

General Terms of Sale of Stahlrohr GmbH, Duisburg
Version 08/2013

I. Scope/conclusion of contract

1. These General Terms of Sale shall apply to all – also future – contracts with entrepreneurs, legal entities under public law and special assets under public law concerning deliveries and other services. Terms of purchase of the buyer shall not be recognised even if we do not explicitly object hereto once again after the receipt by us.
2. Our offers are without obligation and non-binding. Oral agreements, promises, assurances, guarantees and statements concerning the intended use of our employees in connection with the conclusion of the contract are non-binding and will only become binding by our written confirmation. The written form shall also be safeguarded by the transmission of faxes and by e-mail.
3. The co-delivery (provision) of test certificates according to DIN EN 10204 requires a written agreement. We are entitled to hand over copies of such certificates and to cover the orderer and the issuer in such copies.
4. In case of doubt the Incoterms in their respective newest version are decisive for the interpretation of terms of trade .

II. Prices

The prices are deemed, if not otherwise agreed, ex works or ex warehouse plus freight charges, value added tax and import duties. The goods are charged "gross for net". The remuneration for agreed test certificates according to DIN EN 10204 is € 15 per certificate in the absence of any other agreement.

III. Payment and offsetting

1. The payment has – without deduction of cash discount – to be carried out in the manner that we may dispose over the amount on the due date. This shall also apply if the test certificates according to DIN EN 10204 agreed for the delivery are missing or arrive late. Costs of the payments transactions shall be borne by the buyer. The buyer shall only be entitled to a right of retention and an authorization to offset to the extent as its counter-claims result from the same contractual relationship (in particular claims for defects and claims owing to production costs) or are undisputed or have been declared final and binding.
2. Insofar as not otherwise agreed our invoices are due and payable 14 days after the invoice date. In case the term of payment is exceeded, by no later than from default, we shall charge interest on default in the statutory amount (§ 288 BGB [German Civil Code]) unless higher interest rates have been agreed. The assertion of further damages on default remains reserved.
3. If it becomes recognisable after the conclusion of the contract that our payment claim is in danger by insufficient solvency of the buyer, or if the buyer is in default of payment with a substantial amount or if other circumstances occur, which allow conclusions to be drawn about the substantial deterioration in his solvency, we can refuse agreed advance services. In such cases we can further deem all not yet due receivables from the current business relationship with the buyer due and payable.
4. An agreed cash discount always only refers to the invoice value excluding freight charges and presumes the full settlement of all due liabilities of the buyer at the time of the cash discounting. Insofar as not otherwise agreed cash discount deadlines shall begin from the invoice date.

IV. Execution of the deliveries, delivery deadlines and dates

1. Our delivery obligation is subject to the reservation of the correct and timely self-delivery and in case of import business additionally subject to the reservation of the timely receipt of monitoring documents and import permits.
2. Details concerning delivery times are approximate. Delivery deadlines shall begin on the date of our order confirmation and shall only apply under the pre-requisite of the timely clarification of all details of the order and the timely satisfaction of all obligations of the buyer, such as e.g. the provision of all official certificates, furnishing of letters of credit and guarantees, making of down payments or drawings approved by the buyer.
3. The time of the despatch ex works or warehouse is decisive for the adherence to delivery deadlines and dates. They shall be deemed as adhered to with the report of the readiness for shipment if the goods cannot be sent in time without our fault.
4. The buyer has to ensure a smooth acceptance of the goods and to inform us of more difficult delivery relationships in time. The buyer has to properly unload the goods immediately. If we or third parties assist herein this shall be carried out without a legal obligation and at the risk of the buyer.
5. Events of force majeure entitle us to postpone the deliveries by the duration of the impediment and a reasonable start-up time. This shall also apply if such events occur during an available delay. Deemed equivalent to force majeure are monetary, trading policy and other sovereign measures, strikes, lock-outs, interferences to operation, which were not caused by us (e.g. fire, machine and roll breakage, shortage of raw materials and energy), impediment to the traffic routes, delay with the import/customs clearance as well as all other circumstances which, without being caused by us, render the deliveries and services substantially more difficult or impossible. It is irrelevant hereby whether the circumstances occur in our company, the delivery plant or another sub-supplier. If the execution becomes unreasonable for one of the contractual parties as a result of the aforementioned events he can cancel the contract by an immediate written declaration.

V. Reservation of title

1. The delivered goods shall remain the property of the seller until the full payment of the purchase price. The buyer undertakes to carry out the measures which are necessary for upholding the reservation of title – or a collateral right which is comparable in the country of his branch or in a country of destination which deviates from this – and to prove this to us upon request.

2. Insofar as permitted according to the law of the country in which the goods are located the following supplementary regulations shall apply:

a. The delivered goods shall remain our property (reserved goods) until the satisfaction of all claims, in particular the respective balance claims, to which we are entitled within the framework of the business relationship (reservation of balance). This shall also apply to claims incurred in future and conditional claims and also if payments are made on particularly described claims. This reservation of balance shall finally lapse with the settlement of all claims still outstanding at the time of the payment and covered by this reservation of balance.

b. Processing of the reserved goods is carried out on our behalf as manufacturer within the meaning of § 950 BGB without obliging us. The processed goods shall be deemed as reserved goods within the meaning of No. 2 a. In case of the processing, connection and mixing of the reserved goods with other goods by the buyer we shall be entitled to the pro rata co-ownership to the new object in the ratio of the invoice value of the reserved goods to the invoice value of the other used goods. If our ownership lapses by connection or mixing then the buyer hereby now already assigns the property rights to which he is entitled to the new stock or the object in the scope of the invoice value of the reserved goods and shall store these free of charge on our behalf. Our co-ownership rights shall be deemed as reserved goods within the meaning of No. 2 a.

c. The buyer may only sell the reserved goods in customary business transactions at his normal business terms and conditions and as long as he is not in default, presuming that the claims from the resale according to d) to e) pass to us. He is not entitled to make other disposals over the reserved goods.

d. The claims from the resale of the reserved goods are hereby now already assigned to us together with all collateral items, which the buyer acquires for the claim. They serve as collateralisation to the same extent as the reserved goods. If the reserved goods are sold by the buyer together with other goods not sold by us, 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 sold goods. With the sale of goods, in which we hold co-ownership shares a part is assigned to us, which corresponds to our co-ownership share.

e. The buyer is entitled to collect claims from the resale. This collection authorization shall lapse in the event of our revocation, by no later however in case of default of payment, the non-redemption of a bill of exchange or an application for the opening of insolvency proceedings. We will only exercise our right to revocation if it becomes recognisable after the conclusion of the contract that our payment claim from this or from other contracts with the buyer is in danger by his insufficient solvency. At our request the buyer undertakes to inform his buyers of the assignment to us immediately and to give us the documents which are necessary for the collection.

f. The buyer has to inform us of an attachment or other impairments by third parties immediately. The buyer shall bear all costs, which have to be spent to revoke the access, for sorting out or for the return transport of the reserved goods, insofar as they are not reimbursed by third parties.

g. If the invoice value of the existing collateral exceeds the secured claims including secondary claims (interest; costs etc.) in total by more than 50 per cent we are insofar obliged to release collateral items at our choice at the request of the buyer.

VI. Weights

1. The weighing carried out by us or our sub-suppliers is decisive for the weights. The proof of weight is carried out by submission of the weighing note. We can also determine the weights without weighing according to the length and/or theoretically, whereby we may determine the dimensions using statistical methods. We are entitled to increase the theoretical weight by 2 ½ % (trade weight) in order to compensate for rolling and thickness tolerances and with the settlement to use a trade weight of 8 kp/dm³ as a basis.

2. Numbers of units, bunch numbers, etc. stated in the advice of despatch are non-binding with goods charged according to weight. Insofar as an individual weighing is not usually carried out, the total weight of the shipment shall respectively apply. Differences compared with the calculable individual weights are distributed hereto pro rata.

VII. Acceptances

1. If an acceptance has been agreed, the goods can only be accepted in our warehouse immediately after the report of the readiness for acceptance. The personal acceptance costs shall be borne by the buyer, the material acceptance costs shall be charged to it according to our price list or the price list of the delivery plant.

2. If the goods are not accepted, not in time or not in full without this being our fault, we are entitled to ship them without acceptance or to store these at the costs and risk of the buyer and charge these to the buyer.

3. In case of acceptances, which go beyond the agreed standards the buyer shall bear all thus associated risks and costs.

VIII. Release orders, continuous deliveries

1. In case of business transactions with continuous delivery we are to be informed of release orders and division of the types for approximately the same monthly quantities; otherwise we are entitled to carry out the determinations ourselves at our reasonable discretion.

2. If the individual release orders exceed the contractual quantity on the whole, we are entitled, however not obliged to deliver the additional quantity. We can charge the additional quantity at the prices which are valid with the release order or the delivery.

IX. Shipment, passing of risk, packaging, partial delivery

1. We shall determine the despatch route and shipping means as well as carrier and freight forwarder. Our deliveries are carried

out, insofar as not otherwise agreed in writing, from Duisburg.

2. Goods which are reported as ready for shipment in line with the contract must be called immediately, otherwise we are entitled to send these after a reminder at the costs and risk of the buyer at our choice or to store and charge these immediately at our own discretion.

3. If the transport on the envisaged route or to the envisaged location in the envisaged time becomes impossible or is rendered substantially more difficult without our fault, we are entitled to deliver the goods on another route or to another location; the incurred additional costs shall be borne by the buyer. The buyer shall be given the opportunity to make a statement in advance.

4. In case of release orders the risk shall pass to the buyer when the goods are made available for collection. Incidentally the risk shall pass to the buyer, also that of a seizure of the goods, with the hand-over of the goods to a carrier or freight forwarder, by no later however than when they leave the warehouse or the delivery plant, with all business transactions, also with carriage paid and free house deliveries. We shall only ensure insurance at the instructions and costs of the buyer. The unloading and its costs shall be to the expense of the buyer.

5. The goods shall be delivered unpacked and not protected against rust. If agreed we shall deliver packed. We shall incidentally ensure the packaging, protection and/or transport aids based on our experience at the costs of the buyer. They will be taken back at our warehouse. We do not take over costs of the buyer for the return transport or for an own disposal of the packaging.

6. We are entitled to make partial deliveries to a reasonable extent. We are further entitled to reasonably exceed and fall short of the agreed delivery quantities. The entry of an "approximate" quantity entitles us to a surplus/ shortfall of up to 10 %.

X. Liability for defects of quality

1. The internal and external properties of the goods, in particular their quality, type and dimensions are determined according to the agreed, in the absence of deviating agreement, according to the standards which were applicable upon conclusion of the contract (e.g. DIN, EN and API standard, etc.), in the absence of such according to practice and trade customs. References to standards and similar regulations, to test certificates according to DIN EN 10204 and similar certificates as well as details relating to qualities, types, dimensions, weights and usability of the goods are no assurances or guarantees, just as declarations of conformity and corresponding marks such as CE and GS.

2. The statutory regulations apply to the inspection of the goods and report of defects under the condition that the obligation to inspect the goods after delivery shall also cover possible test certificates according to or in line with DIN EN 10204 and defects of the goods and test certificates are to be reported to us in writing.

3. In case of a justified report of defects within the deadline we can remedy the defect or deliver a faultless good (substitute satisfaction) at our choice. If the subsequent satisfaction fails or is refused, the buyer shall be entitled to the statutory rights. If the defect is not substantial or if the goods have already been sold, processed or redesigned, he shall only be entitled to the right to reduction.

4. We shall only take over expenses in connection with the subsequent satisfaction insofar as they are reasonable in an individual case, in particular in ratio to the purchase price of the goods, in no way however more than 150 % of the goods value. Excluded are costs in connection with the dismantling and installation of the faulty and faultless object, as well as costs of the buyer for the self-remedy of a defect without the statutory pre-requisites existing in this respect. We shall not take over expenses, which are incurred by the fact that the sold goods have been taken to another location than the agreed place of performance.

5. After the execution of an agreed acceptance of the goods by the buyer the report of defects of quality, which could be determined with the agreed type of the acceptance, is excluded. If the buyer was not aware of a defect as a result of negligence he can only assert rights owing to this defect if we maliciously fail to disclose the defect or have assumed a guarantee for the condition of the object.

6. In case of goods, which have been sold as declassified material, the buyer shall not be entitled to any rights owing to the defect of quality with regard to the stated reasons for declassification and such defects, which is usually has to expect. With the sale of all goods our liability is excluded owing to defects of quality according to Section XI No. 2 of these terms and conditions.

7. Rust does not represent any defect insofar as not otherwise agreed and insofar as the agreed standards are complied with.

XI. Damages and statute-of-limitations

1. We shall only be liable owing to the breach of contractual and non-contractual duties, in particular owing to impossibility, delay, fault with initiation of a contract and illicit act – also for our executives and other vicarious agents – in cases of wilful intent and the gross negligence, limited to the damages which are typical for the contract and were foreseeable when the contract was concluded. Incidentally our liability, also for damages due to defects and consequential damages from defects, is excluded.

2. These restrictions shall not apply with the culpable breach of essential contractual duties insofar as the achievement of the contractual purpose is in danger, with culpably caused injuries to life, the body and the health nor if and insofar as we have assumed the guarantee for the condition of the sold object as well as in cases of mandatory liability according to the Product Liability Act. The regulations concerning the burden of proof shall remain unaffected hereby.

3. Insofar as not otherwise agreed contractual claims, incurred to the buyer against us due to and in connection with the delivery of the goods, shall become statute-barred one year after delivery of the goods. In the event of a subsequent satisfaction the statute-of-limitations shall not begin to apply anew, but is inhibited until the expiry of three months after execution of the subsequent satisfaction. Our liability from wilful and grossly negligent breaches of duty, culpably caused injuries to life, the body and the health shall remain unaffected by this regulation of statute-of-limitations.

XII. Supplementary terms and conditions for subcontracting work

1. The General Terms of Sale shall also apply accordingly to subcontracting work.
2. A delivery note is to be enclosed with the material handed over to us for processing. This must include the following minimum details
 - a) Designation of the material, number of units and net weight;
 - b) Requested processing;
 - c) Requested test processes;
 - d) Other details or regulations which are necessary for the success of the processing.

If the necessary minimum details are missing or if they are incomplete or incorrect, we shall carry out the processing to the best of our discretion.

3. Owing to our claim from the order we are entitled to a contractual right of lien and retention to the material which has come into our possession owing to the order. The contractual right of lien and retention can also be asserted owing to claims from previously carried out work, substitute deliveries and other services insofar as they are associated with the object of order. The contractual right of lien and retention shall only apply to other claims from the business relationship insofar as these are undisputed or there is a final and binding title and the object of order belongs to the customer.

XIII. Place of performance, place of jurisdiction, applicable law

1. The place of performance for our deliveries and the payments of the buyer is our registered seat in Duisburg. The place of jurisdiction is at our choice either the court of factual jurisdiction in Duisburg or the place of jurisdiction of the buyer.
2. The law of the Federal Republic of Germany shall apply to all legal relationships between us and the buyer under the exclusion of the Convention of the United Nations of 11.4.1980 concerning the International Sale of Goods (CISG).