

General Terms and Conditions of Sale and Delivery of Meiser Streckmetall GmbH

§ 1 Scope of Application

(1) Our deliveries and services to entrepreneurs (hereinafter referred to as the “Customer”) shall be provided exclusively on the basis of the following terms and conditions. These terms and conditions shall apply to all current and future business relationships between the contracting parties, even if they are not expressly agreed again.

(2) Any deviating, conflicting or supplementary general terms and conditions of the Customer shall not become part of the contract, even if we are aware of them, unless we have expressly agreed to their validity in writing.

§ 2 Formation of the Contract / Offer Documents

(1)

Our quotations are non-binding and subject to change without notice.

(2)

By placing an order, the Customer makes a binding offer to purchase the goods. We shall be entitled to accept the contractual offer contained in the order within four (4) weeks from the date of the order.

(3)

Only agreements made or confirmed by us in writing, by fax or by e-mail shall be binding with regard to the acceptance, scope and execution of the delivery. Any telephone or verbal agreements or ancillary arrangements shall only become effective if confirmed in writing by both parties. Our employees are not authorised to agree to any amendments to the delivery or payment terms.

(4)

Customary commercial deviations or DIN tolerances relating to dimensions, shape and weight of the raw materials and the manufactured goods shall be permissible. Production shall be carried out in accordance with DIN Standards 6930, 24041, 24043 and 791. With regard to flatness tolerances, it shall be



assumed that the sheets are machine-rolled in accordance with the current state of the art.

(5)

Unless expressly agreed otherwise, no particular surface quality of the base material shall be owed, in particular no grease-free surface.

(6)

Over-deliveries of up to 10% and under-deliveries of up to 5% shall be permissible.

(7)

The provisions of Section 312e (1), sentence 1, nos. 1–3 and sentence 2 of the German Civil Code (Bürgerliches Gesetzbuch – BGB) shall not apply.

(8)

We reserve all ownership rights and copyrights in all illustrations, drawings, calculations and other documents. Such documents must not be made available to third parties. This shall apply in particular to documents marked as "confidential"; they may only be disclosed to third parties with our prior written consent.

§ 3 Performance of Delivery Obligations / Delivery Periods

(1)

The conclusion of the contract shall be subject to our receiving correct, complete and timely deliveries from our own suppliers. This shall apply only if the non-delivery, incorrect delivery or delayed delivery is not attributable to us and we have entered into a corresponding covering transaction with our supplier.

The Customer shall be informed without undue delay if the goods or services become unavailable. Any consideration already provided by the Customer shall be reimbursed without undue delay.

(2)

Delivery dates or delivery periods, whether binding or non-binding, must be agreed in writing. Delivery dates shall only be binding if expressly confirmed by us in writing as binding.



The delivery period shall commence on the date of our order confirmation.

The delivery period shall be deemed to have been complied with if the goods have left our works before the expiry of the agreed delivery period. Compliance with the delivery period is subject to the timely receipt of all documents to be provided by the Customer, any required approvals, and the fulfilment of all agreed obligations by the Customer.

(3)

If we or our suppliers are prevented from performing our obligations due to force majeure, we shall be released from our delivery obligations for the duration of such impediment. Agreed delivery periods shall be extended by a reasonable period, including where we are already in delay.

Force majeure shall include, but not be limited to, war, strikes and lockouts affecting our suppliers or, where such strikes or lockouts are lawful, affecting our own operations, civil unrest, terrorist attacks and natural disasters.

(4)

In the event of unlawful industrial action affecting our business (in particular strikes or lockouts), we shall not be liable where only slight negligence is attributable to us.

(5)

If an impediment within the meaning of paragraph (3) is of a permanent nature, we shall be entitled to withdraw from the contract unless the impediment was reasonably foreseeable at the time the contract was concluded. The Customer shall not be entitled to claim damages in this respect.

In such case, we shall inform the Customer without undue delay in accordance with paragraph (1), sentences 3 and 4, and shall reimburse without undue delay any consideration already received.

Where an impediment within the meaning of paragraph (3) is of a permanent nature, the Customer shall likewise be entitled to withdraw from the contract.

(6)

If the contract is subsequently amended in a manner that may affect the delivery period, the delivery period shall be extended by a reasonable period.



(7)

We shall be entitled to make partial deliveries. Partial deliveries shall be invoiced immediately.

(8)

Where the goods owed by us are defined only by type, we shall only be obliged to supply goods from our own production.

If, accordingly, we are not obliged to make delivery, we shall inform the Customer without undue delay in accordance with paragraph (1), sentences 3 and 4, and shall reimburse without undue delay any consideration already received.

(9)

If delivery is delayed, any reasonable grace period to be granted to us by the Customer shall be no less than three (3) weeks. Such grace period shall commence upon receipt of the Customer's notice granting the extension.

(10)

If we are in delay with delivery for reasons for which we are responsible, the Customer's claims shall be limited to 1% of the value of the delayed delivery (excluding VAT) for each completed week of delay, up to a maximum of 5% of the value of the delayed delivery (excluding VAT).

This limitation shall not apply to claims arising from injury to life, body or health or where the delay results from our wilful misconduct or gross negligence.

(11)

If the Customer is in default of acceptance or culpably breaches any other duty to cooperate, we shall be entitled to claim compensation for any damage incurred by us, including any additional expenses.

In such event, the risk of accidental loss or accidental deterioration of the goods shall pass to the Customer at the time the Customer enters into default of acceptance.

§ 4 Retention of Title

(1)

We retain title to the goods until all claims arising from the ongoing business relationship with the Customer, irrespective of their legal basis, have been paid in full (the "Reserved Goods").

(2)

Any processing or transformation of the Reserved Goods shall be carried out on our behalf as manufacturer within the meaning of Section 950 of the German Civil Code (BGB), without creating any obligations on our part. The processed goods shall continue to be regarded as Reserved Goods.

If the Reserved Goods are combined or mixed with other goods, we shall acquire co-ownership of the newly created item or inventory in the proportion of the invoice value of the Reserved Goods to the invoice value of the other goods at the time of combination or mixing.

If our ownership ceases as a result of such combination or mixing, the Customer hereby assigns to us, in advance, its ownership rights in the newly created item or inventory to the extent of the invoice value of the Reserved Goods. The Customer shall hold such ownership on our behalf free of charge.

(3)

If the Reserved Goods are resold together with other goods, the assignment of the claim arising from the resale shall apply only up to the amount of our invoice value of the Reserved Goods.

Where goods in which we hold co-ownership are resold, the assignment shall apply only to the extent of our co-ownership share.



(4)

The Customer shall handle the goods with due care. Where maintenance or inspection work is required, the Customer shall carry out such work regularly at its own expense.

(5)

The Customer shall immediately notify us of any third-party access to the goods (e.g. attachment or seizure), as well as of any damage to or destruction of the goods.

The Customer shall also notify us without undue delay of any change of possession of the goods or any relocation of its registered office.

(6)

We shall be entitled to withdraw from the contract and demand the return of the goods if the Customer acts in breach of the contract, in particular in the event of default in payment or breach of any obligation under paragraphs (4) and (5).

We shall also be entitled to do so if the Customer suspends payments, applies for the opening of insolvency proceedings, or if circumstances arise which entitle us under Section 5 (9) of these Terms and Conditions to declare all outstanding amounts immediately due and payable.

(7)

If we demand the return of the goods pursuant to paragraph (6), the Customer shall immediately surrender the goods upon first request.

For this purpose, the Customer authorises us to enter any premises where the Reserved Goods are stored and to take possession of them.



(8)

The Customer shall have a revocable right to resell the Reserved Goods in the ordinary course of business.

Resale shall also include the performance of contracts for work and materials, contracts for work involving the supply of goods, or the incorporation of the Reserved Goods into real property or installations attached to real property.

(9)

If the Reserved Goods are incorporated by the Customer, or on its behalf, as an essential component into the property of a third party, the Customer hereby assigns to us, in advance, any claims for remuneration arising against such third party, together with all ancillary rights, including the right to the registration of a security mortgage. We hereby accept such assignment.

If the Reserved Goods are incorporated as an essential component into the Customer's own property, the Customer hereby assigns to us, in advance, any claims arising from the sale of such property or property rights, together with all ancillary rights. We hereby accept such assignment.

(10)

The Customer hereby assigns to us, in advance, all claims against third parties arising from the resale of the goods up to the amount of the relevant invoice value. We hereby accept such assignment.

Following the assignment, the Customer shall remain authorised to collect such claims in its own name and for its own account.

We reserve the right to collect the assigned claims ourselves if the Customer fails to meet its payment obligations properly or is in default of payment.



(11)

Where the Customer resells the goods on credit, it shall retain title to the goods vis-à-vis its purchaser.

The Customer hereby assigns to us all rights and claims arising from such retention of title. We hereby accept such assignment.

(12)

To the extent that the Customer acquires claims against third parties, in particular insurers, arising from damage to, deterioration of, loss of or destruction of the Reserved Goods, or for any other reason, the Customer hereby assigns such claims to us, together with all ancillary rights, up to the amount of our outstanding claims. We hereby accept such assignment.

(13)

We undertake, at our discretion, to release the securities to which we are entitled to the extent that their value exceeds our outstanding claims by more than twenty (20%) on a basis that is not merely temporary.

§ 5 Prices, Payment Default and Set-Off

(1)

All prices are quoted net of the statutory value added tax (VAT) applicable on the date of delivery.

(2)

Where fixed prices have exceptionally been agreed, we reserve the right to increase such prices accordingly if, between the conclusion of the contract and delivery, our costs increase due to higher prices for materials or raw materials, increases in wages or salaries, or any other increases in costs.



(3)

Unless otherwise agreed in writing, our prices are quoted ex works (EXW) and exclude insurance and packaging costs.

(4)

Our invoices shall be payable in full upon receipt without any deduction.

(5)

The Customer shall be deemed to be in default of payment if payment is not received within fourteen (14) days of receipt of the invoice.

For all methods of payment, payment shall be deemed to have been received on the date on which the relevant funds are at our unrestricted disposal, unless otherwise agreed in writing.

(6)

During any period of default, the Customer shall pay default interest at a rate of eight (8) percentage points above the applicable base interest rate.

Our right to claim further damages shall remain unaffected.

(7)

The Customer shall only be entitled to set off claims, exercise a right of retention, or assert rights pursuant to Sections 438 (4) and (5) or 634a (4) and (5) of the German Civil Code (BGB) if its counterclaims have been finally adjudicated, are undisputed, or have been expressly acknowledged by us.

(8)

Cheques and bills of exchange shall only be accepted on account of performance.

We expressly reserve the right to refuse acceptance of cheques or bills of exchange.

Any discount charges, collection charges and other costs relating to bills of exchange shall be borne by the Customer and shall become due immediately.

(9)

If circumstances become known to us which call the Customer's creditworthiness into question, in particular if a cheque issued by the Customer is dishonoured or



the Customer suspends payments, we shall be entitled to declare all outstanding amounts immediately due and payable.

In such circumstances, we shall also be entitled to perform any outstanding deliveries or services only against advance payment or the provision of adequate security.

(10)

If the Customer permanently suspends payments and/or insolvency proceedings or judicial or extrajudicial composition proceedings are initiated with respect to the Customer's assets, we shall be entitled to withdraw from the unperformed part of the contract.

(11)

Notwithstanding any contrary designation by the Customer, we shall be entitled to apply payments first to the Customer's oldest outstanding debts.

Where costs and/or interest have already accrued, we shall be entitled, irrespective of any designation by the Customer, to apply payments first to costs, then to interest and finally to the principal amount.

The Customer shall be informed accordingly of such allocation.

(12)

Our representatives are not authorised to collect payments unless they hold a written power of attorney.

(13)

The Customer shall bear all fees, costs and expenses incurred in connection with any legal proceedings successfully pursued against the Customer outside the Federal Republic of Germany.

§ 6 Assignment of Rights

We, as the Supplier, shall be entitled to assign our claims against the Customer to a third party.

The Customer may assign any claims against us only with our prior written consent.

§ 7 Provision of Security

If, after the order confirmation has been issued, circumstances become known to us which reasonably indicate that the Customer's financial situation is less favourable than originally assumed, we shall be entitled to require the Customer to provide adequate security, irrespective of the payment terms agreed in the order confirmation.

§ 8 Call-Off Orders

(1)

Call-off orders must be called off by the Customer no later than one (1) year after the order has been placed.

(2)

If call-off orders are not called off in accordance with the contract, we shall be entitled to invoice the quantities due for call-off and, after a further period of two (2) weeks, to dispatch such quantities to the Customer together with any processed or unprocessed material, charging the agreed purchase price immediately, but in any event not less than our total costs incurred.

(3)

In the case of ongoing delivery schedules, the Customer shall notify us of any intended discontinuation of the relevant part of the schedule as early as possible and in any event no later than six (6) months before the scheduled discontinuation.

Failing such notice, the Customer shall reimburse us for all material procurement and production costs incurred in anticipation of the scheduled deliveries.

Any further claims for damages shall remain unaffected.

§ 9 Transfer of Risk / Shipment

(1)

The risk of accidental loss or accidental deterioration of the goods shall pass to the Customer upon delivery. In the case of shipment, the risk shall pass upon delivery of the goods to the forwarding agent, carrier or any other person or organisation designated to carry out the shipment.

From the same point in time, the Customer shall also be liable for any damage that may be caused to third parties.

This shall also apply where delivery is made carriage paid.

(2)

The choice of shipping route, method of shipment and means of transport shall be at our discretion, to the exclusion of any liability on our part and without any obligation to select the least expensive means of transport.

(3)

If shipment is delayed or omitted at the Customer's request, the risk shall pass to the Customer upon notification that the goods are ready for dispatch.

In addition, we shall be entitled, one (1) month after notification of readiness for dispatch, to charge the Customer for storage costs amounting to at least 0.5% of the invoice value.

(4)

At the Customer's written request made at the time of placing the order, deliveries shall be insured in the Customer's name and at the Customer's expense.

(5)

Any complaints regarding missing items must be notified to us no later than one (1) week after receipt of the delivery.

§ 10 Packaging

The goods shall be packaged if requested by the Customer or if we consider such packaging to be necessary.



Unless otherwise agreed in writing, packaging shall be charged at cost.

The Customer shall have no claims arising from defective packaging unless such defects result from our wilful misconduct or gross negligence.

§ 11 Warranty

(1)

The Customer's warranty claims shall be subject to the Customer having duly complied with its obligations to inspect the goods and notify defects pursuant to Sections 377 and 378 of the German Commercial Code (Handelsgesetzbuch – HGB). Failing such compliance, the goods shall be deemed approved and any warranty claims shall be excluded.

The Customer shall also be obliged, in the event of an incorrect delivery, to inspect the goods and notify us of the defect without undue delay in accordance with Section 377 HGB. If such notice is not given without undue delay, the goods shall likewise be deemed approved.

(2)

If the goods are delivered to a third party instead of the Customer, the Customer shall ensure that the third party inspects and accepts the goods without undue delay.

Otherwise, the goods shall be deemed to have been delivered in conformity with the contract.

(3)

In the event of defects in the goods, we shall, at our discretion, provide subsequent performance by repairing the goods or supplying replacement goods.

Up to three (3) attempts at repair shall be permissible.

The Customer shall keep the defective goods available for our inspection in the condition in which they were at the time the defect was discovered.

(4)

If subsequent performance fails or is refused by us, the Customer may, as a



general rule, demand an appropriate reduction of the purchase price or withdraw from the contract.

However, the Customer shall have no right of withdrawal in the event of only a minor breach of contract, in particular where the defect is insignificant.

(5)

If, following unsuccessful subsequent performance, the Customer withdraws from the contract due to a legal or material defect, the Customer shall not be entitled to claim damages in addition to such withdrawal.

(6)

Public statements, product descriptions or advertising claims made by us or by the manufacturer shall not constitute an agreed quality or specification of the goods.

(7)

In the cases referred to in Sections 438 (1) No. 2 and 634a (1) No. 2 of the German Civil Code (BGB), the limitation period for warranty claims shall be one (1) year from delivery of the goods.

This shall not apply in cases of fraudulent concealment or gross negligence on our part, nor to claims arising from injury to life, body or health.

The Customer's obligation to notify defects in due time pursuant to paragraph (1) shall remain unaffected.

(8)

In all other cases, the limitation period for warranty claims shall be one (1) year from delivery of the goods.

This shall not apply in cases of fraudulent concealment or gross negligence on our part, nor to claims arising from injury to life, body or health.

The Customer's obligation to notify defects in due time pursuant to paragraph (1) shall remain unaffected.

(9)

If the Customer receives defective assembly instructions, our obligation shall be



limited to supplying defect-free assembly instructions, and only where the defect in the instructions prevents proper assembly.

(10)

If the Customer fails to comply with our operating or maintenance instructions, modifies the products, replaces parts or uses unsuitable consumables, all warranty claims shall be excluded unless the Customer proves that none of these circumstances caused the defect.

(11)

No guarantees within the legal meaning shall be granted by us unless expressly agreed in writing.

§ 12 Limitation of Liability

(1)

In the event of a slightly negligent breach of duty, our liability—irrespective of the legal basis, subject to paragraph (3) below—shall be limited to the foreseeable, direct and typical damage arising under the contract, taking into account the nature of the goods.

This limitation shall also apply to slightly negligent breaches of duty by our legal representatives, employees and other agents acting on our behalf.

(2)

Subject to paragraph (3) below, neither we nor our employees, agents or other persons engaged in the performance of our obligations shall be liable for slightly negligent breaches of non-essential contractual obligations, irrespective of the legal basis of the claim.

(3)

The limitations of liability set out in paragraphs (1) and (2) shall not apply to claims arising under applicable product liability legislation.

They shall likewise not apply to claims arising from injury to life, body or health.



§ 13 Final Provisions

(1)

These Terms and Conditions and all contractual relationships between the parties shall be governed by the laws of the Federal Republic of Germany, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2)

Any amendments or supplements to the contract concluded between us and the Customer must be made in writing. Transmission by fax or e-mail shall satisfy the written form requirement.

The same shall apply to any waiver of this written form requirement.

(3)

If the Customer is a merchant, a legal entity under public law or a special fund under public law, our registered office shall be the place of performance and the exclusive place of jurisdiction for all disputes arising out of or in connection with the contract.

The same shall apply if the Customer has no general place of jurisdiction in Germany or if the Customer's place of residence or habitual residence is unknown at the time legal proceedings are commenced.

(4)

Should any provision of the contract with the Customer, including these General Terms and Conditions, be or become wholly or partly invalid or unenforceable, the validity of the remaining provisions shall remain unaffected.

The invalid or unenforceable provision shall be replaced by a valid provision that comes as close as legally possible to achieving the economic purpose intended by the parties.

The same shall apply in the event of any contractual omission or gap.

(5)

The Customer is hereby informed that personal data collected in the course of our business relationship will be stored and processed by us in accordance with the applicable data protection legislation.

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