

## **Terms of delivery and payment of**

### **Binder Edelstahl- Produktionsgesellschaft mbH in Bremen**

#### **1. Validity of terms**

- 1.1 These terms of delivery and payment shall apply to all of our deliveries of goods and supplies of services, including ones resulting from future business transactions. The present terms of delivery and payment will be regarded as accepted at the latest when delivery of our products is accepted. Any contradictory Customer terms shall be herewith excluded.
- 1.2 Should any provision contained in these terms of delivery and payment or in any other agreement be or become invalid, this shall not affect the validity of the remaining terms or agreements.
- 1.3 All previous standard terms of delivery and payment shall be hereby rendered null and void.

#### **2. Offers and conclusions of contracts**

- 2.1 Our offers are provisional and non-binding. All contracts will come into existence on the receipt of our written acknowledgement of order, at the latest on the handover of the goods. The terms of the contract concluded are as specified in our order acknowledgement and our terms of delivery and payment. There are no other verbal or written agreements or understandings between the parties with respect to this contract or any of the subject matters settled therein.

A cancellation charge equivalent to the costs already incurred by us will be invoiced to the Customer if an order is cancelled after a contract has been concluded.

Information, drawings, illustrations, technical specifications and descriptions of weights, dimensions and performance contained in leaflets/brochures, circulars, print advertisements, price lists or documentation linked to an offer will only be binding if they are expressly described as such in the order acknowledgement.

#### **3. Delivery time and delivery**

- 3.1 The delivery date specified refers to departure from the factory or store.
- 3.2 Deliveries are ex works / ex store.
- 3.3 The risk of loss or damage to goods will pass to the Customer at the time when we hand over the goods to a forwarder or carrier, but at the latest when they leave our

factory or store. If goods are ready for dispatch and shipment or collection is delayed for reasons

beyond our control, the risk will pass to the Customer when notice of readiness for dispatch is received. Sentences 1 and 2 do not apply if the Customer is a private consumer.

- 3.4 If a delivery which we are under an obligation to make is delayed by unforeseeable circumstances beyond our control (e.g. labour disputes, operational breakdowns, transport problems, shortage of raw materials, actions taken by public authorities – including all such cases affecting our own suppliers – and failures of our own suppliers to deliver punctually), we shall be entitled to withdraw from the contract in whole or in part or, at our discretion, to postpone delivery to a reasonable extent equivalent to the duration of the difficulty concerned. We shall inform the Customer immediately if such problems arise and when they cease to apply. In the event of withdrawal, any consideration already paid by the Customer will be reimbursed immediately. If the originally agreed delivery time is exceeded by more than 10 weeks, the Customer the Customer is entitled to withdraw from the contract.
- 3.5 Adherence to our delivery obligation presupposes the punctual and correct fulfilment of the Customer's obligations.
- 3.6 If the Customer suffers loss due to a delay caused by us, he is entitled to claim compensation for that delay. However, the Customer is only entitled to exercise this right if he has granted us a reasonable extended deadline in writing which we failed to meet. The amount of compensation payable for a delay will be equivalent to a maximum of 0.5% for each complete week of the delay up to a maximum total of 5% of the value of that part of the whole consignment which, as a result of the delay, is not available on time. Any further-reaching claims are hereby excluded, unless the delay concerned was due to gross negligence at least.
- 3.7 In case of deliveries on call, the quantities to be accepted must be distributed as evenly as possible throughout the relevant period, unless agreed otherwise. Upon expiry of the agreed call period, we will be entitled to deliver the entire remainder immediately. In case of a later acceptance, we reserve the right to charge the current price applicable on that day.
- 3.8 We are entitled to partial deliveries to a reasonable extent.

#### **4. Qualities, dimensions and weights**

- 4.1 Qualities and dimensions will be in accordance with DIN standards / material sheets, unless foreign standards are agreed upon in writing. If there are no DIN standards or material sheets, the relevant Euronorm will apply. In the absence of the latter, customary trade practice will be decisive.

- 4.2 As far as weights are concerned, the weighings carried out by us or our own suppliers will be decisive. Determinations of weight may only be challenged on the basis of weighings carried out by a public authority immediately after delivery. Weight deviations by up to 2% will not justify any complaint, unless the deviation is unreasonable to the Customer. As far as legally permissible, weights may be determined in accordance with DIN without any weighing. The above does not affect the additions and deductions customary in the German steel trade (trade weights). The number of units, parcel numbers, etc. specified in the notice of dispatch are not binding in the case of goods charged for by weight.

## **5. Acceptance and test certificates**

- 5.1 If acceptance is agreed upon, it may only take place at the delivery factory or at our storage facility immediately after notification of readiness for acceptance.
- 5.2 Restamping and restamping certificates will be charged for separately.

## **6. Prices and payments**

- 6.1 The prices applicable are those specified by us, plus statutory VAT at the rate applicable at the time of delivery.
- 6.2 The Customer must make net payments, without any deductions, into an account specified by us (within 30 days of the invoice date).
- 6.3 A payment will not be regarded as having been made until we are able to access the sum concerned. When accepting bills of exchange or cheques, we do not assume any responsibility whatsoever for protesting or timely presentation. All expenses or other costs incurred through collection of bills of exchange or cheques shall be borne to the Customer.
- 6.4 If, in spite of a formal reminder, the Customer fails to meet his payment obligations, or if there is a substantial deterioration in the Customer's asset position, we will be entitled to demand the immediate payment of the remaining debt, even if we have already accepted bills of exchange or cheques. In such a case, we will also be entitled to demand advance payment or the provision of security and to refuse to meet our obligations until advance payment has been made or security has been provided. If

our demand is not met within a reasonable period specified by us, we will be entitled to withdraw from the contract and/or – if the Customer is responsible for the breach of duty – to claim damages in place of performance.

6.5 Even in the event of notification of defects or counterclaims, the Customer will only be entitled to offset if his counterclaims are legally final and absolute following a judgement by a German court or if they are undisputed. If the Customer is an entrepreneur, the above also applies to a possible withholding of payment or reduction of price.

6.6 In case of delay, the customer does owe interest at the rate of eight percentage points above the base rate published by the Deutsche Bundesbank and the reasonable costs of judicial and extrajudicial prosecution.

## **7. Material and title defects and notification of defects**

7.1 Claims due to defects may only be made against us by a merchant as defined by German law (Kaufmann) if the obligations concerning inspection and notification of a defect imposed by § 377 German Civil Code (HGB) have been satisfied.

7.2 If the Customer is not a merchant as defined above, any claims on his part concerning material and/or title defects only require immediate notification after delivery in the case of apparent defects.

7.3 We reserve the right to vary quantities, dimensions and forms within the scope of tolerances for deviation customary in the trade. Minor deviations in size and construction from the samples supplied as well as minor harmless defects, such as rust film, etc. will not represent grounds for complaint, unless the deviation is unreasonable to the Customer.

7.4 If a justified complaint is made in a timely manner, we will be under an obligation to remedy the defect. Taking into account the nature of the defect and the legitimate interests of the Customer, we will be entitled to determine the method of remedy ourselves (repair, replacement subject to the return of the goods complained about). If the Customer is a private consumer, he will be entitled to determine the method of remedy himself. If an attempt to remedy fails, the Customer may at his discretion reduce the price or withdraw from the contract.

7.5 In the case of sales of declassified or second-quality products, the Customer will not be entitled to any claims concerning those defects because of which the goods were declassified or reduced in price in the first place. In the case of sales “as seen”, there is no guarantee. Sentence 2 does not apply if the Customer is a private consumer.

## **8. General limitation of liability**

- 8.1 We shall only be liable for damage – whatever its legal ground – which we or our vicarious agents have caused willfully, by gross negligence or, in case of the infringement of obligations being material for the fulfillment of the purpose of the contract, by slight negligence.
- 8.2 In cases of a slightly negligent infringement of obligations being material for the fulfillment of the purpose of the contract, our liability in terms of the amount shall be limited to damages typical for comparable transactions of this kind which were foreseeable when concluding the contract or when committing the infringement of obligations at the latest.
- 8.3 A further liability for damages as provided in 8.1 and 8.1 – irrespective of the legal basis of the claim – shall be excluded.
- 8.4 Damage claims under the German Product Liability Act, due to the absence of guaranteed characteristics, and due to injury to life, limb or health, or any other compulsory legal provisions shall remain unaffected.
- 8.5 The above provision shall not be connected to a change of the burden of proof to the Customer's disadvantage.

## **9. Reservation of title**

- 9.1 We shall retain exclusive title to all the goods delivered until all claims arising from the delivery contract have been paid in full.
- 9.2 If the Customer is an entrepreneur, paragraphs 9.2-9.4 shall apply additionally.
- 9.3 Prior to the satisfaction of all all our claims against the Customer (including all current account balance claims), whatever their legal basis, the following securities shall be provided to us. We shall release such securities upon request at our discretion, provided that the respective value exceeds our claims by more than 10%.
- 9.4 Also in the circumstances referred to in 9.3, we shall retain exclusive title to the goods. Any combination, mixing or processing shall in all cases take place on behalf of us as the manufacturer, but with no obligation on our part. If goods are combined, mixed or processed with other items not belonging to us, we shall acquire joint title to the new item, proportional to the ratio between the value of the goods and the combined, mixed or processed items at the time of combination, mixing or

processing. If our (joint) title expires as a result of such action, it is hereby agreed that the relevant proportion (based on invoice value) of the Customer's (joint) title to the unitary item shall pass to us. The Customer shall hold our (joint) title free of charge. Goods to which we hold (joint) title are referred to as reserved goods in the following.

- 9.5 The Customer is entitled to dispose of reserved goods in the normal course of business, in particular to process and sell them, as long as he is not in arrears with his payments to us. No resale shall be permitted, however, to end customers who have excluded or limited any assignments of claims for payment against them. Any other disposal, in particular the pledging or assignment as security of reserved goods, shall not be permitted without our approval.

The Customer hereby assigns to us by way of security and with immediate effect all claims arising from a resale or other legal grounds (insurance, unlawful act) with respect to reserved goods (including all current account balance claims). If we only hold joint title to reserved goods, this advance assignment shall be limited to that proportion of the claim which corresponds to our share of the title (based on invoice value)

We hereby authorise the Customer revocably to collect claims assigned to us for his own account and in his own name. This authorisation may be revoked if the Customer fails to meet his payment obligations as agreed.

- 9.6 In the event of seizure or any other third-party action affecting reserved goods, the Customer shall draw attention to our title and notify us immediately.

## **10. Special terms applicable to the processing of materials supplied (materials for contract work)**

- 10.1 The Customer must deliver materials for contract work free of charge and at his own risk. We assume no responsibility for the condition of the materials supplied or for any information about them supplied by the Customer.
- 10.2 If materials supplied by the Customer turn out to be unusable or difficult to process, or if damage to them has to be repaired, the Customer must reimburse us for any additional costs and for any arising repair costs.
- 10.3 We are not liable for defects or damage which result from incorrect information or instructions from the orderer.

## **11. Applicable law, place of performance**

- 11.1 The business relationship and the entire legal relationship between us and the Customer is exclusively subject to German law. The application of United Nations Convention on the International Sale of Goods (CISG) is hereby excluded.
  
- 11.2 The place of performance for the delivery of goods and supply of services is Bremen if the Customer is a merchant as defined in German law. The place of performance for non-merchants is defined in § 269 German Civil Code (BGB).

## **12. Place of jurisdiction**

- 12.1 If both contracting parties are merchants as defined in German law, the exclusive place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship is the court responsible for Bremen. We are, however, entitled to take legal action against the Customer at his general place of jurisdiction.
  
- 12.2 Also in the case of cross-border deliveries, the exclusive place of jurisdiction for all disputes arising from the contractual relationship is the court responsible for Bremen, Federal Republic of Germany (Article 23 of (EC) Regulation No. 44/2001 of the Council relating to legal jurisdiction and to the recognition and enforcement of civil and commercial law judgments dated 22.12.2000 = EuGVVO). We also reserve the right to appeal to any other court to which jurisdiction is granted by the EuGVVO of 22.12.2000.

Stand October 2019