

# General Terms and Conditions of Delivery and Payment

by NB Norder Bandstahl GmbH

*Please consider this translation as support. Solely the German text is legally binding.*

## I. Scope of application / Quotations

1. These General Terms and Conditions of Delivery and Payment shall apply to all – present and future – contracts and agreements with enterprises, legal entities of public law and special assets under public law with regard to supplies and other services. We do not accept the buyer's conditions of purchase, even if they were not again expressly objected to after having been presented to us.

2. We offer our quotations without engagement. Verbal agreements, promises, warranties and guarantees made by our employees in the context of concluding the contract of sale shall not be binding until they have been confirmed by us in writing.

3. In case of doubt, the Incoterms as amended are decisive for the interpretation of trading terms.

4. All data such as measures, weights, illustrations, descriptions, sketches and drawings in pattern books, price lists and other printed papers have only been ascertained approximately but to the best possible extent; as such, however, they are non-binding on us. The same is true of data provided by the works.

5. The "buyer" as defined by these terms and conditions also refers to the "purchaser" in the case of contracts for work and labour.

## II. Prices

1. The prices are quoted ex works or warehouse plus freight, packing and value-added tax.

2. Unless otherwise agreed, the prices and conditions of our price list, as valid on the day of concluding the contract, shall apply.

3. If charges or other external costs which are included in the agreed price change later than 4 weeks after conclusion of contract or if additional charges or external costs accrue, we shall be entitled to adjust our prices accordingly. Alloy surcharges shall be invoiced on the basis of the market prices valid at the time of delivery.

4. We reserve the right to raise the agreed price for quantities not yet delivered, if circumstances arising from a change in the raw material market and/or the economic situation substantially increase the prices of manufacture and/or purchase of the product in question with regard to those valid at the time the prices were agreed upon. In this case, the customer shall have the right to cancel his orders thus affected within a period of 4

weeks from having been advised of the price increase.

## III. Payment and offsetting

1. Unless otherwise agreed or stated on our invoices, the purchase price is due immediately upon delivery, without cash discount deduction, and is payable in a manner ensuring that we can dispose of the amount on the due date. The buyer shall bear the costs of payment transactions. The buyer is only entitled to the right of retention and is authorised to offset amounts to the extent to which his counterclaims are undisputed or have been recognised by declaratory judgement.

2. If the time for payment was exceeded or payment was delayed, we shall charge an interest rate of 8 percentage points above the base rate, unless higher interest rates have been agreed upon. We reserve the right to claim further damage for delay.

3. The buyer shall be put in default no later than 10 days after the due date and receipt of invoice / payment schedule or receipt of services rendered.

4. Should it become apparent after the conclusion of the contract that our claim for payment is put at risk by the buyer's insufficient solvency, we shall be entitled to the rights pursuant to § 321 BGB (German Civil Code) (defense of uncertainty). We shall then also be authorised to render payable all non-statute-barred claims resulting from current business relations with the buyer. The defense of uncertainty incidentally extends on all further supplies and services outstanding as a result of the business relationship with the buyer. This shall also apply if our commercial credit underwriters refuse to secure the buyer's commitment in whole or in part for reasons beyond our control.

5. An agreed cash discount always only relates to the invoice value excluding freight and is based on the precondition that all the buyer's liabilities due at the time of taking the cash discount have been settled in full.

## IV. Fulfilment of deliveries and meeting of delivery times and dates

1. Our delivery commitment is subject to us having been supplied correctly and in time, unless we ourselves are to blame for incorrect or delayed supplies.

2. Delivery times are indicated roughly. Delivery terms commence on the date of our acknowledgement of order and are only valid on the precondition that all order details are clarified in time and that the buyer meets all his obligations in a timely manner

such as e.g. submission of all certificates issued by the authorities, presentation of letters of credit and guarantees or making down payments.

3. The time of dispatch ex works or warehouse is decisive for meeting delivery terms and dates. They are considered met upon signalling readiness for dispatch, if the goods could not be dispatched in time with no fault of ours.

4. Events of force majeure entitle us to postpone delivery by the duration of the obstruction and an adequate lead time. This shall also apply if such events occur during a given case of default. Force majeure is equalled by measures in terms of monetary policy, trade policy and other sovereign measures, strikes, lockouts, malfunctions which we are not to be blamed for (such as e.g. fire, machinery or roller breakdown, shortage of raw materials or energy), obstruction of routes, delays in imports / customs clearance as well as all other circumstances which considerably aggravate deliveries or render them impossible, with no fault of ours. It is irrelevant in this respect whether these circumstances arise at our premises, at the supplier's works or at the premises of a pre-supplier. Should it become unacceptable for one of the contracting parties to perform the contract on the grounds of the aforementioned events, in particular, should performance of major parts of the contract be delayed by more than 6 months, said party may declare this contract cancelled.

## V. Retention of title

1. All delivered goods shall remain our property (goods subject to retention of title) until all claims have been settled including, in particular, the respective balance claims which we are entitled to within the scope of our business relations (retention of balance) as well as those claims which are unilaterally justified by the liquidator by way of selective fulfilment. The same is true of claims which will arise in the future and will be subject to certain conditions, such as claims from acceptor's bills of exchange, and shall also apply if specifically designated claims are settled by effecting payment. Said retention of balance definitely expires upon settlement of all claims which are still open at the time of payment and are affected by this retention of balance.

2. We as manufacturer treat and process goods subject to retention of title as defined by § 950 BGB (German Civil Code), without committing ourselves. Treated and processed goods are considered as being goods subject to retention of title as defined

by No. 1. If goods subject to retention of title are processed, combined and mixed with other goods by the buyer, we shall be entitled to pro-rata co-ownership of the new product in proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods used in this process. Should our ownership expire by combination or mixture, the buyer shall already now assign to us his rights of ownership of the new stock or product to the extent of the invoice value of the goods subject to retention of title and shall store it at no cost for us. Our rights of co-ownership are considered as goods subject to retention of title as defined by No. 1.

3. The buyer may sell the goods subject to retention of title only within the scope of his usual business transactions on the basis of his normal terms and conditions as long as he is not in default, provided that the claims arising from resale as per Nos. 4 - 6 are assigned to us. He shall not be authorised to issue any other instructions as to how to proceed with the goods subject to retention of title.

4. Claims arising from resale of goods subject to retention of title shall already now be assigned to us, along with all securities which the buyer acquires for the claims. They serve as security to the same extent as goods subject to retention of title. In the event that goods subject to retention of title are sold by the buyer along with other goods which had not been sold by us, the claim arising from resale shall be assigned to us in proportion of the invoice value of the goods subject to retention of title to the invoice value of the other goods sold. If goods are sold in which we hold co-ownership proportions pursuant to No. 2, a proportion equivalent to our co-ownership proportion shall be assigned to us. If the buyer uses the goods subject to retention of title to fulfil a contract for work and labour, the claim arising from the contract for work and labour shall be assigned to us in advance to the same extent.

5. The buyer shall be authorised to collect claims resulting from resale. This authorisation for collection expires if revoked by us, however no later than upon default, dishonour of a bill of exchange or application for adjudication of insolvency proceedings. We shall only use our right of withdrawal if it becomes apparent after the conclusion of the contract that our payment claim resulting from this or other contracts with the buyer is put at risk by his insufficient solvency. Upon our request, the buyer shall be obliged to immediately advise his customers of the assignment to us and to submit those documents to us which are required for collection.

6. Assignment of claims arising from resale is inadmissible, unless assignment is made by way of real factoring, of which we are notified accordingly and the factoring proceeds of which exceed the value of

our secured claim. Our claim shall immediately fall due upon crediting the factoring proceeds.

7. The buyer shall notify us without delay of any garnishment or other impairments by third parties. The buyer shall bear all costs which have to be incurred for cancellation of access to or return transport of the goods subject to retention of title, to the extent to which they are not compensated for by third parties.

8. If the buyer is in arrears with his payments or does not honour a bill of exchange at maturity, we shall be entitled to take the goods subject to retention of title back and to access the buyer's premises, if necessary for this purpose. The same is true if it becomes apparent after the conclusion of the contract that our payment claim resulting from this or other contracts with the buyer is put at risk by his insufficient solvency. Taking the goods back does not constitute a rescission of the contract. The regulations of the Insolvency Code shall remain unaffected.

9. In the event that the invoice value of the existing securities exceeds the secured claims including incidental claims (interest, costs or the like) by more than 20 % in total, we shall be obliged, upon the buyer's request, to release securities at our choice in this respect.

#### **VI. Grades, measures and weights**

1. Grades and measures are determined pursuant to the DIN/EN standards and/or material data sheets, respectively, failing which, according to custom and usage. Reference to standards, industrial standards, material data sheets or inspection certificates as well as details as to grades, measures, weights and usability are no warranties or guarantees, nor are declarations of conformity, manufacturer's declarations and marks to this effect such as CE and GS.

2. As regards the weights, those weights shall be decisive which have been established by us or by our pre-suppliers. The weights are evidenced by presentation of the respective weight note. As far as legally permissible, weights can be determined without weighing pursuant to standards. The surcharges and deductions (commercial weights) customary in steel trade within the Federal Republic of Germany shall remain unaffected. Quantities, numbers of bundles or the like, as stated on the dispatch note, shall be non-binding if the goods are charged on the basis of their weight. Unless individual weights are usually established, the total weight of the consignment shall apply. Differences with regard to the calculated individual weights shall be distributed among them on a pro-rata basis.

#### **VII. Acceptance**

1. An acceptance which has been arranged can only take place at the supplier's works or at our warehouse immediately after readiness for acceptance has been signalled. The buyer shall bear personal acceptance costs; he shall be charged with factual acceptance costs as per our price list or the price list of the supplier's works.

2. In the event that acceptance does not at all, not in time or not completely take place with no fault of ours, we shall be entitled to dispatch the goods without acceptance or to store them at the buyer's risk and expense and to charge him with the costs incurred.

3. Acceptance causes payment to fall due, our liability to concentrate on the accepted product, the period of limitation to commence and the risk of reimbursement to pass. Thereafter, the buyer shall bear the burden of proof with regard to defects as to quality.

#### **VIII. Dispatch, passing of risk, packing, part shipments**

1. We shall determine the route of transport and the means of transport as well as the forwarder and carrier.

2. If transport on the intended route or to the intended destination within the intended time becomes impossible or is considerably aggravated with no fault of ours, we shall be entitled to effect delivery on another route or to another destination; additional costs incurred shall be borne by the buyer. Prior to that, the buyer shall be given the opportunity to submit his comments.

3. By handing the goods over to a forwarder or carrier, however, no later than at departure from the warehouse or the supplier's works, passing of risk to the buyer, including the risk of seizure of the goods, shall take effect with regard to all transactions, also in the case of deliveries effected on carriage-paid or free-to-the-door terms. We shall only provide insurance cover upon the buyer's instructions and at his expense. The buyer shall be obliged to unload the goods at his expense.

4. The goods shall be delivered in unpacked condition and shall not be protected against corrosion. If customary, we shall deliver the goods in packed condition. According to our experience, we shall provide packing, protection material and/or transport aids at the buyer's expense. They can be returned to our warehouse. We do not bear the buyer's expenses for return transport or for dumping the packing material by his own means.

5. We shall be authorised to effect part shipments to a reasonable extent. Customary excess deliveries and short deliveries of the contractual quantity are admissible.

#### **IX. Call orders**

1. In the case of call orders, those goods which have been declared ready for shipment must be called without delay; other-

wise, we shall be at liberty to dispatch them at the buyer's risk and expense, after a reminder to this effect, or to store them at our discretion and to invoice them directly.

2. In the case of transactions with continual deliveries, we shall be advised of calls and of a delivery schedule of grades for roughly equal monthly quantities; otherwise, we shall have the right to make these arrangements ourselves at equitable discretion.

3. In the event that total individual calls exceed the contractual quantity, we shall be entitled to deliver the surplus quantity, but shall not be obliged to do so. We shall be able to charge the surplus quantity at the prices valid at the time of call or delivery, respectively.

#### **X. Liability for defects as to quality**

1. Written notice of defects as to the quality of the goods is to be given immediately, no later than 7 days after taking delivery. Defects as to quality which cannot be detected within this period in spite of the most thorough inspection, shall be advised in writing – upon immediately stopping treatment and processing, if any – promptly after detection, but no later than before expiry of the agreed or legal period of limitation.

2. After an arranged acceptance of the goods by the buyer has been effected, claims on account of defects as to quality shall be ruled out, if they could have been ascertained during the type of acceptance agreed upon.

3. In the event that a claim is justified and was raised in time, we shall be at liberty to remedy the defect or to deliver a faultless product (supplementary performance). If supplementary performance fails or is refused, the buyer shall be allowed to depreciate the purchase price or to rescind the contract after an appropriate deadline has been fixed and expired without success. If the defect is of a minor nature, he shall only be entitled to the right of depreciation.

4. Should the buyer not immediately give us an opportunity to assure ourselves of the defect as to quality, in particular, should he not promptly put the claimed goods or samples of the claimed goods at our disposal, if so requested, all rights on account of the defect as to quality shall become void.

5. In the case of goods which had been sold as second-choice material, the buyer shall not be entitled to any rights resulting

from defects as to quality with regard to the reasons stated for the material to be second-choice and further reasons which he usually has to take into account.

6. Expenses accrued in the context of supplementary performance shall only be borne by us if and as far as they are appropriate with regard to the individual case, especially in proportion to the purchase price of the goods. Expenses which were incurred by taking the sold goods to a destination other than the buyer's head office or branch office, shall not be borne by us, unless this was in accordance with their contractual use.

7. The buyer's rights of recourse pursuant to § 478 BGB (German Civil Code) shall remain unaffected.

#### **XI. General limitation of liability**

1. We shall only be liable for infringement of contractual and extra-contractual obligations, particularly for impossibility, default, fault at the time of approaching the contract and unlawful act – also as regards our executive staff and other vicarious agents – in cases of criminal intent and gross negligence, limited to the loss which was foreseeable at the time of concluding the contract and is typical for the kind of contract concluded.

2. Said limitations shall neither apply in the case of negligent breach of essential contractual obligations, to the extent to which the purpose of the contract is put at risk, nor in cases of compulsory liability under the Product Liability Act, nor in cases of danger to life, bodily injuries and health damage, and moreover, not even if and to the extent to which we maliciously concealed defects of the product or guaranteed the absence of such defects. Regulations regarding the burden of proof shall remain unaffected by this.

#### **XII. Period of limitation**

1. Unless otherwise agreed upon, contractual claims arising to the buyer against us due to or in context with the delivery of the goods, shall become time-barred one year after passing of risk. This time limit shall also apply to those goods which are used in the construction of a building in accordance with their usual application and which have caused the defectiveness of the building. Our liability for wilful and grossly negligent breach of obligations as well as the period of limitation regarding legal claims of recourse shall remain

unaffected by this. In cases of supplementary performance, the period of limitation shall not recommence. Shorter legal periods of limitation, if any, shall take precedence.

#### **XIII. Place of fulfilment, place of jurisdiction and applicable law**

1. The place of fulfilment of our supplies is the supplier's works in the case of ex works deliveries, whereas it is our warehouse in the case of other deliveries.

2. The courts at the place where our head office is located shall have exclusive jurisdiction over merchants, legal entities of public law, special assets under public law and contractual partners having no place of general jurisdiction within the Federal Republic of Germany. We shall also be entitled to sue the buyer at his place of jurisdiction.

3. For all legal relations between us and the buyer, the law governing legal relations among domestic parties valid at the place of our head office shall apply, excluding UN sales law.

#### **XIV. Miscellaneous**

1. If a buyer based outside the Federal Republic of Germany (foreign buyer) or his representative collect goods or if he transports or dispatches them abroad, the buyer shall present us with the evidence of exportation which is required for tax purposes. Should said evidence not be presented, the buyer shall pay value-added tax on the invoice amount at the applicable rate for supplies within the Federal Republic of Germany.

2. In the event of supplies from the Federal Republic of Germany to other EU member states, the buyer shall notify us, prior to delivery, of his value-added tax identification number used by him for paying acquisition tax on intra-EU trade. Otherwise, he shall pay, in addition to the agreed purchase price for our supplies, the amount of value-added tax lawfully owed by us

3. In the event of settling supplies from the Federal Republic of Germany to other EU member states, the value-added tax regulations of the respective receiving member state shall apply if either the buyer is registered for payment of value-added tax in another EU member state or if we are registered for payment of value-added tax in the receiving member state.