

Terms and Conditions of Delivery and Payment of Auerhammer Metallwerk GmbH

I. General Stipulations

1. Our deliveries and services shall be effected exclusively on the basis of these terms and conditions. This shall also apply to future transactions, even in cases where no express reference to the Terms and Conditions of Delivery and Payment is made, yet the orderer has received them with our acknowledgement of an order. Deviating, conflicting or supplementary General Terms and Conditions of Business of the orderer shall only become part of the contract in so far as we have given our express written consent to their application. This requirement of consent shall apply in all events, even if we unconditionally make delivery to the orderer knowing of the orderer's General Terms and Conditions of Business. Our Terms and Conditions of Delivery and Payment shall also apply exclusively in cases where the order placed is contrary to our Terms and Conditions, even if we do not raise any objection.
2. If a stipulation in these Terms and Conditions of Delivery and Payment is or becomes ineffective or has not become part of the contract, this shall not affect the legal effectiveness of the other stipulations. If stipulations have not become part of the contract or are ineffective, the content of the contract shall be determined in accordance with the statutory provisions.
3. Transfers of the orderer's rights and duties arising from the contract shall require our prior written consent.
4. We shall be entitled to assign the claims arising from our business relationship.

II. Conclusion of the Contract

1. Orders placed shall only be deemed accepted upon our written acknowledgement or upon execution of the delivery.
2. All agreements shall be laid down in writing. This also applies to collateral agreements, representations and subsequent amendments of the contract. Individual agreements made with the orderer in individual cases shall, in all events, have precedence over these General Terms and Conditions of Business. Either a written contract or alternatively our written acknowledgement shall be authoritative for the effectiveness of such agreements.
3. No obligation on our part shall be derivable from mistakes, typing errors or other obvious inaccuracies.

III. Prices

1. All prices shall apply ex works. The valid prices confirmed by us, plus applicable statutory value-added tax, shall prevail. All prices shall be without any cash discount or other deductions. Agreed supplementary services shall be charged additionally.
2. Extra deliveries made at the request of the orderer shall be subject to the prices newly confirmed by us, plus applicable statutory value-added tax.

IV. Dispatch

Dispatch shall take place on a carriage unpaid basis. In the case of a contractual agreement contrary thereto, we shall, with the exclusion of liability on our part, determine the method of dispatch and the means of carriage. Extra costs arising as a result of other requests by the orderer or as a result of other extra freight charges, including those due to the particular nature of the goods, e.g. bulky goods of an extraordinary size, shall be borne by the orderer.

V. Acceptance, Passage of Risk

1. If the goods are to be tested under particular conditions, the acceptance test shall take place at our works. Costs of materials in connection with acceptance testing shall be borne by us. Personal travel and subsistence expenses of the person appointed to carry out the acceptance test shall be borne by the orderer. If the orderer waives acceptance testing at our works, the goods shall be deemed accepted at such time as we notify the orderer that the goods are ready for dispatch, but no later than such time as the goods leave the works.- { }-

2. Goods notified as being ready for dispatch must be acceptance tested without undue delay. If the orderer defaults on taking delivery, omits to carry out an act of co-operation or causes the delivery to be delayed for other reasons imputable to the orderer, this shall entitle us to demand compensatory damages and to warehouse the goods at the orderer's expense and risk. Moreover, we shall be entitled to rescind the contract.

3. The risk of accidental destruction and accidental deterioration of the goods shall pass to the orderer no later than upon hand-over. In so far as acceptance testing is agreed upon or the orderer waives acceptance testing at our works (no. 1), this point in time shall be authoritative for the passage of risk.

4. If our contract is rescinded, the loss incurred shall be compensated for at the liquidated rate of 20 % of the purchase price, except where we prove that a higher loss has been incurred.

5. If we make use of any of the rights referred to in no. 2, we shall be entitled to freely dispose of the goods and instead deliver an equivalent item on these terms and conditions.

6. In so far as acceptance testing at the orderer is agreed upon or ensues from statutory provisions, the risk of accidental destruction and accidental deterioration of the goods shall pass to the orderer at such time as the goods are handed over to the forwarder or carrier, even if we use our own vehicle for delivering the goods, no later than such time as the goods leave the works or the supply depot.

VI. Delivery

1. If the occurrence of unforeseeable circumstances impedes us in the performance of our obligations and it was not possible for us to recognise or avert those circumstances, even by observing the standard of diligence which is reasonable in the circumstances of the case, the delivery period shall be extended to a reasonable extent, provided that it is still possible for us to deliver. Otherwise, we shall no longer be obliged to deliver. The orderer shall have no damage claims in this connection. Our responsibility for intent and negligence shall remain unaffected. In particular, such unforeseeable circumstances include operational disruptions occurring at our company or at our sub-suppliers, delays in the delivery of essential raw materials and/or operating materials or repercussions of labour disputes, also at third parties. The orderer shall not assume any responsibility for procurement risks. We shall, without

undue delay, give the orderer notification of performance-impeding circumstances which we become aware of. Force majeure and all circumstances which make it considerably more difficult or impossible for us to deliver, such as for example measures taken in connection with currency policy and/or trade policy or other measures taken by a supreme authority, shall be deemed to be equivalent to such unforeseeable circumstances considering article VII. of these Terms and Conditions of Delivery and Payment.

2. Dates and periods for delivery shall be non-binding. Periods for delivery shall be deemed to have commenced only after clarification of all issues of significance to the performance of the contract, no earlier than our acknowledgement of the order.

3. Part deliveries shall be permissible, except where otherwise expressly agreed upon.

4. The write-off of call-offs shall be non-binding and be carried out according to the deliveries made. If the call-off exceeds the quantity ordered, we shall be entitled to delete the excess or charge for it in accordance with a new price agreement to be made as per no. III 2..

5. Under-deliveries or over-deliveries on our part shall be permissible, in so far as they do not exceed 10 % of the quantity envisaged.

VII. Exportation

1. The applicable national, European and US-American export control regulations, including all European and US-American sanction lists and other embargos of persons (collectively "Export Control Regulations") shall be observed in the case of all contracts.

2. The orderer shall, within the scope of its responsibility, observe and implement all relevant Export Control Regulations and other laws of its country and of the country delivered to. Prior to the conclusion of the contract, the orderer shall point out to us in writing all special requirements ensuing from those provisions.

3. The orderer hereby undertakes not to use itself for military or nuclear purposes the goods delivered, or to sell these goods to third parties with such end-uses, or to otherwise directly or indirectly provide the said goods to such third parties. The orderer shall send to us forthwith, at our request, the end-use documents in the original in the form prescribed by the *Bundesamt für Wirtschaft und Ausfuhrkontrolle* [German Federal Office for Economic Affairs and Export Control].

4. If, after the conclusion of the contract, we discover circumstances that give reason to suspect a possible breach by the orderer of Export Control Regulations or of the duties arising from Section VII of these Terms and Conditions of Delivery and Payment, we shall inform the orderer thereof in writing.

5. In any case where we become aware of circumstances giving reason to assume a possible or actual breach of the Export Control Regulations or of the buyer's duties arising from this Section VII, default in performance on our part shall be excluded for an appropriate period of examination.

6. We shall have the right to rescind the contract, if actual, incurable breaches of Export Control Regulations or of the orderer's duties arising from this Section VII are discovered or cannot be ruled out.

7. The orderer hereby undertakes to indemnify us against all loss and expenditure resulting from any breach of the duties imposed upon it under this Section VII. In this respect, all legal

defence costs and disbursements resulting to us, or that have resulted to us, as well as any official civil or administrative fines shall, in particular, also be reimbursed.

VIII. Payment

1. Our invoices shall be payable within eight days from the invoice date or from such time as the notice of availability of the goods is sent off to the orderer. Deviating payment terms or the possibility of claiming a cash discount shall only apply, if this is contractually agreed upon or is expressly noted on the invoice.
2. Payments with debt-discharging effect may only be made to the named financial institutions, as shown on the invoice, to whom we have assigned our claims arising from our business relations.
3. A cash discount shall in any event, even if otherwise noted on the invoice, only be allowed, if all the orderer's due payments relating to previous deliveries have been fully met.
4. Our entire receivables shall become due immediately, if payment terms are not complied with in relation to us or if we become aware of circumstances which are likely to reduce the orderer's credit-worthiness. In each of those cases, we shall be entitled to carry out outstanding deliveries only against advance payment, rescind the contract following a reasonable grace period or demand compensatory damages, at our option.
5. If part deliveries arise from an order, each part delivery shall be deemed to be an independent transaction. If the orderer fails to meet its obligations in respect of a part delivery, we shall be released from further part deliveries.
6. The orderer shall only be entitled to rights of set-off against our receivables, if its claim has been determined with legal finality or is uncontested. The orderer shall not be entitled to a right of retention.
7. Delays, additional costs or other difficulties in transferring our amount receivable to the Federal Republic of Germany shall be borne by the orderer. If the agreed method of payment cannot be complied with, payment shall be effected by an alternative method of our choosing.

IX. Retention of Title

1. Until the orderer has paid all receivables which have arisen from the business relationship, particularly any balance on an open credit account, we shall retain title to all goods delivered by us.
2. If the orderer breaches its duties, particularly by defaulting on payment or by placing the claim to title in jeopardy, we shall be entitled, even without setting a time limit, to reclaim possession of the goods and/or rescind the contract. Reclaiming of possession of the goods shall not constitute a declaration of rescission on our part, unless rescission is expressly declared. Rescission of the contract shall not be necessary for asserting the retention of title.
3. Until full payment of the receivables secured, it shall not be permissible to pledge the secured receivables to third parties or assign them as security. The orderer shall, without undue delay, give us written notification of any attachment or other impairment of our rights of title by third parties and shall, without undue delay, point out to the third parties our

retention of title. The orderer shall bear all costs incurred on our part for nullifying the seizure and recovering the item purchased.

4. The retention of title shall also extend to the new products ensuing from processing, mixing or combining and shall apply to their full value. We shall be deemed to be the manufacturer in this respect. Both during and after processing, mixing or combining, the orderer shall act on our behalf as the custodian of the new item. In all cases of processing, mixing or combining with other goods not belonging to us, we shall be entitled to joint title to the new item in the ratio of the value of the goods under retention of title to the other goods processed, mixed or combined, in so far as third-party rights of title remain in effect. The same terms applicable to the goods under retention of title shall apply to the new items ensuing from processing, mixing or combining. The new item shall be deemed to be goods under retention of title within the meaning of these terms and conditions.

5. The orderer shall only be permitted to sell and/or process our property in the ordinary course of its business, on its normal terms and conditions of business and only as long as it is not in default with the performance of any obligation in relation to us. The orderer shall only be entitled and authorised to on-sell the goods which are under retention of title with the proviso that the receivable arising from on-selling passes to us in accordance with no. 6. The orderer shall not be entitled to make any other disposition over the goods which are under retention of title.

6. Every receivable of the orderer arising from on-selling of the goods which are under retention of title is assigned to us here and now as security, in its entirety or in the sum of our share of joint title, regardless of whether the goods under retention of title are on-sold without having been processed or after having been processed. We accept the assignment.

7. The orderer shall, along with us, be entitled to collect receivables arising from on-selling. This authorisation shall only apply until such time as it is revoked by us, which shall be possible at any time. The orderer shall not be entitled to dispose of such receivables by assignment. At our request, the orderer shall be obliged to notify its customer of the assignment to us. If the orderer defaults on the performance of an obligation in relation to us, this authorisation to collect shall become immediately revoked as a result thereof. In this case, the orderer shall be obliged to immediately give its debtor notification of the assignment as per no. 6 and send us a list of the debtors of the receivables assigned under no. 6.

8. If the value of the security interests existing for us exceeds our receivables by more than 20 % in total and if the orderer is not in default with the performance of any obligation in relation to us, we shall be obliged, at the orderer's request, to release security interests of our choosing to this extent.

9. In each of the cases referred to in no. VII 6., we shall be entitled to prohibit the on-selling and processing of the goods delivered and demand the return of the goods delivered or transfer of constructive possession thereof at the orderer's expense. The orderer authorises us here and now to seek out and take away the goods delivered.

X. Defect-Related Complaints

1. Defect-related complaints of any kind, as well as complaints of under-deliveries or incorrect deliveries must be lodged in writing without undue delay. If this occurs later than eight days after receipt of the goods, claims against us on the basis of the foregoing shall be excluded, unless the defect was not detectable, even upon diligent examination of the goods received. Content labels or tally sheets enclosed with the consignment shall be attached to the defect-related complaint.

2. Damage to goods in transit or loss of goods in transit shall not give entitlement to lodge a defect-related complaint and shall not affect our claim to payment. Without undue delay after having determined that damage or loss exists, the orderer shall arrange with the appropriate body that the facts be recorded.

3. In the case of justified defect-related complaints, we shall, at our option, render supplementary performance either by eliminating the defect (rectification) or by delivering a defect-free item (replacement). Our right to refuse the chosen method of supplementary performance, subject to fulfilment of the statutory prerequisites, shall remain unaffected. The orderer shall be obliged to return the defective goods complained of. Where necessary, supplementary performance shall take place at the orderer's site or at that of a third party. If rectification or replacement fails, the orderer shall be entitled to demand reduction of the remuneration or, at its option, cancellation of the contract. There shall be no entitlement to delivery of a further replacement.

4. If supplementary performance is impossible, both parties shall have the right to rescind the contract. Damage claims shall be limited to cases of intent and gross negligence.

XI. Contracts for Works

The items handed over to us for reworking shall not be examined by us as regards whether they are defect-free and whether finishing is possible. Only the orderer shall be obliged to perform such an examination. The orderer shall be obliged to only supply faultless primary material. If defects are determined to exist, even in only part of the delivery, we shall be entitled to reject the entire delivery. At our request, the orderer shall, at any time, prove that the primary material delivered is of faultless quality. We undertake to merely inspect the delivered material for externally detectable damage.

XII. Liability

1. Damage claims of any kind against us on the part of the orderer are excluded, particularly those on account of defects, under-delivery or incorrect delivery, unless they are based on intent or gross negligence. Our liability shall, also in cases of gross negligence, be limited to foreseeable damage or losses typical of the contract.

2. Personal liability on the part of our company's statutory representatives, our agents in contract and our workforce members in relation to the orderer is excluded.

XIII. Time-Barring

The general time-bar period for claims arising from defects in quality or defects in title is one year from delivery. In so far as acceptance testing is agreed upon, the time-bar period shall commence upon acceptance.

XIV. Place of Performance, Place of Jurisdiction

1. The place of performance for the parties' mutual obligations is Aue. The exclusive place of jurisdiction for all present and future claims arising from the business relationship with traders who have full merchant status is Chemnitz (Germany, Federal State of Saxony).

2. The same place of jurisdiction shall apply, if the orderer does not have a place of general jurisdiction domestically, if the orderer transfers its place of residence or habitual abode abroad after having concluded the contract or if the orderer's place of residence or habitual abode is not known at the time an action is brought.

3. The laws of the Federal Republic of Germany apply exclusively, with the exclusion of all international and supranational legal systems, particularly the UN Sales Law. The contractual language shall be German.

Aue, 01 October 2011