

## **General terms of business for contract hardening plants**

Industrieverband Härtetechnik (IHT), Hagen, recommends the following general terms of business on a non-binding basis to its members for use in business transactions. Recipients are at liberty to follow the recommendation or to use other general terms of business.

### **I. General terms and conditions**

#### **I.1 Place of performance, jurisdiction and applicable law**

The place of performance and venue for jurisdiction in respect of all goods and services supplied and for all payments shall be the place of the contractor's registered office. The contract shall be subject to the law of the Federal Republic of Germany. The United Nations convention on contracts relating to the international sale of goods of 11 April 1980 shall not apply.

#### **I.2 Contractual conditions**

The contractor's offers shall be subject to alteration. Unless any agreements to the contrary are made in writing, all orders received shall only be performed on the following terms and conditions. The customer's purchase conditions, expressed in forms, and other terms and conditions of business shall not be recognized, even if they are not expressly contradicted. The contracting parties | shall immediately confirm any oral agreements in detail and in writing.

#### **I.3 Pricing**

The prices shall be in Euro, ex works, excluding VAT and the costs of any packaging. If substantial changes occur to the order-related costs after the contract has been entered into, each contracting party shall be entitled to request a reasonable adjustment of the prices, taking these factors into account.

#### **I.4 Payment**

Invoices shall be payable without any deduction immediately after receipt. If the due date is exceeded, the contractor shall be entitled to charge interest for delay at the base rate charged by the bank to the contractor for current account loans, but in any event not less than 8% above the base interest rate of the European Central Bank. The customer shall not be entitled to exercise a right of retention or a set-off, unless counter-claims are undisputed or recognized with legal finality.

#### **I.5 Lien**

The contractor shall have a lien on the customer's workpieces, in respect of all present and future claims, as soon as they are handed over for heat treatment. The legal consequences arising from the provisions of Sections 1204 et seq. of the German Civil Code (Bürgerliches Gesetzbuch – BGB) and Insolvency Regulations (Insolvenzordnung) shall apply accordingly.

### **II. Terms of performance and supply**

## II.1 Information from the customer

All workpieces which are handed over for heat treatment must be accompanied by an order or delivery note containing the following information:

- a) description, number of units, net weight, value of the parts and nature of the packaging;
- b) material quality (standard designation and steel grade and steel manufacturer);
- c) the desired heat treatment, particularly:
  - aa) in the case of carburizing steels pursuant to DIN 6773, either the required carburization depth with carbon content limit (e.g. carburization depth  $0.35 = 0.8 + 0.4$  mm) or the prescribed carburization hardening depth with reference hardness value and surface hardness (e.g. carburization hardening depth  $550 \text{ HV1} = 0.2 - 0.4$  mm, surface hardness = minimum  $700 \text{ HV5}$ );
  - bb) in the case of hardened steels, the required tensile strength. The Brinell hardness test on the surface shall be conclusive for the purposes of ascertaining the tensile strength, unless otherwise agreed;
  - cc) in the case of tool steels and high-speed steels, the desired level of hardness according to Rockwell or Vickers;
  - dd) in the case of nitriding steels, the required nitriding case depth;
  - ee) in the case of induction hardening and flame hardening, the required surface hardening depth, with reference hardness value and surface hardness and the position of the region to be hardened;
  - ff) in the case of salt bath nitrocarburizing and short-time gas nitrocarburising, either the duration of the treatment or the desired compound layer thickness;
- d) details of the desired test procedure, the test facility and the test load (see DIN test standards);
- e) any additional information or requirements necessary for the success of the treatment (see DIN 6773, DIN EN 10 052, DIN 17021, DIN 17023).

When partial hardening is required, drawings must be attached showing which areas must be hardened and which must remain soft. If similar workpieces are produced from different molten steel casts, this must be stated. Likewise, any particular requirements relating to dimensional accuracy or the surface condition must be noted on the delivery documents. The customer must in particular point out any welded or soldered workpieces and any which contain sealed volumes.

The contractor shall, within the scope of his knowledge, check the content and completeness of the information from the customer. The contractor shall notify the customer in the event of legitimate doubts as to a successful heat treatment.

## II.2 Delivery period

The delivery period shall begin as soon as the contracting parties have clarified the order and the customer has complied with all requirements. For technical processing reasons, the delivery period shall only be agreed on an approximate basis and shall be appropriately extended, even if it causes a delay in delivery, if unforeseeable obstacles arise which the contractor was unable to prevent in spite of exercising reasonable care in the circumstances of the case.

“Unforeseeable obstacles” shall include any multiple treatments which were not initially apparent, unavoidable and serious operational breakdowns in the contractor’s own works which are caused for example by strike, lockout, accidents, transport difficulties, shortage of fuel, problems with the energy supply, and by operating breakdowns in his supplier’s works. The contractor shall provide evidence in this respect.

If it is apparent to the contractor that he will not be able to comply with the delivery period, he shall immediately notify the customer thereof, give him the reasons for this and name a possible new delivery date.

### **II.3 Transfer of risk**

Unless otherwise agreed, the goods which are to be heat treated shall be delivered by the customer at his own expense and risk and collected by him after completion.

The risk shall pass to the customer when the goods are handed over to the railway company, the haulier or the freight forwarder or at the start of storage, but in any event no later than when they leave the works or the store, and this shall apply even if the contractor has delivered and handed over the goods with his own fleet of vehicles.

### **II.4 Testing**

The goods which are heat treated shall be tested to the normal extent within the industry and, if applicable, in accordance with the customer's instructions, before they leave the hardening works. Additional testing and analyses shall take place only on the basis of special agreements.

The contractor's acceptance test shall not discharge the customer from his obligation to test the goods on receipt.

### **II.5 Material defects**

The required heat treatment shall, after the order is given, be carried out as a service with the necessary care and appropriate means on the basis of the information provided pursuant to Clause II.1. No warranty is given as to the success of the heat treatment, e.g. as to the absence of distortion and cracks, surface hardness, effective hardness, hardness penetration, possibility of electroplating, etc., particularly because of possible variations in hardenability of the material used, latent defects, disadvantageous shapes or because of possible changes which have occurred in the preceding work process.

If the heat treatment is unsuccessful, without this being the fault of the contractor, because for example the information given by the customer as required under Clause II.1 was incorrect, because the contractor was not and could not have been aware of latent defects in the workpiece before the heat treatment was performed or because characteristics of the material used, the shape or the condition of the workpieces supplied made a successful heat treatment impossible but the contractor was not and could not have been aware of this, the treatment fee shall nevertheless be payable. Successful re-treatments shall be charged for separately, subject to the stated requirements.

The contractor shall be notified in writing of any defects immediately after the transfer of risk. Complaints about latent defects shall be made in writing immediately after they are discovered, but in any event no later than 12 months after the transfer of risk. This time limit shall also apply to the lapse of claims for material defects except where the law mandatorily prescribes longer time limits, particularly in respect of defects in an assembly and in workpieces which have, in accordance with their normal use, been used for an assembly and which have caused it to be defective.

In the event of any complaint, the contractor must be given an opportunity for testing and re-treatment. If the contractor fails to comply with his obligation to carry out re-treatment, or fails to do so in accordance with the contract within a reasonable period, the customer shall be entitled, after a reasonable time limit set in writing has expired, to reduce the treatment fee, to cancel the contract or to carry out the necessary re-treatment himself or by a third party at the contractor's expense. In respect of damage to the goods which are heat treated and other damage caused by the contractor, the contractor shall only be liable for such loss as is typical of the contract and reasonably foreseeable.

The customer shall be responsible for proving any defect.

The guarantee periods and restrictions shall also apply to any subsequent treatment.

If workpieces which are the subject of complaint are treated or further processed without the contractor's written agreement, the guarantee obligation shall expire.

No shortage claims can be made in respect of waste occurring to a reasonable extent in the hardening process in respect of mass-produced articles and small parts which is normal in the trade and caused by the process. If the contractor carries out straightening operations at the customer's request, he shall give no warranty in respect of any breakage occurring at this time. If stopping-off against carburization or nitriding is used, it is likewise not possible to give any warranty as to success.

## **II.6 Liability**

With regard to the heat treatment which is to be carried out, the customer shall be responsible for the workpieces being manufactured in accordance with the rules of the art, for the correctness and completeness of the information required under II.1 and for the heat treatment instructions being in accordance with the subsequent use. Unless any mutual written agreements have been made, the contractor shall not be liable for damage resulting from a treatment proposed by him and approved by the customer.

The contractor shall proceed on the basis that the customer, for his part, carries out the tests necessary to comply with the obligation of suitability for use. The contractor shall not recognize claims of an indirect nature, especially claims arising from damage to items which are not identical to the workpiece.

The above restrictions on liability shall not apply in the event of deliberate acts, gross negligence on the part of the contractor's lawful representatives or executives or culpable breach of substantial contractual obligations. In the event of culpable breach of substantial contractual obligations, the contractor shall, except in cases of deliberate acts or gross negligence on the part of his lawful representatives or executives, only be liable in respect of the damage which is typical of the contract and reasonably foreseeable.

The restriction on liability shall also not apply in cases in which, under the German Product Liability Act (Produkthaftungsgesetz), there is liability for personal injuries or damage to property in respect of items used privately because of defects in the products supplied. The restriction shall also not apply in the case of death, physical injury or damage to health or if the warranted characteristics are absent or if a guaranteed quality is absent, if and to the extent that it was the specific purpose of the warranty or guarantee to cover the contracting party against damage which had not arisen in the heat treatment goods themselves.

Where the contractor's liability is excluded or restricted, this shall also apply to the personal liability of his employees, workers, colleagues, lawful representatives and various agents. The statutory provisions as to the burden of proof shall remain unaffected by this.

## **II.7 Partnership clause**

Appropriate account shall be taken, in good faith, of the economic circumstances of the contracting parties, the nature, extent and duration of the business relations and the value of the heat treatment services in respect of all compensation payments, particularly in the level of the compensation.

Notice of the General Terms of Business for contract hardening plants was given to the Federal Monopolies Office in Berlin on 1 April 2003 pursuant to Section 22(3)(2) of the German Act prohibiting the restriction of competition (Gesetz gegen Wettbewerbsbeschränkung), and they were published in Bundesanzeiger No. 74 on 16 April 2003.

The original German version of the general terms of business for contract hardening plants is valid for all cases of doubts.

### **Please notice:**

The **DIN 6773** standard mentioned in II.1 "Information from the customer" was replaced by **DIN ISO 15787** standard in February 2008.