

Hans Zewe Stahlhandel - Conditions of delivery and payment

§ 1 General scope of application

1. All our deliveries and services, present and future, are exclusively carried out on the basis of the following conditions. Deviations from these conditions must be agreed in writing. The conditions of sale of our contractors are herewith protested. They are not recognized even if they are not explicitly protested again on receipt.

2. Our offers are subject to confirmation. Oral agreements, promises, undertakings and warranties made by our employees in the course of the conclusion of a contract become binding only after our written confirmation.

3. In case of doubt the interpretation of terms of trade shall be based upon the Incoterms as amended.
Drawings and plans we have compiled remain our property.

§ 2, Prices

1. If not otherwise agreed our prices apply as on the date of delivery plus VAT. The price calculations are based on the established weights including packing insofar as this is usual in this line of business.

2. In the case that taxes or other third-party charges, which are included in the agreed price, change 4 weeks after the date of a contract or if they rise again we shall be entitled to change the prices correspondingly.

§ 3, Payment and offsetting

1. Unless otherwise agreed or indicated in our invoices – namely without deduction of a cash discount – payment has to be made in such a way that we have the amount at our disposal on the due date. The customer shall bear the costs of money transactions. The customer shall have a right of retention and right of setting off a claim only insofar as the counterclaim is undisputed or final.

2. We will charge interest of 8% above the basic rate unless a higher interest rate has been agreed. We reserve the right to claim further damages and compensations.

3. The customer shall be in default 10 days after the date of payment and receipt of the invoice/ payment schedule or receipt of the goods.

4. Cash checks are accepted on account of performance subject to receipt of the corresponding value. The due date of our invoices remains unaffected hereby.

5. Our claims become due upon receipt of the invoice by the contracting partner. We can fix a later due date in the invoice. The beginning and duration of limitation shall remain unaffected.

6. If after the conclusion of an agreement it becomes obvious that our claim for payment is endangered by lack of solvency of the customer we shall be entitled to the rights of Sect. 321 BGB (German Civil Code) (defense of uncertainty). In this case we will be entitled to accelerate all claims that are not statute-barred from business transactions with this customer. The defense of uncertainty shall cover all other outstanding deliveries and performances from the business relation with this customer. In particular we have the right to take delivered goods back and to enter the premises of the customer to take the goods back. The taking back does not constitute a termination of the agreement.

7. We reserve the right to use payments for the settlement of the longest due invoice items plus accumulated interests of default and costs in the following order: costs, interests, main claim.

8. Possible toll and road charges arising from transport are to be paid by the client upon receipt of the invoice.

§ 4, Terms and dates of delivery

1. We always aim to deliver as soon as possible. Our obligation to deliver is subject to the fact that our suppliers deliver to us correctly and on time, unless the incorrect or delayed delivery is our fault.

2. Indications of delivery dates are approximate. Delivery times start with the date of our order confirmation and apply only on the provision that all details of the order have been clarified on time and the customer has fulfilled his obligations e.g. all official documents have been submitted, letters of credit or guaranties have been given or advance payments have been made in time.

3. Compliance with delivery dates and terms shall be governed by the time of dispatch of the goods ex works or ex warehouse. If the goods cannot be dispatched in time due to no fault on our part deadlines shall be met when a dispatch note that the goods are ready for dispatch has been sent.

4. In the case of a delayed delivery/ collection due to a fault on the part of the customer, the customer shall bear the costs of the warehouse and take the risk of accidental loss of the goods.

5. Incidences due to circumstances amounting to Force Majeure entitle us to postpone delivery at the time of the incident and an appropriate setting-up time. This also applies when such incidences occur during a delay. Force Majeure shall include currency and trade political or other measures, strikes, lockouts, interruption of operations through no fault of ours (e.g. fire, machinery or tire breakdown, raw material or energy shortage), obstruction of transport routes, import or customs delays as well as all other circumstances arising through no fault on our part which considerably complicate or make delivery impossible. In the case that the execution of the agreement becomes unreasonable for one of the parties, this party to declare rescission of the agreement.

6. The customer has to unload immediately and properly. If we cooperate this is done without legal obligation. Liability for slight negligence shall be excluded. The unloading costs are payable by the customer.

§ 5, Qualities, measures and weights

1. Qualities and measures are governed by the DIN-standards or material specifications as of the date of the contract. Insofar that DIN standards or material specifications do not exist the corresponding Euro-standard shall apply and if missing, trade practice shall be used. Neither references to standards, industrial standards, material specifications or test certificates and indications of qualities, measures, weights and applicability shall constitute warranties or guaranties, nor shall conformity declarations, manufacturer's declarations and the corresponding marking, such as CE und GS.

2. The weights are based upon the weighing carried out by our pre-supplier or us. The weight is evidenced by submitting of the weighing slip. The additions and deductions (trade weights) used in the steel trade in the Federal Republic of Germany remain unaffected. The piece numbers, batch rates or others indicated in the dispatch advice are non-binding for goods calculated on a weight basis. Insofar that no individual weighing is carried out the total weight of the consignment shall apply. Differences between the calculated individual weights are proportionally allocated to the individual weights.

§ 6, Acceptance

1. If acceptance has been agreed it can only be effected in the plant of destination or our warehouse immediately after the notification that the material is ready for acceptance. The customer pays his personal acceptance costs, the factual acceptance costs will be invoiced to the customer according to the price list of the delivery plant or the actual costs incurred.

2. If acceptance is not agreed, not timely or incompletely effected through no fault on our part we are entitled to dispatch the goods without acceptance or store the goods at the customer's cost and risk and invoice the customer.

§ 7, Dispatch, transfer of risk, partial delivery, packing

1. We specify the way and means of transport as well as the forwarder or carrier.

2. As soon as the goods have been handed over to the forwarder or carrier or at the latest when the goods have left the warehouse or the delivery plant, the risk including the risk of seizure of the goods for all transactions including delivered free and free-domicile delivery shall pass to the customer. We will insure the goods only upon request and at the expense of the customer. The customer shall be obliged to unload and bear the costs thereof.

3. We are entitled to partial deliveries within a reasonable scope. Excess delivery or short delivery as is usual in our line of business is permissible. Large deviations which can occur in the warehouse business such as sheet metal delivery supplied in complete packets are herewith agreed upon.

§ 8, Call-off purchase orders

1. Goods, which have been announced ready for dispatch as agreed, must be called off without delay. If the customer fails to do so after a further reminder we are entitled, at our own discretion, to dispatch the goods at the expense and the risk of the customer or to store the goods and invoice them immediately.

2. For agreements including regular deliveries we shall be given call-off purchase orders and classifications for about the same monthly quantities, otherwise we shall be entitled to effect the classification at our own discretion.

3. Should individual call-off purchase orders exceed the total agreed quantity we are entitled but not obliged to honor the excess delivery. We can invoice the excess delivery at the price ruling at the time of the call-off or the delivery.

4. Goods delivered by us are taken back only on the basis of a special agreement with us. We take the goods back only in the state as supplied and delivered free-of-charge. Goods taken back are credited less the proportional warehouse and administration costs incurred to us, at least however at 15% of the invoice amount.

5. Changes of delivery and performance are reserved insofar that they are reasonable for the customer under consideration of our mutual interests.

§ 9, Reservation of title

1. All goods delivered remain our property subject to retention of title until all claims, including the corresponding claims of balance we have from the business relations (current account reservation) have been satisfied. This also applies to future and conditional claims even if payments on specific denominated claims have been made. This current account reservation becomes extinct with the settlement of all claims which are still open at the time of settlement and covered by this current account reservation.

2. Machining and processing of goods subject to retention of title is effected by us as producers in accordance with Sect. 950 BGB (German Civil Code) without obligation on our part. The machined and processed goods constitute goods subject to retention of title as in No. 1. If the goods subject to retention of title are processed, joined or blended with other materials by the customer we retain a joint property of the new goods proportionally to the value of the goods subject to retention of title and the other materials.

In the case that property rights expire due to processing, blending or joining the customer transfers his own property rights of the newly created goods to us in the amount of the calculated value of the goods subject to retention of title and keeps them in safe custody free of charge for us. Our joint property rights constitute goods subject to retention of title as in No. 1.

3. The customer may dispose of the goods subject to retention of title exclusively in the ordinary course of business at his usual Terms and Conditions as long as the customer is not in default and on the provision that the claim arising from the disposal is transferred to us according to Nos. 4-6. The customer shall not be entitled to dispose of the goods subject to retention of title in any other way.

4. Any claims arising from the disposal of goods subject to retention of title or from another legal basis are herewith assigned to us as well as all securities the customer acquires for the claim. In the same way the claims to secure the goods are subject to retention of title. If goods subject to retention of title are disposed of by the customer together with other goods which were not purchased from us the claim from the disposal is assigned to us proportionally to the calculated value of the goods subject to retention of title and the remaining value of the goods. In the case that goods are sold of which we have a joint property share according to No. 2 the corresponding part of joint ownership is assigned to us.

5. The customer shall be entitled to collect claims from resale. This right of collection expires if we revoke it as in the case of a delay of payment or an application for the opening of insolvency proceedings. We shall only make use of our right to revoke if, after conclusion of the contract, it becomes clear that our claim for payment from this or other contracts with the customer is jeopardized due to lack of solvency of the customer. Upon our written request the customer shall be obliged to inform his customers without delay about the assignment of the claims to us and to hand over all documents needed for the collection of the claims to us.

The assignment of claims from resale is inadmissible unless it is to be considered as an assignment by real factoring of which we have been notified and in which the factoring proceeds exceed the value of our secured claim. Our claim becomes due and payable as soon as the factoring proceeds have been credited.

6. The customer undertakes to inform us without delay about any garnishment or other interference by third parties. The customer shall bear all costs arising from the removal of the excess and the re-transportation of the goods subject to retention of title unless they have to be paid by another third party.

7. In case of default of the supplier we shall be entitled to take back the goods subject to retention of title and if necessary to enter the premises of the customer for this purpose. The same applies if, after conclusion of the contract, it becomes obvious that our claim for payment from this or other contracts with the customer is jeopardized due to lack of solvency of the client. The taking back of the goods does not constitute a withdrawal from the contract. In the case that insolvency proceedings into the property of the client are instituted we shall be entitled to withdraw from the contract.

8. If the value of the existing guaranties exceeds the secured claims by more than 20% altogether, we shall be obliged to release upon request securities at our discretion.

§ 10, Notification of defects and guarantees

1. Defects as to the quality of the goods must be notified immediately upon delivery. Material defects, which cannot be detected even upon the execution of due diligence within this period, must be notified in writing immediately upon detection, at latest however prior to expiry of the agreed or legal term of limitation and processing and machining of the goods must be stopped immediately.

2. In any case the goods must be kept in unchanged condition for inspection. If the customer violates this obligation and processes or machines the goods this shall be deemed as approved by us, and all liabilities shall be extinct. Any warranties of goods shall be extinct.

3. After the goods have been inspected by the client as agreed the right to file a claim for defects, which were detectable through the inspection, shall be excluded.

4. If the claim for defects is justified and filed in time we can remedy the defect at our discretion or supply goods free from defects (supplementary performance). If supplementary performance fails or is refused the customer has the right to reduce the purchase price or after the expiry of a reasonable period of time withdraw from the contract. In the case of a minor fault in the goods the customer shall have the right to reduce the purchase price exclusively. The customer cannot ask for rescission of sale if construction work is part of the guarantee or the defect considerably reduces the value or fitness of work rendered by us.

5. We shall pay the costs incurred by supplementary performance only if they are reasonable in the individual case and in relation to the purchase price. We will not pay the costs caused by the introduction of the sold goods to place other than the site of the contracting partner unless this corresponds to the specified use in the contract.

6. We guarantee fitness of the purchased goods only insofar that the purchased goods are suitable in the meaning of the provisions and definitions of the producer. The customer ensures that the purchased goods are conveyed as agreed. If this obligation is violated the customer shall not be entitled to file claims against us.

7. For goods sold as declassified materials the customer shall have no rights to claim for defects from the reasons for the declassification and other reasons that customarily have to be expected. In the trade of II a-materials (second-rate quality) our liability for defects is excluded.

8. Samples, models, analytical data and other information on the quality or the dimensions of the goods are considered as outline information without obligation on our part unless they are explicitly guaranteed.

9. For orders for the combination of produced materials we do not assume liability for the quality of the material supplied or its process-ability. A compulsory liability according to the Product Liability Act is excluded from this provision.

10. The customer's right of recourse according to Section 478 BGB (German Civil Code) remains unaffected.

§ 11, General restriction on liability

1. In the case of violation of contractual or non-contractual obligation namely in the case of impossibility, default, culpa in contrahendo and tort we shall only be liable if done intentionally or in case of gross negligence also for our executives and other vicarious agents restricted to the typical contractual damage foreseeable at the time of the contract.

2. This restriction does not apply in the case of intentional violation of essential obligations of the contract insofar that attainment of the objectives of the contract is endangered, the Product Liability Act includes compulsory obligation, damage to life, body or health and insofar that defects have been fraudulently concealed or the absence of such defects has been guaranteed.

3. Unless otherwise agreed contractual claims that the customer is entitled to against us, from or in connection with the delivery of goods become statute-barred one year after delivery of the goods. This period also applies to goods which, according to their usual use, are used for construction work and have caused a defect thereof. Our liability for intentional or gross negligent violation of obligations remains unaffected thereof as well as the expiry of legal recourse claims.

In cases of supplementary performance the period of limitation does not recommence running from the beginning again. Compulsory legal liabilities and period of limitation provisions remain unaffected.

§ 12, Place of performance, place of jurisdiction, effectiveness and applicable law

1. Place of jurisdiction – as far as permitted by statute – and place of performance for all claims from ongoing business relations between the contracting parties shall be our company headquarters.

2. Supplementary to these conditions German law and the practice in the trade shall apply at our company premises for all legal relationships between us and the customer. The provisions of the Convention of April 11, 1980 on Contracts in the International Sale of Goods shall not apply.

3. The invalidity of any provisions of the contract or of the general terms shall not affect any part of the remaining contract. An invalid provision shall be interpreted so that it best serves the intended purpose of the contract.

4. In the event any conflict in the interpretation of the rights and obligations of the parties hereto arises from the use of different languages the German version of these General Terms and Conditions shall prevail.