

§ 1 General Information

- (1) **These General Conditions of sale shall apply to all of our deliveries and other services provided to customers. They are an integral component of any contract offer and contract acceptance and shall apply exclusively if no individual terms have been formulated by the parties.**
- (2) Any terms or conditions of the customer which are contrary to or deviate from our General Conditions of Sale shall not be recognized. They shall not become a part of the agreement even if we carry out performance or delivery without special reservation in the knowledge of such terms and conditions. No later than the time of acceptance of the goods, the customer must accept these General Conditions of Sale without reservation, even if the customer has objected to the General Conditions of Sale in advance of delivery of the goods.
- (3) These General Conditions of Sale shall also apply to any and all future business with the customer; even if these General Conditions of Sale are not expressly incorporated into future transactions.
- (4) We shall only be bound to verbal agreements or any and all agreements provided to us through our representatives only if and insofar as we expressly confirm such agreements in writing.

§ 2 Offers / Formation of Contract

- (1) In case of doubt our offers shall be non-binding. In these cases a contract shall be formed only if we confirm the customer's purchase order in writing or deliver the goods. In the case of binding offers, we reserve the right to revoke the offer up to the time of acceptance of the offer by the customer.
- (2) In case of doubt we reserve the right to accept a purchase order of a customer within a period of two weeks unless another commitment period has been specified or agreed upon in the purchase order.

§ 3 Prices / Payment

- (1) Our prices shall be the factory price in Euros plus applicable sales tax (value added tax) unless agreed otherwise in writing.
- (2) If no price has been agreed upon for a specific delivery, in particular in the case of deliveries after expiration of the period for which a price has been determined, then the last agreed upon price shall also apply for this delivery.
- (3) In case of doubt, the customer shall be responsible for packaging, insurance, transport costs, customs and other charges payable on the goods.
- (4) The price of the goods shall be determined by the weight of the goods calculated at our factory prior to shipment of the goods. Weight, grade and dimensions of the goods are approximate. Deviations are permissible in accordance with EN.
- (5) We reserve the right to pass any price increase on to the customer in the event of unforeseen cost increases, e.g. currency fluctuation, increase in taxes, customs or other fees, in particular import duties, import costs, and/or substantial increases in the price for raw materials. If the price increase exceeds 15% of the original price, then the customer may reject the price increase. In the event a customer rejects a price increase, we reserve the right to withdraw from the agreement.
- (6) When a term of payment is granted, all outstanding debts at the time of the grant must be covered by an appropriate credit line with a well-known major credit insurer or by other equivalent securities. In the event that the credit insurer reduces the allowed line of credit or the customer's outstanding account with us exceeds the limit of the allowed credit line, we reserve the right to deliver those goods subject to the uncovered claim only after advance payment. The foregoing is valid also with respect to claims covered by equivalent securities. If there exists a previously established business practice between the parties to the contract, the customer may not derive any additional rights from that business practice.
- (7) The foregoing shall apply if our outstanding accounts from the business relationship are not completely covered by sufficient credit insurance (and/or line of credit) with our credit insurer.
- (8) The customer shall automatically be in default if the respective claim amount is not paid by the agreed payment deadline. If no deadline has been specified, then invoices shall be immediately payable and the customer shall be in default if the invoice amount is not paid to our account within seven (7) days after it becomes due. The date of the receipt of payment shall be the date on which payment is received by us. Default in accordance with statutory provisions shall remain unaffected.
- (9) When a customer is in default, interest shall be paid on the claim at an interest rate of five percentage points per annum above the respective Euro Interbank Offered Rate (Euribor) monthly average for one-month loans. However, the customer shall be entitled to prove that either no or substantially less damage has been caused as a result of the delay. Assertion of claims for higher damages shall remain unaffected. The statutory provisions with regard to the minimum interest rate shall remain unaffected.

§ 4 Delivery / Delay in Delivery

- (1) Delivery shall be subject to proper and timely availability of raw materials from our own suppliers as well as timely arrival of the raw materials. Furthermore, delivery shall be subject to the condition of unimpaired production in the planned scope, unimpaired transport and shipping conditions, timely provision of the required starting materials and power on the basis of existing supply contracts as well as the availability of required official permits and licenses. Any delays in delivery and performance due to force majeure or circumstances which may occur following formation of the agreement and for which we may not be held responsible, including shortages of raw materials and power, traffic bottlenecks, excusable shortage of supplies, plant disturbances, strike and lockout, shall entitle us to postpone the respective dates of delivery and deadlines for the duration of the impediment, in addition to an appropriate start-up period.
- (2) If in such cases the impediment to delivery persists for more than six months, then either of the parties shall have the right to withdraw from the agreement, after expiration of an appropriate notice period, to the exclusion of any other claims unless we have offered a reasonable substitute solution. The same shall apply if either party is no longer interested in continuation of the agreement due to the delay or if either party suffers substantial harm as a result of the delay.
- (3) In the event of delay in delivery the customer may withdraw from the agreement only if a reasonable grace period for performance has been given to us in writing by the customer and has elapsed. In case of doubt, a grace period of four weeks shall be reasonable. Any other claims based on delay, in particular claims for damages of any kind whatsoever, may only be sought by the customer under the terms and conditions of Section 7.
- (4) The goods shall be shipped at the customer's own risk. The risk shall pass to the customer when the goods are handed over for loading to the party responsible for transport (e.g. hauler, carrier, or the like) or on commencement of the loading of the goods in the event that we are responsible for transport. In any event, the risk passes to the customer on departure from the plant of the place of performance at the latest.
- (5) We shall be entitled to make partial deliveries to a reasonable extent. Production-related excess or reduction up to 10 % of the total order amount are permitted.

§ 5 Customer's Obligation to Cooperate, Call Orders (Split Deliveries), Price Setting / Default in Acceptance / Customer's Liability for Damages

- (1) The customer shall be obliged to cooperate in a timely manner and in good faith in accordance with the agreement.
- (2) In the case of call orders (split deliveries), the customer shall be obliged to make the call within the specified period. In the event that the customer has been granted an express right of determination with regard to the call quantity, then specification of the call quantity shall be carried out within the specified period.
- (3) The price of the metal fixed by the customer and us is binding and unalterable.
- (4) An option with regard to the setting of the price shall be exercised by means of written declaration within the specified period and at the latest prior to commencement of the respective market price period.
- (6) The buyer must arrange for security for the metal corresponding to the order on the metal account established for the transaction at least six weeks before the delivery date.
- (7) Should the customer fail to meet its obligation to cooperate or fail to meet such in accordance with the agreement, in particular if the customer fails to place call-off orders in accordance with the terms of the agreement or does not set a price as specified, or if the customer arranges for the merchandise to be shipped after the specified delivery deadline, or if the customer is in default of acceptance due to other circumstances for which the customer may be held responsible, then we reserve the right to require compensation for the damage and any additional expenditures incurred by us as a result of the customers' failure to meet its obligations under the agreement. In particular, compensable damages shall include, but are not limited to, additional expenditures in the form of transaction costs incurred for new hedge transactions (closing out or rolling of stock exchanges items). Furthermore, we shall be entitled to compensation for other damages (handling costs, storage costs, etc.). The customer shall be entitled to prove to us that no or substantially less damage has been incurred. We reserve the right to prove higher damages. Any other rights, in particular the right to withdraw from the agreement or to require payment of damages instead of performance, shall remain unaffected. In this case, the risk shall pass to the customer with notification of readiness for shipment.
- (8) Furthermore, if the customer fails to place call-off orders in accordance with the terms of the agreement, fails to accept deliveries, or fails to cooperate as required otherwise, then we shall be entitled to afford the customer a reasonable period within which to make performance. If the customer fails to perform before expiration of the period, then we shall be entitled to withdraw from the agreement, either in whole or in part, and to require payment of damages instead of performance.
- (9) Unless expressly agreed otherwise, the customer shall be responsible for obtaining any special permits, licenses (e.g. import or export licenses) or the like required for the effectuation of the purchase agreement or for execution of the contract.
- (10) The customer shall be obliged to provide any and all information required and to cooperate in a timely manner as required in accordance with the agreement and/or in good faith.

§ 6 Notice of Defect, Rights Based on Defects

- (1) Warranties are provided only if we have declared such expressly in writing under application of this provision. Without such express declaration, information in catalogues, quality data sheets and certificates, analysis certificates, etc. shall not apply as warranties within the legal meaning of the term.
- (2) The customer shall be obliged to immediately examine the goods for defects, including deviations in both quality and quantity and services provided. In order to maintain any claims based on defects, any objections to the goods shall be reported to us in writing within ten days after taking delivery at the latest or, in the case of hidden defects, within ten days after their discovery. Otherwise, the delivery shall be considered as approved in accordance with the agreement. Comments on delivery notes shall not be considered as notification of a defect. Transport personnel shall not be authorized to accept notices of defect.
- (3) We shall not be responsible for defects or reductions of quality that are based on the defectiveness of any provided materials. We are not obliged to perform a quality control inspection of materials provided.
- (4) Claims based on defects shall be excluded in the case of insignificant deviation from the specified quality. Claims based on defects shall be excluded in the case of damage or reductions of quality which occur after passage of the risk or for which the customer may be held responsible, e.g. improper storage or transport by the customer.
- (5) In the case of proven defects, we shall provide for subsequent performance at our option by means of substitute delivery or improvement of the goods; as a rule we provide free replacement in exchange for the non-conforming merchandise. The customer may only withdraw from the agreement or reduce the purchase price if no attempt at subsequent performance is undertaken within a reasonable grace period or subsequent performance is not possible, is refused, fails, or is unreasonable. The period for subsequent performance must amount to at least two weeks unless opposed by the customer based on the customer's reasonable interests. In case of doubt it, shall be assumed that subsequent performance has failed only after the third failed attempt at subsequent performance.
- (6) Any other claims, in particular claims for damages, may only be asserted under the terms and conditions of Section 7 of these General Conditions of Sale
- (7) The statute of limitation for claims based on defects shall expire twelve months following delivery and/or acceptance of the goods. The legally applicable statute of limitation shall apply for claims for damages based on defects.

§ 7 Cancellation, Liability for Damages, Product Monitoring

- (1) Cancellation shall only be permissible due to a breach of an obligation not constituting a defect if we may be held responsible for the violation.
- (2) We shall be liable for damages, insofar as the other prerequisites for a claim are met, if intent or gross negligence can be imputed to us. In the case of simple negligence, we shall be liable in the event of breach of an obligation the non-performance of which makes due performance of the agreement impossible and on whose performance the customer may rely (so-called cardinal obligation). In all other respects, liability for payment of damages of any kind whatsoever, regardless of the basis for claim – including violation of mutual confidence in the preparation of contract – shall be excluded.
- (3) In the case of negligence, our liability shall be limited to reasonably foreseeable damages, the occurrence of which we should have anticipated in accordance with the circumstances known to us upon formation of contract.
- (4) Furthermore, liability for lost profit shall be excluded in all cases.
- (5) Insofar as we have assumed a warranty, the above exclusions of and limitations on liability shall not apply for damages which are to be paid in accordance with product liability law as well as damages for fatal injury, personal injury, and damage to health.
- (6) The above exclusions of and limitations on liability shall also apply for the benefit of our staff, agents, and other third parties to whom we have recourse for performance of the agreement.
- (7) In the relationship between us and the customer, it shall be the exclusive task of the customer to monitor any products supplied by us after they have been placed on the market (product monitoring obligation) and to respond to any hazards or risks. The customer shall be obliged to immediately notify us with regard to any and all errors, problems and/or hazards in connection with the products supplied by us. The customer shall be solely liable insofar as damage or injuries are caused by violation of the product monitoring obligation.

§ 8 Retention of Ownership

- (1) We reserve the right of ownership of the delivered merchandise until complete fulfilment of all of our claims, including those already incurred and future claims against the customer from the common business relationship.
- (2) The customer shall be entitled to sell or process the conditional commodity within the scope of the customer's usual course of business so long as the customer is not in default, insolvency proceedings against the customer's assets have not been instituted, or the customer is not obliged to petition for institution of insolvency proceedings. In the case of resale of the conditional commodity on credit, the customer shall be obliged to secure the rights of our retention of ownership upon resale. The customer shall only engage in bailment of the conditional commodity, pledge the conditional commodity as security for a transaction, or resell the conditional commodity to third parties for the purpose of financing the object of purchase only with our prior written consent. Any possible processing or

manipulation of our goods by the customer shall always take place for us as a processor within the meaning of Section 950 of the German Civil Code [BGB]. If our merchandise is processed, manipulated, inseparably commingled, or combined with other goods which do not belong to us, then we shall be entitled to a co-ownership share of the new item based on the proportion of the value of our merchandise (invoice value including sales tax) to the value of the other processed goods at the time of processing, manipulation, commingling, or combination. If the other item is to be regarded as the principal item, then it shall be agreed that the customer assigns to us proportionate co-ownership. We shall hereby accept such co-ownership. The customer shall safeguard our co-ownership free of charge. In all other respects the same shall apply to the new product created through such processing as in the case of our conditionally delivered merchandise.

- (3) As a precaution, the customer shall assign to us any claims from resale of the conditional commodity. If we are only entitled to a co-ownership share in the sold merchandise, then anticipatory assignment shall be limited to the part of the claim which corresponds to the share of our co-ownership (on the basis of the invoice amount including sales tax).
- (4) Subject to revocation, the customer shall be authorized to collect any assigned claims. We may require that the customer's debtors be notified of such assignment. Upon revocation of the collection authorization, the customer shall provide us with the information required for collection of the respective claim and to support the recovery of such, if required.
- (5) The customer shall be obliged to carefully store the items for which we shall have (co-)ownership, to insure such against theft, breakage, fire, water and any other damage at the customer's own expense and to verify procurement of such insurance on request.
- (6) The customer shall report any attachment of the conditional commodity by third parties immediately after discovery and produce any and all information and documents required for intervention. The customer shall be responsible for any costs incurred to remove such attachment, in particular through institution of third party proceedings, insofar as such costs cannot be obtained from the collecting creditor.
- (7) We shall be entitled to reclaim the conditional commodity in the event that the customer fails to properly meet the obligations arising out of the present agreement or if we become aware of circumstances that appear to put our claims at risk. Any reclamation of the item due to our retention of ownership right shall be possible without cancellation of the agreement. In particular, we shall be entitled to prohibit the customer from resale or processing of the conditional commodity and to revoke the direct debit authorization.

§ 9 Assignment

We shall be entitled to assign claims to third parties.

§ 10 Setoff / Rights of Retention

The customer shall only be entitled to setoff and rights of retention if the customer's counterclaims are accepted, incontestable or have been recognized by declaratory judgment. This provision shall also apply if the customer's counterclaim is based on the same legal relationship.

§ 11 Data Protection

- (1) We employ electronic data processing. To this end, we have stored only your personal data that are required for business purposes.
- (2) Unless opposed by any protected interests, we shall be entitled to collect, store, process, use, and transmit information and data about customers to third parties if such is required for processing the agreement or for safeguarding our justifiable interests. In particular, we shall be entitled to transmit data for the purpose of claims collection or for outsourcing debt management. We reserve the right to report to protective business organizations (e.g. Schufa, Creditreform). We shall provide information on the stored data at any time on request.

§ 12 Place of Performance, Applicable Law, Jurisdiction

- (1) The place of performance for any and all performance arising out of the present agreement shall be the respective plant designated in the order confirmation. If, in accordance with the agreements reached by the contracting parties, shipment should be from the plant of a third party, then this plant shall be the place of performance.
- (2) The law of the Federal Republic of Germany shall apply to the contractual relationship to the exclusion of the United Nations (Vienna) Convention on Contracts for the International Sale of Goods [CISG] and international provisions regarding the conflict of laws.
- (3) The place of jurisdiction shall be Hamburg (principal place of business of the parent company). We shall also be entitled to bring an action against the customer at the customer's general place of jurisdiction.