due to national or international (in particular Swiss, EC and US) export control regulations, e.g. embargos or other sanctions.
- 3.6 When re-exporting or transferring the goods to third parties at home or abroad, the Buyer shall comply with the applicable national and international (in particular Swiss, EC and US) export control laws. With regard to international export control regulations of third countries, this shall only apply insofar as compliance with them does not constitute a violation of the provisions of Regulation (EC) No. 2271/96 and/or Section 7 of the AWW.
- 3.7 The Buyer shall inform *LISTEMANN* before conclusion of the contract if the subject matter of the contract falls under the Swiss Goods Control Act (Schweizerische Güterkontrollgesetz, GKG) and/or War Material Act (Kriegsmaterialgesetz, KGB) and/or is subject to US export control according to EAR (Export Administration Regulations) and/or ITAR (International Traffic in Arms Regulations) or other country-specific regulations for dual-use or military equipment.
- 3.8 The Buyer is obligated to provide *LISTEMANN* upon request immediately and free of charge with all potentially export control relevant information and documents (e.g. end-use declarations, Buyer/participant data, transport routes/means of transport, etc.) for a period of up to three years after the complete execution of the contract.

4. Provided objects and technical documentation

- 4.1 The Buyer has, as far as applicable, to provide material, tools, devices and all other items (e.g. finished and semi-finished products), which he provides to *LISTEMANN* for the fulfilment of an existing contract with *LISTEMANN* ("Provided Items") and further Technical Documentation necessary for the execution of the contract and specified in the contract (e.g. current drawings, descriptions, diagrams, instructions, specifications, all together the "Technical Documentation"). The Buyer confirms that he/she is fully entitled to make the Provided Items and the Technical Documentation available to *LISTEMANN*.
- 4.2 The Buyer ensures that the Provided Items are suitable for the contractually agreed deliveries and services and that they correspond to the Technical Documentation. *LISTEMANN* only checks Provided Items to be treated for weight, number of pieces and obvious defects. There is no further obligation to inspect, unless the parties to the contract have made a different agreement. In case of delivery of Provided Items, the Buyer must indicate the number of pieces and description of the Provided Items on an accompanying document (delivery note). For all deliveries, the following additional information is required on a pro forma invoice: unit price and total value, number of packages, gross and net weight, country of origin of the goods, type of transport upon delivery and desired type of transport for return.

5. Prices; Terms of payment

- 5.1 Unless otherwise agreed, the net prices of *LISTEMANN* at the time of the conclusion of the contract plus the legal VAT and excluding insurance, transport and packaging always apply.
- 5.2 Invoices of *LISTEMANN* are payable within 30 working days after delivery or acceptance and receipt of invoice without any deduction and in Swiss Francs or another currency stated by *LISTEMANN*. The day of receipt of payment is decisive. Delivery in the aforementioned sense means the receipt of *LISTEMANN*'s dispatch/collection readiness notice by the Buyer or - if so agreed - the delivery to the transport person.

6. Rights of set-off and retention

The Buyer shall only be entitled to set off and assert a right of retention if his counterclaim is undisputed, ready for decision or has been established as final and absolute.

7. Delivery and service modalities

- 7.1 Delivery dates and service times must be agreed individually in writing.
- 7.2 *LISTEMANN* is not liable for impossibility or delay as far as they are based on force majeure or other events that were not foreseeable at the time of contract conclusion and for which *LISTEMANN* is not responsible (e.g. operational disturbances of any kind, fire, weather, floods, terrorism, transport delays, strikes, legal lockouts, lack of manpower, energy or raw materials).
- 7.3 A contractual penalty for delayed delivery requires a special written agreement.
- 7.4 The Buyer has no right to withdraw from the contract in case of late delivery. The liability of *LISTEMANN* for the compensation of any damage that has arisen from minor, culpable delay is hereby excluded. For other damages caused by delay, the maximum liability is limited to the amount of the agreed remuneration.
- 7.5 This limitation does not apply in the case of unlawful intent or gross negligence on the part of *LISTEMANN*, but it does apply in the case of unlawful intent or gross negligence on the part of auxiliary persons.

8. Dispatch, transport and insurance

- 8.1 Special requirements regarding dispatch, transport and transport insurance must be announced by the Buyer in time.
- 8.2 If agreed upon with the Buyer, *LISTEMANN* will ship the object of delivery and service to the destination specified by the Buyer. This is done - also with regard to packaging - at the expense of the Buyer. *LISTEMANN* is entitled to determine the type of dispatch (especially the transport company and the dispatch route) and the packaging according to its dutiful discretion. Unless otherwise agreed, the Buyer is responsible for insurance against damages of any kind.



General Terms and Conditions for Deliveries and Services

- 8.3 Complaints in connection with dispatch or transport must be made by the Buyer upon receipt of the deliveries or the freight documents immediately to the last forwarding agent, carrier or the last transport person.
- 9. Transfer of risk; Acceptance; Inspection of the object of delivery and performance**
- 9.1 The risk shall pass to the Buyer at the latest upon delivery or acceptance of the delivery item or service.
- 9.2 As far as the deliveries and services require a formal acceptance by law or according to a separate contractual agreement, the Buyer is obligated to a formal acceptance upon LISTEMANN's request. Acceptance cannot be refused due to insignificant defects.
- 9.3 Deliveries and services are also considered as accepted if LISTEMANN has set a reasonable deadline for the acceptance by the Buyer and the Buyer has not refused the acceptance within this deadline, stating at least one significant defect. Deliveries and services of LISTEMANN are also considered as accepted if the Buyer uses, installs or otherwise (further) processes the deliveries and services.
- 9.4 If the Buyer is in default of acceptance, he/she shall bear the costs for additional expenses (e.g. storage and storage costs).
- 9.5 LISTEMANN will inspect the object of delivery and service as far as is usual before dispatch. In doing so, it shall use the current state of the art. If the Buyer demands further tests, these are to be agreed upon separately and paid for by the Buyer.
- 9.6 In the case of brazing treatments, the Buyer is obligated to test the brazed joints with regard to required characteristics, such as tightness and strength, before and after further processing or before use of the delivery and service item. An inspection by LISTEMANN is only carried out if this is agreed upon separately before placing the order.
- 9.7 LISTEMANN creates a treatment and test protocol on explicit request of the Buyer and against separate payment. The Buyer has to check the treatment and test protocol upon delivery of the object of delivery and service and has to complain about deviations from the contractual agreement immediately. If he fails to do so, the treatment and test protocol shall be deemed approved.
- 9.8 With the conducted tests LISTEMANN only checks the compliance with the characteristics specified by the Buyer, but not the functionality of the delivery and service item. In particular, LISTEMANN is not subject to any product observation obligations.
- 9.9 Complaints are to be substantiated by the Buyer, whereby the object of delivery and service complained about is to be presented to LISTEMANN upon request. Complaints must be asserted to LISTEMANN as follows:
- in case of obvious defects immediately, at the latest 2 weeks after delivery;
 - in case of hidden defects immediately, at the latest, however, 2 weeks after discovery.
- If no complaint is made within this period, the delivery and service items are considered approved.
- 10. Liability for defects**
- 10.1 LISTEMANN is liable for defects according to the legal regulations, as far as nothing else is regulated in this clause 10. LISTEMANN always has the right to choose the type of supplementary performance.
- 10.2 Claims for defects of the Buyer expire within 12 months after delivery or acceptance. If the object of delivery and service is used for a building in accordance with its usual use and causes its defectiveness, the statutory period of limitation applies. The same applies if the defect was caused by LISTEMANN or its vicarious agents intentionally or through gross negligence. Clause 11 applies to claims for damages of the Buyer.
- 10.3 Rejects caused by the Buyer as a result of wrong material or treatment information do not fall under the definition of defects. Unless otherwise agreed, scrap quantity tolerances of max. 3% of the total lot shall apply to serial parts.
- 10.4 LISTEMANN is not liable for defects caused by missing, incorrect, incomplete or inaccurate information provided by the Buyer and/or which are due to the unsuitable nature of the Provided Items (e.g. material defects, processing residues or other foreign objects), as far as the unsuitability of the Provided Items was not obvious to LISTEMANN.
- 10.5 LISTEMANN is not liable for errors and damage that have occurred despite proper handling. This includes cracks, distortion (changes in shape and dimensions), strength or tightness of brazed and welded joints, density and freedom from pores of sintered parts, damage caused by straightening work and unsuitable further processing and damage to workpieces that have already been treated elsewhere.
- 10.6 Claims due to violation of intellectual property rights or copyrights of third parties are excluded, if this violation is based on an instruction of the Buyer, an unauthorized modification or non-contractual use of the delivery or service item by the Buyer.
- 11. Liability**
- 11.1 LISTEMANN is liable according to the legal regulations in case of intent, gross negligence, culpable injury of life, body or health, in case of assuming a guarantee or a procurement risk and in case of liability according to the product liability law as well as in other cases of legally binding liability.
- 11.2 LISTEMANN is also liable in case of a simple negligent violation of essential contractual obligations, i.e. such obligations, the fulfilment of which makes the proper execution of the contract possible in the first place and on the compliance of which the Buyer regularly relies and may rely. In this case, LISTEMANN's liability is limited to the amount of damages typical for the contract and foreseeable at the conclusion of the contract.
- 11.3 Any further liability is excluded.
- 11.4 As far as the liability of LISTEMANN is excluded or limited according to the aforementioned regulations, this also applies to the personal liability of the organs, legal representatives, employees and other assistants of LISTEMANN.
- 12. Duty of notification in case of official measures**
- If official measures take place at or against the Buyer (especially in the area of product safety law), which affect deliveries and services of LISTEMANN (especially official measures of market surveillance, for example the order of a withdrawal or a recall), or if the Buyer intends to take such measures himself (especially a notification to a market surveillance authority or a recall), he will inform LISTEMANN immediately in writing. The same applies in each case if the Buyer is informed of such measures by or against his customer(s).
- 13. Applicable law; Place of jurisdiction; Severability clause**
- 13.1 Swiss law shall apply to these GTC, excluding the UN Convention on Contracts for the International Sale of Goods (CISG). Vaduz/Liechtenstein is agreed to be the exclusive place of jurisdiction for all claims arising from the contractual relationship if the Buyer is a merchant, a legal entity or a special fund under public law or has no general place of jurisdiction in Liechtenstein.
- 13.2 Should individual provisions of this contract be or become invalid or ineffective in whole or in part, the effectiveness of the remaining provisions shall not be affected. The same applies in the event that the contract does not contain a provision that is necessary in itself.