

# Standard Terms and Conditions of Sale Berkenhoff GmbH

## I Formation of Contract

1. The following standard terms and conditions shall govern exclusively all contracts between the Seller and the Purchaser. Any terms and conditions used by the Purchaser are hereby revoked.
2. Our offers are without obligation. Orders and agreements shall become binding when confirmed in writing.

## II Price of Goods, Terms of Payment

1. Our prices are EXW (INCOTERMS 2000), excluding packing and VAT unless otherwise agreed. We reserve the right to adjust the contract price where the cost price increases by more than 15% after the contract date but prior to the delivery date, whereupon we shall invoice the price valid on the date of delivery. The same shall apply to orders where the price is to be determined.
2. Our prices are based on usual shipment / forwarding methods insofar as these are included in the price. Additional costs incurred as a result of the impeding or obstruction of shipment / forwarding shall be borne by the Purchaser. The same shall apply in relation to dead freight for which we are not responsible.
3. The prices in our order acknowledgement for to non iron metals are based on the metal quotations as at the date of receipt of order. In the event that metal prices are not quoted on that day, the prices as per the following quotation date shall apply.
4. Changes in or the subsequent incurring of taxes, consulate fees, customs duties and other levies shall be charged extra where the same are included in the purchase price.
5. Prices agreed for the reworking of material are conditional upon the Purchaser providing the material required freight paid and free of customs duties six weeks before the delivery date. In the event that the Purchaser does not comply with the above we retain the right to purchase the metal required for the Purchaser's account at the current price without obligation to reimburse the Purchaser for quantities of material received late. Subsequent VAT claims for the reworking of material or for orders where the material is supplied by the Purchaser are to be paid by the Purchaser and are due for payment without deduction immediately when claimed by the Seller.
6. In the event that the Purchaser calls off quantities in excess of the contractual quantity, we retain the right but are not obliged to deliver the additional quantities. Additional quantities will be invoiced at the price valid on delivery.
7. Unless otherwise agreed the purchase price is due for payment by the Purchaser 30 days from the date of the invoice. Upon expiration of the 30 day period the Purchaser shall be deemed in default of payment within the meaning of § 286 (2), No. 2 of the German Civil Code (BGB). Payment shall be deemed remitted where the Seller can access the sum due. An offset is only permissible against undisputed or non appealable counterclaims. The Purchaser may only exercise rights of retention insofar as they are based on the same legal transaction.
8. In the event that circumstances subsequently become known, which diminish the Purchaser's creditworthiness, we retain the right to render any claim due for immediate payment irrespective of deferment or the duration of a bill received. Furthermore we shall be entitled to deliver outstanding orders against payment in advance only and after a reasonable deadline rescind the contract or claim damages for non-performance.
9. Cheques and Bills of Exchange will only be accepted as conditional payment. Payment by Bill of Exchange is to be agreed separately. All expenses incurred for Bills of Exchange and other payment charges shall be borne by the Purchaser and are due for payment immediately.

## III Retention of Title

1. Notwithstanding delivery title to the Goods shall not pass to the Purchaser until the Purchaser has paid the full price for all, including future and conditional business transactions. The same shall apply to account claims even where the Purchaser has remitted payment for individual invoices. The retention of title shall apply until the customer is released completely from contingent liabilities in particular guarantees or liabilities on promissory notes which we, in the interest of the Purchaser, have entered into in connection with covering transactions by cheque or promissory note.
  2. The treatment or processing of the reserved property shall be carried out for us as the manufacturer within the meaning of § 950 of the German Civil Code (BGB) without the incurring of any obligations as a result. In the event that the reserved property is processed, incorporated in or admixed with objects which are not our property we shall acquire ownership of the new object to the extent of the invoice sum for the reserved property. In the event that our title to the goods extinguishes as a result of incorporation, admixing or processing the Purchaser assigns herewith his proprietary rights or expectant rights in the new object to the invoice value of the reserved property and shall hold the same safeguarded for us free of charge.
  3. The Purchaser is authorised to resell the reserved property to his usual clientele, in the usual course of business and under his usual standard terms and conditions of sale only. The same shall apply to a contract for services. Claims by the Purchaser against its customers resulting from the resale of the reserved property are assigned herewith to us to the value of our invoice sum. In the event of resale after processing within the meaning of III.2 above the Purchaser shall assign its claim arising from resale to us to the invoice value of the reserved property processed. The assignment shall apply to all surrogate claims in relation to the goods e.g. claims against third parties (insurance companies, tortfeasors) for the loss, destruction or damage to the goods.
  4. The Purchaser is entitled to collect debts from resale until we revoke such collection. We shall only exercise our right of revocation where it is legally justified to include without limitation the default or suspension of payment by the Purchaser, insolvency, non-acceptance of a cheque or promissory note or seizure of property. Accounts receivable are to be collected in a separate account for and on our behalf. Furthermore the Purchaser is obliged to furnish us with all necessary details of the assigned debts and the debtors for the purpose of collection by us. In addition the Purchaser shall provide us with copies of the relevant documentation (delivery notes, invoices) and inform its debtors of the assignment.
  5. The Purchaser is under no circumstances authorised to further transfer title mortgage or assign our reserved property to third parties other than in the manner described above. The Purchaser shall inform us without delay of any levy of execution which has been or is about to be enforced against our reserved property by third parties and shall identify our reserved property. Any costs incurred by us as a result thereof shall be borne by the Purchaser.
  6. In the event that the value of the existing securities is in excess of 20% of the secured claims we undertake to release the security upon the request of the Purchaser.
  7. In the event that the above retention of title clause is void or unenforceable according to the law of the state/country in which the Goods are situated, the collateral security which corresponds to the retention of title in that state/country is deemed to be agreed. The Purchaser is obliged to undertake all necessary steps required to found and maintain comparable rights or securities.
- ## IV Delivery
1. Terms of delivery commence at the date of our order acknowledgement however not before all the technical and economic details relating to the order have been clarified.
  2. In the event that the Purchaser does not co-operate or fulfil any secondary obligations in due time we are entitled to extend the terms and dates of delivery agreed by a reasonable period without prejudice to our claims arising from Seller's default in acceptance.
  3. The date of dispatch from the works or warehouse is definitive for determining compliance with the delivery term or date. Where the goods cannot be dispatched on time through no fault of our own or are not called off by the Purchaser on time the term and date of delivery shall be deemed to be complied with upon notification of readiness for shipment.
  4. Where we fail to deliver upon an agreed delivery date and such failure is caused by an act or omission on our part the Purchaser shall grant us an extension in writing of not less than 2 weeks. Where delivery is still non-forthcoming and the Purchaser desires to rescind the contract or demand damages in lieu of performance the Purchaser shall prior thereto set a final and reasonable deadline in writing expressly indicating his intention.
  5. The Purchaser is obliged at our request to declare within a reasonable period whether he shall rescind the contract due to the delay in delivery and/or demand damages in lieu of performance or insist upon performance.
  6. In relation to framework agreements, stock agreements or orders for goods to be delivered on demand we may demand any missing obligatory specification three months after the order acknowledgement. In the event that the Purchaser does not comply within the following three weeks we are entitled to set a reasonable deadline and upon the expiration thereof to rescind the contract or claim damages for refused delivery. The same shall apply if the Purchaser does not take delivery of the Goods on the agreed delivery date.
  7. Where the Goods are required by the Purchaser to be tested by us for use, the type and scope of the tests are to be agreed. If the type and scope of the tests have not been agreed at the conclusion of the contract the costs thereof shall be born by the Purchaser.
  8. We retain the right to deliver by instalments. Additional costs incurred as a result will be borne by us insofar as the Purchaser is not responsible for such deliveries.

## V Force Majeure, Delivery Impediments

In the event of acts of God we are entitled to delay delivery for the duration of the hindrance. If as a result the execution of the Contract becomes unconscionable for one of the parties, it may withdraw from the contract without penalty. Force Majeure shall include all circumstances beyond our responsibility which hinder delivery or render it impossible e.g. currency, trade or other national measures, strikes, lock-outs, interruption of operations (e.g. fire, breakdown of machinery or rollers, shortage of raw materials or energy) as well as hindrances of traffic routes which either affect us or a supplier.

## VI Acceptance

1. Where acceptance by inspection has been agreed it shall take place exclusively in the supplying factory as soon as readiness for shipment has been confirmed. The costs thereof shall be borne by the Purchaser.
  2. In the event that the inspection does not take place on time or at all or is incomplete we are entitled to ship the Goods without inspection or to store the Goods at the risk and cost of the Purchaser. The Goods shall be deemed as delivered in compliance with the Contract upon shipment or storage.
- ## VII Measurements, Weight, Quality
1. The relevant EN/DIN standards shall govern the compliance with measurements and technical data. The measurements and weights stated in our offers and order acknowledgements are to the best of our capability but constitute an approximate guide only.
  2. Variations in weight and quantities resulting from manufacture are permitted within a range of +/- 10 % both in relation to the entire contractual amount and to individual instalment deliveries.
  3. The weights and quantities in our delivery notes are definitive for invoicing. Complaints in this regard will only be considered if made to us immediately after delivery. Incorrect quantities shall be noted on the delivery note by the Purchaser.

## VIII Shipment, Passing of Risk

1. We shall determine both the forwarding agent or carrier and the type of shipment at our discretion unless expressly agreed otherwise. The costs of shipment shall be borne by the Purchaser unless otherwise agreed.
  2. Risk of damage to or loss of the goods shall pass to the Purchaser as soon as the Goods are surrendered to the carrier or in the case of dispatch when the Goods have left the factory/warehouse. The Goods shall also travel at the Purchaser's risk where delivery to the place of utilisation has been agreed. In the event that a delay in dispatch occurs through an act or omission of the Purchaser the risk of damage to or loss of the goods passes to the Purchaser upon notification that the Goods are ready for shipment.
- Insofar as we bear the risk of the loss of or damage to the Goods, it shall be limited to risks, which can be insured against under normal fpa conditions. Additional risks shall be borne by the Purchaser from the point of appropriation.
3. Goods which have been confirmed ready for shipment must be called off within 4 days from the supplying factory. In the event of non compliance we are entitled to assert our rights arising from the Purchaser's delay in acceptance.
  4. In the event that the transportation costs have been paid by us, we may either deliver freight paid or invoice the Purchaser for freight. Additional costs which are incurred as a result of the Purchaser's preferred method of shipment shall be borne by the Purchaser in any event.
- Non-returnable packing will be invoiced at cost price and shall not be returned. Two thirds of the charges invoiced for returnable packing will be reimbursed where such packing is returned undamaged, freight and duties paid within 6 months of the invoice date. Charges for spools, excluding non-returnable spools, will be reimbursed in full where such spools are returned undamaged within 6 months of the invoice date. A hire charge will be invoiced for the use of rail containers.
5. In the event that a delay occurs in the dispatch of shipping documents or other paperwork we shall only be liable for the consequences where we have acted gross negligently or with intention.
  6. Where damage has been incurred during shipment it shall be noted by the Purchaser on the shipping documents, who shall, without delay, ascertain the facts and inform us accordingly.

## IX Product Particulars and Confidentiality

1. The extent of our liability for our product or service particulars is limited to the terms and conditions set out in each individual contract. We reserve the right to make technical changes in the course of our product development. Our product descriptions and particulars describe the quality of our products and services and do not constitute a guarantee within the meaning of § 443 of the German Civil Code (BGB). The Purchaser undertakes to test our products and services itself as to their suitability for the purpose intended.
2. All commercial and technical information (including characteristics, which can be ascertained from objects surrendered and from other knowledge and experience) shall be treated as confidential for as long as and until they are in the public domain or we have authorised the same for resale by the Purchaser and shall only be accessed by such employees of the Purchaser who need to know thereof and who are obliged by their contracts of employment or service not to disclose the same. We shall retain title to the commercial and technical information aforesaid at all times. The same shall not be reproduced or used for a commercial purpose without our previous written consent. All information and/or objects received by the Purchaser from us (including copies or drawings) shall at our request be returned immediately and in full or destroyed.
3. We retain all rights to the information in sub-paragraph 2 above (including copyright and the right to register industrial property rights such as patents, utility models, semi-conductor protection etc).

## X Liability for defects

1. The Purchaser can make no claim based on defective delivery or performance where the reduced value or merchantability of the delivered Goods or performance is nominal.
2. Where the Goods delivered by us are defective and the Purchaser has properly notified us of the same in writing in accordance with § 377 of the German Commercial Code (HGB) we shall at our option deliver a replacement or remedy the defect. The Purchaser shall grant us a reasonable period of not less than 8 days to carry out the same.
3. The Purchaser is entitled to demand reimbursement of the costs incurred by reason of the replacement delivery or remedying of the defect insofar as such costs are not increased due to the subsequent transportation of the goods delivered to a location other than the original shipment location unless the purpose for which the Goods are intended requires the same.
4. In the event that we are not in a position to remedy the defect or deliver a replacement the Purchaser is entitled to rescind the contract or to demand a reasonable reduction in the purchase price. Rescission of the contract is only permissible where the Purchaser prior thereto sets a final and reasonable deadline in writing expressly indicating his intention.
5. The Purchaser shall retain a right or recourse against us within the meaning of § 478 of the German Civil Code (BGB) insofar as the Purchaser has not agreed terms with its purchaser which exceed the statutory liability for defects.

## XI Damages

Liability for damages or expenditure (hereinafter liability for damages) irrespective of the legal grounds upon which it is claimed but in particular for breach of a contractual term or a tortious act shall be excluded except where we, our legal representatives or vicarious agents have acted wilfully or in a gross negligent manner or where the breach goes to the root of the contract. Our liability for a negligent breach which goes to the root of the contract is limited to reasonably foreseeable damages which shall not exceed twice the invoice amount of the goods concerned. The exclusion / limitation of liability aforesaid shall not apply in relation to strict liability claims for death or personal injury or damage to items of property for personal use under the Product Liability or any other Act.

## XII Limitation

The limitation period for claims based on defective deliveries or performance as well as for claims for damages is 1 year. The limitation period aforesaid shall not apply where longer limitation periods are prescribed by law as well as in cases of injury to life, body or health due to wilful or gross negligent behaviour on our part and in relation to damage claims based on product liability law.

## XIII Miscellaneous

1. In the event that a Purchaser resident abroad or its agent collects the goods or dispatches the goods abroad he shall provide the required export certificate. In the event that the certificate required is not provided, the Purchaser is liable to pay in addition to the purchase price the value-added tax which accrues for domestic sales.
2. In relation to deliveries from Germany to other EU member states the Purchaser shall inform us prior to delivery of his value-added tax (VAT) identification number under which his receipts are taxed within the EU. In the event that the VAT identification number is not provided the Purchaser is liable to pay in addition to the purchase price agreed the sum of value-added tax owed by us by law.
3. Invoices for deliveries from one EU member state to another are subject to the value-added tax regulations as set out in the version of the 6<sup>th</sup> European Directive current at the time of sale except where the same conflicts with national law. Where we are obliged to charge value-added tax the purchaser shall be obliged to pay the applicable value-added tax sum in addition to the net purchase price.

## XIV Choice of Law, Place of Jurisdiction

1. All contracts shall be governed by and construed exclusively in accordance with the law of the Federal Republic of Germany.
2. Place of performance and jurisdiction is 35452 Heuchelheim, Germany. We retain the right however to sue before any competent court.
3. In the event that any provision of this agreement shall be found to be invalid, the validity of the remaining conditions shall remain unaffected. A replacement provision shall apply which closely corresponds both legally and economically to the invalid provision.

## XV Data Storage

We advise that in the course of business relations data relating to persons acting for the Purchaser or third parties are stored internally on data carriers.