

General Terms and Conditions of Sale of G. ELSINGHORST Stahl und Technik GmbH



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I. Application / Conclusion of Contracts

1. With the exception of the provisions in Sec. V.1. (retention of title), III.6 (limitation of set-off and right of retention) and X (general limitation of liability), which shall also apply to consumers according to article 13 of the German Civil Code (BGB), these General Terms and Conditions of Sale (Conditions) shall apply to all present and future contracts with entrepreneurs, with public enterprises as well as public assets, concerning deliveries, in particular of steel products and technical articles and other services, such as sawing, blasting, preserving, drilling and burning of steel products as well as assembling, making up, cutting to length and repairing of technical articles.
2. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
3. Our offers are non-binding and subject to change. Any oral agreements, promises, assurances and guarantees made or given by our sales staff shall not be binding to us, unless confirmed by us in text form. Orders of the Buyer are only binding to us following our confirmation in text form, at the latest with the delivery of the goods.
4. Any supply of inspection documentation (such as Mill Test Certificates) acc. to EN 10204 is subject to prior agreement in text form. We shall be entitled to transmit such document as a copy.
5. Any trade terms shall, in case of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed or stated, the prices are ex works or ex warehouse, plus freight, statutory value added tax and import duties. The goods are invoiced „gross for net“. Unless otherwise agreed, the fee for agreed test certificates according to EN 10204 shall be based on the price list of the respective issuer.
2. In the event our external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, we shall be authorised to modify the price accordingly with regard to the goods not yet delivered to the Buyer as of the beginning of each calendar month concerned.
3. If the modified price surpasses the originally agreed price by more than 15 pct, the Buyer may, within one week after receipt of our price modification notice, withdraw from the contract with respect to the goods affected by the price modification.

III. Payment and Set-Off

1. Payment shall be made without any discount and in such a way that we are able to dispose of the amount on the due date. The costs of payment transactions shall be borne by the Buyer.

2. Unless otherwise agreed, our invoices are due net 14 days after the invoice date.
3. In case the Buyer exceeds the payment deadline or is in default in payment, we will debit him with interests at 9 pct-points above the basic rate of interest, unless higher rates have been agreed upon. We are further entitled to charge a fixed sum of EUR 40.00 as compensation for recovery costs. We reserve the right to claim additional damage resulting from late payment.
4. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the conclusion of the contract, we shall be entitled to refuse any agreed advance performance and to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship. This also applies insofar as our obligation to deliver is not yet due. A lack in financial means shall also be deemed to exist if the Buyer is at least three weeks in arrears with a substantial amount (from 10% of the receivables due), as well as a substantial downgrading of the limit existing for him with our trade credit insurer.
5. Any agreed cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed to discount periods shall begin with the date of the invoice.
6. The Buyer shall be entitled to retain or set off any counterclaims only in so far as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the Buyer and as they would not entitle him to refuse the fulfilment his contractual duties under section 320 BGB. This applies in particular in the event that agreed test certificates in accordance with EN 10204 are missing from the delivery or arrive late.

IV. Delivery

1. Our commitment to deliver is subject to our own correct, timely and contractual self-delivery, unless we are responsible for the non-contractual, deficient or late self-delivery. In particular, we are entitled to withdraw from the contract insofar as we have concluded a covering purchase but are not supplied by our supplier for reasons for which we are not responsible, e.g. in case of insolvency of our supplier.
2. Any confirmation as to delivery times shall be approximate only. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.
3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be shipped at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for shipment.
4. Force majeure events entitle us to postpone the deliveries for the period of the hold-up and an appropriate start-up time. This also applies if such events occur during a present default. Force majeure is the equivalent of monetary or trade measures or other acts of sovereignty, strikes, lockouts, breakdowns not caused by us (e.g. Fire, machinery or roller breakdown, shortage of raw materials and lack of energy), pandemic or flood disaster and their related impact, obstruction of transport routes, delays in clearing the goods for import and in customs clearance, insolvency of our supplier

as well as of all other circumstances, that essentially impede or render the deliveries and performances impossible, without being caused by us. Thereby, it is irrelevant if the circumstances occur with us or with one of our suppliers. If performance becomes unacceptable for one of the parties due to the abovementioned events, the party shall be able to withdraw from the contract by instant declaration in text form.

V. Retention of Title

1. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled (current account reservation). This condition shall also apply to any future as well as any conditional claims. The current account reservation shall not apply in prepayment or delivery vs payment cases. In this case, the delivered goods remain our property until the purchase price for these goods has been paid in full. The Buyer is obliged to take the required measures to maintain the reservation of title - or a comparable security interest in the country of his seat or in the deviating country of destination – and, upon request, to provide us with evidence thereof.

2. To the extent permitted by the law of the country in which the goods are located, the following supplementary provisions shall apply:

a. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of section 950 BGB without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. In cases where the Buyer manufactures, combines or compounds the Reserved Property with other goods, we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or compounding our ownership expires, the Buyer herewith transfers to us any rights which he will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions.

b. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with clause V/2/c through V/2/e of these Conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

c. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. We hereby accept the assignment. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights according to clause V/2/a of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.

d. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.

e. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.

f. Should the Buyer default in payment or should he fail to honour a draft we shall be entitled to take back the Reserved Property, to enter, for this purpose, the Buyer's premises and to sell the Retained Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The statutory regulations of the German Insolvency Act (Insolvenzordnung) shall remain unaffected.

g. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 pct, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

VI. Weight

1. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight ticket. We are further entitled to determine the weight of steel products without weighing by length or area and/or theoretically. In this context, we are entitled to increase the theoretical weight by 2 ½ % to compensate for rolling and thickness tolerances (commercial weight) and to calculate the weight based on a specific weight of 8 kg/dm³.

2. Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding, if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

VII. Inspection

1. Where inspection of the goods has been agreed upon, the goods have to be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for inspection. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.

2. Should, without our fault, the inspection fail or be delayed or be incomplete, we shall be entitled to ship the goods without the inspection or to store them at the Buyer's costs and risk and to invoice them to him.

VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.

2. The Buyer shall immediately call for delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.

3. In case, by reasons not attributable to us, the goods not be shipped or will it become substantially difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. We will, in such cases, ask the Buyer for his prior comments.

4. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if requested by the Buyer and at his costs. The Buyer shall unload the goods at his costs.

5. The goods will be delivered unpacked and not be protected against rust. Where so provided by trade usage will the goods be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. We will take back such devices at our warehouse within a reasonable period of time. We will not bear any costs for their re-transport or disposal.

6. We shall be entitled to make partial deliveries at reasonable quantities. We may also exceed or reduce the agreed quantities as appropriate. Where quantities are indicated as "circa", we may exceed or fall below the agreed quantity up to 10 pct.

7. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise, we shall be entitled to specify them at our own fair and just discretion.

8. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

9. Unless otherwise agreed, callable deliveries shall be completed in full within 365 days from conclusion of the contract. Upon expiry of this period, we may store the uncalled goods at the Buyer's cost and risk.

IX. Warranty Provisions

1. Any properties of the goods, in particular their grade, size and classification shall be primarily determined in accordance with the contractually agreed quality of the goods, in particular with any agreed DIN and EN standards or Data sheets or other agreed technical provisions. Any reference made to such standards and similar rules, to inspection documents according to EN 10204 and similar certificates as well as to grade, classification, size, measure and usability of the goods shall not constitute any warranties or guarantees. The same shall apply to declarations of conformity and similar markings such as CE and GS.

2. We shall not assume liability for the suitability of the goods for the use stipulated in the contract, unless expressly confirmed in text form.

3. Insofar as the goods have the agreed quality in accordance with section IX.1 above or are suitable for the use assumed under the contract and confirmed by us in accordance with section IX.2, the Buyer is not entitled to invoke the goods may not be suitable for normal use or have a quality which is usual for goods of this type and which the Buyer expected. In this respect, our liability is excluded in accordance with section X of these Conditions.

4. As to the Buyer's obligations to examine the goods and to notify us of any defects, the applicable statutory provisions shall apply, subject to the following conditions:

The Buyer shall examine the goods immediately after delivery with regard to the properties relevant for the use of the goods and shall notify us in text form of any defects of the goods immediately thereafter. In case the Buyer intends to install the goods into another object or attach the goods to another object, the properties relevant for the installation or the attachment include the inner properties of the goods. The Buyer's obligation to examine the goods exists even in cases where an inspection certificate or any other material certificate is provided. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery have to be notified to us in text form immediately after their discovery.

In case the Buyer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment (e.g. by function tests or a trial installation), this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the Buyer may assert any rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

5. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our choice, remedy the defect or deliver goods free of defects ("cure"). Place of performance for the cure is our seat. Should the cure fail or should we refuse it, the Buyer may exercise his statutory rights. In cases where the defect is trivial or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.

6. In case the Buyer has installed the goods, in accordance with the goods' type and designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects ("dismantling and installation costs") only in accordance with the following provisions:

Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the Buyer by appropriate documents in text form.

Additional costs of the Buyer for consequential damages such as e.g. loss of profit, down time costs or additional costs for covering purchases are no dismantling and installation costs and therefore not recoverable under Sec. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.

The Buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

7. In case, on an individual basis, the costs incurred by the Buyer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs requested by the Buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective goods.

8. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. If a defect has remained unknown to the Buyer as a result of negligence, he may only assert rights on account of this defect if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the item.

9. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as "Ila-Ware" ("secondaries") are not subject to any warranty in accordance with section X of these Conditions.

10. In accordance with Section X of these Conditions, additional claims are not acceptable. This applies in particular to claims for

Damages which did not occur to the goods themselves (consequential damages);

Costs of the Buyer related to the self-remedy of defects without the legal requirements being fulfilled and;

Dismantling and installation costs, in case due to a transformation undertaken by the Buyer before the installation of the goods into another object or before attachment of the goods to another object, the installed or attached goods provide substantially different features than the original goods delivered by us or have been transformed to new products.

X. Restriction of Liability and Limitation Periods

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be limited to damages caused by our wrongful intent or by our gross negligence and, in case of gross negligence, shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question.

2. The aforesaid restrictions shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach will endanger the contractual purpose; nor to such obligations enabling the proper performance of the contract in the first place and on the observance of which the contractual partner may regularly rely; it shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the German Product Liability Act (Produkthaftungsgesetz). Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Should we default on a delivery or performance, the Buyer shall be entitled to damages due to this delay; in case of slight negligence, however, the claim of the Buyer is restricted to maximum 10 % of the agreed purchase price for the performance in default. The rights of the Buyer for damages instead of performance in accordance with the present sec. X.1 and X.2 remain unaffected by the aforesaid.

4. Unless otherwise agreed, any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634a para. 1 No. 2 of the German Civil Code BGB require longer limitation periods, in cases of injuries to life, body and health, breaches of contract caused by our wrongful intent or by our gross negligence or in cases where a defect is fraudulently concealed.

XI. Test parts, moulds, tools

1. In case the Buyer has to provide parts for the execution of the order, such parts have to be delivered free of charge with the agreed quantity, otherwise with an appropriate additional quantity for any rejects, in good time and free of defects. In case of non-compliance, any costs and other consequences caused thereby shall be borne by the Buyer.

2. The production of test parts including the costs for moulds and tools shall be borne by the Buyer.
3. Ownership rights to moulds, tools and other devices required for the manufacture of ordered are subject to the relevant agreement. If such devices become unusable before the agreed output quantity has been fulfilled, the costs required for their replacement shall be borne by us. We undertake to keep such devices available for at least two years after their last use.
4. For tools, moulds and other production equipment provided by the Buyer, our liability is limited to the duty of care observed in our own affairs. Any costs for maintenance and care shall be borne by the Buyer. Our obligation to store such devices shall expire - irrespective of the Buyer's ownership rights - at the latest two years after the last production from the mould or tool.

XII. Copyright

1. We reserve the right of ownership and copyright to cost estimates, drafts, drawings and other documents; any disclosure to third parties shall be subject to our consent. Any drawings and other documents belonging to our offers shall be returned on our request.
2. If we have delivered goods according to drawings, models, samples or other documents provided by the Buyer, the Buyer shall guarantee that there is no violation of industrial property rights of third parties. If third parties prohibit us from manufacturing and delivering such goods, in particular by invoking industrial property rights, we shall be entitled - without being obliged to examine the legal situation - to cease any further activity in this respect and to claim damages if and to the extent the Buyer is at fault. The Buyer shall further indemnify us immediately against all claims of third parties in connection therewith.

XIII. Place of Performance, Jurisdiction, Applicable Law, Applicable Version

1. The place of performance for our deliveries shall be the supplying work in cases of ex-work deliveries, in all other cases it shall be our warehouse. The place of jurisdiction shall be Bocholt / Germany. However, we shall also be entitled to sue the Buyer at any other general or special place of jurisdiction.
2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, to the exclusion of the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
3. The European Commission provides a platform for online dispute resolution (ODR), which the Buyer may find at <https://ec.europa.eu/consumers/odr>. We are not willing or obliged to participate in a dispute resolution procedure before a consumer arbitration board.
4. In cases of doubt, the German version of these Conditions shall apply.