



STAHLO Stahlservice GmbH & Co. KG
General Terms and Conditions of Sale

§ 1 General

- (1) The following terms and conditions only shall apply to our deliveries and services in so far as the Buyer is a merchant, or a legal entity under public law. Any terms of the Buyer which contradict or deviate from the terms and conditions below shall not apply except where we have expressly agreed to the same in writing.
- (2) These terms and conditions shall apply to all future supplies to the Buyer.
- (3) Our offers are subject to change without notice with regard to prices, quantity, delivery date and delivery prospects
- (4) Our order acknowledgement in written or text form shall govern exclusively the acceptance of an order, the scope of delivery and the time of delivery.
- (5) Insofar as is necessary for the handling of our business we are entitled to store and process the Buyer's data in electronic form to the extent permitted by data protection laws (in particular §28 of the German Data Protection Act).

§ 2 Prices, Payment Terms

- (1) The price shall be based on the price list in force on the date the contract is made except where otherwise agreed. The prices are EXW (Incoterms 2000, 6th review) plus packing, freight, customs duties, import duties, insurance and VAT. We shall invoice VAT at the rate in force on the date of performance.
- (2) Where the delivery or performance date is more than 3 months after the contract date we are entitled upon timely notification to the Buyer and prior to delivery or performance to adjust the price in such a manner as is necessitated by any general price development beyond our control (e.g. exchange rate fluctuations, currency regulations, customs duties changes, increases in material and production costs) or by changes of suppliers. For supplies of goods or services within three months from the contract date the contract price shall apply in any event.
In relation to framework agreements with a price clause the three month period shall begin to run upon the effective date of the agreement.
- (3) Cheques and bills of exchange shall only be accepted as conditional payment, bills of exchange by special agreement only. Bill charges and other costs of payment shall on principle be for the account of the Buyer and are due immediately.
- (4) The Buyer may only set off undisputed counterclaims or counterclaims against which we have no further recourse to appeal. The Buyer shall only be entitled to rights of retention in so far as these are based on the same legal transaction.

§ 3 Delivery Terms, Delivery Dates

- (1) The commencement of the delivery term quoted shall be subject to clarification of all technical matters and proper and timely performance by the Buyer of his obligations.
- (2) Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the Buyer shall grant us an extension in writing of not less than 3 weeks. Where upon the expiry of the grace period, delivery is still not forthcoming and the Buyer desires to rescind the contract or demand damages in lieu of performance, the Buyer shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention.

- (3) In the event of force majeure we are entitled to suspend performance of our obligation to deliver. Where there is a considerable change in the circumstances prevalent at the formation of the contract, we reserve the right to rescind the contract. This shall also apply to energy or raw material shortages, labour disputes, decrees issued by authorities, transport or operational disturbances, or if subcontractors fail to supply us on time or with the correct quantity or at all for any of the above reasons.

§ 4 Measurements, Weight, Quality

- (1) Quality and measurements shall be determined in accordance with DIN norms or the requisite material requirements except where foreign norms have been agreed in writing. Where neither of the aforesaid exist the corresponding European norms shall apply or in the absence thereof such quality and measurements as are customary in the trade.
- (2) The weight determined during the weighing performed by ourselves or by our sub-suppliers shall be definitive in terms of determining the weight of the goods. The weight shall be evidenced by production of the weighing certificate. The weight determined shall only be contested on the basis of an official weighing carried out immediately after delivery. Deviations in weight of up to 2% cannot be reprimanded. Where legally permissible, weight can be determined on the basis of the DIN norms without weighing. Reductions which are customary in the steel trade in the Federal Republic of Germany shall remain unaffected. Where the price of the goods is based on weight, deviations of up to 10% from the number of items, bundles confirmed in the order acknowledgement are permissible.

§ 5 Retention of Title

- (1) Goods sold shall remain our property until payment of all claims under the business relationship has been received from the Buyer (Reserved Goods).**
- (2) If the Buyer works or processes the goods our reservation of title shall be extended to cover the whole of the new article. In the case of processing, combining or mixing with external goods by the Buyer we shall acquire title in the fraction that corresponds to the invoice value of our goods to that of the other objects used by the Buyer at the time the processing, combining or mixing took place.**
- (3) If the goods subject to reservation of ownership are combined or mixed with a principle good belonging to the Buyer, the latter hereby assigns in addition his rights in the new good to us. If the Buyer combines or mixes the goods subject to reservation of title with a principle good belonging to a third party against payment, he hereby assigns his claims for payment against the third party to us**
- (4) The Buyer may resell goods subject to reservation of ownership in the framework of due business activities. If the Buyer sells these goods without receiving the full purchase price in advance or contemporaneously with the surrender of the item purchased, he shall agree a reservation of title with his customers in accordance with these conditions. The Buyer hereby assigns to us his claims under this resale and the rights under the reservation of title agreed. He agrees at our request to notify the assignment to Buyers and to provide us with the information required to claim our rights against the Buyers and to hand over documents. Irrespective of the assignment the Buyer shall only be authorised to collect payments under the resale as long as he complies duly with his obligations to us**
- (5) If the value of the securities provided to us exceeds our claims by more than 20 percent, we undertake to release securities of our choice on demand by the Buyer. If we claim reservation of title this shall only be deemed to be a withdrawal from the contract as well if we declared this expressly in writing beforehand.**

§ 6 Shipment, Passing of Risk

- (1) Delivery shall be Ex Works (EXW – Incoterms 2000, 6th Review). The risk of destruction, loss of or damage to the goods shall transfer to the Buyer upon loading of the goods from our stores or where the goods are unable to be shipped or are to be collected upon notification of readiness for shipment.
- (2) We reserve the right to select the transport route and the type of transport. The goods shall be delivered without packaging and without protection against rust. Where it is customary in the trade the goods shall be supplied with packaging. We shall select packaging, protection aids

and /or means of transportation on the basis of our experience at the expense of the Buyer. Packaging materials and protection and shipment aids are non-returnable except where otherwise agreed in writing. Extra costs caused by the Buyer's special shipping requirements shall be for the account of the Buyer. This shall also apply to increases in freight charges that occur after the contract is concluded, any additional costs for re-routing, warehouse charges, etc., unless carriage paid delivery is agreed.

- (3) We reserve the right to deliver by instalment and to invoice the same except where this is unreasonable for the Buyer.
- (4) In relation to make and hold orders approximately the same quantities shall be called off each month except where otherwise agreed in writing. The entire order quantity shall be deemed called off one month after the expiration of the call off deadline, or in the absence thereof twelve (12) months after the contract date. Where the Buyer fails to assign goods ordered to a certain delivery within one month after the expiry of the deadline for such assignment, or in the absence of an agreed deadline, within one month of our request for such assignment, we reserve the right to assign the goods at our discretion and deliver the same.
- (5) Increased or decreased delivery quantities within limits which are customary in the trade are permitted.

§ 7 Buyer's rights in the case of defects

- (1) The goods supplied by us correspond to the German regulations and standards currently in force. We give no guarantee that the goods comply with other national regulations. Where the goods are to be put into operation overseas it is the responsibility of the Buyer to ensure that the goods are in conformity with the relevant legal requirements and standards and where required to make appropriate adaptations.
- (2) The Buyer shall not be entitled to make a claim based on defective delivery or performance where the reduced value or merchantability of the goods delivered or services supplied is nominal
- (3) Where the goods delivered by us are defective and the Buyer has immediately notified us of the same in writing as required under § 377 of the German Commercial Code (HGB) we shall at our option deliver a replacement or remedy the defect. The Buyer shall grant us a reasonable period of not less than 15 days to carry out the same.
- (4) The Buyer is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the goods are intended requires the same.
- (5) In the event that we are not in a position to remedy the defect or deliver a replacement the Buyer is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the Buyer prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.
- (6) The Buyer shall retain a right of recourse against us within the meaning of §478 of the German Civil Code (BGB) insofar as the Buyer has not agreed terms with its customer which exceed the statutory liability for defects.

§ 8 Damages

- (1) Except where otherwise provided below any claim of the Buyer for damages other than those claims set out in § 8 aforesaid are hereby excluded irrespective of the legal grounds upon which it is based. Accordingly we do not accept liability for any damage not incurred by the goods themselves nor do we accept any liability for loss of profit or any other pecuniary loss suffered by the Buyer. To the extent that our contractual liability is excluded or limited, such exclusion or limitation shall apply in relation to the personal liability of employees, representatives and vicarious agents.
- (2) The aforesaid limitation of liability shall not apply where the damage incurred has been caused by willful default or by gross negligence, where personal injury has been suffered or where the damages claim is based on product liability law.
- (3) Where we are in negligent breach of a material term of the contract our liability to compensate damage to property shall be limited to such loss as was typically foreseeable at the time the contract was made. A material term of the contract shall be any term which places the Buyer in the legal position provided for under the contract in terms of its content and purpose and any term which must be complied with in order to ensure proper performance of the contract and upon the performance of which the Buyer relied or could be reasonably expected to rely.

- (4) Beyond the aforesaid we shall only be liable to the extent of our insurance coverage insofar as we are insured against the damage which has been incurred and subject to payment of the insurance benefit.
- (5) Any other liability in damages is hereby excluded
- (6) Any assignment of the Buyer's claims provided for in §§ 7 and 8 above is not permitted.

§ 9 Statute of Limitation

- (1) The limitation period for claims based on paragraphs 7 and 8 aforesaid is 1 year. The limitation period aforesaid shall not apply in relation to claims brought under § 8 subparagraph 2 (Liability for wilful default, gross recklessness, for personal injury claims and claims under product liability laws) and where longer limitation periods are prescribed by law (e.g. for structures §§ 438 s.1. No. 2 (BGB), rights of recourse § 479 (BGB) and building defects § 634a s.1 No.2 (BGB)).

§ 10 Prohibition of Delivery to Third Parties

- (1) The Buyer and subordinate customers shall not carry out any of the following:
 - a) Transport unprocessed material which has not been expressly sold for export outside the Federal Republic of Germany;
 - b) Allow material which has been sold for export to remain in the Federal Republic of Germany, or to supply or transport such material back to the Federal Republic of Germany or to transport or supply the material to any country other than the country specified in the purchase order. Such material shall not at any time be processed in the Federal Republic of Germany.
- (2) The Buyer shall produce evidence of the whereabouts of the material where we so request.
- (3) Where the Buyer or one of his subordinates in the supply chain is in breach of the aforesaid he shall pay a penalty in the sum of 10 % of the purchase price but not more than 5,000€. Where as a result of the Buyer's action we are sued for loss of profit the Buyer shall also reimburse the loss of profit suffered by our suppliers subject to production of evidence of the same.
- (4) The Buyer undertakes to:
 - a) impose the conditions set out in sub-sections 1-3 aforesaid upon his subordinates coupled with an obligation that the same conditions be imposed throughout the supply chain and to inform us without delay of any breaches by any subordinates in the supply chain of which he becomes aware;
 - b) to sue his customers where they are in breach of the aforesaid conditions or to assign his right to sue to us where we so request.
- (5) For goods which are the subject of the European Coal and Steel Community Contract export shall mean the supply to a country outside the sovereign territories of the European Coal and Steel Market and the sovereign territory of the kingdom of Norway. These territories are for the purposes of these terms and conditions of sale deemed to be the same as Federal Republic of Germany.
- (6) Where the goods are transported to a location and/or address other than the delivery address specified in the invoice the Buyer shall, irrespective of the lack of evidence of his default, reimburse all financial concessions made on the basis of the recipient specified together with an additional 50,00€ per tonne of the misdirected goods but not more than twice the value of the concessions.

§ 11 Jurisdiction, Choice of Law, Severability Clause

- (1) Any dispute shall be resolved before the courts in Haiger. We reserve the right to sue the Buyer at its principle place of business.

- (2) The laws of the Federal Republic of Germany shall govern all the legal relationships between the Buyer and us
- (3) In the event that individual provisions of these Standard Terms and Conditions are invalid in whole or in part, this shall not affect the validity of the remaining provisions. The parties shall replace an invalid provision by a valid provision that as closely as possible reflects the commercial purpose of the invalid provision.

Date April 2009