

General Terms and Conditions of Sale and Payment

1. Scope of Application; Conclusion of Contract

- (1) These General Terms and Conditions of Sale and Payment shall apply for all – also future – deliveries and services made by us including suggestions, advice and other auxiliary performances.
- (2) In the relationship to the general terms and conditions („Allgemeine Geschäftsbedingungen“, „AGB“) of the customer, our General Terms and Conditions of Sale and Payment shall have exclusive application; purchase terms and other AGB of the customer are expressly objected to herewith. The objection shall also apply if we do not again object to the AGB after receipt thereof.
- (3) Our offers are subject to change without notice.
- (4) Offers or orders of the customer shall be deemed to be accepted by us only with our express declaration of acceptance. Silence with regard to such an offer or order shall not be deemed to be acceptance.
- (5) Our declarations must be in writing or made in electronic form within the meaning of §§ 126a, 127 German Civil Code („Bürgerliches Gesetzbuch“, „BGB“). The requirement of a writing shall also be deemed to be met with a copy of an original signed and retained by us. Computer processed order confirmations which are expressly designated as such do not meet the requirement of a writing standard.
- (6) With deliveries in other EU member states, prior to the conclusion of the contract, the customer shall be obligated to inform us of his value added tax identification number.

2. Scope of Performance; Place of Performance

- (1) The customer shall be entitled to demand goods only from our own production or services by us. We reserve the right to have the delivery or services owed by us performed by third parties.
- (2) Place of performance for delivery shall be the place of the supplying plant or warehouse; place of performance for the customer's payment obligation is the location of the bank account stated on our invoice.

3. Price, Export Certificate, Payment, Security

- (1) Insofar as not otherwise agreed, prices are understood to be ex factory plus domestic or foreign value added tax in the respective statutory amount. Payment shall be payable and due up to the 15th of the month following the delivery ex factory or ex warehouse without deduction of cash discount in a manner to enable us to dispose over this amount on the due date.
- (2) Customs, consular costs, shipping, insurance premiums and other costs which exist in connection with the performance of the contract shall be invoiced separately to the customer. If it is otherwise agreed that such costs shall be included in the price, then such cost increase occurring after the conclusion of the contract shall be invoiced to the customer.
- (3) Should a customer located outside of the Federal Republic of Germany or its authorized representative retrieve goods and transport or transfer these outside the Federal Republic of Germany, then the customer shall prove such by transfer of documentary evidence which conforms to the requirements of the value added tax law of the Federal Republic of Germany. Should this proof not be provided within 30 days after transfer of the goods, then the customer shall be obligated to pay the value added tax on the invoiced amount pursuant to the value added tax rate applicable for the deliveries within the Federal Republic of Germany.
- (4) The customer may only set-off amounts with accounts receivable which are non-disputed or determined with final, res judicata effect. He shall only be entitled to retention rights insofar as such concern the same contract relationship.
- (5) We shall accept properly taxed bills of exchange eligible for refinancing with central banks on account of performance if such is expressly agreed. With the acceptance of bills of exchange or checks, the debt shall first be deemed to be paid upon irrevocable credit of the amount evidenced in the security to a bank account named by us. Bank charges accruing with the discounting of bills of exchange eligible for refinancing with central banks and all costs accruing with the payment of the bill of exchange and check amount shall be borne by the customer.
- (6) Should the customer be in default of payment or should our accounts receivable be threatened by deterioration of the credit-worthiness of the customer, then we shall be entitled to make our accounts receivable immediately payable and due, regardless of the term of any bill of exchange or to demand security thereby. We shall also be entitled to revoke the collection authorization pursuant to Item 11, para. 7 hereof. Furthermore, we shall be allowed to perform still-outstanding deliveries only upon payment of advance payments or with provision of security.
- (7) Should the customer be in default with payment and such indicates a risk to the capability of realizing a substantial portion of the accounts receivable, then we shall be entitled to prohibit the further processing of the goods already delivered by us, to retrieve the goods and, if applicable, to access the business operations of the customer for this purpose. The retrieval of goods is not the equivalent of cancellation of the contract.
- (8) The statutory provisions concerning default of payment shall remain unaffected.

4. Group Set-Off

- (1) We are entitled, in agreement with all companies affiliated with the Salzgitter AG Group, to set-off with all accounts receivable which we, Salzgitter AG or such company of which Salzgitter AG is directly or indirectly a shareholder, have outstanding against the customer. Furthermore, we shall be entitled to set-off against all accounts receivable which the customer, regardless of the legal reason, has against us, against Salzgitter AG or those Group companies mentioned in sentence 1.

This shall also apply in the case that a cash payment is made by one party and payment by the other party is agreed to be by means of bill of exchange or other performance on account of performance.

- (2) Upon demand, we shall make available a complete list of the Group companies of Salzgitter AG named in paragraph 1.
- (3) Securities which exist for us or one of the designated companies shall be liable respectively for the accounts receivable of all of these companies.

5. Measurements; Weight; Quality

- (1) Deviations of measurements, weight and quality are permissible within the framework of applicable DIN norms or customary practice, insofar as not otherwise agreed.
- (2) If the price is determined in accordance with weight, then the weights shall be determined on calibrated scales and shall be applicable for invoicing. Proof of weight shall occur by means of presentation of a weighing record. Insofar as it is not customary that an individual weighing occur, the total weight of the delivery shall apply respectively, regardless of the means of transportation of the delivery. Differentials as compared with the calculated individual weights shall be distributed proportionately to these. With bundling up, we shall weigh gross for net.

6. Packaging

Insofar as not otherwise agreed, the goods shall be delivered unpacked and unprotected against rust. If packaging is expressly agreed, then such shall be invoiced to the customer and not taken back. We can instead – with invoicing of a charge for use and deposit – demand return of the packaging.

7. Acceptance

- (1) When an acceptance is agreed, such shall occur – unless otherwise agreed – in the supplying factory. It must be undertaken without undue delay after the readiness for acceptance. We shall bear the acceptance costs accruing to the factory; otherwise the costs accruing in connection with the acceptance or costs invoiced to us by a third party shall be borne by the customer.
- (2) In the event that particular quality provisions are agreed, the customer shall be obligated to take acceptance upon our demand.
- (3) Should the acceptance not be undertaken in a timely manner or incompletely due to no fault of our own, then we shall be entitled to perform the delivery without acceptance or to store the goods at the cost and risk of the customer.

8. Transfer of Risk, Shipment

- (1) Insofar as not otherwise agreed, we shall have the choice of the means of transport and the transport route. In this case, we shall designate the forwarding agent and/or the carrier.
- (2) The risk of loss shall be transferred to the customer upon the transfer to the customer, the forwarding agent or the carrier but, however, at the latest upon departure from the factory.
- (3) The Incoterms in the version applicable at the time of the execution of the contract shall be applicable for the interpretation of the commercial clauses.
- (4) Should the loading or shipment of the goods be delayed for reasons for which the customer is responsible, then we shall be entitled to place the goods in a warehouse at our discretion at the cost and risk of loss of the customer, to undertake all measures appropriate for the maintenance of the goods and to invoice the goods. Our payment claim is payable and due in this case 30 days after the invoice date. This date shall apply as the date of delivery within the meaning of Item 10 (10) of these General Terms and Conditions of Sale and Payment. he same shall apply if goods notified to be ready for delivery are not requested to be delivered within four days. The statutory provisions regarding default of acceptance shall remain unaffected.
- (5) With transport damages, the customer shall cause a determination of the facts to be made without undue delay with the responsible office.
- (6) We shall be entitled to make installment deliveries.
- (7) We reserve the right to ship the delivery from a foreign factory or warehouse or from a foreign subcontractor.

9. Period of Delivery, Delivery Delays

- (1) Delivery deadlines shall commence with the date of our order confirmation but, however, not before complete clarification of all necessary details of the order. The latter shall apply also for delivery dates.
- (2) If the customer does not perform contractual obligations – also cooperation or auxiliary obligations – (such as e.g. opening of a letter of credit, production of domestic or foreign certificates, making of an advance payment or the like) in a timely manner, we shall be entitled to postpone our delivery deadlines and delivery dates – regardless of our rights arising from the default of the customer – in accordance with the requirements of our production operations.
- (3) If we are prevented from performing our obligations due to unforeseen circumstances which effect us or our suppliers and which we also could not have avoided according to the circumstances of the case with reasonable care, e.g. war, force majeure, civil turmoil, natural forces, accidents, strikes and lock-outs, other business operation disruptions and delays in the delivery of essential raw materials or preliminary materials, the period of delivery shall be extended by the term of the hindrance and a reasonable start-up period. Should the delivery be impossible or unreasonable for us due to the hindrance, then we can cancel the contract; the customer shall have the same right if the acceptance is unreasonable for him due to the delay.

- (4) With failure to meet delivery deadlines, the customer shall first be entitled to rights arising from § 323 BGB if we are in default and he has fixed a reasonable deadline for delivery which – insofar as in deviation of § 323 BGB – includes a statement that he shall refuse acceptance of the performance after expiration of the deadline; after unsuccessful expiration of the deadline, the claim for performance shall be precluded. The right of cancellation shall basically extend only to the not-yet performed part of the contract. Insofar as performed installment deliveries are not capable of being used by the customer, he shall also be entitled to cancel with regard to these installment deliveries.
- (5) Further rights arising from default of delivery, in particular, damage claims are precluded to the extent stated in Item 12 hereof.

10. Defect Claims

- (1) The condition and quality and absence of defect in accordance with the contract of our goods shall be measured exclusively pursuant to the express agreements concerning quality/characteristics and amounts of the goods ordered at the date of the transfer of risk.
- (2) With goods which are sold as declassified materials – e.g. so-called “Ila-Materials” – we shall not be liable for the stated defects and for such defects which the customer generally must expect with such materials.
- (3) A warranty for a certain purpose or a certain fitness shall only be undertaken insofar as such is expressly agreed; otherwise the customer shall have the exclusive risk of fitness and use.
- (4) We shall not be liable for deterioration or destruction or improper treatment of the goods after transfer of risk.
- (5) Contents of agreed specifications and any expressly agreed use shall not establish a guarantee; the assumption of a guarantee shall require an express written agreement.
- (6) The customer shall inspect the goods received without delay after receipt. Warranty rights exist only if defects are objected to without undue delay in writing. Latent defects of quality must be objected to without undue delay after their discovery.
After performance of an agreed acceptance, the objection to defects which could have been determined with this acceptance shall be precluded.
- (7) With objections, the customer shall give us the opportunity without undue delay to examine the goods objected to; upon demand, the goods objected to or a sample of the same shall be placed at our disposal at our cost. With unjustified objections, we reserve the right to invoice the customer with shipping and turn-round handling of goods costs as well as the examination costs at normal market prices.
- (8) With the existence of a defect of quality, we shall, at our discretion – taking into account the interests of the customer – perform subsequent improvement by replacement delivery or by remedy.
Should the subsequent improvement not be successfully performed by us within a reasonable time period, then the customer can fix a reasonable deadline for us to perform subsequent improvement, after the unsuccessful expiration of which he can either reduce the purchase price or cancel the contract; further rights due to defects are precluded to the extent set forth in Item 12 hereof.
- (9) With the existence of legal imperfection of title, we shall be entitled to perform subsequent improvement by elimination of the legal imperfection of title within a reasonable time period which shall generally be at least two weeks as of receipt of the notification of defect. Otherwise, para. 8 hereof shall apply accordingly.
- (10) The deadline for the statute of limitations of claims due to defects of quality of movable goods, notwithstanding §§ 478, 479 BGB and insofar as not otherwise expressly agreed between the parties, shall be
 - a) a term of three years after delivery of goods which are used in accordance with their usual purpose for a building and which caused its defectiveness and
 - b) otherwise one year as of delivery.
 In addition, with regard to the statute of limitations provisions relevant for the defects, the statutory provisions shall apply.
- (11) Should the customer be entitled to recourse claims against us pursuant to § 478 BGB, these shall be limited to the statutory scope of the warranty claims of third parties against the customer. The customer shall be obligated to defend such claims – insofar as expedient.
- (12) We shall grant a warranty in the same manner for the remedy or replacement delivery as for the original delivery. Respective claims shall be time-barred
 - a) with goods which are used in accordance with their usual purpose for a building and which caused its defectiveness, after three years as of completion of the remedy or delivery of a replacement delivery but by no means, however, later than 48 months after the original delivery mentioned in sentence 1 hereof,
 - b) otherwise one year after completion of the remedy or delivery of replacement delivery but by no means, however, later than 18 months after the original delivery mentioned in sentence 1 hereof.

11. Retention of Title; Assignment of Accounts Receivable

- (1) The delivered goods remain our property (goods subject to reservation) up until full payment of all accounts receivable, in particular, also the respective balance accounts receivable which we have against the customer within the framework of the business relationship.
- (2) Processing and conversion of the goods subject to reservation shall occur for us as manufacturer within the meaning of § 950 BGB, without obligating us. The processed and converted goods shall apply as goods subject to reservation within the meaning of para. 1 hereof.
- (3) With the processing, combination, commingling of the goods subject to reservation with other goods by the customer, we shall be entitled to co-ownership in the new goods in the relationship of the invoice value of the goods subject to the reservation compared to the invoice value of the other used goods. Should our ownership be dissolved by combination, comming-

ling or processing, then the customer transfers to us already now the ownership or expectancy rights to which he is entitled in the new product or the goods to the extent of the invoice value of the goods subject to the reservation, in the case of the processing in the relationship of the invoice value to the invoice value of the other used goods and shall store the goods subject to reservation at no cost to us. Our co-ownership right shall apply as goods subject to reservation within the meaning of para. 1 hereof.

- (4) The customer may only resell the goods subject to reservation in the normal course of business in accordance with his normal general terms and conditions and as long as he is not in default, provided that he agrees to a reservation of title with his customers and that the accounts receivable from the resale are transferred to us pursuant to para. 5 and para. 6 hereof.

The use of the goods subject to reservation for the performance of works contracts and contracts which have the subject matter of the delivery of movable goods to be manufactured or produced shall be deemed to be a resale (“contract for work done and materials supplied”).

- (5) The accounts receivable of the customer from the resale of the goods subject to reservation shall be assigned to us already now; this shall apply with the placement of the resale accounts receivable in a current account in the amount thereof also for the respective balance accounts receivable. The assigned accounts receivable shall serve as security in the same manner as the goods subject to reservation within the meaning of para. 1.
- (6) Should the goods subject to reservation be resold together with goods not delivered by us, then the accounts receivable from the resale or the respective balance accounts receivable shall be assigned to us in the relationship of the invoice value of the goods subject to reservation compared to the invoice value of the other goods.
With the resale of goods to which we have co-ownership rights pursuant to para. 3 hereof, a portion of the accounts receivable shall be assigned to us corresponding to our co-ownership share.
- (7) The customer shall be entitled to collect accounts receivable from the resale or balance accounts receivable, unless we revoke the collection authorization in the cases named in Item 3, para. 6. The customer shall be obligated, upon our demand, to notify his customers immediately of the assignment to us – insofar as we do not do so ourselves – and shall give us all information and documents necessary for the collection.
- (8) In no case shall the customer be entitled to any other assignment of accounts receivable. This shall apply also for factoring business; the customer shall also not be allowed to do so on the basis of the collection authorization. We are, however, prepared to agree to factoring transactions in individual cases insofar as the equivalent amount herefrom finally flows to the customer and the settlement of our accounts receivable is not threatened.
- (9) The customer must notify us of an attachment or other encroachments by third parties without undue delay.
- (10) Should the value of the existing securities exceed the secured accounts receivable by more than ten percent, then we shall be obligated, upon the demand of the customer, to release securities at our choice in this amount.
- (11) Should the retention of title not be legally valid according to the law applicable where the goods are located, then a security corresponding to the retention of title shall be deemed to be agreed. Should the cooperation of the customer be necessary for the creation of such rights, then he shall undertake all measures which are necessary to establish and maintain such rights.

12. General Limitations of Liability

- (1) Insofar as not otherwise regulated in these General Terms and Conditions, we shall be liable for damages due to breach of contractual or extra-contractual obligations or upon the preparation of the contract only with wrongful intent or with gross negligence of our statutory representatives or employed persons as well as negligent breach of essential contract obligations (cardinal obligations).
- (2) With negligent breach of cardinal obligations, we shall be liable – with the exception of cases of wrongful intent or gross negligence of our statutory representatives or employed persons – only for damage which is foreseeable and typical for the specific kind of contract.
- (3) Our liability is limited in total to the payments of our employers' liability insurance.
- (4) With negligent breach of cardinal obligations, our liability is, in addition, limited in total to double the contract value of the respective delivery which was the cause of the damage.
- (5) The afore-mentioned limitations of liability shall not apply to injury to life, limb and health and for personal damage or damage to privately used goods pursuant to the Product Liability Act.

13. Jurisdiction, Applicable Law

- (1) Notwithstanding the jurisdiction for measures of preliminary injunction proceedings, jurisdiction for all other legal disputes, also for bills of exchange and check litigation, shall be at the location of the registered office of our company. We shall be entitled, however, to also file an action against the customer in the courts of his general jurisdiction.
- (2) The law of the Federal Republic of Germany applicable for the legal relationships of domestic parties shall apply exclusively for all legal relationships between us and the customer, to the exclusion of the UN Sales Law.

14. Partial Invalidity; Data Protection

- (1) These General Terms and Conditions shall remain in effect as whole also in the case of the legal invalidity of other individual provisions.
- (2) Data becoming available in connection with the business association shall be stored in files by the companies of the Salzgitter Group and transmitted between them.

Salzgitter Mannesmann Grobblech GmbH

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