

Version of 10 December 2002

General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components

I. Scope of the General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components

1. These General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components apply to the present and all future contracts with the customers of the company PICKER GMBH & CO. KG – hereinafter referred to as PICKER – involving the processing, in particular the galvanizing or coating of components provided by the customer, by PICKER. Any obligations additionally assumed by PICKER shall not affect the validity of these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components.

2. PICKER shall not be bound by conflicting or deviating general **terms and conditions of the Customer**, even if PICKER does not expressly oppose, or performs services or accepts services of the Customer without reservation notwithstanding any conflicting or deviating general terms and conditions of the Customer. Likewise, PICKER is not bound to the extent that the general terms and conditions of the Customer deviate from statutory provisions, regardless of the content of these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components.

II. Conclusion of contracts

1. Before concluding a contract, the Customer is obligated to **expressly point out to PICKER** if the components to be processed have to be suited not exclusively for customary use, or are used under unusual conditions or under conditions representing a particular health, safety or environmental risk or requiring increased load.

2. If the Customer's **order** deviates from the proposals or the offer provided by PICKER, the Customer shall particularly emphasize the deviations as such.

3. All orders accepted in particular also by employees of PICKER shall take effect **exclusively** by the written order acceptance slip or the **written order confirmation** of PICKER. The actual acceptance of components for processing, other behavior of PICKER or silence does not entitle the Customer to rely on the conclusion of the contract. PICKER may issue the written order acceptance slip or the written order confirmation **up to the expiration of 14 calendar days** after the Customer's order was received by PICKER.

4. The written order acceptance slip or the written order confirmation of PICKER is decisive for the scope of the entire **content of the contract**. Subject to any objections of the Customer which are made at short notice and in writing, the written order acceptance slip or the written order confirmation of PICKER shall bring the contract into effect, even if it does not contain all topics on which the Customer wanted to make an agreement, or otherwise deviates from the statements of the Customer, in particular also with regard to the exclusive applicability of these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components. Specific wishes of the Customer, in particular guarantees or other

covenants with regard to the processing of the components or the performance of the contract therefore require express written confirmation in each case.

5. The **employees** of PICKER are not authorized to refrain from the requirement of the written order acceptance slip or written order confirmation, or to enter into commitments with a deviating content, or to declare guarantees. **Modifications** of the concluded contract shall also require a written confirmation of PICKER.

III. Obligations of PICKER

1. PICKER shall perform all hot-dip galvanizing works in accordance with DIN EN ISO 1461, centrifugal galvanizing in accordance with DIN 267 Part 10, and coating works in accordance with DIN EN ISO 12 944. PICKER is not obligated to perform **services** which are not specified in the written order acceptance slip or written order confirmation or in these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components.

2. PICKER is obligated to supply **pieces of an average kind and quality**, taking into account the tolerances which are usual in the trade with regard to the type, quantity, quality and packaging. PICKER is entitled to perform partial deliveries and bill them separately.

3. PICKER shall store the components handed over and shall treat them with the same care PICKER usually applies in its own matters. PICKER will only pay damages for damages occurred to the **components** to the extent that PICKER is obligated to do so according to the provisions of Section VIII. Any further liability of PICKER is excluded. PICKER is not obligated to take out any insurance.

4. Agreed **delivery times** require that the Customer hands over the components to be processed at the time indicated in the order confirmation, submits any documents, permits or approvals to be obtained in due time, makes down payments as agreed, and performs all other obligations incumbent on it in due time. Apart from that, the delivery times specified by PICKER are always approximate values. The delivery date is observed if PICKER has notified the Customer by the delivery date that the components are ready for delivery. PICKER is entitled to delivery prior to the agreed date.

5. PICKER is entitled to perform contractual obligations **after the scheduled date**, if the Customer is informed about the delay and a period for subsequent performance is notified to the Customer, unless subsequent performance is unacceptable to the Customer, or the Customer refuses the offer of subsequent performance within a reasonable period. In case of subsequent performance, PICKER shall refund the additional expenses of the Customer which are demonstrably necessary due to the delay, to the extent that PICKER is liable for damages according to the provisions of Section VIII.

6. PICKER is not obligated to take back **packaging material** (transport, sales or other packaging) from the Customer. Notwithstanding any legal provisions, the Customer shall reuse, recycle or otherwise dispose of the packaging as prescribed otherwise at its own expense. The provision above shall apply regardless of whether the packaging is charged separately to the Customer or not.

7. Without waving any further statutory rights, PICKER is entitled to the **defense of uncertainty** according to § 321 of the German Civil Code (BGB) in particular if the Customer insufficiently performs its obligations to PICKER or third parties, or is slow to pay, or the limit set by a credit insurer is exceeded or will be exceeded with the forthcoming delivery. Instead of the defense, PICKER may make future works – including already confirmed works – dependent on prepayment. PICKER is not obligated to continue with its services as long as services provided by the Customer to avoid the defense do not offer sufficient security or may be subject to appeal.

IV. Obligations of the Customer

1. The Customer shall deliver all components handed over to PICKER for processing together with a delivery note, which contains a description of the component and details on the **number of pieces**. PICKER can check the number of pieces only by random samples.

2. The Customer shall ensure that it will hand over to PICKER exclusively components which are **suitable for galvanization** according to DIN EN 10025 and designs which are **appropriate for galvanization**, which are suitable for hot-dip galvanizing due to their chemical composition and their mechanical characteristics. PICKER may verify their suitability only by visual inspection. Steel materials according to other standards and/or with other characteristics can be accepted by PICKER for processing only after express written confirmation in the order acceptance slip or the order confirmation.

V. Price and payment

1. Notwithstanding any further obligations to secure or prepare payments, the compensation shall be **due for payment** upon the issue of the invoice. The amount of the interest payable after the due date provided by law shall be determined according to § 288 BGB. Periods granted for payment will cease to apply and receivables will be immediately due for payment if the opening of insolvency proceedings on the Customer's assets is applied for, if the Customer fails to meet material obligations owed to PICKER or third parties without a justified cause, or if the Customer has provided inaccurate information on its creditworthiness.

2. The **calculation basis** for determination of the price is the original weight of the galvanized goods determined by PICKER. If no price has been agreed, the list price of PICKER which is prevailing at the delivery date shall apply. PICKER reserves the right to charge a minimum price for small orders.

3. The galvanizing and coating works incumbent on PICKER are covered by the **price**. Cleaning and straightening works as well as packaging are charged separately, if they exceed the requirements of DIN EN ISO 1461. If other ancillary works are necessary, PICKER is entitled to charge surcharges. Such ancillary works include in particular the removal of old paint coats or old zinc coatings, the subsequent placement of galvanizing openings, and dipping components twice.

4. Covenants for **cash discounts** must be shown in each individual case in the written order confirmation of PICKER, and shall apply only under the condition of timely and full payment.

5. The **payments** shall be transferred in EUROS without deduction and free of charge through the banking institution designated by PICKER. **Timeliness** of the payment depends on the time when the amount is credited to the bank account without reservation.

6. PICKER may **set off** incoming payments at its own discretion against the accounts receivable from the Customer by virtue of its own or assigned rights at the time of payment.

7. Rights of the Customer to **set-off** against the claims of PICKER are excluded, unless the counterclaim is founded in the Customer's own right and has either been legally established by a court or is due and undisputed or has been accepted by PICKER in writing.

8. Rights of the Customer to **withhold** the payment or to raise defenses are excluded, unless the Customer is entitled to this according to § 641 para. 3 BGB or PICKER has materially violated obligations which are due to and arising from the same contractual relationship in spite of a written warning, and has not offered appropriate security.

VI. Warranty

1. Without waiving the statutory exclusions or restrictions of responsibility of PICKER, the goods are considered to have a **material defect** if they deviate significantly from the kind, quantity or quality agreed in the written order acceptance slip or the written order confirmation, taking into account the provisions in Section III., or in the absence of agreed quality, if they deviate significantly from the quality customary in Arnsberg, or if it is obvious that they are not suitable for the use which is customary in Arnsberg. Rejects and shortfalls up to 5% in case of small parts delivered as bulk material and white rust at the components which does not impair corrosion protection do not constitute material defects.

2. Unless expressly provided otherwise in the written order acceptance slip or the written order confirmation, PICKER is in particular **not responsible** to ensure that the processed components are suitable for any use other than the customary use, or that they fulfill any further requirements of the Customer. PICKER is not liable for material defects arising after the time when the risk has passed. PICKER is not responsible if the Customer has handed over materials or designs which are unsuitable for galvanizing or coating. This applies in particular if stress results in deformations and cracks.

PICKER is also not responsible for faults or occurrences to the pieces to be galvanized, which are caused by the base material or prior processing (e.g. rolling defects, peelings, scales, overfolds, rough surfaces, scars, grooves, edges, welding pits, chips, etc.).

3. Also in case of follow-up business, **guarantees** or covenants requested by the Customer always have to be specifically shown in the written order acceptance slip or the written order confirmation. In particular keyword-style descriptions, reference to generally accepted standards and DIN standards, the use of trademarks or quality marks, or the submission of specimen or samples do not by themselves constitute the assumption of a guarantee or covenant. The employees of PICKER are not entitled to grant guarantees or covenants or to make statements on special applications or on the economic viability of the processed components.

4. If the Customer itself or through third parties makes **attempts to remove material defects** without the approval of PICKER, PICKER is released from the warranty obligation, unless they are appropriately removed and PICKER is immediately notified.

5. The Customer shall **immediately** inspect each individual consignment in every respect for visible and typical quality, quantity and other kinds of deviations. Upon their **acceptance**, the components are considered approved. The installation or any other use of the components are considered acceptance. **Notices of defects** have to be made directly to PICKER immediately in writing and exactly stating their type and extent. The employees of PICKER are not entitled to accept notices of defects or issue warranty-related statements.

6. In case of justified complaints, the Customer may request **subsequent performance** from PICKER in accordance with the statutory provisions within a reasonable period after notification of a defect. Imperfections are post-processed with single-component zinc dust coating materials. PICKER is not obligated to pay the expenses incurred for subsequent performance, if they are increased because of relocation or other modifications of the components made after the notice of defects was sent. Shipping costs resulting from a return of a consignment are only at the expense of PICKER if PICKER has expressly requested the return.

7. In case that subsequent performance definitely fails, is impossible or is not performed within a reasonable time, the Customer is entitled according to the statutory provisions to **reduce** the compensation or **withdraw** from the contract after setting a period and notice of refusal within a preclusion period of four weeks after expiry of the deadline. Notwithstanding the Customer's legal remedies, PICKER is always entitled to improve faulty components.

8. Subject to any written confirmed covenants to the contrary, and subject to fraudulent concealment by PICKER, the Customer does **not have any further claims** for defects. Claims for damages according to the provisions in Section VIII. which are established by operation of law remain unaffected thereof.

9. Any claims of the Customer based on defects shall **fall under the statute of limitations** one year after commencement of the respective statutory limitation period. Claims for damages based on intent remain unaffected thereof.

VII. Withdrawal

1. In addition to the provisions in Section VI.-7., the **Customer is entitled** to withdraw from the contract, taking into account the relevant statutory provisions, if the services owed by PICKER have become impossible, PICKER is in delay with the performance of contractual principal obligations, or has otherwise breached duties established by this contract and PICKER is responsible for the delay or breach of duties according to Section VIII.-1.-b). In order for a delay to be considered to exist, it is always necessary without waiving any further statutory requirements also in case of a specified delivery timeframe, to submit a separate written request directly to PICKER after the due date, to perform the service within a reasonable time.

2. Without waiving any further statutory rights, **PICKER is entitled** to withdraw from the contract without compensation if the Customer objects to the application of these General

Terms and Conditions for the Hot-Dip Galvanization and Coating of Components, if the opening of insolvency proceedings on the Customer's assets is applied for, if the Customer fails to fulfill material obligations owed to PICKER or third parties without stating a justifying cause, if the Customer provides inaccurate information on its creditworthiness, if PICKER without fault is not delivered itself properly or in due time, or if PICKER is no longer able to perform its service obligations for other causes with means which are acceptable taking into account its own interests and the justified interests of the Customer, which can be identified upon conclusion of the contract, and in particular the agreed consideration.

VIII. Damages

1. Except for the liability under the Product Liability Act for damages resulting from the culpably injury of the life, body or health, **PICKER is obligated to pay damages** within the scope of this contract and outside the contract without waiving the statutory requirements only in accordance with the provisions below. These provisions shall also apply if any warranty obligations are violated and in case of default:

a) The Customer is primarily obligated in accordance with the provisions in Section III. to accept an offer for subsequent performance, and in accordance with the provisions in Section VI. to accept the **warranty-related remedies**, and may claim damages only for remaining disadvantages, but in no case instead of other legal remedies.

b) PICKER shall be liable only in case of culpable **breach** of material obligations and in case of intentional or grossly negligent breach of other **duties** owed to the Customer.

c) In case of liability, and taking into account the limits according to letter d), PICKER shall replace the proven **loss** of the Customer to the extent in which the loss was **foreseeable** for PICKER as a consequence of the breach of duty upon conclusion of the contract with regard to the occurrence and amount of the loss and could not have been avoided by the Customer. The Customer shall **inform** PICKER in writing before contract conclusion on any particular risks, risks of atypical losses and unusual amounts of loss.

d) **PICKER will not assume liability** for lost profit and non-material adverse effects. Apart from that, the **amount of compensation** based on default shall be limited to 0.5% for each completed week of default and a maximum of 5%, and based on other breaches of duty to 200% of the value of the services. This paragraph shall not apply to gross culpability of the bodies or executives.

e) Notwithstanding compliance with the statutory provisions and the provisions set forth in these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components, the Customer may only claim **compensation instead of performance** after having threatened PICKER with the refusal of accepting performance, and in the absence of performance having definitely refused performance to PICKER within a reasonable time after the threat of refusing acceptance.

f) The **limitation period** for contractual claims shall also apply to extra-contractual claims of the Customer against PICKER competing with contractual claims. Provided that PICKER is not liable on account of intent or the Customer's claim has not fallen under the statute of limitations before, taking legal action for damages is subject to a **preclusion period of 6 months**, commencing with the refusal of the payment of damages.

g) The provisions above on the liability of PICKER shall also apply to statutory claims of the Customer for compensation of **wasted expenses** and for the **personal liability** of the employees, workers, staff, representatives and vicarious agents of PICKER.

2. Notwithstanding any further statutory or contractual claims of PICKER, the **Customer** is **obligated to pay damages** to PICKER as follows:

a) In case of **delayed receipt of payment**, the Customer shall reimburse the legal costs of judicial and extra-judicial litigation as well as interest of 8% above the base rate of the European Central Bank.

b) Subject to the Customer's proof that no damage or only considerably less damage was suffered, PICKER shall be entitled in case of **delayed acceptance** or in the case of a release order for delivery which was agreed upon but not made by the Customer after setting a reasonable grace period, to claim **damages at a flat rate** of 15% of the respective delivery amount without proof.

c) The Customer shall compensate PICKER for all damages including lost profit which were caused by the provision of materials which are **not suitable for galvanization** or designs which are **not appropriate for galvanization**.

IX. Contractor's lien and property pledged as collateral

1. There is a **contractor's lien** on the components handed over to PICKER for processing, securing all claims of PICKER that may arise from the business relationship with the Customer.

2. If PICKER hands over the components to the Customer before all claims to PICKER are fully satisfied, **the Customer transfers ownership of the components to PICKER in order to secure** all claims arising from any kind of legal cause, including the principal and secondary claims of PICKER to the Customer that may become due in the future. In the case of current accounts, the respective balance is secured. The Customer shall keep the components safe for PICKER without compensation.

3. If the Customer only has a contingent right to the components, transfer of the property shall be replaced by **transfer of the contingent right**. The Customer grants PICKER with immediate effect the right to waive retention of title by satisfaction of the owner.

4. If the components are assigned to a third party as a security, the **Customer shall assign its claim for retransfer of ownership to PICKER**. This shall also apply to possible claims of the Customer arising from excessive security to owners on account of reservation of title and security. PICKER accepts such assignment.

5. The Customer is obligated to **insure** the components in regard to which ownership according to Section IX.-2. or the contingent right according to Section IX.-3. was transferred to PICKER by way of security, or in respect of which a claim for retransfer of ownership according to Section IX.-4. was assigned to PICKER, against theft, damage and destruction, and on RIETBERGWERKE's request to store the components separately or isolate them in a suitable manner at the Customer's own expense, and to take all measures which are necessary to **comprehensively safeguard the aforementioned rights or claims**. The

Customer herewith irrevocably assigns the full amount of the claims against the insurances to PICKER by way of security, and PICKER accepts such assignment.

6. The Customer shall **inform** PICKER immediately in writing if claims or rights are asserted by a third party with regard to the components in regard to which ownership according to Section IX.-2. or the contingent right according to Section IX.-3. was transferred to PICKER by way of security, or in respect of which a claim for retransfer of ownership according to Section IX.-4. was assigned to PICKER, or with regard to the claims assigned to PICKER, and shall assist PICKER free of charge in the pursuit of its interests. If a **third party** acquires rights to the components, the claims of the Customer to the third party including all rights are herewith irrevocably assigned to PICKER by way of security, and PICKER accepts such assignment.

7. The Customer may **sell** the components in regard to which ownership according to Section IX.-2. or the contingent right according to Section IX.-3. was transferred to PICKER by way of security, or in respect of which a claim for retransfer of ownership according to Section IX.-4. was assigned to PICKER, within the scope of proper business management, and only under the condition that the Customer is not in default with its payments. The Customer is not entitled to any other disposals (e.g. transfer by way of security, pledging, etc.). The Customer herewith irrevocably assigns the full amount of **claims against its buyers** to which the Customer is entitled from the sale of the components, including all ancillary rights, by way of security to PICKER. If the Customer includes the claims arising from a sale into a **current account relationship** with its buyers, it herewith irrevocably assigns the full amount of the current account receivables after balancing by way of security to PICKER, and PICKER accepts the assignments.

8. The Customer remains entitled to **collect** the claims assigned to PICKER on a **trust basis** on behalf of PICKER, provided that it is not in delay with its payments. The Customer is not entitled to assign the claims to third parties. The Customer shall record any incoming payments separately and immediately pass them on to PICKER until the secured claims of PICKER are fully satisfied. If payment is effected by transfer to the Customer's credit institution, the Customer herewith irrevocably assigns the claims it is entitled to against its credit institution to PICKER. If the Customer receives **bills of exchange** to settle the claims against third parties, it herewith irrevocably assigns the claims it is entitled to against its credit institution in case of discounting the bill of exchange to PICKER.

9. The further **treatment and processing** of components which are not fully paid yet, in regard to which ownership according to Section IX.-2. or the contingent right according to Section IX.-3. was transferred to PICKER by way of security, or in respect of which a claim for retransfer of ownership according to Section IX.-4. was assigned to PICKER, shall be carried out on behalf of PICKER as the manufacturer as defined in § 950 BGB without any obligations arising for PICKER. In case of **combination or mixing** with other objects, PICKER shall be entitled to co-ownership in the new object in relation of the invoice amount of the components being subject to retention of title to the invoice amount of the other objects used. The combination with a **real estate** shall be only on a temporary basis. If the component is mixed, blended or combined with other objects in a manner so that the ownership of PICKER lapses by virtue of law, the Customer assigns its ownership or co-ownership rights to the new object to PICKER with immediate effect, and shall keep them in trust for PICKER free of charge.

10. The Customer shall inquire if necessary to what extent the components still serve to secure claims of PICKER. PICKER is not obligated to quantify the extent of the security interests upon any payments without being requested. If components which are not fully paid yet are still in the custody of the Customer, PICKER shall **release components** at the Customer's request, to the extent that the invoice value of the components exceeds the total amount of unsettled receivables by more than 20% and PICKER has no rights of separations with regard to the components. This applies accordingly to the extent that ownership transferred by way of security or the contingent right to components or the claim for retransfer has been replaced by claims against third parties, which are asserted by PICKER on its own behalf. Apart from that, PICKER shall release securities at the Customer's request, to the extent that the market value of the securities exceeds the total amount of the secured receivables by more than 50% plus value-added tax incurred at the time of utilization.

11. If any components which are not fully paid yet, in regard to which ownership according to Section IX.-2. or the contingent right according to Section IX.-3. was transferred to PICKER by way of security, or in respect of which a claim for retransfer of ownership according to Section IX.-4., are in the custody of the Customer and the opening of insolvency proceedings on the Customer's assets is applied for, or the Customer fails to fulfill its obligations owed to PICKER or third parties without stating a justifying cause, PICKER may **revoke the Customer's right to ownership** and demand the surrender of the components without cancellation of the contract. PICKER is not entitled to demand surrender if the insolvency administrator decides to perform the contract and the price of the goods has been paid.

12. In case of withdrawal from the contract, in particular for delayed payment of the Customer, PICKER is entitled to **sell** the components **in the open market** and satisfy its claims from the proceeds. Notwithstanding any other rights which PICKER is entitled to, the Customer is obligated to reimburse PICKER for the **expenses** of contract conclusion, for contract execution so far and dissolution of the contract, as well as the costs for the return of the components, and pay a **user charge** of 5% of the value of the components for each commenced month since the risk has passed.

X. Other provisions

1. To comply with the **written form**, it is neither required to sign documents with one's own name nor with an electronic signature. Notifications by telex or e-mail comply with the written form as well as other forms of text, without it being required that the end of the statement is particularly identified as such.

2. PICKER shall **process the data** about the Customer obtained in connection with the business relationship as defined in the Federal Data Protection Act.

3. Without PICKER waiving any further rights, the Customer shall indemnify PICKER without restriction against all claims of third parties which are asserted against PICKER on the basis of **product liability** or other provisions, to the extent that the liability is based on circumstances which are established by the Customer or other third parties without the express written consent of PICKER, such as the presentation of the product. The exemption shall also include in particular the compensation of expenses incurred by PICKER, and shall be assured by the Customer waiving further preconditions or other defenses, in particular waiving compliance with monitoring and recall obligations, and waiving the defense of limitation.

4. PICKER reserves all property rights, copyrights, other industrial property rights and rights arising from know-how in any illustrations, drawings, calculations or other **documents** provided by PICKER in physical or electronic form as well as software. They shall be kept secret from third parties and must be used exclusively for the performance of the respective contract.

5. Notwithstanding any further statutory provisions, the suspension of the **limitation period** shall also end if the negotiations triggering the suspension are not continued for more than four weeks. Any new start of the limitation period for claims of the Customer shall require the express written confirmation of PICKER in any case.

XI. General contractual bases

1. **Place of performance**, payment and fulfillment of all obligations arising from the legal relationships of PICKER with the Customer shall be Arnsberg. This provision shall also apply if PICKER performs services for the Customer at another place, or any services performed are to be restituted. Arrangements on who bears the costs shall not contain any modification of the above-mentioned provision on the place of performance.

2. Contractual and extra-contractual legal relationships with the Customer shall be governed **exclusively by German law** and the customs prevailing in Arnsberg.

3. All contractual and extra-contractual disputes from or in connection with contracts to which these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components shall apply, will be finally settled according to the Rules of Arbitration of the Deutsche Institution für Schiedsgerichtsbarkeit e.V. (DIS), with the exclusion of the ordinary course of law. The **arbitral tribunal** shall consist of three arbitrators, and in case of disputes with an amount of dispute of less than € 5,000 of one arbitrator. The place of the arbitration proceedings shall be Hanover, the language of the proceedings shall be German. However, PICKER is entitled in the individual case to take action also before the courts having jurisdiction for Rietberg or the state courts at the Customer's place of business or other courts having jurisdiction by virtue of law.

4. If any provisions of these General Terms and Conditions for the Hot-Dip Galvanization and Coating of Components should be or become fully or partially invalid, the other provisions shall remain effective. The parties are obligated to replace the invalid provision by a valid provision that comes as close as possible to the economic meaning and purpose of the invalid provision.

This English version of the General Terms and Conditions is not binding and for convenience and information purposes only. In all cases, the German language version shall prevail.