

## GENERAL TERMS OF DELIVERY AND PAYMENT

### 1. Scope

These Terms and Conditions shall apply for all our deliveries. The customer's General Business Terms shall not apply, even if we do not expressly object.

### 2. Offer and Formation of Contract

2.1 Our offers shall not be binding. A contract for a delivery will come about upon our written confirmation of order.

2.2 All other agreements reached between us and the customer for the purposes of the execution of orders shall be laid down in writing.

2.3 We shall have the right to make partial deliveries ("Teillieferungen"), if and when reasonable for the customer. We expressly reserve the right to supply up to 10 % more or less in respect of weight, quantity or surface area, and up to 20 % more or less in the case of purchase orders for less than 100 kg. This will apply to both the total purchase quantity and each individual partial delivery.

2.4 In the case of master agreements or contracts requiring covering purchases of metal, we may, from 3 months after confirmation of the order, demand any missing binding classifications (e.g. for single call-offs, exact delivery quantities, delivery dates, dimensions and quality characteristics). If the customer does not respond to this demand within 3 weeks, we shall have the right to set a two-week period of grace, after which we shall have the right to withdraw from the contract and demand compensation while refusing delivery.

2.5 If the customer wishes us to perform certain tests and inspections that extend beyond the usual state of the art or that may be required for certain purposes of use, the nature and scope of these tests and inspections shall be agreed no later than upon formation of the contract. If this does not happen, the costs of the tests and inspections shall be borne by the customer.

### 3. Delivery Periods and Default

3.1 If the customer fails to meet contractual obligations – including duties of cooperation or ancillary duties – in time, we shall have the right to extend our delivery periods and dates in accordance with the needs of our production processes without prejudice to our rights from default and to demand compensation for the loss we have suffered, including any additional expenses incurred.

3.2 If we agree upon dates of delivery such dates shall be non-binding save as we have expressly agreed upon otherwise. In the case of default, the customer shall at our request inform us within a reasonable period of time whether he intends to withdraw from the contract or insists on delivery.

3.3 Nos. 9.2 to 9.4 (Liability) infra shall also apply for claims of the customer to compensation on the basis of a delay in delivery for which we are responsible.

3.4 If we have concluded a hedging transaction with our suppliers, unforeseeable and non-culpable circumstances such as interruptions to operations, failure to deliver on time or failure of our suppliers to deliver and shortages of energy and raw materials shall release us from the obligation to deliver for the duration of the interruption and to the extent of its effects. If this results in a delay in delivery of more than three months, the customer will have the right, to the exclusion of all further claims, to withdraw from the contract in respect of the quantity affected by the interruption to supply.

3.5 We and the customer shall have the same rights in the case of force majeure such as strikes, lockouts sabotage, action or decrees by the authorities, embargoes, floods, storms, fire, explosion and other natural occurrences, as well as all other unforeseen events such as power cuts, delayed or faulty raw material deliveries, breakdown of machinery or tools, delayed provision of transport means, and traffic interruptions for which we are not responsible.

### 4. Shipment, Passage of Risk and Packing

4.1 Unless another form of shipment has been agreed, we supply "ex works" (INCOTERMS 2010). The time that the goods are ready for shipment in the supplying works shall prevail for observance of the agreed delivery periods and dates. Unless otherwise agreed, the risk shall pass to the customer upon dispatch "ex works".

4.2 Unless otherwise agreed, our reusable transport packaging must be returned to the supplying works carriage-free in due condition immediately after emptying. If this does not happen, we may charge the customer the costs of procuring further packaging. The reusable transport packaging must be stored properly.

### 5. Prices and Payment

5.1 Subject to any written agreement to the contrary, all ancillary costs such as packing, freight, insurance, customs, charges and fees of all kinds shall be borne by the customer. Our prices do not include value-added tax; this is shown separately on the invoice.

5.2 In the case of orders executed later than four months after formation of the contract, we shall have the right to adjust the prices for deliveries not yet made in the event of unforeseen and substantial changes in production costs (e.g. cost of materials, energy, labor, shipping costs and public charges).

5.3 If we have justified doubts as to the customer's solvency or creditworthiness, we shall – without prejudice to our other rights – be entitled to demand payment in advance for deliveries not yet made and to call in for immediate payment of all claims arising from the business relationship. The obligation to supply shall be suspended for as long as the customer is in default with a due payment.

5.4 Further, if the customer is in default with payments (*Verzug*), we shall – without prejudice to our other rights – be entitled to demand advance payment for any deliveries not yet made and to call in for immediate payment for all claims arising from the business relation.

### 6. Reservation of Title

6.1 We reserve title to the goods delivered by us ("Reserved Goods") as security for all existing and future claims accruing to us against the customer from our business relations with the customer, even if the ascertained good is already paid.

6.2 The customer is only authorised to the processing (*Verarbeitung*), joining (*Verbinden*) and mixing (*Vermischen*) and to the sale of Reserved Goods in the ordinary course of business only and unless we revoke this authorisation. The customer shall not otherwise dispose of or change any right in (*verfügen*) the Reserved Goods that would endanger our rights, in particular he shall not grant pledges or make transfers by way of security (*Sicherungsübertragungen*).

6.3 Any processing, joining and mixing of the Reserved Goods with other goods by the customer is exercised on our behalf but without any obligations arising therefrom for us. Our title shall extend to the new products or combination of goods, respectively, created

by the processing, joining or mixing of the Reserved Goods. In the event of processing, joining or mixing with goods not belonging to us, we shall acquire joint title to the new products or combinations of goods, respectively, in the proportion of the invoice value of our Reserved Goods to that of the other goods. In all other respects, the same shall apply to the new products or combination of goods, respectively that applies to Reserved Goods.

6.4 The customer shall exercise possession of the Reserved Goods for us as custodian (*Verwahrer*) with the diligence of a prudent business man. He shall take all necessary measures to ensure that the reservation of title is neither impaired nor rescinded. At any time, the customer shall upon request provide information on the Reserved Goods. Any third party measures against or with respect to Reserved Goods or claims assigned to us pursuant to No. 6.6 infra must be notified to us and necessary documentation shall be provided, without undue delay. Any cost of measures necessary for the removal of such third party measures and for the recovery of Reserved Goods shall be borne by the customer, to the extent compensation for such cost cannot be obtained from such third party.

6.5 The customer shall provide insurance cover for the Reserved Goods against theft, breaking, fire, water and other natural hazard and other damage. To the extent that the customer does not provide such insurance cover, we are entitled to arrange for insurance cover at the cost of the customer.

6.6 As security for our claims under No. 6.1 supra, the customer hereby assigns to us all claims and receivables to the full amount arising from the sale of Reserved Goods or from any other cause in law (*Rechtsgrund*) concerning the Reserved Goods, including bills of exchange and checks, and we hereby accept this assignment. This also includes any account balance as claim in its own right (*Saldoforderung*) that may result from a current account arrangement (*Kontokorrentverhältnis*) between the customer and the third party purchaser. The customer is authorised to collect all assigned receivables unless we revoke this authorisation. In the case that goods to which we have joint title pursuant to No. 6.3 supra are sold, the assignment is limited to that share of the receivable corresponding to our share of joint title.

6.7 We shall only exercise our rights of revocation under this No. 6 (Reservation of Title) in the event of the customer's payment default (*Zahlungsverzug*), if the customer suspends the payment of its debts (*Zahlungseinstellung*), if an application for the initiation of insolvency proceedings has been filed by the customer or if there are founded indications for an overindebtedness (*Überschuldung*) or an imminent inability to fulfil payment obligations (*drohende Zahlungsunfähigkeit*) of the customer.

6.8 In the case of default in payment or suspension of payment or if the customer files an application for the initiation of insolvency proceedings, or if there are founded indications for an overindebtedness (*Überschuldung*) or an imminent inability to fulfil payment obligations (*drohende Zahlungsunfähigkeit*) of the customer, the customer shall at our request notify his own customers of the assignment under this No. 6 and he shall provide us with all necessary information and take all necessary measures to safeguard our rights. We shall in particular be notified at once of any attachment by creditors of the Reserved Goods or the receivables assigned to us pursuant to No. 6.6 supra and any other measures against or with respect to Reserved Goods or claims assigned to us pursuant to No. 6.6 supra and shall be provided with any necessary documentation of our rights. Any cost of measures necessary for the removal of such attachment or other measures or claims and for the recovery of Reserved Goods shall be borne by the customer, to the extent compensation for such cost cannot be obtained from the creditor.

6.9 If the realizable value of the securities granted to us exceeds the value of all the receivables to be secured by more than 10 %, we will at the request of the customer release securities of our choice to that extent.

### 7. Right of Lien

If he has provided us with material, the customer grants us a right of lien (*Pfandrecht*) to the material and to claims in its stead as security for all present and future claims arising from the business relationship with him. If the customer defaults in payment or loses creditworthiness, we shall have the right to freely realize the pledged material at the quoted value (if listed on the London Metal Exchange), and if not listed then at the average price on the German market on the day of the default in payment or loss of creditworthiness.

### 8. Customer's Duty of Inspection, Notification of Defects, Rights in the Event of Defects

8.1 The customer shall notify identifiable defects of any kind in writing immediately, latest by the end of the eighth working day (Saturday does not count as a working day) from receipt of the goods, failing which the goods will be considered approved. Hidden defects shall be notified in writing immediately, latest by the end of the eighth working day (Saturday does not count as a working day) from discovery, failing which the goods will be considered approved in respect of these defects also.

8.2 The limitation period for claims based on defects shall in principle be one year. In the event of an injury to life, body or health for which we are responsible and in cases of intent and gross negligence, the limitation period for claims based on defects shall be two years. In the case of goods which were used for a structure in its normal manner and which caused its deficiency, the limitation period for claims based on defects shall be five years. In the event of Sec. 478 German Civil Code (*Bürgerliches Gesetzbuch*) the limitation periods in Sec. 479 German Civil Code (*Bürgerliches Gesetzbuch*) shall apply, if these limitation periods are longer than the aforementioned limitation periods.

8.3 If the supplied goods have a defect, the customer may demand as renewed performance rectification of the defect (improvement) or delivery of a perfect item (substitute delivery); we shall have the right to choose between these two options. If we replace defective goods, we shall acquire title to the replaced parts. If we are unwilling or unable to effect improvement/substitute delivery, in particular if this is delayed beyond a reasonable period of time for reasons for which we are responsible, or if the improvement/substitute delivery otherwise fails, the customer shall be entitled to withdraw from the contract or reduce the purchase price, at his option, if further attempts at renewed performance are unreasonable for him.

8.4 We will only be liable for other damage caused by defects in the delivery item within the limits set out in No. 9 infra.

8.5 Unless otherwise agreed, the condition of the products shall be determined by ISO, EN or DIN standards. Deviations in dimensions and weights and in other technical values that are justifiable for the intended purpose shall not constitute grounds for complaint.

### 9. Liability

9.1 We will be liable in accordance with the provisions of the German Product Liability Act, in cases of culpable inability to perform or impossibility of performance and in the event of Sec. 478 German Civil Code (*Bürgerliches Gesetzbuch*).

9.2 We will also be liable in accordance with statutory provisions for damage in cases of intent, gross negligence or assumption of a guarantee and in the event of injury to life, body or health for which we are responsible. If we otherwise breach a substantive or cardinal duty (i.e. duties without whose fulfillment the contract cannot be duly performed or whose observance the customer may normally rely on and duties whose breach jeopardizes achievement of the purpose of the contract) through slight negligence, our liability to compensate shall be limited to the loss typically foreseeable under such a contract.

9.3 In all other cases of liability, claims to compensation based on the breach of a duty under the contractual obligation or on a tortious act shall be precluded, so that in particular we shall not be liable for consequential losses and for additional expenses, lost profit or other financial losses suffered by the customer.

9.4 If our liability is precluded or restricted on the basis of the above provisions, this shall also apply for the personal liability of our employees, representatives and vicarious agents.

#### **10. Trademarks, Property Rights, Marks of Origin, Tools**

10.1 The marks of origin or identification marks affixed to our goods may not be altered or removed without our written consent.

10.2 The customer may not use trademarks or brands under which our goods are delivered either for the products derived from them or for other purposes of his own (in particular for advertising) without our prior written consent.

10.3 We reserve title and copyright to specimens, illustrations, drawings and other documents as well as to tools, including embossing dies, pressure rollers or permanent molds. This shall also apply if the customer pays a proportion of the costs for such items.

10.4 If we produce or deliver according to drawings or other specifications of the customer and if property rights are infringed as a result, the customer shall indemnify us against all claims of third parties.

10.5 Three years after their last use, we shall have the right to destroy tools, print cylinders, sketches, designs and other aids that belong to us.

#### **11. Assignment**

We are entitled to assign our rights under this contract to third parties.

#### **12. Set-Off and Retention by the Customer**

12.1 The customer shall only be entitled to offset claims which are undisputed (*unbestritten*), have been declared final and absolute (*rechtskräftig festgestellt*), are reciprocal linked to our claims (*aus demselben Vertragsverhältnis*) or are acknowledged by us. Otherwise any set-off by the customer shall be excluded.

12.2 The customer shall only have a retention right (*Zurückbehaltungsrecht*) or a right to refuse performance (*Leistungsverweigerungsrecht*) if such right is resulting from a claim which originating from the same contractual relationship (*aus demselben Vertragsverhältnis*) and is undisputed (*unbestritten*), or has been declared final and absolute (*rechtskräftig festgestellt*). Otherwise, the customer's rights of retention and rights to refuse performance shall be excluded.

#### **13. Cost of Litigation Outside Germany**

The customer shall bear all fees, costs and expenses incurred by us in connection with any legal proceedings before a court successfully instituted against it outside of Germany. Any further rights of ours to be compensated for cost of legal enforcement and other claims in connection herewith shall remain unaffected hereby.

#### **14. Place of Performance, Jurisdiction, Applicable Law**

14.1 The place of performance (*Erfüllungsort*) shall be the place of our supplying plant that performed delivery.

14.2 Provided that the customer is a full merchant (*Vollkaufmann*), the place of our seat registered in the commercial register shall be the exclusive place of jurisdiction (*alleiniger Gerichtsstand*). However, we shall also have the right to pursue our claims at the customer's general place of jurisdiction.

14.3 German law shall apply to the exclusion of provisions governing conflicts of laws. The INCOTERMS as amended by the International Chamber of Commerce in Paris shall additionally apply.

14.4 Application of the United Nations Convention of April 11, 1980 on Contracts for the International Sale of Goods is precluded.