

## General Conditions of Sales and Delivery

### 1. General Provisions

- 1.1 Our products and services are supplied solely on the basis of the following conditions:  
Any purchase conditions the buyer seeks to impose are hereby rejected and have no validity even if not expressly negated by us on receipt. Furthermore it is deemed agreed that in the event of any conflict between our Terms of Sale set out below and the purchase conditions of the buyer, our conditions of sale shall prevail.
- 1.2 Our tenders are given without obligation. Sales and other agreements will only become binding once confirmed by us in writing.
- 1.3 Unless otherwise agreed we must receive in good time confirmed quantities for orders which are on call under consideration of our production lead times. Any extra costs are to be carried by our purchasers if caused by them through a belated call order or a later alteration to a call order ready for delivery, regarding time or quantity; our price calculation is decisive in the event of this case.

- 1.4 Each party to the contract shall only implement all documentation (this includes samples, models and data) as well as knowledge arising from the business relationship for the specific mutually followed aims. Furthermore, the same care is to be applied keeping confidentiality of their own documentation and knowledge towards any third party when the other party to the contract clearly specifies it as confidential or is interested in the afore said documentation and knowledge being kept secret. This obligation begins with the first receipt of the documentation or knowledge and ends 36 months after the end of the business connection. The obligation does not apply to documentation and knowledge which is generally known or which, on receipt, was already known by the partner to the contract, without him being obliged to confidentiality, or which afterwards is conveyed to an entitled third party, or when the documentation and knowledge is developed by the receiving party to the contract, without making use of confidential documentations and knowledge of the other contract partner.

### 2. Prices and Payment Terms

- 2.1 Unless otherwise agreed our prices apply to unpackaged and not specially oiled goods, ex works, on the Oberhausen freight basis and inclusive of VAT for domestic deliveries. In the event that between contract and delivery there is a significant change in certain cost factors, such as the costs of wages, raw materials, energy or freight, then the agreed price may be adjusted to encompass the influence of prevailing cost factors.
- 2.2 Payments are to be made to us without deduction by the 15th of the month following the delivery ex works.
- 2.3 If the credit period is exceeded, interest will be charged at the rate the bank charges for current account overdrafts, but at least 9 percent above the base-lending rate of the European Central Bank and an additional lump sum of EUR 40.
- 2.4 The purchaser has the right of set-off in respect of undisputed or previously adjudicated claims. He may only exercise rights of retention insofar as these relate to the same contract and are undisputed and/or judicially resolved.
- 2.5 In the event of circumstances arising after the conclusion of the contract such as to jeopardise significantly our claim to payment, i.e. the insolvency of the purchaser, we are entitled irrespective of the term of any Bill of Exchange to call for payment. In the event of arrears of payment such as to jeopardise our claims we are entitled to recover the goods, if necessary entering on the premises of the purchaser to remove them. We may furthermore prohibit the further processing of the goods supplied. These provisions do not apply if the purchaser is not responsible for the delay of payment. Taking back the goods does not represent a withdrawal from the contract. In either case we may revoke authorization to collect payment on resale pursuant to Clause 8.7 below and request payment in advance for orders still outstanding. All these legal consequences can be adverted by the purchaser providing security for payment in a sum corresponding to our outstanding claims. At the same time we are entitled in the event of a significant deterioration of the financial circumstances to execute outstanding orders only against pre-payment and/or on the expiry of a suitable period of notice to withdraw from the contract without prejudice to any claim for damages for non-performance.
- 2.6 We reserve the right to call for security of a type and extent that is customary for our claims whether these be contingent or limited as to time.
- 2.7 The legal consequences of default in payment remain unaffected.
- 2.8 We are entitled to settle obligations of any subsidiary company within our company group towards their purchaser, applying our own requirements at any time. In this case the commitment to pay no longer applies to our subsidiary and the debt is cancelled to the amount of the obligation which the purchaser is given notice thereof. We are prepared to notify about the group of subsidiaries at the buyer's request.  
The above-mentioned authority to settle applies, furthermore, to requirements and obligations, which are not yet due, granting a rate of interest to the amount of the usual bank interest rates.  
There is no opposition to different forms of payment with settlements of this kind: (e.g., cash on the hand, B/E on the other.) Our authority to settle is cancelled 10 days before a possible suspension of payments or an application for insolvency against the assets of the buyer, in the event of the application for insolvency leading to the opening of bankruptcy proceedings.
- 2.9 In the event of job processing being undertaken, our prices will be as fixed on the basis of industry standard for basic materials and presuming customary fabrication coil weights and coil make-up. In the event of any variation therefrom we reserve the right to charge any additional cost to the purchaser. Complaints of defects in the event of job processing can only refer to work carried out by us.

### 3. Weights and Measures and Quality

- 3.1 Deviations from weight measure and quality conform to the latest DIN or EN standards for the time being unless otherwise agreed or customary within the industry. All other deviations are subject to special agreement.
- 3.2 Weight shall be determined with our calibrated scales which are conclusive for invoicing purposes. Proof of weight shall be the entry in the weighing record. The net weight shown is understood to be inclusive of packing materials customary in the industry – such as strapping bands, metal covers and protective wrapping but not detachable spacers and pallets.

### 4. Acceptance

- 4.1 Contractual acceptance can only take place at our works. It must take place immediately upon notification that the goods are ready for despatch. If acceptance does not take place or does not take place immediately, we are entitled to dispatch the goods or to place them with a third party for storage at the expense of the buyer and the buyer's risk. In this case the goods are deemed upon dispatch or storage to have been delivered in accordance with the contract. All costs of acceptance are to be borne by the party ordering the goods.

### 5. Dispatch and Passing of Risk

- 5.1 In the absence of specific instructions route and means of transport as well as the choice of carrier or haulier are at our discretion.
- 5.2 If the loading or dispatch of the goods is delayed for any reason for which the purchaser is responsible, we are entitled at the expense of the purchaser and at his risk, to take reasonable steps at our discretion to store the goods, to take all necessary steps to preserve them and to invoice the goods as having been delivered. These provisions apply to goods, which have been notified as ready for despatch are not called for within 4 days. Legal provisions concerning delay in acceptance remain unaffected.
- 5.3 In the event of the goods being damaged in the transit the purchaser must immediately commission a fact-finding exercise with the relevant authorities.
- 5.4 Risk passes to the purchaser upon the transfer of the goods to the transport agent or haulier or at the latest upon the goods leaving the works or storage.
- 5.5 The provisions of Incoterms 2010 apply to the interpretation of trade clauses.
- 5.6 We are entitled to make part deliveries.
- 5.7 Unless otherwise agreed, the goods are dispatched unwrapped and without protection from rust.

### 6. Delivery Times, Delivery Delays

- 6.1 Delivery times agreed only apply where there is timely clarification of all particulars of the order and timely fulfilment of all obligations on the part of the purchaser. Such times are always only approximate and with the reservations customary in the Steel Industry.
- 6.2 If the purchaser does not fulfil his contractual obligations including associated operations or side agreements such as opening a letter of credit, obtaining domestic or foreign licences, rendering advance payment, inter alia, we are entitled to postpone our delivery times in accordance with the needs of our production process and without prejudice to our rights arising from default on the part of the buyer.
- 6.3 Unless otherwise agreed, we deliver "ex works". Notification given by us on our readiness to despatch or to pick up is decisive in determining our delivery date or deadline.
- 6.4 If we were prevented from fulfilling our obligations as a consequence of unforeseen circumstances affecting us or our supplier which could not be avoided with the exercise of due diligence, for example war, act of God, domestic unrest, natural catastrophe, accidents, other operational disturbances or unavailability of essential raw materials, then the delivery time shall be suspended for the period of the problem plus a reasonable time thereafter. When as a consequence of the hindrance delivery becomes impossible or impracticable, we reserve the right to withdraw from the contract: the same right applies to the buyer if due to the delay he cannot reasonably be expected to accept the product. Note: Strikes and lockouts are to be considered hindrances beyond our control within the meaning of this paragraph. Delivery time is extended – without prejudice to our rights arising from the default on the part of the purchaser – by the period of time during which the purchaser may be in default as to his obligations. If the default is on our part then the purchaser may after a reasonable period of notice confirmed in writing, withdraw from the contract. The same applies if the delivery of the goods is made impossible for reasons outside our control. The parties to the contract are obliged to give necessary information immediately, where reasonable, and adapt to the altered circumstances according to good faith.
- 6.5 The right to withdraw from the contract extended to the purchaser or to ourselves pursuant to Clause 6.4 above covers only that part of the contract as yet unfulfilled. If however part deliveries are unacceptable to the purchaser, he is entitled to withdraw from the entire contract.
- 6.6 The purchaser may claim further rights, in particular the right to damages, only as defined in Clause 9.

### 7. Defects in the Goods, Warranties

- 7.1 We are not liable for material defects, which only reduce minimally the standard or value of the goods.

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- 7.2 Purchaser's complaints must be communicated without delay in writing or telegraphically and at the latest within 14 days of arrival of the goods at their destination. However, such complaints do not justify retention of invoiced amounts. Defects, which even after careful inspection are not noticed within this time period, are to be notified immediately upon detection. If defects are found, any further treatment or use of the goods must be stopped immediately. The time limit for claims in respect of defects expires 12 months after receipt of the goods. This does not apply where longer time limits are stipulated by law. This applies, in particular, to defects to a building and in the case of goods used in a building for their typical purpose which cause the defects of the building, and in the case of injury to life, body or health.
- 7.3 In the case of a justified and timely complaint of a defect in goods, we shall take the defective goods back and deliver replacements. Alternatively we may also make good the defects. Only if we fail to meet these obligations is the buyer entitled to rely upon warranty. In the cases for which we have offered a warranty, we are liable only insofar as to indemnify the purchaser in respect of losses actually incurred.
- 7.4 In the event of a justified complaint of a defect in goods, we are to be granted an opportunity to confirm this. Defective goods are to be returned to us immediately on request. In the event of a justified complaint we will cover transport costs. Should the buyer not meet this obligation, or undertakes alterations on the faulty goods without our express permission, he will lose all claims for defects.
- 7.5 Orders specifying choices of material and other specifications based upon sample drawings, descriptions or specifications supplied will be carried out to the best of our ability but without responsibility for defects arising from nonsuitability of the result.
- 7.6 The risk of rusting during transport and storage at the end user's location is not assumed even if special oiling or packing is stipulated, since rusting in particular as a result of sweating cannot be prevented.
- 7.7 The partner's legal claims to recourse to us apply only as far as the buyer with his customer has not made an agreement over and above the legal claims of a justified complaint. Clause 7.3 last sentence shall apply analogously to the extent of the claims to recourse. This does not affect the statutory provisions governing recourse in the case of the purchase of consumer goods (paragraph 478 of the German Civil Code); claims for damages are excluded to the extent of Clause 9.
- 7.8 After acceptance of the goods has taken place, any complaint concerning defects which could have been found during the quality control acceptance process is excluded.
- 7.9 In the case of goods which are sold as sub-standard material, e.g. so called IIA material, the purchaser has the benefit of no warranty in respect of acknowledged faults and such defects as would otherwise be accounted for.
- 7.10 Production-related excess or short delivery is allowed up to a tolerance of 10 %.
- 8. Retention of Title**
- 8.1 All goods delivered remain our property (Retained Goods) until settlement of all claims, in particular those, which relate to balance of payments due to us in related dealings. This also relates to future or conditional claims, e.g. arising from reversible Bill of Exchange.
- 8.2 Treatment and processing of retained goods take place to our order as manufacturer as understood in paragraph 950 of the German Civil Code without imposing obligation upon us. The treated or processed goods are deemed to be retained goods as defined in 8.1 above.
- 8.3 When the purchaser processes, combines or mixes the retained goods with other goods, we reserve the right to co-ownership of the new product in the proportion of the invoice value of the reserved goods to the invoice value of the other goods. Should our ownership have been extinguished through the combination mixture or processing of the goods, then the purchaser shall transfer to us his interest or expectation in ownership in the new product or matter as relates to the invoice value of the retained goods, or in the case of processing at the ratio of the invoice value of the retained goods to the invoice value of the other use goods and undertake to preserve them without charge to us. Our rights of co-ownership shall be deemed retained goods in the sense of subsection 8.1
- 8.4 The purchaser may only re-sell the retained goods in his usual course of business under his normal terms of trading and as long as he is not in arrears and provided that he has agreed with his customer a retention of title and that the claims arising from the resale of the retained goods are transferred to us pursuant to clauses 8.5 and 8.6. No other disposal of retained goods is permitted. The use of the retained goods for the purpose of fulfilling contracts for work services and materials is also deemed a disposal.
- 8.5 The purchaser's claims arising from the resale of retained goods are to be considered already assigned to us. They serve as security to the same extent as do the retained goods defined in Clause 8.1
- 8.6 If the retained goods together with other goods are resold by the buyer, any claim arising from the resale at the ratio of the invoice value of the retained goods to the invoice value of the other goods is assigned to us. In the event of resale of goods in which we hold an interest pursuant to Clause 8.3, a proportion of the claim is assigned to us in the proportion of our co-ownership.
- 8.7 The purchaser is entitled to collect claims arising from the resale unless we revoke the authorization to collect in the cases described under Clause 2.3 above. Upon our request the purchaser is required to inform his buyers immediately of the assignment – unless we do this ourselves – and to give us the information and documentation necessary for the collection.
- 8.8 The purchaser is not entitled under any circumstances to assign the claims. This also applies to factoring transactions which are prohibited on the basis of our authority to collect.
- 8.9 The purchaser must immediately inform us of any distraint or other prejudicial action on the part of third parties.
- 8.10 In the event that the value of existing securities exceeds the value of secured claims by more than 20 % in total, we are obliged to release securities of our choice upon request of the purchaser.
- 8.11 In the event of the partner failing in their duty, in particular with payment arrears, we are entitled to cancel contract and demand return of goods, after suitable notice; the legal regulations on the dispensability of a period of notice remain unchanged. The partner is obliged to return the goods. We are entitled to cancel the contract when application to initiate bankruptcy proceedings over the assets of the partner is declared.
- 9. General Limitation of Liability**
- 9.1 Save as otherwise provided for in these conditions, we shall not be liable for any loss arising from breach of contractual or extra contractual obligations other than in case of intent or gross negligence of our non-executive agents or senior executives as well as in case of culpable breach of essential contractual obligations.
- In the event of culpable breach of essential contractual obligations – except in case of intent or gross negligence of our non-executive agents or senior executives – liability will arise only for typical contractual, predictable damage. This provision does not affect claims arising in personal injury or damages to private property pursuant to product liability law.
- 9.2 Restricted liability does not apply in case of a lack of assured characteristics, if and as far as the guarantee had the intention to insure the partner against damage which does not arise from the supplied goods themselves.
- 9.3 The restricted liability does not apply in the case of injury to life, body or health based on negligence by us in observing duties or an intentional or negligent failure to observe a duty on the part of our legal representative or agent.
- 10. Compliance**
- 10.1 The conclusion and performance of the contract take place respecting all applicable national, European and US-American export control regulations, including all European and US-American lists of sanctions and other embargoes on individuals (together "export control regulations").
- 10.2 The observance and implementation of the relevant export control regulations and other laws of his country and of the country to which shipment is to be made come within the purchaser's responsibility. The purchaser must notify the vendor in writing on conclusion of the contract of all special features resulting from these provisions.
- 10.3 The purchaser herewith undertakes not to use the delivered goods for military or nuclear purposes of any kind or to sell these goods to third parties for the aforementioned end uses or in any other way to procure them directly or indirectly. At the vendor's request he shall always, and immediately, transmit to him the originals, but at the latest within a time limit of 10 working days, the corresponding end-user documents in the form prescribed by the Federal Office of Economics and Export Control.
- 10.4 In the event that after conclusion of the contract the vendor discovers circumstances which constitute grounds for assuming a possible or actual violation of export control regulations or the purchaser's duties based on this section and its sub-sections, the vendor shall notify the customer of this in writing.
- 10.5 In case circumstances become known which form grounds for assuming a possible or actual violation of export control regulations or the obligations of the purchaser arising from this section or its sub-sections, default of contractual obligations by the vendor shall be excluded for an appropriate period in order to allow the vendor the opportunity to verify this.
- 10.6 The buyer undertakes to comply with the regulations of our Compliance Management System (download at [www.bilstein-kaltband.de/downloads](http://www.bilstein-kaltband.de/downloads)).
- 10.7 If actual violations of export control regulations or the obligations of the purchaser arising from this section and its sub-sections are established or cannot be excluded, the vendor may rescind the contract.
- 10.8 The purchaser undertakes to indemnify the vendor from all damages which arise due to faulty performance of or failure to perform the obligations of the purchaser arising from this section and its sub-sections. The extent of the damages to be paid also includes the reimbursement of all necessary and appropriate expenses which are or have been incurred by the vendor, and in particular the costs and expenses of any legal defense, and any administrative fines or penalties imposed by authorities.
- 11. Applicable Law**
- The laws of the Federal Republic of Germany apply with exception of the United Nations Law on the International Sale of Goods of April 11, 1980.
- 12. Place of Performance and Jurisdiction**
- Place of performance and jurisdiction for both contractual parties is Hagen in Westphalia. We are also entitled to commence proceedings against the purchaser in his home courts.