

## **GENERAL TERMS AND CONDITIONS**

### **1. VALIDITY OF THE CONDITIONS**

- 1.1. Our deliveries, services and offers are exclusively based on these terms and conditions. They shall therefore also apply to all future business relations, even if they are not expressly agreed again. These terms and conditions should be deemed to have been accepted when the order is placed, but at the latest when the goods or services are received.
- 1.2. Counter-confirmations of the buyer with reference to his terms and conditions of business or purchase are hereby contradicted and shall not be valid even if we do not expressly contradict them again after receiving. In addition, it is agreed that our terms and conditions of business shall also apply to the extent that they contradict the counter-confirmations, terms and conditions of business or purchase of the Buyer.

### **2. OFFER AND CONCLUSION OF CONTRACT**

- 2.1. Our offers are subject to change and non-binding. Orders, contracts and the conclusion of contracts as well as all agreements made between us and the buyer for the purpose of executing a contract require our written or telex confirmation to be legally effective. The same applies to collateral agreements and assurances. Silence on offers and orders of the buyer does not constitute acceptance. The same applies to commercial letters of confirmation sent to us in electronic form, unless the mutual electronic form of transmission has been agreed for the business relationship and transmission is made to the address expressly designated for the acceptance of such declarations.
- 2.2. Drawings, illustrations, dimensions, weights or other performance data are only binding if this is expressly agreed in writing.
- 2.3. Our sales employees are not authorized to make verbal collateral agreements or give verbal assurances that go beyond the content of the written contract.

### **3. PRICES**

- 3.1. The prices quoted in our order confirmation plus the respective statutory value added tax are decisive. Additional deliveries and services will be charged separately.
- 3.2. If, between the conclusion of the contract and the delivery date, there is a significant change in certain cost factors for us, our suppliers or their sub-suppliers, in particular the costs of raw materials, primary materials, personnel, energy or freight, we shall be entitled to adjust agreed prices appropriately in accordance with the influence of the relevant cost factors. Price adjustments become effective upon receipt of our written notification by the buyer.
- 3.3. Unless otherwise agreed, our prices are ex works or warehouse plus freight.
- 3.4. Our prices are based on normal shipping conditions and normal, unimpeded transport conditions. Additional costs arising from any aggravation and/or hindrance of the freight and/or transport conditions, even if they are based on the nature of the goods, shall be borne by the buyer; the same applies to dead freight. These additional costs shall not be borne by the buyer if we are responsible for their occurrence or if surcharges have been agreed for this difficulty.
- 3.5. Should the general economic conditions on which the contract is based change significantly, especially regarding the cost of manufacturing the products covered by the contract, so that the supplier cannot

reasonably adhere to the agreed contractual conditions, then the supplier is entitled to demand an adjustment of the contractual conditions. In particular, but not exclusively, cost changes in the

- 3.6. raw materials and inputs required for the manufacture of the products covered by the contract, e.g. gas, hydrogen, electricity, iron ore, pellets, coking coal, injection coal or other additives. The supplier will inform the buyer in writing of the reasons for a significant change in the general conditions and his intention to negotiate an adjustment of the contractual conditions. The parties will then negotiate in good faith for up to four weeks to agree on an amendment to the terms of the contract. If the parties cannot agree on an adjustment of the contract terms within this period, the supplier is entitled to terminate the contract with immediate effect. Notwithstanding the termination, existing delivery schedules will be met within the supplier's production lead time by both parties according to the agreed terms.

#### **4. DELIVERY AND PERFORMANCE TIME**

- 4.1. Delivery dates or periods, which can be agreed upon binding or non-binding, must be in writing. They are only approximate unless we have expressly designated them as binding.
- 4.2. Delivery periods begin with the date of our order confirmation, but not before clarification of all execution details and are understood to be from the place of delivery. In the absence of bindingly agreed individual acceptances and times, we shall be granted reasonable delivery periods for call orders and blanket orders, taking into account procurement times customary in the industry.
- 4.3. In the case of sales ex works, the delivery periods and dates shall be deemed to have been complied with upon notification of readiness for dispatch, even if the goods cannot be dispatched on time through no fault of ours or the supplier's fault.
- 4.4. Delays in delivery and performance due to force majeure and due to events, which make delivery not only temporarily more difficult or impossible for us - these include in particular strikes, lock-outs, official orders, breakdowns (e.g. fire, machinery or roll breakage, lack of raw materials or energy), obstruction of traffic routes etc, even if they occur at our suppliers or their sub-suppliers -, we shall not be responsible even in the case of bindingly agreed periods and dates, regardless of whether they occur at our premises, at the supplying plant or at a sub-supplier. They entitle us to postpone the delivery or service by the duration of the hindrance plus a reasonable start-up time or to withdraw from the contract in whole or in part with regard to the part not yet fulfilled. If the hindrance lasts longer than three months, the buyer is entitled, after setting a reasonable grace period, to withdraw from the contract with regard to the part not yet fulfilled. If the delivery time is extended or if we are released from our obligation, the buyer cannot derive any claims for damages from this. We can only refer to the circumstances mentioned if we have informed the buyer immediately.
- 4.5. If we are responsible for the non-observance of bindingly agreed periods and dates or if we are in default, the buyer shall be entitled to compensation for default in the amount of 0.5% for each completed week of the default, but in total not exceeding 5% of the invoice value of the deliveries and services affected by the default. Any further claims are excluded unless the delay is due to at least gross negligence on our part.
- 4.6. We shall be entitled to make partial deliveries and render partial services at any time unless the partial delivery or partial service is of no interest to the buyer. BESTAR reserves the right to over-ship or under-ship by up to 15% and charge the Purchaser for the amounts actually shipped which shall not give rise to any warranty or other claim by Purchaser.
- 4.7. Compliance with our delivery and service obligations presupposes the timely and proper fulfilment of the buyer's obligations. Our delivery periods shall be extended by the period in which the buyer is in default with his
- 4.8. Obligations to us arising from this or other contracts. This applies accordingly to delivery dates.

4.9. If the buyer is in default of acceptance, we shall be entitled to demand compensation for the damage incurred by us; the risk of accidental deterioration and accidental loss shall pass to the buyer upon the occurrence of default of acceptance.

4.10. We shall be free to choose the factory or warehouse to be entrusted with the delivery of the ordered goods. We are under no obligation to inform the buyer of the factory or warehouse chosen by us.

## **5. GRADES, DIMENSIONS AND WEIGHTS**

5.1. Grades and dimensions are determined according to DIN standards or material sheets, unless foreign standards have been agreed in writing. If there are no DIN standards or material sheets, the corresponding European standards shall apply; in the absence of such standards, commercial practice shall apply.

5.2. Insofar as it is customary in the trade that in the case of goods invoiced by weight, the weight determined on the factory by the weighing master is decisive, this applies. Proof of weight shall be furnished exclusively by presentation of the weighing slip. The total weight of the consignment is decisive for the calculation. Differences from the calculated individual weights shall be distributed proportionately.

5.3. For deliveries in the warehouse business, the weight determined on our scales shall be decisive for the calculation. As far as permissible, weights or weighings can be determined in accordance with DIN - or corresponding Euronorm. The surcharges or discounts customary in the steel trade in the Federal Republic of Germany (commercial weights) shall remain unaffected. Quantities, bundle numbers or the like stated in the dispatch note are not binding for goods invoiced by weight

5.4. Weight determinations can only be objected to immediately upon delivery on the basis of official re-weighing.

## **6. ACCEPTANCES**

6.1. If the relevant material standards provide for an acceptance test or if an acceptance test has been agreed, this shall be carried out in the supplying factory immediately after notification of readiness for dispatch. The buyer shall bear the costs of acceptance.

6.2. If acceptance is not carried out on time or if the buyer waives it, we shall be entitled to dispatch the material without acceptance or to store it at the buyer's expense and risk. In this case the goods shall be deemed to have been delivered in accordance with the contract unless the defect is not recognizable at the time of acceptance.

## **7. SHIPMENT AND TRANSFER OF RISK**

7.1. Packaging, dispatch and means of transport shall be left to our discretion in the absence of a special agreement. If packaging has been agreed, this shall be carried out in the customary commercial manner for an additional charge.

7.2. Goods notified as ready for dispatch in accordance with the contract must be called off immediately. Otherwise, we are entitled to dispatch them at our discretion or to store them at the expense and risk of the buyer and to invoice them immediately.

7.3. The delivery "free at truck unloading point" is subject to the condition that the point in question can be reached by a route easily accessible to trucks. The recipient is responsible for immediate and proper unloading. Waiting times will be invoiced.

- 7.4. If, through no fault of our own, transport on the intended route becomes impossible within the intended time, we shall be entitled to deliver by another route; the additional cost incurred shall be borne by the purchaser. The buyer shall be given the opportunity to comment beforehand.
- 7.5. The risk shall pass on to the buyer as soon as the consignment has been handed over to the person carrying out the transport or has left our warehouse or that of the supplier plant for the purpose of shipment. If dispatch is delayed at the request of the buyer, the risk shall pass to the buyer upon notification of readiness for dispatch.

## **8. RETENTION OF TITLE**

- 8.1. Until the fulfilment of all claims (including all balance claims from current account), which we are entitled to against the buyer now or in the future for any legal reason, the following securities are granted to us, which we will release on request and at our discretion, provided their value exceeds the claims by more than 20% on a sustained basis.
- 8.2. The goods remain of our property. Processing and treatment or transformation shall always be carried out for us as manufacturers within the meaning of §950 BGB, but without any obligation on our part. If our (co-)ownership expires due to processing, combining or mixing, it is hereby agreed that the buyer's (co-)ownership of the uniform item shall pass to us in proportion to its value (invoice value). The buyer shall store our (co-)ownership free of charge. Goods to which we are entitled to (co-)ownership are hereinafter referred to as reserved goods.
- 8.3. The buyer is entitled to process and sell the reserved goods in the ordinary course of business as long as he is not in fault, provided that he reserves the right of ownership. Pledging or transfer of ownership by way of security is not permitted. The use of the goods subject to retention of title for the fulfilment of contracts for work and services is also deemed to be resale. The buyer hereby assigns to us in full by way of security any claims arising from resale or on any other legal grounds (insurance, tort) in respect of the goods subject to retention of title (including all balance claims from current account). If the reserved goods are resold by the buyer together with other goods, the claim from the resale is assigned to us in the ratio of the invoice value of the reserved goods to the invoice value of the other goods. In the case of resale of goods in which we have co-ownership shares in accordance with item (2), a part of the claim corresponding to our co-ownership share is assigned to us.
- 8.4. We revocably authorize the buyer to collect the claims assigned to us for our account in his own name. This collection authorization can only be revoked if the buyer does not properly fulfil his payment obligations. In this case, the buyer is obliged at our request - unless we inform his customer ourselves - to inform the customer of the assignment to us and to provide us with evidence of the notification, as well as to send the information and documents necessary for the collection of the assigned claims with this notification.
- 8.5. In the event of access by third parties to the reserved goods, in particular seizures, the buyer shall draw attention to our ownership and inform us immediately so that we can enforce our ownership rights. Insofar as the third party is not in a position to reimburse us for the court or out-of-court costs incurred in this connection, the buyer shall be liable for them.
- 8.6. If the buyer acts in breach of contract - in particular a default of payment - we shall be entitled to withdraw from the contract and to claim damages for non-performance. Furthermore, we may prohibit the resale of the reserved goods and, in the event of withdrawal, demand their return. Additional freight charges, shipping and other expenses and costs of return as well as a reduction in the value of the goods shall be reimbursed to us.

**9. PAYMENT**

- 9.1. Unless otherwise agreed in writing, the purchase price shall be payable in cash without deduction in euros on the 15th day of the month following delivery at the latest.
- 9.2. If it has been agreed that the goods are to be released for dispatch by our buyer within a certain period of time after our notification of readiness for dispatch (call-off), we shall be entitled to invoice the goods from the time of readiness for dispatch; in this case, the purchase price shall be due for payment 30 days after the invoice date. The rights under §9 No. (6) remain reserved.
- 9.3. We are entitled, despite any provisions of the buyer to the contrary, to first set off payments against the buyer's older debts and will inform the buyer of the type of set-off that has taken place. If costs and interest have already been incurred, we shall be entitled to set off the payment first against the costs, then against the interest and finally against the main service.
- 9.4. A payment shall only be deemed to have been made when we can dispose of the amount. In the case of cheques, payment shall only be deemed to have been made when the cheque is cashed.
- 9.5. If the buyer is in default of payment, we shall be entitled to demand interest from the relevant date at a rate of at least 6 percentage points above the base rate. We reserve the right to prove higher damages. If the delay in payment is based on a claim for delivery and performance against a buyer with a place of business outside the Federal Republic of Germany, it shall be deemed agreed that the damage caused by the delay to be compensated by the buyer shall also include the judicial and extrajudicial costs of legal prosecution and enforcement which we are charged with.
- 9.6. If we become aware of circumstances that call the creditworthiness of the buyer into question, in particular if the buyer does not honor a cheque or suspends payments, or if we become aware of other circumstances that call the creditworthiness of the buyer into question, we shall be entitled to declare the entire remaining debt due. This shall also apply if we have accepted cheques or bills of exchange on account of payment irrespective of their term. In this case we are also entitled to demand securities and to carry out outstanding deliveries against advance payments or security.
- 9.7. The buyer is only entitled to offset, withhold or reduce payments, even if notices of defects or counterclaims are asserted, if the counterclaims have been legally established or are undisputed. However, the buyer is also entitled to retention due to counterclaims from the same contractual relationship.
- 9.8. We shall be entitled to assign our rights arising from the business relationship, in particular our claims against the buyer from deliveries and services to third parties for financing and risk verification purposes.

**10. RIGHTS OF THE BUYER DUE TO DEFECTS**

- 10.1. The products are delivered free of manufacturing and material defects; the warranty period is one year from delivery of the goods.
- 10.2. We shall not be liable for material defects which only insignificantly reduce the value or suitability of the goods.
- 10.3. If our care, treatment or storage instructions are not followed, claims for defects in the goods shall not be valid if the buyer does not refute a corresponding substantiated claim that one of these circumstances was the cause of the defect.
- 10.4. The guarantee for non-rusting during transport and storage at the buyer's premises cannot be assumed even if special greasing or packaging has been prescribed, as rust in particular due to the formation of condensation water cannot be prevented with certainty.

- 10.5. In the case of goods which have been sold as declassified material - e.g. so-called IIa material - the buyer shall not be entitled to any claims for defects with regard to the stated defects and those which he usually has to expect. The buyer must notify us in writing of any defects immediately, but at the latest within two weeks of receipt of the goods. Defects which cannot be discovered within this period even after careful inspection must be reported to us in writing immediately after discovery. Otherwise, the assertion of warranty claims is excluded. The same applies if the buyer does not immediately provide us with samples of the material complained about upon request.
- 10.6. Timely dispatch suffices to meet the deadline in the sense of the above clause. The buyer shall bear the full burden of proof for all claim requirements, in particular for the defect itself, for the time of detection of the defect and for the timeliness of the notice of defects.
- 10.7. In the event of a material defect, we shall at our discretion - taking into account the interests of the purchaser - provide subsequent performance either by replacement delivery or by rectification of the defect. If we fail to provide subsequent performance within a reasonable period of time, the Buyer may set us a reasonable deadline for subsequent performance, after the fruitless expiry of which he may either reduce the purchase price or withdraw from the contract; no further claims shall exist. § 11 remains unaffected.
- 10.8. In the case of defects of title, we shall be entitled to subsequent performance by remedying the defect of title within two weeks of receipt of the goods. In all other respects, the above clause shall apply accordingly.
- 10.9. Only the direct purchaser is entitled to claims against us due to defects and these are not transferable.

## **11. LIABILITY**

- 11.1. Claims for damages are excluded regardless of the type of breach of duty, including tortious acts, unless intentional or grossly negligent conduct is involved.
- 11.2. In the event of a breach of material contractual obligations, we shall be liable for any negligence, but only up to the amount of foreseeable damage. Claims for loss of profit, saved expenses, from claims for damages by third parties as well as other indirect and consequential damages cannot be demanded, unless a quality feature guaranteed by us is specifically intended to protect the buyer against such damages.
- 11.3. The limitations and exclusions of liability in paragraphs 1 and 2 shall not apply to claims arising from fraudulent conduct on our part, or in the case of liability for guaranteed characteristics, for claims under the German Product Liability Act (Produkthaftungsgesetz) or damages arising from injury to life, limb or health.
- 11.4. Insofar as our liability is excluded or limited, this shall also apply to our
- 11.5. employees, workers, representatives and vicarious agents.

## **12. SECRECY**

- 12.1. Unless expressly agreed otherwise in writing, information submitted to us in connection with orders is not considered confidential.

**13. PROOF OF EXPORT**

13.1. If a buyer who is resident outside the Federal Republic of Germany (non-territorial customer) or his representative collects goods and transports or dispatches them to the external territory, the buyer must provide us with the export certificate required for tax purposes. If this proof is not provided, the buyer must pay the VAT rate applicable for deliveries within the Federal Republic of Germany on the invoice amount.

**14. APPLICABLE LAW, PLACE OF PERFORMANCE, PLACE OF JURISDICTION**

14.1. The law of the Federal Republic of Germany shall apply to these terms and conditions and the entire legal relationship between the Seller and the Buyer. The provisions of the UN Sales Convention shall not apply.

14.2. The place of performance for our delivery obligations is the location of the supplying factory or warehouse from which we deliver. The place of performance for the buyer's payment obligations and the place of jurisdiction for both parties to the contract is Remscheid. We are entitled to sue the buyer at his general place of jurisdiction.