



## **General Terms of Delivery and Payment for Special Steels and Casting Products**

### **1. Scope of application**

- a) These general terms of delivery and payment apply to businesses, other legal entities under private and public law as well as to special funds under public law.
- b) The customer's terms and conditions of purchase that conflict or differ from the following provisions are hereby expressly excluded. Deviating, contradictory or supplementary terms and conditions of the customer will not form an integral part of the agreement, unless we expressly agree to their validity. This consent is also required, for example, if we, being aware of the customer's terms and conditions, deliver the order to the customer without reservation.

### **2. Conclusion of contract, scope of delivery**

- a) Our offer is non-binding and subject to change unless stated otherwise in the offer or explicitly declared in writing. A contract is only concluded once we have confirmed an order in writing or we fulfil the order.
- b) Unless expressly designated as binding, the information contained in brochures and catalogues, such as illustrations, drawings, weight and dimension specifications, are approximate values commonly used in the industry.
- c) We retain intellectual property rights and copyright to images, brochures, calculations, and other documents, which may not be made accessible to third parties. This applies in particular to written documents marked as "confidential;" the customer requires our express written consent before they can be disclosed to third parties.

### **3. Pricing and payment terms**

- a) Our prices are quoted ex works or ex warehouse, and exclude packaging, freight, postage, insurance, and applicable value-added tax, unless otherwise agreed in writing in the order.
- b) If order-related costs change significantly after conclusion of the contract, each party to the contract will have the right to demand that the other party enter into supplementary contract negotiations. The purpose of these supplementary contract negotiations is to ensure that the contractually agreed prices appropriately reflect the changed costs.
- c) Unless otherwise agreed, our invoices are payable in full within 30 days of receipt by transfer to a bank account specified by us. The customer is only entitled to set off claims or withhold payments, if their counterclaims are undisputed, accepted by us or legally established based on the principle of reciprocity.
- d) However, we reserve the right to make deliveries contingent upon payment on a cash-on-delivery basis or upon receiving an advance payment.
- e) If we have delivered partially defective goods, the buyer is still obliged to make payment for the undisputed defect-free goods, unless the partial delivery is of no interest to them.
- f) We accept non-negotiable and properly taxed bills of exchange as a means of payment, provided that this has been expressly agreed upon in advance. Credits for bills of exchange and checks are subject to clearance, less expenses, with a value date on the date on which we can dispose of the cleared funds.
- g) If we are obliged to make advance payments and, after conclusion of the contract, we become aware of circumstances, which jeopardise our payment claim due to the customer's inability to pay, we will be entitled, in addition to the legal claims based on the retention of title agreed in Section 11, to prohibit the resale and processing of the delivered goods and to demand their return or transfer of indirect ownership to the delivered goods at the customer's expense and to revoke the collection authorisation under the conditions set out in Section 11 (h). In the mentioned cases, the customer authorizes us, in advance, to enter their premises and collect the delivered goods. The return of the goods constitutes a withdrawal from the contract only if we expressly declare so. Our payment claims are considered to be at risk due to the deterioration in the customer's financial position, if a reputable credit agency significantly downgrades the customer's creditworthiness compared to the rating at the time the contract was concluded or if such an agency identifies a credit issue. This applies even if the causes leading to the downgrade or credit issue were already present at the time of contract conclusion and were we were aware of them.
- h) If the payment deadline in accordance with Section 3 (c) is exceeded, we will be entitled to charge late-payment interest of nine percentage points above the base interest rate as well as a flat rate fee of EUR 40.00. This is without prejudice to the right to seek further damages. In all other respects, the statutory provisions shall apply.
- i) Discounts are only granted if we have expressly agreed to them. Unless otherwise agreed, cash discount periods run from the invoice date, irrespective of the time of receipt or delivery. A cash discount period will only be deemed to have been observed if we can dispose of the amount paid within the period. Cheques must reach us three bank business days before the discount period expires. In case of a payment delay, any applicable discounts will be forfeited for all other outstanding payments, except when the overdue payment is clearly minor in nature. We hereby object to tacit agreements regarding changes to the discount terms, even in cases of long-standing practice.



Unauthorised cash discounts do not preclude the subsequent assertion of overdue amounts. The limitation period for such claims is five years from the end of the calendar year in which the outstanding payment became due.

#### **4. Delivery dates**

- a) Our delivery obligations are subject to receiving correct and timely deliveries from our suppliers, unless we are responsible for the incorrect or delayed availability of supplies.
- b) The delivery periods shall commence upon dispatch of our order confirmation, but not before all details of the performance have been clarified and all other fulfilment requirements have been met by the customer; the same shall apply to delivery dates. The delivery date is the dispatch advice date; alternatively, it is the dispatch date. Unless otherwise agreed upon or unless the contract stipulates otherwise, the delivery dates we provide are always non-binding.
- c) Deliveries before the end of the delivery period and partial deliveries are permitted provided that this is of interest to the customer based on the intended use and the customer does not incur any significant additional expense as a result.
- d) Where agreed delivery periods and/or dates are extended or postponed, this will be without prejudice to our rights arising from the customer's delay; the extension will be equal to the period by which the customer is in arrears with their obligations. If the customer is in default of acceptance, or if they breach any other duties to cooperate for reasons within their control, we will be entitled to demand compensation for any damage incurred as a result, including any additional expenses. In this case, the risk of accidental loss or accidental deterioration of the purchased object will be transferred to the customer on the day he falls behind with acceptance.
- e) If an agreed delivery date is exceeded for reasons for which we are responsible, the customer must give us a reasonable grace period for performance in writing. This grace period shall be at least two weeks.
- f) The customer shall notify us within a period of two weeks, whether they intend to withdraw from the contract due to the delay and/or demand damages in lieu of performance or they still wish to receive the delivery. If the grace period passes to no effect, the claim to performance will be excluded. There is no need to set a grace period with a threat of rejection in the event of our final refusal to perform.

#### **5. Force majeure and other disruptions**

- a) We are not liable in cases of force majeure. This includes all unforeseeable events as well as events that - to the extent that they could have been foreseen - lie outside the parties' sphere of influence. This includes but is not limited to the following events: natural disasters such as floods, storm surges, hurricanes and typhoons as well as other catastrophic weather events, earthquakes, lightning strikes, avalanches and landslides, fires, epidemics, pandemics, epidemics and infectious diseases (if declared as such by the WHO or a ministry or by the Robert Koch Institute has set a risk level of at least "moderate"), war or war-like conditions, terrorist acts, riots, revolution, military or civil coup, uprising, blockades, administrative or government orders, strikes, lockouts.
- b) If such an event of force majeure occurs, the affected party is obliged to notify the other party immediately, at the latest within 14 days of becoming aware of it, in writing or electronic form about the occurrence of the event and the consequences of its impact on their performance.
- c) In this case, we will be entitled to extend our delivery dates and deadlines depending on the extent and duration of the force majeure event and its consequences, without granting the customer the right to withdraw from the contract or to claim damages. We will not be in default for the period of justified extension of delivery dates and periods.
- d) Both parties are obliged to do everything in their power and within reason to minimise the damage.
- e) If the interruption due to a force majeure event lasts longer than six weeks, both parties will be entitled to terminate the contract in whole or in part. In these cases, we will only be entitled to demand compensation for the part of the work completed up to the point of termination.

#### **6. Covid-19**

If we are hindered in fulfilling our obligations under the terms of the contract by effects that are directly or indirectly related to the Covid-19 pandemic or a mutation thereof, the provisions listed below under (a) to (d) will apply. We will be deemed to have been hindered in our performance due to the coronavirus pandemic or a mutation thereof in particular if:

- Quarantine measures are imposed on our operations or a significant part thereof,
- Officially ordered company closures, curfews, travel bans or return-from-abroad orders are issued,
- Required materials or services from abroad are unavailable due to government-imposed entry bans or supply chains are disrupted due to government measures and/or
- A significant number of our employees are in quarantine due to an infection with the coronavirus or a mutation thereof.



- a) In the event of such a hindrance, we undertake to immediately inform the customer in writing or electronic form about the occurrence of the hindrance and its effects.
- b) In such a case, we are entitled to extend our delivery dates and periods depending on the extent and duration of the hindrance and its consequences, without this giving the customer the right to withdraw from the contract or to claim damages. In this case, we will not be in default as a result of extending our delivery dates and periods.
- c) Both parties are obliged to do everything in their power and within reason to minimise the damage.
- d) If the interruption due to the hindrance lasts longer than six weeks, both parties will be entitled to terminate the contract in whole or in part. In these cases, we will only be entitled to demand compensation for the part of the work completed up to the point of termination.

## **7. Dimensions, weight, quality**

Deviations in dimensions, weight and quality are permissible according to DIN or the applicable practice within a range of +/- 10% of the agreed order quantity. The weights are determined on our calibrated scales and are decisive for invoicing. Proof of weight is provided by presenting the weigh-in certificate. Unless individual weighing is customary, the total weight of the shipment shall apply. Any variances from the calculated individual weights will be proportionally distributed among them. The customer is entitled to provide evidence of the inaccuracy of our measurement procedure.

## **8. Framework / long-term / call-off contracts**

- a) Open-ended contracts can be terminated by giving a 3 months' notice with effect from the end of the month.
- b) If a significant change in wage, material or energy costs occurs after the first four weeks of the contract term of long-term contracts (contracts with a term of more than 12 months and open-ended contracts), either party will have the right to request an appropriate price adjustment, taking these factors into account.
- c) Our prices are calculated based on the agreed order quantities. If no binding order quantities have been agreed, our calculation will be based on the agreed target quantities. If the order or target quantity is not met, we will be entitled to increase the price appropriately.
- d) In the case of on-call delivery contracts, unless otherwise agreed, binding quantities must be communicated to us within a reasonable period of time before the delivery date. The usual practice for the provision and delivery of the goods is considered appropriate, taking into account the current production and transport times. Additional costs caused by a delayed call-off or subsequent changes to the call-off in terms of time and/or quantity by the customer shall be borne by the customer; our calculation shall be decisive in this respect.

## **9. Delivery and transfer of risk**

- a) Unless there are specific instructions from the customer, we will be responsible for selecting a suitable forwarding agent and carrier.
- b) We will only arrange standard transportation insurance for the respective delivery upon the express request of the customer; the associated costs shall be borne by the customer.
- c) Unless otherwise agreed, the risk of accidental loss or accidental deterioration of the delivery passes to the customer when the delivery items are handed over to the freight forwarder, railway, post office or other carrier, but at the latest when they leave our factory premises. This also applies in the case of partial deliveries or when we provide other services, e.g. when we pay for the shipping costs or handle the transportation ourselves.
- d) If shipping is delayed due to circumstances attributable to the customer, the risk will be transferred upon notification that the goods are ready for dispatch.
- e) The packaging of the delivery items as well as the choice of the transport route and means of transport is incumbent on us at our reasonable discretion and exercising reasonable care, unless the customer expressly gives different shipping instructions in writing. Acceptance of the delivery items without objections by the railway, postal service, carriers, or other transport operators/freight forwarders is considered confirmation of the proper condition of the packaging at the time of dispatch. This exempts us from liability for improper packaging or loading and for damages or losses that occurred during transportation. In the event of intent or gross negligence, the exclusion of liability does not apply.
- f) If the customer picks up the delivery items at the factory and transports or ships them abroad, the customer must promptly provide us with the export documentation required for tax purposes following the delivery. This can be done by email, fax or post. If the required documentation is not provided, the customer will be required to pay the applicable VAT on the invoice amount for deliveries within the Federal Republic of Germany. We expressly reserve the right to collect the VAT and to refund it only after the necessary export documentation has been provided.



## 10. Export controls

- a) Unless otherwise agreed with the customer, the delivery items are intended to be placed on the market within the Federal Republic of Germany, or in the case of international delivery, to be placed on the market in the agreed country of first delivery.
- b) In the case of agreed international delivery, the customer is responsible for ensuring, at their own expense, that all national import regulations of the first delivery country are met concerning the items to be delivered by us, unless we have contractually assumed this obligation and such assumption is legally permissible under the laws of the respective country.
- c) The delivery items may be subject to the applicable commercial laws of one or more countries (including in the event of any subsequent - further - exports by the customer). The customer shall comply with all relevant laws and regulations governing the import or export of the delivery items, including, but not limited to, trade laws such as the US Export Administration Regulations and other end-user, end-use, and destination restrictions of the United States and other countries, as well as sanctions regulations administered by the US Office of Foreign Assets Control (collectively referred to as "trade laws").
- d) The customer shall ensure that before shipment to a country other than the first delivery country agreed with us, they obtain the necessary national product approvals or product registrations, and they comply with all the requirements of the relevant country's national law regarding the provision of user information in the national language, as well as all other import regulations. The customer shall, in particular, verify and ensure that:
  - The delivery items are not intended for military, nuclear, or weapons-related use;
  - No companies and individuals listed in the current US Denied Persons List (DPL) are supplied with U.S.-origin goods, US software, and US technology;
  - No companies and individuals listed in the US Warning List, US Entity List, or US Specially Designated Nationals List are supplied with U.S.-origin products without the required authorisation.
  - No companies or individuals named in the list of Specially Designated Terrorists, Foreign Terrorist Organizations, Specially Designated Global Terrorists or the EU terrorist list or other relevant negative lists for export controls are supplied;
  - No military recipients will be supplied with the items we deliver;
  - No recipients are supplied who are in breach of other export control regulations, in particular those of the EU or the ASEAN states;
  - All early warning notices from the relevant German or national authorities of the respective country of origin of the delivery are adhered to.
- e) We have the right to immediately suspend the agreed delivery of items and withdraw from related contractual obligations if, in our reasonable judgement, we conclude that continued performance would violate trade laws or carries the risk of being subject to sanctions or penalties under trade laws. In this case, we will not be liable for damages or other financial losses incurred by the customer that may be associated with a withdrawal from the contract in individual cases.
- f) The customer agrees that, in the event of passing on the items supplied by us to third parties, they will bind these parties in the same way as outlined in Sections 10 (a) to (d) and in particular to inform them about the need to comply with trade laws.
- g) The customer shall indemnify us against any claims of third parties resulting from his culpable breach of the above obligations in accordance with Sections 10 (a) to (f). In addition to claims for damages, the indemnification also includes the reimbursement of reasonable costs for legal defence arising from the culpable breach of the aforementioned obligations. The indemnification requires that a settlement or acknowledgement of third-party claims can only occur with the prior consent of the customer.

## 11. Retention of title

- a) We retain title to any delivered goods (reserved goods) until all current and future claims, including any outstanding balances related to the business relationship to which we are entitled to have been settled in full. This also applies to payments for specific claims. If the customer defaults on payment, we are entitled to demand the return of the delivered goods. The related costs shall be borne by the customer. This does not apply if insolvency proceedings have been filed or initiated against the customer, and we are therefore not entitled to demand the immediate return of the delivered goods.
- b) The fact that we take back the reserved goods and/or exercise the retention of title shall not be construed to constitute a withdrawal from the contract, unless we expressly declare so.
- c) The customer shall always process the delivered goods on our behalf. If a reserved item is processed or inextricably mixed or otherwise combined with other items not belonging to us, we will acquire joint ownership of the new item in proportion to the relationship between the value of the original goods that are subject to the reservation of title and that of the other items processed or mixed at the time of processing.
- d) If our ownership lapses due to mixing or combining, the customer shall transfer to us their ownership rights in the new inventory or item in proportion of the invoiced value of the reserved goods and shall hold them free of charge on our behalf. The resulting joint ownership rights will be considered reserved goods within the meaning of paragraph (a).



- e) The customer may only sell the reserved goods in the regular course of business, on their normal business terms, as long as they are not in default, provided that the claims from the resale are transferred to us in accordance with paragraphs (f) and (g). They are not entitled to make other dispositions, in particular, to pledge or transfer the reserved goods as security.
- f) The customer's claims arising from the resale of the reserved goods are hereby assigned to us. They serve to secure our claims to the same extent as the reserved goods.
- g) If the reserved goods are sold by the customer together with other goods not delivered by us, the assignment of the claim from the resale only applies to the invoice value of the reserved goods sold. When selling goods in which we have joint ownership in accordance with paragraph (b), only the portion of the claim that corresponds to the share of joint ownership can be assigned.
- h) The customer is entitled to collect claims from the sale in accordance with paragraphs (e) and (f) until we withdraw. We have the right to withdraw in particular if the customer defaults on payment, an application has been filed to open insolvency proceedings or payments have been suspended. In these cases, the customer shall notify us immediately of the assignment of claims and their debtors, and provide all the information necessary for the debt collection, hand over all related documents and inform the debtors of the assignment. The customer is under no circumstances authorized to assign the claims.
- i) If the value of the existing collateral exceeds the value of the secured claims by more than 20%, we will be obliged to release the collateral at our choice. The customer shall notify us immediately of any seizure or other impairment by third parties.

## 12. Warranty

- a) In the event of a breach of a contractual obligation, the customer has the statutory rights against us in accordance with the following provisions.
- b) The customer is only entitled to make warranty claims if they have complied with their obligations to inspect the goods and notify us of any defects in accordance with Section 377 of the German Commercial Code (HGB). After an agreed acceptance procedure has been carried out, the notification of defects that can be detected during this acceptance procedure will be excluded.
- c) If the defect is justified and reported in a timely manner, the customer will be entitled to corrective action during the warranty period; we have the right to choose with regard to the type of remedy – elimination of the defect or delivery of a defect-free item. If the remedy fails or if further attempts to remedy the defect are unreasonable for the customer, the customer will be entitled to a reduction in price or to withdraw from the contract.
- d) If a claim is made against the customer by one of their buyers or consumers due to a defect in the delivered goods which was already present at the time of the transfer of risk or which was claimed by a consumer as the end customer, the customer's statutory rights of redress against us under Sections 445a, 445b and 478 of the German Civil Code (BGB) will remain unaffected.
- e) The customer can only assert claims for damages due to a defect if the remedy has failed or we refuse to remedy the defect. The customer's right to seek further claims for damages remains unaffected.
- f) Claims for defects against us can only be asserted by the direct customer and cannot be assigned.
- g) In the case of goods that have been sold as downgraded material - e.g. II-a material - the buyer will not be entitled to any warranty rights with regard to the specified defects and/or any typical defects.

## 13. General limitation of liability

- a) We are liable for any damage/loss incurred only to the extent that they result from a breach of material contractual obligations or from intentional or grossly negligent conduct on our part, on the part of our legal representatives, senior employees, or agents. If a material contractual obligation is breached due to simple negligence, our liability will be limited to the foreseeable typical damage. Material contractual obligations are obligations, which are essential for the proper performance of the contract and the fulfilment of which the customer may routinely rely upon.
- b) Any further liability for damages is excluded. Liability for culpable injury to life, body or health in accordance with statutory provisions remains unaffected. This also applies to mandatory liability under the Product Liability Act. Liability for the lack of a guaranteed characteristic also remains unaffected to the extent that the guarantee is intended to protect the customer against damage that did not occur to the delivered goods themselves.
- c) If we have excluded or limited our liability, this will also extend to the personal liability of our staff, employees, representatives and agents.
- d) The customer's claims for damages and material defects against us shall lapse one year after the transfer of risk to the customer. This does not apply if the law stipulates longer time limits in Section 438 (1) No 2 BGB (buildings and items used in buildings), and in Sections 445a, 445b and 478 BGB (supplier's redress), and in the cases of injury to life, body or health or grossly negligent breach of duty or a fraudulent concealment of a defect. The statutory provisions on suspension of expiry, suspension and recommencement of time limits shall remain unaffected. Claims for damages under the Product Liability Act are also subject to statutory limitation periods.





**14. Partnership clause**

When determining compensation payments, and claims for damages in particular, the parties shall act in good faith and take into account the economic circumstances of the parties, the nature, extent and duration of the business relationship, as well as the value of the goods.

**15. Confidentiality**

- a) Either party will use the documents (this includes but is not limited to samples, models and data) and knowledge they acquire in the course of the business relationship only for the jointly pursued purposes and will keep them secret from third parties with the same care as their own documents and knowledge, provided that the other party designates them as confidential or there is an obvious interest in keeping them confidential.
- b) This obligation shall commence upon the initial receipt of the documents or knowledge and it will continue for 36 months after the end of the business relationship.

**16. Place of performance and jurisdiction**

- a) The place of jurisdiction for all disputes arising from this contractual relationship is Gummersbach, Germany. However, we are also entitled to bring an action before the court at the location of the registered office of the customer.
- b) Unless otherwise stated in the order confirmation, the place of performance for all delivery obligations on our part and for the other contractual obligations of both parties is Runderoth, Germany.

**17. Applicable law**

The contractual relationships between the parties are governed exclusively by the laws of the Federal Republic of Germany to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG). The application of the UN Convention on Contracts for the International Sale of Goods is rejected, in particular, on the basis of a specific agreement as a result of a provision to this effect in the terms and conditions of the customer.

**18. Written form requirement**

Any arrangements made between us and the customer to execute this contract must be made in writing. To be effective, any changes or additions to this contract must be made in writing. This also applies to the waiver of the written form requirement. The same applies to legally relevant declarations and notifications that the customer must make to us after the contract has been concluded (e.g. setting deadlines, notifications of defects, declarations of withdrawal or reduction in payments).

**19. Severability**

If any provision of these terms of delivery and payment is held to be ineffective or void, whether in whole or in part, the parties undertake to agree on a provision that comes closest to the spirit and purpose of the invalid provision.

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