

General Terms and Conditions of Sale and Delivery of TiBo Metals GmbH & Co.KG

I. Application / Conclusion of Contracts

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with entrepreneurs, legal entities under Public law and special funds under public law within the meaning of §310 section 1 BGB (German Civil Code) in regard to deliveries and other services, including contracts relating to the supply and manufacture of non fungible goods. 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 open and subject to change. Verbal agreements, promises, assurances and guaranties made or given by our sales staff shall not be binding unless confirmed by us in writing. Communication in writing by telefax or by e-mail are acceptable and binding.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

II. Prices

1. Unless otherwise agreed, only such prices and terms shall apply as fixed, effective at the time when the contract is concluded. The goods will be invoiced "gross for net". Unless otherwise agreed, prices shall be understood ex works or stock plus costs for delivery, VAT, import dues and any other applicable dues.
2. In case variable prices are agreed, we may raise the agreed price to the same degree to which our material, supply and labour costs raises, provided there is a period of more than three months between the conclusion of the contract and the shipment. The Buyer may, in such cases, withdraw from the contract provided his declaration of withdrawal reaches us immediately after we have declared the price raise.

III. Payment and Set-Off

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately upon delivery and in such a manner that we can dispose of the sum on the due date. Any payment transfer costs shall be borne by the Buyer.
2. 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 based on the same contractual relation with the Buyer and/or as they would entitle him to refuse the fulfilment of his contractual duties under section 320 BGB (German Civil Code)
3. Should the Buyer exceed the payment deadline or should he default in payment, we will debit him with interests at 8 percent above the basic rate of interest, unless higher rates have been agreed upon. 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 authorised to make use of rights under section 321 BGB (German Civil Code) and to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship.
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.

IV. Delivery Times

1. Our commitment to deliver is subject to our correct and timely self-delivery unless we are responsible for the deficient or late self-delivery.
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 local and foreign official certifications/approvals, to provide letters of credit and payment guarantees or to pay agreed down payments.

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. If the delivery is delayed by our fault, the Buyer, after setting a reasonable grace period, may withdraw from the contract if and in so far as the goods have not been delivered by this date. Damage claims for delay and non-performance may be made in accordance with clause X of these Conditions.
5. If in event of force majeure we are hindered or prevented from fulfilling our contractual delivery/service we shall be entitled to postpone deliveries/service for the period of hindrance and for a reasonable time necessary for start-up. Force majeure shall include, but not limited to, industrial disputes in the form of strikes or lockouts, mobilisation, war, plant stoppages, import and export bans, raw material and energy supply problems, fire, natural disasters, machinery breakdown, traffic barricades, disturbance or shortage by means of transport, or any other circumstances which are extraordinary, unforeseeable and outside our control. There is no difference whether these circumstances affect us, our suppliers or their sub-suppliers. If this amendment of the Agreement is impossible or is unreasonable to fulfill to one of the parties, such party shall be entitled to resign the contract.
6. The Customer shall be entitled to request an explanation on whether we are going to deliver during the reasonable period of grace or withdraw from the Agreement. If we do not explain our intentions, the Customer shall be entitled to rescind the contract within a reasonable time limit.
7. The explanation provided by our suppliers or their sub-suppliers shall be deemed as adequate proof that we are hindered from fulfilling from our contractual obligations as stipulated in provision 5.

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. This condition shall apply to any future as well as any conditional claims including accepted notes 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.
2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of section 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 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.
3. 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/4 through V/6 of these Conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.
4. 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 according to clause V/2 of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.
5. 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.

6. 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.
7. 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 Insolvenzordnung (= German Insolvency Act) shall remain unaffected.
8. 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. Quality, Dimensions, Weight

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, EN, ASTM or other national/international standards of same level effective and agreed at the time the contract is concluded, or in absence of such standards, in accordance with trade practice 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 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").
3. 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 and Inspection Documents

1. Any supply of Inspection Documents („Mill Test Certificates“) acc. to EN 10204 or similar standards must be agreed upon in writing. We may transmit such document as a copy.
2. Where inspection of the goods through buyer or third party inspection has been agreed upon, the goods must 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 ensure that we can authorize the inspection company designated by him in his or his purchaser's name and on his account. Unless otherwise agreed, this authorization shall be regarded as granted as soon as the Buyer designates an inspection company.
3. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be either to our or to the account of the mill.
4. 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. Unless otherwise agreed, 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. 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. 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, damage or confiscation 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 or the mill. 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.
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.

IX. Warranty Provisions

1. The goods must be inspected and any defects must be notified in accordance with the legal provisions of § 377 HGB (German Commercial Code). 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.
2. Upon arrival, obvious transport damages to be reported immediately to the forwarding agent and shall be confirmed by him in writing. Further the good to be checked immediately in presence of forwarding agent in terms of quantity. Any missing quantity to be reported immediately to the forwarding agent and confirmed by him in writing.
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, he may only reduce the purchase price. In case claimed goods has been used, soled or repaired the warranty rights are deemed lost, even after claim has been made.
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 not bear any expenses such as for the mantling and dismantling of the defective goods. Expenses caused by transport of the defective good to another place than the agreed place of performance will not be acceptable unless the transport is according to the contractual usage.
5. After performance of an agreed inspection of goods by buyer in factory or stock no claims of defects which could have been detected by the agreed range of inspection are acceptable. In case that the buyer is not able to know about the defect because of negligence the buyer has only right of claim if and so far the we have maliciously concealed the defect.
6. 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.
7. 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.
8. 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. 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 tortious 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 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; 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). Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.
3. Unless otherwise agreed, any contractual claims to which the Buyer is entitled 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 limitation shall also apply to such goods which, according with the normal way they are used, have been used for a building and have resulted in the defectiveness of the building, unless this use has been agreed upon in writing. This restriction shall not apply to our liability resulting from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault nor to any recourse claims.

XI. Place of Performance, Jurisdiction and Applicable Law

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 the warehouse. The place of jurisdiction shall be at our seat or - at our discretion - at the Buyer's seat.
2. All legal relationships between us and the Buyer shall be governed by the non-standardised laws of the Federal Republic of Germany supplementing these Conditions, especially the German BGB/HGB (Germany Civil and Commercial Code), excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

XII. Miscellaneous

1. If a buyer based outside Germany, his forwarding agent or representative collects the goods, or in case he carries or transports the goods to a place outside of Federal Republic of Germany, such buyer shall provide the required proof of exportation for tax purposes. In case buyer fails to proof, buyer will be required to pay the statutory VAT for the amount invoiced at the applicable rate for shipments within the Federal Republic of Germany.
2. In the case of shipments from Federal Republic of Germany to another state being member of EU, buyer shall notify us of his tax identification number (VAT) under which his business is taxed within the EU. Failing to provide, buyer will be required to pay the statutory VAT at the current rate, additional to the price agreed in contract. For each tax-free intra-community delivery from Federal Republic of Germany to another state being member of EU, the buyer undertakes to provide us with a proof of the actual arrival of the goods (confirmation of arrival) in accordance with the Umsatzsteuerdurchführungsverordnung (VAT Implementing Regulation). Should such proof not be provided, the buyer shall pay the VAT rate applicable to deliveries within the Federal Republic of Germany, on the basis of the respective (net) invoice amount.
3. This is a translation of the German version. In cases of uncertainty or conflict, the german version shall prevail.

XIII. Separability Clause

Should individual provisions of the Terms and Conditions of Sales and Delivery be completely or partially illegal, ineffective or invalid, this shall not affect the effectiveness of the other provisions. Both parties undertake that any such provision will be mutually renegotiated in order to find a legal, effective clause of same or similar purpose.