

Terms of Sale and Delivery

STAHLO Stahlservice GmbH & Co. KG (TSD)

Last update: April 22nd, 2024

1. General

- 1.1 Our offer is directed at merchants within the meaning of the German Commercial Code, legal entities under public law, and special public funds under public law. Solely the following terms and conditions apply to our deliveries and services. Supplementary or deviating terms of purchase of the Customer shall not apply, unless we have agreed to them in individual cases in writing. The unconditional delivery of goods, rendering of services or receipt of payments shall not be interpreted as acknowledgement of deviating conditions.
- 1.2 Our TSD apply exclusively. Deviating, conflicting or supplementary General Terms and Conditions of the Customer shall only become part of the contract if and insofar as we have explicitly agreed to their validity. This requirement of consent shall apply in any case, for example even if we undertake delivery to the Customer unreservedly in awareness of the Customer's GTC.
- 1.3 Individual agreements concluded with the Customer in individual cases (including collateral agreements, supplements and amendments) shall always take precedence over these TSD. Subject to proof to the contrary, a written contract or our written confirmation is authoritative for the content of such agreements.
- 1.4 Legally relevant declarations and notifications of the Customer with regard to the contract (e.g. setting of deadlines, notification of defects, withdrawal or reduction) shall be made in writing, i.e. in written or text form (e.g. by letter, email, fax). Statutory formal requirements and further evidential proof, in particular in the event of doubts about the legitimacy of the declarant, shall remain unaffected.
- 1.5 These TSD shall also apply to all future deliveries and services rendered for the Customer.

2. Contractual representations

- 2.1 Our published range of products and services (e.g. in catalogues, brochures, technical documentation or on the internet) is subject to change and is non-binding. A purchase contract shall only be concluded subject to our order confirmation. The contract shall also be concluded if we execute the order.
- 2.2 We shall be entitled at any time to change our goods and services with effect for the future. We shall not be obliged to make such changes to goods that have already been delivered or to services that have already been rendered.

3. Prices, terms of payment and offsetting

- 3.1 Unless agreed otherwise, the prices for our products and services are to be taken from our price list valid at the time of conclusion of the contract. The list prices are exclusive of transportation, customs duties, import duties, insurance, statutory VAT, packaging and other ancillary costs. We calculate the VAT at the rate valid on the date of performance.

- 3.2 If the date of delivery or performance is later than three months after conclusion of the contract, we shall be entitled, after timely notification of the Customer and prior to delivery or performance, to adjust the price of the goods or services agreed at the time of conclusion of the contract, including transportation, to the extent that this is reasonable due to the development of costs beyond our control (e.g. up-front costs, exchange rate fluctuations, changes in customs duties and fees). In the case of deliveries or services within three months, the price valid on the day the contract is concluded shall apply in any case. In the case of general contracts which contain price agreements, the three-month period shall commence upon conclusion of the general contract.
- 3.3 Unless agreed otherwise, the Customer shall pay the agreed remuneration within 30 days without deduction. Upon expiry of the deadline, the Customer shall be in default even without an explicit demand for payment (reminder).
- 3.4 Cheques and bills of exchange are not accepted as means of payment.
- 3.5 The Customer may off-set accounts only if the counter-claim in question is not controversial or has been ascertained in a legally binding manner. The Customer shall only be entitled to rights of retention insofar as these are based on the same legal transaction.
- 3.6 If, after conclusion of the contract, we become aware of an inability to pay on the part of the Customer, we shall be entitled to make outstanding deliveries only against advance payment or provision of security. An inability to pay on the part of the Customer is to be assumed in particular, if a commercial credit insurance for deliveries to the Customer cannot be concluded on account of a negative risk assessment by a commercial credit insurer. If the advance payments or securities have not been provided even after the expiry of a reasonable grace period, we shall be entitled to suspend deliveries until the advance payments or securities have been provided or to withdraw from individual or all affected contracts respectively in whole or in part. Stahlo reserves the right to assert further rights.

4. Time for performance

- 4.1 We shall comply with the deadlines and dates specified for performance of the contract provided that all technical questions have been clarified and the Customer has fulfilled its obligations to cooperate in a timely, complete and proper manner.
- 4.2 If we do not perform in due time for reasons for which we are responsible, the Customer shall grant us a reasonable period of grace for performance, which as a rule shall be two to four weeks. If requested by us, the Customer shall be obliged to declare within an adequate period of time if it intends to withdraw from the contract due to the delay.



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in delivery and/or demands compensation in lieu of delivery, or if it will still insist on delivery.

- 4.3** Unless agreed otherwise, delivery dates shall be agreed between the parties for a period to be defined in each case within framework of delivery schedules and delivery schedule confirmations (hereinafter jointly referred to as "Delivery Schedule"). The delivery dates stated in Delivery Schedules are binding for both parties. However, the Customer shall be entitled to postpone a delivery date by up to two weeks if they notify us accordingly more than five working days before the agreed delivery date and we do not object within three working days. The Customer shall be entitled to adjust the delivery quality for a delivery date by up to 10% if they notify us accordingly more than five working days before the agreed delivery date and we do not object within three working days. The Customer shall also be entitled to reduce the delivery quantity of a Delivery Schedule by up to 20% if they notify us accordingly more than three months before the respective delivery dates. If the Customer notifies us of a reduction in the delivery quantity less than three months before the respective delivery date, we shall be entitled to invoice the costs of the primary materials. Goods already completed in the ordinary course of business at the time of notification of the reduction of the delivery quantity shall be accepted by the Customer. The parties shall reach an agreement in good time, at least three months before the expiry of a Delivery Schedule, as to whether and on what terms supplies to the Customer are to be continued after the expiry of a Delivery Schedule. If no such agreement is reached and the Customer nevertheless places further orders, we shall be entitled (but not obliged) to execute these orders at the prices stated in the expired Delivery Schedule. Should the Customer discontinue their production of goods for which our goods are being used (EoP – End of Production), the Customer shall be entitled to terminate a Delivery Schedule as a whole prematurely subject to a notice period of six months. In such a case, the Customer shall take delivery of the primary materials and finished goods already procured in the ordinary course of business at the time of termination.
- 5. Shipping, transfer of risk, deliveries by instalment, call orders**
- 5.1** Unless agreed otherwise, we shall ship the goods at Customer's expense and risk. We shall determine the shipping method, dispatch route, forwarding agent and/or freight carrier.
- 5.2** The risk of destruction, loss of or damage to the goods shall be passed to the Customer when the goods are loaded at our warehouse or, if the goods cannot or are not to be shipped, upon provisioning of the goods and the sending of notification of our readiness to deliver. The aforesaid shall also apply where delivery is made in instalments or where we have undertaken additional services such as transport costs or delivery and installation.
- 5.3** Raw materials and semi-finished products are delivered unpacked and without surface protection unless special protective measures correspond to commercial practice. We shall provide suitable packaging, protective material and/or transport aids for other goods in accordance with our experience. Unless agreed otherwise in text form, packaging, protective material and transport aids are taken back at our warehouse. The costs of transportation to our warehouse shall be borne by the Customer. Extra costs attributable to the Customer's special shipping requests shall be borne by the Customer. The same shall apply to increases in freight rates that occur after conclusion of the contract.
- 5.4** We may render deliveries by instalment and issue invoices accordingly unless this is unreasonable for the Customer.
- 5.5** If the Customer has agreed with us to purchase a total quantity over a specified period of time (e.g. quantity contract) in partial quantities to be called off individually, and if no Delivery Schedule has been agreed, the Customer shall give due consideration to our interests (e.g. delivery times of manufacturers). The Customer shall pay particular attention to an even distribution of quantities and to reasonable lead times between the individual call-off and the respective delivery date. Relevant disposition parameters (e.g. availability, stock, lead and delivery times) shall be provided to the Customer upon request within the framework of the supply planning.
- 6. Qualities, dimensions and weights**
- 6.1** Qualities and dimensions are determined in accordance with DIN standards or material sheets unless foreign standards or customer standards have been explicitly agreed. If no DIN standards or material sheets exist, the corresponding Euro standards (EN) shall apply, in the absence of which commercial practice shall apply. We shall not assume any liability for compliance with other national regulations. Where the goods are to be used overseas, it is the responsibility of the Customer to ensure that the goods conform with the relevant legal requirements and standards, and to make appropriate adaptations where required at own cost.
- 6.2** The weighing undertaken by us or our pre-supplier shall be decisive for the weights. Proof of weight shall be provided through presentation of the weighing slip. Weight determinations can only be objected to on the basis of an official reweighing without delay after delivery, whereby weight deviations of up to 2% will not be taken into consideration. The surcharges and discounts customary in the steel trade of the Federal Republic of Germany (trade weights) shall remain unaffected. Insofar as goods are invoiced by weight, deviations of plus/minus 10% from the units, bundle numbers and the like stated in the dispatch note and invoice are permissible.
- 7. Self-delivery, force majeure, frustration of contract, reservation of performance**
- 7.1** If, for reasons for which we are not responsible, we do not receive deliveries or services from our sub-suppliers or from subcontractors, or we do not receive them correctly or on time despite proper congruent coverage, or if events of force majeure occur which affect ourselves or our sub-suppliers, we shall inform the Customer in writing in good time. In this case, we shall be entitled to postpone the delivery or service for the duration of the impediment as well as a reasonable restart time or to withdraw from the contract in whole or in part due to the unfulfilled part, insofar as we have fulfilled our aforementioned duty to inform and have not assumed the procurement risk or manufacturing risk, and the impediment to performance is not just of a temporary nature. Force majeure shall include strikes, lockouts, official interventions, shortages of energy and raw materials, transport bottlenecks beyond our control, operational hindrances beyond our control (e.g. due to fire, water and machine damage) and all other hindrances which, viewed objectively, were not culpably caused by us.
- 7.2** If a delivery or performance date or a delivery or performance period has been agreed as binding, and if the agreed delivery or performance date or the agreed delivery or performance period is exceeded by more than four weeks due to events in accordance with the aforementioned Clause 7.1 or if, in the case of a non-binding performance date, it is objectively unreasonable for the Customer to adhere to the contract, the Customer shall be entitled to withdraw from the contract for the part not yet fulfilled. Further rights of the Customer, in particular claims for damages, shall not exist in this case.
- 7.3** If a serious change in the circumstances prevailing at the time of conclusion of the contract occurs as a result of which we cannot reasonably be expected to adhere to it, we shall be entitled to withdraw from the contract.
- 7.4** Our fulfilment of the contract is subject to the proviso that we thereby neither violate regulations of national and international foreign trade law nor violate sanctions or embargoes.
- 8. Retention of title**
- 8.1** Sold goods shall remain our property ("reserved goods") until all claims arising from the business relationship have been fulfilled.



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- 8.2 Until full payment of all secured claims, the Customer may only dispose of the reserved goods if we have previously agreed to such a disposal. The Customer shall immediately inform us in written form, if and to what extent third parties intend to access the reserved goods.
- 8.3 If reserved goods are treated or processed by the Customer, our retention of title shall be extended to cover the entire new object. If our goods are processed, combined or mixed with third-party items by the Customer, we shall acquire co-ownership in the fraction corresponding to the proportion of the invoice value of our goods to that of the other items used by the Customer at the time our goods are processed, combined or mixed.
- 8.4 If the Customer combines or mixes the reserved goods with principal goods belonging to them, the Customer shall hereby assign us its rights with regard to the new item. If the Customer combines or mixes the resale with a principle good belonging to a third party against payment, they hereby assign to us their claims for payment against the third party; we accept the assignment.
- 8.5 The Customer shall be entitled to resell reserved goods in the normal course of business. If the Customer in turn resells reserved goods without receiving the full purchase price for such goods, the Customer shall agree with their customers on a retention of title that corresponds to the obligations to which the Customer is subject. The Customer hereby assigns to us its claims arising from this resale and the rights arising from the retention of title agreed by the Customer. We accept the assignment. At our request, the Customer shall be obliged to inform its customer about the assignment and to provide us with the information and documents required to assert our rights against their customer. Irrespective of the assignment, the Customer shall only be authorised to collect claims under the resale as long as it duly fulfils its obligations towards us.
- 8.6 If the value of the securities provided to us exceeds our claims by more than ten percent, we undertake to release securities of our choice at the request of the Customer.
- 9. Liability for defects**
- 9.1 The statutory provisions shall apply to the rights of the Customer in the event of material defects and defects of title (including incorrect delivery and delivery shortfalls, as well as improper assembly or deficient assembly instructions) unless stipulated otherwise in the following.
- 9.2 The goods shall be deemed to be free of defects if they have the agreed quality. Our product description as provided to the Customer prior to their order or which was referenced in the contract in the same way as these terms and conditions shall be authoritative. A declaration of obligation going beyond the claims for defects (independent guarantee) shall not be associated with this unless the Customer has concluded a separate agreement with us which regulates the scope and legal consequences of the independent guarantee in detail.
- 9.3 In the absence of an explicit agreement on quality, the goods shall be free from material defects, if they are suitable for the use provided for in the contract and have the quality which the Customer may expect according to the information and notifications attributable to us. Publicly available statements by other manufacturers or other third parties shall not be taken into account.
- 9.4 We shall not assume liability for surface damage caused by improper storage or by transportation by the Customer. It should be noted that proper storage and transportation must be undertaken in accordance with the valid DIN EN standards. Information about risk reduction can also be found at www.stahlo.de.
- 9.5 The Customer's claims for defects presuppose that it has fulfilled its statutory obligations to inspect consignments and give notification of deficiencies (Sections 377, 381 German Commercial Code/HGB). If a defect is obvious (including incorrect or shortfall in delivery) or if it becomes apparent during the inspection or later, we must be notified about the defect in writing without delay. The notification shall be deemed to have been given without delay, if this takes place within two weeks; a timely dispatch is sufficient. If the notification is not given at all or later than stipulated, claims associated with the defect in question shall be excluded.
- 9.6 Defects caused by the Customer or a third party shall void any claims in this regard. This shall be assumed in particular, if the deficiency is based on one of the following circumstances:
- the Customer's requested execution, if its unsuitability was not apparent to us or the Customer rejected the reservations expressed by us;
 - deficiency of the material or other components supplied by the Customer;
 - improper usage or storage, faulty or negligent handling.
- 9.7 If the delivered goods are defective, we can initially choose whether to undertake subsequent fulfilment by remedying the defect (rectification) or to deliver flawless goods (substitute delivery). We shall be entitled to make subsequent fulfilment conditional upon payment of the due purchase price by the Customer, whereby the Customer may retain a reasonable part of the purchase price until the defect has been remedied.
- 9.8 The place of performance for subsequent fulfilment shall be the original place of delivery unless the transfer to another place corresponds to the intended use. Additional costs incurred in association with shipment to a location with restricted access (e.g. offshore platform, restricted area, polar or alpine region) shall be borne by the Customer. In the event of a substitute delivery, the Customer shall return the defective goods to the place of performance.
- 9.9 If our subsequent fulfilment fails despite two attempts or if we are in default despite setting a reasonable deadline, the Customer may withdraw from the purchase contract while waiving further subsequent fulfilment or reduce the purchase price in accordance with the value of the deficiency. A withdrawal shall be excluded in the case of an insignificant deficiency.
- 9.10 Claims of the Customer for damages or compensation for futile expenditure shall only exist in the limits of the following Section 10 (liability); otherwise they shall be excluded.
- 10. Liability**
- 10.1 Unless indicated otherwise in these TSD, including the following provisions, we shall be liable in accordance with the statutory provisions in the event of any infringement of contractual and non-contractual duties.
- 10.2 We shall only be liable to pay damages, irrespective of their legal grounds, in the event of wilful intent or gross negligence unless the law provides for liability without fault. Furthermore, we shall also be liable in the event of a degree of culpability that falls short of Sentence 1 (minor negligence), but then only
- for damages resulting from injury to life, limb or health, and
 - for damages arising from the breach of a material contractual obligation, in which case our liability shall be limited to compensation for the foreseeable, typically occurring damage. A material obligation is an obligation, the fulfilment of which makes proper execution of the contract possible in the first place and the observance of which the Customer can justifiably rely upon.
- 10.3 The limitation of liability in accordance with Clause 10.2 shall not apply, if we have maliciously concealed a deficiency or we have assumed a separate guarantee for the quality of the goods. The same shall apply to claims on the part of the Customer in accordance with the German Product Liability Act.
- 10.4 To the extent that our liability is excluded or limited, this shall also apply to the individual liability of employees, representatives and vicarious agents.



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- 10.5** In the event of a breach of obligation that does not concern a deficiency, the Customer may only withdraw from or terminate the contract, if we are responsible for the breach of obligation. Any separate right of termination on the part of the Customer (in particular in accordance with Sections 651, 649 German Civil Code/BGB) shall be excluded. A withdrawal or termination must be in written form in accordance with Section 126 (1) German Civil Code/ BGB. Otherwise the statutory provisions shall apply.
- 10.6** An assignment of claims on the part of the Customer as regulated in Clauses 9 and 10 shall be excluded. Section 354a of the German Commercial Code shall remain unaffected.

11. Limitation

- 11.1** Reciprocal claims of the contracting parties shall lapse in accordance with the statutory provisions unless stipulated otherwise below.
- 11.2** Notwithstanding Section 438 (1) No. 3 of the German Civil Code, the limitation period for claims arising from material defects and defects of title shall be one year from delivery of the goods or performance of the service, unless the defect was maliciously concealed. If an acceptance has been agreed upon, the limitation period shall commence upon the date of acceptance.
- 11.3** If the goods are a building structure or an object that has been used for a building in accordance with its customary use and has caused its defectiveness (building material), the limitation period shall be 5 years from delivery in accordance with the statutory provision (Section 438 (1) No. 2 German Civil Code/BGB). Further special legal regulations regarding the limitation period (in particular Section 438 (1) No. 1, (3), Sections 444, 445b German Civil Code/BGB) shall remain unaffected.
- 11.4** The aforementioned limitation periods under the law governing the sale of goods based on a deficiency of the goods shall also apply to contractual and non-contractual claims for damages asserted by the Customer based on a defect of the goods unless implementation of the regular statutory limitation period (Sections 195, 199 German Civil Code/BGB) would result in a shorter limitation period in individual cases. Claims for damages on the part of the Customer pursuant to Clause 10.2 Sentence 1 and Sentence 2, first indent, as well as pursuant to the German Product Liability Act shall become statute-barred exclusively in accordance with the statutory limitation periods.

12. Confidentiality

- 12.1** The parties shall treat the operating and business secrets of the other party confidentially; in particular, they shall not pass them on to third parties or use them for their own business purposes without authorisation. The parties shall also impose this obligation on their employees and vicarious agents.
- 12.2** The confidentiality obligation shall not apply to any information which at the time of its disclosure
- was already known to the other party outside of the contractual relationship,
 - has been developed by the party itself or has been lawfully procured from third parties,
 - is generally known or is state of the art or
 - has been released by the contractual partner from whom it originates.
- 12.3** After termination of the contractual relationship, the parties shall return all information requiring secrecy to the respective other party, whether in embodied or digital form, without being requested to do so or, at the request of the party from which it originates, destroy it or – insofar as is technically possible with reasonable effort – irrevocably delete it.
- 12.4** The parties shall comply with the rules of data privacy, in particular if they are granted access to the operations or information technology facilities of the other party. They shall take appropriate measures to ensure that their employees and vicarious agents also comply with these provisions.

13. Right of withdrawal/termination

- 13.1** We shall be entitled to withdraw from the contract or to terminate the contract with immediate effect if
- a deterioration in the financial circumstances of the Customer arises and consequently the fulfilment of their payment obligation towards us is in jeopardy or
 - the Customer suspends their payments without justification.

14. Place of jurisdiction and choice of law

- 14.1** These Terms and Conditions and all legal relations between us

and the Customer shall be governed by German law applicable to domestic contracting parties to the exclusion of the UN Convention on Contracts for the International Sale of Goods. By way of derogation, the conditions and effects of the retention of title in accordance with Clause 7 shall be governed by the law of the respective place of storage or installation of the item should the choice of law made in favour of German legislation accordingly be inadmissible or ineffective.

- 14.2** For the target group addressed in accordance with Clause 1.1, the sole – including international – place of jurisdiction for all disputes arising from and in conjunction with the contractual relationship is our registered office in Dillenburg, Germany. We shall also be entitled to take legal action at the Customer's general place of jurisdiction.



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