

**I. General:**

1. Our deliveries and services (hereafter referred to as "delivery/-ies") shall be, in business dealings with entrepreneurs, with legal entities under public law and special funds under public law, exclusively subject to the terms and conditions set out hereafter. This shall also apply if in the case of an ongoing business relationship no reference is explicitly made for any future transactions. Our terms and conditions shall be considered as being effective upon acceptance of our deliveries at the latest.
2. We do not accept and herewith oppose the customer's general terms and conditions. Our terms and conditions shall also apply if we carry out our deliveries without reservation or accept payments without reservation being aware of the customer's deviating or supplementary general terms and conditions. The customer's general terms and conditions shall only take a binding effect if and to such an extent as they have expressly been approved in writing.
3. Our quotations shall be understood without engagement.
4. Any claim against ourselves shall be transferable subject to our approval only.

**II. Prices:**

1. Our prices shall be understood net and excluding value-added tax.
2. The cost of transport and packaging shall be invoiced separately, unless otherwise agreed.
3. All prices stipulated "carriage paid" shall be applicable subject to open and unobstructed rail, road and shipping traffic on the respective railway, road and water routes.
4. For weight-based prices, the weights determined by our loading staff shall be applicable for the calculation of the delivery; stating the number of units shall not be binding. The calculation shall, independent of the type of transport means, be based on the total weight of the delivery. Any difference with respect to the computed individual weights shall be pro-rated on these.
5. If after the time of the conclusion of the contract with the customer the prices for metals and semifinished products increase by more than 5% according to the consecutive number 267, GP no. 24 of the Index of Producer Prices for Industrial Products (Domestic Sales) according to the Product Classification for Production Statistics by the German Federal Statistical Office [Index der Erzeugerpreise gewerblicher Produkte (Inlandsabsatz) nach dem Güterverzeichnis für Produktionsstatistiken des Statistischen Bundesamtes] on the basis 2005=100 and if we have to assume at our reasonable discretion, that this increase will persist at the time of the delivery of our goods, we are entitled to unilaterally increase the price of our goods made of steel up to a maximum of 10% in the sense of § 315 BGB (German Civil Code). Taking into account considerations of equity, the criterion for our price increase shall be the percentage of the respective price increase according to the named index. This shall only apply if the period between the conclusion of the contract and the agreed day of delivery extends to at least 3 months. In case we increase the price of our goods made of steel in this respect, the customer may terminate the contract within 2 weeks upon receipt of our notice of the price increase. § 313 BGB (German Civil Code) remains unaffected.

**III. Delivery and Transfer of Risk:**

1. Our delivery times shall start on the date of our order confirmation, but, however, not before all details contained in the order have been clarified by the customer. A pre-contractual agreement on delivery times or dates is only valid if it is confirmed by us in written form.
2. Partial deliveries shall be permitted and cannot be refused by the customer, unless the customer has no interest in the partial delivery.
3. Unless otherwise agreed, goods shall be delivered unpacked and unprotected against corrosion. Unloading of the goods shall be the customer's responsibility and at his expense.
4. Our delivery obligations are subject to the correct and punctual delivery by our suppliers.
5. We shall not be considered to be in delay with our delivery as long as the customer, on his side, fails to fulfil an obligation arising from the respective order. In the case of delay in delivery, customer's claims for damages shall be subject to the applicable statutory requirements pursuant to the following amendments: The customer's compensation for delay in delivery shall be limited to 0.5 % for every full week of delay up to a maximum of 5 % of the net order value affected by the delayed delivery. This limitation shall not apply if we act with wilful misconduct or gross negligence. The aforementioned rule does not constitute a reversal of the burden of proof.
6. If collection of the delivery by the customer has been agreed, the date of our notification of completion of the order shall be applicable with respect to compliance with our delivery times. Beyond this, the delivery time shall be deemed to be observed with the handover of the delivery to the agent or carrier within this time. Any goods reported as being completed shall be collected immediately by the customer. If not, we shall be entitled to store the goods at the customer's risk and expense, without prejudice to our further claims.
7. The risk of accidental destruction and accidental deterioration including the risk of confiscation, shall pass onto the customer at the time of handing over the goods to the forwarding agent or carrier, but, however, at the latest upon the goods leaving our premises or stock.

**IV. Obstructions:**

1. If the execution of the delivery is obstructed by force majeure - on our or on our suppliers' side or in transport systems - the delivery time shall be considered as being constrained for the period of the obstruction plus

a reasonable subsequent preparatory period. If such obstruction exceeds a period of three months, the parties hereto shall be entitled to rescind the contract with respect to its unfulfilled part.

2. Acts of force majeure include external events that were unforeseeable at the time of the conclusion of the contract, and which we could not avoid with due care, such as strike of personnel other than ours, mobilization, war, blockade, embargo on imports/exports, fire, natural disasters. Events like strike of our own personnel, lock-out, shortage in raw material and fuel, traffic stoppage or disturbance in operation or transport, which are not of short temporary nature and not attributable to us, are equivalent to force majeure events as set forth in section IV.1.

**V. Obligations to Investigate, Requirements to make Complaints, Defects:**

1. The goods shall be inspected immediately upon their arrival. Any obvious or visible defects shall be notified without undue delay in writing within eight (8) calendar days at the latest following delivery. Any defects that cannot be identified despite thorough and comprehensive inspection shall be notified in writing without undue delay upon their discovery, at the latest within eight (8) calendar days after discovery, thereby immediately discontinuing any further processing. In case of the form or deadline of complaints not being complied with, the goods shall be considered to be accepted. The provisions in section V do not apply to contracts for works and services.
2. At our request, the customer shall immediately provide us with samples of the goods rejected.
3. Negotiations on customer's complaints shall not impact our waiving objections against complaints in undue form and time. This also applies to our right to reject a complaint as time-barred, as long as the minimum limitation period according to section XI.1 and XI.2 is respected. Reservations made by forwarding agents or ship-owners in shipping documents shall not constitute an evidence of defect and shall not release the customer from his obligation to make complaints.
4. For goods agreed as being degraded - for example Ila material or counter material - we shall not accept any responsibility with respect to deficiencies which are notified by us or are usually to be expected. With respect to claims for damages, this only applies as far as they are not based on liability for wilful misconduct, gross negligence, death, injury or detriment of health or on the product liability act ("Produkthaftungsgesetz").
5. Any deviation from dimensions, weights or qualities shall be permitted subject to the tolerances contained in the DIN and EN standards applicable upon conclusion of the contract, and, in the absence of these, in conformance with commercial practice.

**VI. Warranty:**

1. In case that the goods are defective at the time of the passing of risk, the customer shall have the right of subsequent fulfilment. Such subsequent fulfilment shall be at our discretion by way of new delivery or rectification. Subsequent fulfilment can be refused by ourselves if excessive costs are involved. If subsequent fulfilment is refused for this reason, or if subsequent fulfilment fails, the customer may reduce the price or may rescind the contract by giving us notice hereof.
2. The customer shall be permitted to perform rectification himself only in the cases specified by the law.
3. The customer's claims for compensation of costs and expenses related to a subsequent fulfilment, such as cost for transportation, labour, material and travel, are excluded as far as they are increased due to a removal or transportation of the good to a place different from the place of the original reception, except if this change of location is inherent to the normal use of the goods.
4. Section VII shall apply with respect to claims for damages.

**VII. Liability**

1. The following provisions shall apply to claims for damages, regardless of the legal basis, as well as to claims for reimbursement of expenses and claims for indemnity. However, the provisions governing the delay of delivery as set forth in clause III.5 shall prevail.
2. We shall not be liable for claims for damages; in particular we shall not be liable for loss of profit, losses due to business interruption, loss of production and downtime costs as well as indirect and consequential damages. This shall also apply in favour of our legal representatives and such persons whom we use to perform our obligations (Erfüllungsgehilfen).
3. The exclusion or limitation of our liability set forth above shall not apply:
  - in cases of wilful misconduct
  - in cases of gross negligence
  - in cases of death, injury or detriment of health
  - to claims according to the Product Liability Act (Produkthaftungsgesetz)
  - in cases of the culpable infringement of material contractual obligations. However, in such cases liability is limited to the compensation of the foreseeable damage which is intrinsic to the contract except in cases of wilful misconduct or gross negligence or in cases of death, injury or detriment of health or in case of claims according to the Product Liability Act (Produkthaftungsgesetz). Material contractual obligations are particularly those which are required in order to achieve the purpose of the contract and the fulfilment of which enables the proper performance of the contract and on the observation of which the customer may rely.
4. The above provisions do not constitute a reversal of the burden of proof.

**VIII. Supplementary Agreements for Wage-Based Processing:**

1. For wage-based processing, we shall be notified of the material in question. The material composition shall be uniform and homogeneous, without any hard spots, shrink holes, contaminations or the like. Failure to comply with these requirements attributable to the customer shall entitle us to charge the cost of additional work and replacement for prematurely worn or damaged tools, or to withdraw from the contract, without prejudice to any other remedy. In case of withdrawal from the contract, the customer shall pay the compensation accrued for work already performed, and reimburse any additional cost incurred as far as he is liable for damages towards us.
2. We shall be entitled to a lien (Unternehmerpfandrecht) in the material made available to us for processing, in respect of all claims arising from our business relations.
3. All chips and waste products shall be our property.
4. In case of the material made available to us becoming unfit for processing for justifiable reasons, the customer shall replace the material in question upon our demand. In this case, the processing of the replaced material shall involve no additional compensation. The cost of material replacement and its shipping shall be at the customer's expense. The aforementioned rule does not constitute a reversal of the burden of proof. Our liability for damages is excluded, without prejudice to a mandatory liability according to clause VII.3.

#### **IX. Payment and Offsetting:**

1. Payments shall be made without deduction by the 15<sup>th</sup> day of the following month after shipment, at the latest within 30 days after shipment, and, for wage-based processing work, within eight (8) days after shipment or order completion report. A payment respects this term only if it is received and booked on our bank account (value date) before expiry of the term. Any discountable bills or cheques shall be accepted subject to express agreement and on the account of performance only. Credit notes for bills and cheques shall be granted due payment provided, less expenses, stating the appropriate value date on which the counter value is made available to us.
2. The customer shall only have a right of retention and be entitled to set off counterclaims against our claims for payment to the extent that such counterclaims are undisputed or have been finally adjudicated.
3. For any delay of payment, interest corresponding to the respective rates for overdraft credits, but at least of 8 percentage points above the respective base rate of interest of the European Central Bank shall be charged.
4. In case of suspension of payments, a petition to open insolvency proceedings against the customer's assets, dishonour of bills or cheques and any other circumstances we learn after the conclusion of the contract that result to a material deterioration of the customer's creditworthiness endangering our claims, we shall be entitled to immediately call due all of our claims arising from our business relations irrespective of the term of any bills possibly discounted, and require advance payment or security for outstanding deliveries by giving a reasonable notice. Failure to make such advance payment or provide security within a defined period of time shall entitle us to rescind the contract. The right to claim damages shall not be excluded by such rescission.
5. The remittance of money shall be at the customer's risk and expense.

#### **X. Reservation of Title:**

1. We reserve the ownership in goods delivered until all our claims arising from our business relations have been settled (hereinafter referred to as "reserved goods"). For current accounts, our reservation of title shall guarantee the accepted balance.
2. The customer shall have the right to resell the reserved goods on the basis of proper business practices. He shall not have any other right of disposal. Claims against third parties arising from the resale shall be assigned to us, to the amount of the invoice value of the reserved goods, regardless of whether the resale takes place without or following processing, combination or intermixture with other materials, and whether it is made to one or several third parties. If the reserved goods are sold together with other goods, the claim shall be assigned to us only to the extent of the market value of the respective reserved goods. If the claim resulting from the resale becomes part of a current account between the customer and the third party, the customer's claim against the third party resulting from the balancing or closing of the account shall take the place of the initial claim, limited to the extent of the market value of the resold reserved goods. The customer is entitled to collect the debts.
3. We may revoke our consent entitling the customer to resell the reserved goods and to collect the resulting debts for good cause, especially in the case of the customer's delay of payments towards us, or in case the customer resells reserved goods not on the basis of proper business practices, in the case of the customer's suspension of payment, a

petition to open insolvency proceedings against the customer's assets, dishonour of bills and cheques and any other material deterioration of the customer's creditworthiness endangering our claims against the customer.

4. The reserved goods shall be processed on our behalf and we are deemed as manufacturer without any commitment whatsoever arising for us therefrom. In case of processing, combination or intermixture of the reserved goods with other material that is not our property, we shall acquire the co-ownership in the new material at a ratio of the invoice value of the reserved goods to the purchase price of the other material at the time of the reserved goods being processed, combined or mixed. If our property rights disappear due to processing or combination, the customer assigns to us, in anticipation, his property rights in the new goods to an extent corresponding to the invoiced value of the processed reserved goods; he will also preserve the new goods for us free of charge. The new co-ownership rights described in this section shall be considered as "reserved goods" as defined and referred to in the aforementioned provisions.
5. In case of the reserved goods being seized or otherwise affected by third parties, the customer shall refer to the reservation of title and notify us accordingly without delay.
6. If the value of securities provided for us exceeds our claims by more than a total of 10 %, we shall release any excessive securities at the customer's request.

#### **XI. Limitation period**

1. Claims for defects become time-barred one (1) year after the statutory commencement of limitation. This shall not apply in the case of §§ 438 par. 1 no. 1 (real property rights of a third party), 438 par. 1 no. 2 (building; material used for the construction of a building), 634 a par. 1 no. 2 (building: surveillance of the construction works), 438 par. 3 and 634 a par. 3 (malice), 479 par. 1, 2 (recourse) BGB (German Civil Code) and, with respect to claims for damages, in the case of wilful misconduct, gross negligence, death, injury or detriment of health and liability according to the Product Liability Act (Produkthaftungsgesetz).
2. Beyond this, the standard limitation period according to § 195 BGB (German Civil Code) for customer's claims shall be restricted to two (2) years after the statutory commencement of limitation. With respect to claims for damages, this does not apply in the case of wilful misconduct, gross negligence, death, injury or detriment of health and liability according to the Product Liability Act (Produkthaftungsgesetz).
3. As far as the limitation period is not shortened by the preceding provisions, the statutory provisions on prescription shall apply.
4. New delivery or rectification are in general executed on a goodwill basis and without acknowledging any statutory obligation. An acknowledgement leading to a restart of the limitation period requires our explicit declaration towards the customer. The statutory provisions on the effect of an acknowledgement upon the limitation period remain unaffected.

#### **XII. Confidentiality, Place of Performance, Place of Jurisdiction and Applicable Law:**

1. The customer has to keep the documents, the know-how and other business secrets he obtained through us ("information") strictly confidential and must engage his staff to do the same. Information is not subject to this confidentiality obligation a) which verifiably at the conclusion of the contract was already known by the customer, or of which he learned through a third person without breach of any confidentiality obligation, statutory provision or official order; b) which, at the time of the conclusion of the contract, was already publicly known or has been made known since then; c) which, due to a legal obligation, due to a court's decision or to an official order has to be made public. This confidentiality obligation is binding for ten years following the conclusion of the contract.
2. The place of performance for the parties hereto shall be Essen in the Federal Republic of Germany.
3. The place of jurisdiction for all litigations arising out of or in conjunction with the delivery relationship between the customer and us shall be Essen in the Federal Republic of Germany. This place of jurisdiction shall be exclusive for any claim issued against ourselves. The jurisdictional clause shall also apply to procedures deciding claims arising out of bills of exchange and cheques as well as summary proceedings.
4. The legal relationship between the customer and us shall be exclusively governed by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on the International Sale of Goods (CISG).