

# **General Terms and Conditions of Payment and Delivery**

## **Sprint Metal Edelstahlziehereien GmbH**

### **§ 1 Scope**

The following General Terms and Conditions of Payment and Delivery apply only to merchants in the sense of § 24 AGB-Gesetz [German law on General Standard Terms and Conditions], inasmuch as the agreement belongs to the operation of their commercial enterprise.

### **§ 2 Conclusion of Agreement**

All parts of our offers are made without engagement. We are bound contractually only if we have confirmed the conclusion of an agreement in writing. Our customers' terms and conditions are effective only if we recognise them in writing. If a customer confirms an order that deviates from our General Terms and Conditions of Payment and Delivery, only our General Terms and Conditions of Payment and Delivery apply in this case, too, even if we do not expressly contradict those of our customer. If a customer does not agree with the general validity of our General Terms and Conditions of Payment and Delivery, he must notify us to this effect in writing immediately. Any additional agreements have to be confirmed in writing by us in order to be effective. Attributes are considered to be guaranteed only if we refer to them explicitly as such in our confirmation. If a sale is made based on a sample, it is only to be taken as a representative sample to roughly describe the goods.

### **§ 3 Prices**

Unless confirmed otherwise, the prices which are shown in our price lists on the day of delivery apply, plus the alloy premium valid in each case. All prices are in Euros (€) and subject to VAT, and are valid ex warehouse or ex works, plus packaging and freight.

### **§ 4 Acceptance of Delivery and Call-Forward Deadlines**

Agreed delivery dates are regarded only as approximations. They start with our confirmation order, however, not before all the details of the design have been clarified and all the requirements to be fulfilled by the customer have been completed, in particular, not before all the documents necessary for completing the order have been furnished and any advance payments, which might have been agreed, have been made. A delivery date is regarded as having been met if the goods have been dispatched from our works before the deadline for the delivery has expired, or if we have given notification of our readiness to dispatch in good time and are unable to dispatch the goods through no fault of our own. The day of dispatch is the day of delivery. If it is agreed that the customer will collect the goods or that the goods will be dispatched to the customer, the day the notification regarding our readiness to dispatch is sent is the day of delivery. In the case of call-forward orders, the date of delivery begins on the next working day after the goods have been called forward. We are entitled to deliver an order or part of an order at an earlier date. We are not responsible for delivery delays caused by force majeure or unforeseen circumstances which we are unable to avoid (e.g. equipment failure or industrial action) despite having exercised reasonable care applicable in each particular case, even in the case of deadlines and dates which have been firmly agreed, nor are we responsible if these delays have occurred at our suppliers or, in turn, at their suppliers. The date of delivery is extended appropriately in such cases. We shall inform our customers about circumstances that will result in considerable delivery delays.

If one of our delivery dates is delayed by more than four weeks, for whatever reason, the customer may set a reasonable period of grace and, when it has expired, withdraw from the agreement, inasmuch a fulfilment is of no interest to him. We are liable to pay damages for not fulfilling an agreement or exceeding delivery dates only if we are guilty of intent or gross negligence. In such cases the claim for damages is limited to replacing the conceivable damage which would have been incurred at the time the agreement was concluded, at most, however, to the value of the delivered goods.

If a delivery is to be made on call or according to a customer's specification and is not called or specified on time, we are entitled, after having fixed a deadline to no avail, to choose to either deliver the goods, claim damages for not fulfilling the agreement or to withdraw from the agreement.

An additional or a short delivery of up to 10 % is permissible.

### **§ 5 Packaging**

Unless agreed otherwise, we deliver our products unpacked ex warehouse or ex works. We will use packaging upon the express or understood wish of a customer. We can supply commercially available reusable packaging which remains our property on loan. If such packaging is not returned to the supplier carriage paid, free of charge and in perfect condition within three months, the complete packaging costs will be invoiced without deductions and due immediately. Special packaging is non-returnable and will be invoiced.

## **§ 6 Dispatch and the Bearing of Risk**

The customer starts to bear the risk when the goods leave our works or are made available to the customer upon pick up of said by him as agreed or upon dispatch of said to him. We accept liability for transportation damage which was not visible from the outside and which is our responsibility only if we are presented with a proper report of the facts - § 438 HGB [German Commercial Code]. If goods are taken back for reasons for which we are not liable, the customer bears the risk until we have received the goods. We may choose the method of carriage to be used unless the customer has stipulated a particular form. We do not guarantee the use of the most economic form of carriage. If we have no instructions from the deliverer, we will decide which forwarding agent or carrier will be used. Forwarding charges are paid by the customer. Any freight payments are regarded as an advance paid by the customer. Insurance against damage or loss will be taken out only if this is the customer's express wish.

## **§ 7 Guarantee**

We accept liability for planning, consulting and processing guidelines, etc. only if we have informed the customer in writing with a special additional remark indicating our commitment to his suggestions upon his written enquiry.

Notification of any defective deliveries which we have made shall be given in writing, without prejudice to a brief statutory requirement to give notice of defects, as soon as they have been noticed, or in the case of any obvious defects, no later than two weeks after the goods have been received. We will supply a replacement delivery or remedy the defect in case of justified defects. If replacement deliveries or remedies for the defects fail, the customer can decide to either reduce the payment or demand that the agreement be cancelled. The customer has no further claims, in particular claims referring to consequential loss or damage due to defects, unless our legal representatives, our management or our senior employees, in view of the defect, are guilty of intent or gross negligence. The amount of a claim in such cases is limited to the predictable damage which would have been incurred at the time the agreement was concluded, at most, however, to the value of the delivered goods.

We must be given the opportunity to establish the notified defects. The goods which are subject to complaint must be sent back to us immediately on demand. If the customer does not fulfil these obligations, fails to comply with instructions received from us or with those evident from recognised engineering regulations for the use of our products or if he changes the product in any way, our entire guarantee becomes invalid. The duration of our guarantee period is three months after the defect has been discovered, at most, however, six months after the risk has passed. Material testing costs must be refunded by our contracting partner in case of an unjustified notification of defects.

If we have expressly guaranteed certain properties, the customer can claim compensation for damages. Insofar, we are exempted from liability in accordance with the above provisions as well.

## **§ 8 Property Rights**

If deliveries are made according to details given by the customer and if property rights of third parties are thus violated, the customer shall exempt us from any claims. If a customer violates an agreement, his property rights do not bar us from utilising the goods in accordance with the agreement.

## **§ 9 Payments**

Payment is due without any deductions within 30 days of the invoice date. The customer is obliged, starting with the 31st day after the invoice, to pay the same amount of interest which is charged by the banks for open loans without a special reminder being necessary. The customer is obliged to prove that no detriment or only one of a minimal degree has been incurred on our part. Bills of exchange, cheques and other payment order papers are accepted only under reservation and for payment.

The due date of our claims is not affected by this. Any discount and collecting costs must be paid by the customer. Deliveries to customers who are unknown to us or who are insolvent are made only upon payment of cash on delivery or prepayment.

## **§ 10 Retention of Title**

All goods supplied by us remain our property until all the claims we are entitled to resulting from our business dealings at the time of delivery or thereafter have been satisfied. If our goods are mixed with or connected to other items, we become co-owners of the share which equals the value of our goods, even if the other goods are to be seen as the main product. Any possible machining or processing of our goods will be conducted by our customer without said resulting in any obligations on our part. If our goods are processed to the extent that our title to them is lost, we gain title to that share in the products which have come into existence which equals the value of our goods. A co-retention of title to which the customer becomes entitled due to our goods having been processed with other items which do not belong to us is transferred to us.

Our customer hereby assigns to us that share of his claims resulting from the further sale of goods which completely or partly belong to us which equals the value of our goods as a part of the total sales price. If our customer sells his claim within the scope of a genuine factoring arrangement, this claim against the factor shall be assigned to us and our part of the returns transferred to our company without delay.

The customer is authorised to collect the assigned claims, as long as he fulfils his payment obligations to us. This direct debiting authorisation expires when revoked, which we are authorised to do in case of a default in payment or of a depreciation of assets (§ 321 BGB [German Civil Code]). After revocation, we are authorised to openly present the assignment of the claim to the buyers and to collect the claim. The customer is obliged to present a list of the exact claims he is entitled to upon request. The list must indicate the names and addresses of the buyers, the amount of each individual claim, the invoice date and all the details which are necessary or sensible in order for us to pursue our claim and enable us to check this information. Furthermore, we are authorised, in such a case, to prohibit the further sale of the goods or their processing.

Any items which belong to us, in whole or part, shall be stored in a separate place by the customer. Should it become necessary to surrender them, the transfer will be executed by leaving the items in the customer's care free of charge. The customer is prohibited from using or collaterally assigning our goods. We must be notified immediately of any seizure on the part of a third party, and the documents necessary for an intervention must be handed over. The customer shall bear the costs of an intervention. The assertion of proprietary rights, including the claim to possession, does not constitute a withdrawal from the agreement.

A proprietary right continues to exist, even if we include individual claims in a current invoice and a balance is drawn and accepted. If the value of the securities existing for our claims exceeds our claims by a total of more than 10 %, we are obliged to release such securities of our choice upon the request of the customer or of a third party affected by over-securing.

#### **§ 11 Right of Lien**

Based on the demands resulting from our business relations, we have a right to retention and a contractual right of lien to our customer's goods which we have obtained in the course of our business relations. We are also entitled to our right to retention and our contractual right of lien based on claims from deliveries and other services which we have carried out in the past. A right of retention and a contractual right of lien are also agreed in case the ordered goods are transferred back to us at a later point in time and claims from our business relations exist at that point in time.

Our rights of retention and lien continues to exist, even if we include one of our claims in a current invoice and a balance is drawn or accepted.

If the value of the securities which have arisen by our exercising our rights of retention and/or lien exceeds our claims by a total of more than 10 %, we are obliged to release such securities of our choice upon the request of the customer or of a third party affected by over-securing.

Statutory rights of lien are not affected by these provisions.

#### **§ 12 Retention / Offsetting**

The offsetting of our claims is admissible only with undisputed claims or those which have become irrevocable. A retention right or a right to withhold performance on the part of the customer exists only if, based on his own rights, the customer has legally enforceable claims or recognised counterclaims and if such claims are attributed to a breach of contract for which our legal representatives, management or senior employees must be accused of due intent or gross negligence. Any claims against us can only be conceded with our consent.

#### **§ 13 Place of Fulfilment and Jurisdiction**

The place of fulfilment and jurisdiction is Iserlohn. We reserve the right to take legal action where the company or customer is domiciled. German law applies. The application of international uniform law is prohibited.

#### **§ 14 Safeguarding Clause**

If any individual provision of this agreement becomes void, the legal validity of the remaining provisions hereof and of the whole agreement itself shall in no way be affected. Rather, the void provision shall be replaced by a provision coming as close as possible to the commercial meaning of the provision which has become void.