General Conditions of Sale and Delivery - Tools

The present Conditions of Sale and Delivery are valid for any sale and delivery from SP GIBO A/S (hereinafter referred to as SP GIBO A/S) unless otherwise agreed in writing. The conditions comprise all kinds of production equipment related to item such as moulds, assembling equipment, fixture and the like (hereinafter referred to as Tools).

1. Delivery

Delivery shall be in accordance with Incoterms 2000 EXW (ex works).

Any delivery time stipulated in offers or in order confirmations means that delivery has taken place when SP GIBO A/S has sent a sample piece representing the first approved shot to the Buyer. Sample piece representing the first approved shot (hereinafter referred to as FOT (First Out of Tool)) means the item as it is after the first test moulding.

2. Payment

All invoices are payable in DKK unless otherwise agreed in writing. Interest of 1% per month will be charged from the due date.

The price agreed does not include any other services than the Tool unless otherwise agreed in writing.

3. Reservation of Property and Lien

SP GIBO A/S owns the Tool absolutely and shall be entitled to withhold the Tool and the sample pieces until settlement in full including interest, costs etc. has taken place.

4. Notice of Defects

Any risk of the Tool passes to the Buyer at the time of delivery. Delivery means physical transfer or forwarding of FOT. Any complaint of the Tool shall be notified in writing to SP GIBO A/S without delay and not later than 8 days after delivery has taken place. If the Buyer fails in doing so his right to complaints will become void. SP GIBO A/S is entitled to and shall remedy any defects. SP GIBO A/S decides whether to repair, replace or reinstate any defects. The liability of SP GIBO A/S for defects is limited to one year after delivery has taken place.

SP GIBO A/S shall not 'shot guarantee' any tools as regards tools unless agreed between the parties in writing. If others than SP GIBO A/S use the Tool, the guarantee shall become void in case the Tool is not being maintained and used correctly.

5. Construction and Design Liability

The liability of SP GIBO A/S does not comprise the construction of item among this design and construction of the items of the Buyer. If the Buyer has specific requirements of the geometry, surface or mechanical properties of the item this shall be agreed in writing.

6. Delay

In case of delay the Buyer shall be notified hereof and has the right to declare the Contract avoided. However, the delay must be essential to the Buyer and the delay shall be caused by SP GIBO A/S. In that case – and after delivery should have taken place – the Buyer shall in writing send a request to SP GIBO A/S with a demand for delivery within 3 weeks. If delivery does not take place within this time limit the Buyer is entitled to declare the Contract avoided. In case SP GIBO A/S fully or partly has produced tools for the Buyer the Buyer is not entitled to declare the Contract avoided, unless the Buyer pays the cost price for the tools whether finished or not.

Delivery is deemed to have taken place when the first FOT from the Tool has been sent to the Buyer. If any delay from SP GIBO A/S this delay is deemed to be stopped, when SP GIBO A/S sends the first sample piece to the Buyer. Delivery time does not comprise succeeding trimmings of the Tool, unless otherwise expressly stated in writing.

Immediately after the Contract is entered into the Buyer shall send drawings, specifications and other documentations required by SP GIBO A/S to enabling the start of the construction of the tools. If these documents are sent later than agreed upon the delivery time agreed becomes void.

If the Buyer requires trimmings or improvements of a tool the initial delivery time become void.

7. Insurance, storage and maintenance of tools

The Buyer shall take out an insurance policy covering the tools being possessed of SP GIBO A/S. The insurance shall cover fire, theft, vandalism and accidental loss. In case SP GIBO A/S keeps the tools SP GIBO A/S shall keep the tools of the Buyer in a proper manner. In case the tools are kept without being used the Buyer shall pay a yearly rental of DKK 1,500.-. If tools have not been used for 3 years SP GIBO A/S is entitled to send back the tools for the Buyer's account.

8. Product Liability

The Buyer shall indemnify SP GIBO A/S against any loss as a result of SP GIBO A/S being ordered to pay damages to a third party for loss and claim, for which SP GIBO A/S according to this item is not responsible for towards the Buyer.

SP GIBO A/S shall not be responsible for damage caused by the tools to:

a) real property or chattels while the Buyer is in possession of the tools
b) products manufactured by the Buyer or products entered into there or for damage to real property or chattels which these products as a consequence of the tools may cause

In no case SP GIBO A/S is responsible for loss on operations, loss of earnings or other losses as a consequence hereof.

If according to above a third party raises a claim against one of the parties for liability in damages this party shall without any delay inform the other party duly.

SP GIBO A/S and the Buyer are mutually liable to be brought an action against at the court or arbitration hearing the claim for damages which has been raised against one of the parties on the basis of a damage or a loss claimed caused by the tools. Mutual relations between the Buyer and SP GIBO A/S shall however always be settled by jurisdiction agreed elsewhere in the conditions (item 10).

9. Exclusion of Liability and Force Majeure

Under below circumstances SP GIBO A/S is exempt from liability if the circumstances arise after the time the Contract was entered into and under these circumstances SP GIBO A/S is exempt from performing the Contract:

Strike, lockout, business disruptions, late delivery caused by sub-suppliers and similar cases postponing the delivery date proportionally. War, civil disturbances, natural disasters and similar events which can neither be controlled nor be avoided or anticipated by the parties, substantial shortage of raw material, confiscation, exchange controls or intervention of the authorities entitle SP GIBO A/S – completely or partly – to terminate any offers and standing orders. The party claiming force majeure shall inform the other party in writing by express mail / telefax within 14 days after the force majeure arises.

10. Disputes

Any dispute between the parties arising out of or in connection with this Agreement shall be subject to the jurisdiction of Danish laws. The parties shall at any time try to settle disputes amicably. If not, the dispute shall be settled by The Danish Institute of Arbitration in Copenhagen. SP GIBO A/S may, however, decide to institute proceedings at the ordinary courts.