

General Conditions for Sale of DS Dhünn-Stahl GmbH, Wermelskirchen

(version 10/2014)

I. Application, conclusion of contract

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts in regard to deliveries and other services. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are non-binding to us. Oral agreements, promises, assurances, guaranties and statements about the designated use of our products made or given by our sales staff shall not be binding unless confirmed by us in writing, this demand being met also in cases of fax and e-mail transmission.
3. The provision with test certificates according to DIN EN 10204 requires written consent. We are entitled to forward copies of such certificates and to make anonymous our supplier and the issuer in such copies.
4. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

Unless otherwise agreed, the prices are understood ex-factory or ex warehouse plus freight, value added tax and import charges. The merchandise will be invoiced "gross for net".

III. Payment and Set-Off

1. Payment shall be made immediately without cash discounts so that we can dispose of the sum on the due date. This also applies if the test certificates according to DIN EN 10204 are not part of the delivery or arrive late. Any payment transfer costs shall be borne by the Buyer. The Buyer may retain or set off any counterclaims only in so far as such claims are undisputed or have become legally binding and as they are not 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.
2. Unless otherwise agreed, our invoices are due 15 days from date of invoice. Should the Buyer default in payment or exceed the term of payment, we will charge default interest at the statutory rates (§288 BGB), unless higher rates have been agreed upon. We reserve the right to claim additional damages resulting from late payment.
3. 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 we are entitled to refrain from any further performance. In such cases, we are also authorised to make due any and all of our non-statute-barred accounts receivable resulting from the same legal relationship.
4. Any agreed upon 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.

IV. Delivery Times

1. Our commitment to deliver is subject to our contractual, correct and timely self-delivery and in case of imported material additionally under provision of timely receipt of monitoring documents and import licenses.
2. Any confirmation as to delivery times shall only be approximate. 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, to pay agreed instalments or to return approved drawings.
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 despatched 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 dispatch.
4. The Buyer has to ensure an undisturbed delivery of the goods and shall refer timely to difficult delivery conditions. The Buyer shall unload properly and without delay. If we or third parties assist in unloading, no legal obligation is incurred and the risk is entirely with the Buyer.
5. 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), obstruction of transport routes, delays in clearing the goods for import and in customs clearance 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 at our place, the delivering plant or at

another presupplier. If performance becomes unacceptable for one of the parties due to the abovementioned events, she shall be able to withdraw from the contract by instant written declaration.

V. Retention of Title

1. The goods delivered to the Buyer shall remain our property until the full purchase price is paid. The Buyer shall take all measures required to preserve the retention of title – or of an equivalent security in the country of his branch or in a different country of destination -, and to provide the corresponding evidence upon our request.

2. To the extent permitted by the laws of the country, in which the goods are located, the following additional regulations apply:

a. The 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. This condition shall apply to any future as well as any conditional claims and such cases where the Buyer will affect payments on specifically designated claims. As soon as the Buyer has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected.

b. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause 2 a of these Conditions. If the Buyer manufactures, combines or mixes 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 mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer 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 2 a of these Conditions.

c. 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 d) - e) of these conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

d. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. 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, the assignment shall be limited to the part which corresponds to our co-ownership rights.

e. 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.

f. 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, to separate or to remove the Reserved Property, if and in so far as such costs are not borne by a third party.

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 %, 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. Where provided by law, the weight may be determined without weighing in accordance with the applicable standards. We may calculate the weight without weighing on the basis of such standards ("theoretical weight") plus 2 ½ pct ("commercial weight").

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 Documents

Any supply of Inspection Documents („Mill Test Certificates“) acc. to EN 10204 must be agreed upon in writing. We may transmit such document as a copy. In case the price for such documents has not been agreed within the contract, we will calculate it on the basis of our price list resp. the issuer's (manufacturer's) price list.

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. Unless otherwise agreed upon in written form, our deliveries take place in Wermelskirchen.

2. The Buyer shall immediately request 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. Can, 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. In such cases we will ask the Buyer for his prior comments.
4. In the case of call-off orders the risk is transferred to the Buyer at the time of the provision of the goods for collection. In all other transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to or even of confiscation of the goods shall pass on 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 to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.
5. The goods will be delivered unpacked and not be protected against rust. Only if agreed upon, the goods will be delivered packed. Besides, 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 only 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 %.

IX. Warranty Provisions

1. Any inner and outer properties of the goods, in particular their grade, size and classification shall be determined in accordance with the agreed and, if not agreed, with the DIN and EN standards effective at the time the contract is concluded, or in absence of such standards, in accordance with trade practise and usage. 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. The goods must be inspected and any defects must be notified in accordance with the legal provisions. The Buyer's duty to inspect the goods after their delivery shall also extend to any inspection documents according or similar to EN 10204. Any defects of the goods and documents shall be notified in writing or in text form.
3. 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.
4. We will reimburse the Buyer for his expenses in connection with the cure only in so far as such expenses are reasonable and proportionate to the purchase price of the goods, in no case more than 150 pct of the purchase price. We will bear any further expenses such as for the mantling and dismantling of the defective goods only in accordance with the rules of Section XI of these Conditions.
5. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will loose all of his warranty rights.
6. 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.
7. Our further liability is subject to Section X of these Conditions. Any of the Buyer's rights of recourse according to sections 478, 479 BGB (German Civil Code) shall remain unaffected.

X. Recovery of damages 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 ("Verschulden bei Vertragsanbahnung") as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence and shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question.
2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; 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 Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.
3. Unless otherwise agreed to 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 restriction shall not apply to claims of the Buyer resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither claims for damages to life, to the body and to health caused by our fault. For these claims, the statutory limitation periods shall apply.



XI. Copyrights

1. We reserve our property and our copyrights of all cost estimates, drafts, drawings and other supporting papers. They may be made available to third parties only after our agreement. Drawings and other supporting documents relating to offers must be returned at our request.

2. So far as we have delivered items according to drawings, models, samples or other supporting documents supplied by the Buyer, he takes over the liability that protected rights of third parties have not been damaged. If third parties, with reference to protected rights, do not permit the manufacture and delivery of those types of items, we are permitted – without being required to check the legal situation – to stop all further activities and to request damages when the Buyer is liable. In addition, the Buyer is responsible to immediately hold us free from all claims of third parties in this connection.

XII. Test Parts, Forms, Tooling

1. If the Buyer is required to provide parts to complete the order, they must be provided delivered free to the place of production in the required quantity, or with an additional quantity to cover any scrap, on time, without cost and free of any defects. If this does not occur, any resulting costs and other consequences will be for his account.

2. The construction of experimental parts, including the costs for forms and tools are for the account of the Buyer.

3. Property rights for forms, tools and other devices necessary for the construction of the ordered parts are according to the agreement made. Should these types of devices become unusable before the agreed upon quantities have been produced, the costs for replacement devices will be taken over by us. We promise to keep such devices available for a minimum period of two years after their last usage.

4. Our liability for tools, forms and other manufacturing devices provided by the Buyer is limited to the care which we would normally apply in our own affairs. The Buyer takes over the cost for maintenance and repair. Our safekeeping responsibility ends – independent of the ownership rights of the Buyer – at the latest two years after the last manufacturing using the form or tool.

XIII. Place of Performance / Jurisdiction / Applicable Law

1. The place of performance for our deliveries and payment of the Buyer shall be our place of business in Wermelskirchen. The place of jurisdiction shall be the court at our place of business in Wermelskirchen having subject-matter jurisdiction or, at our discretion, the place of jurisdiction at the Buyer's seat.

2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).