



Patentierete Oberflächenvorbehandlung
und - veredelung für:

Band

Draht

Profile/Rohre

STAKU
Anlagenbau GmbH

GENERAL DELIVERY AND PAYMENT CONDITIONS OF

STAKU-Anlagenbau GmbH / Lich

I. Scope of Application/Offers

1. The present General Sales Conditions apply to all contracts and future contracts with companies, all contracts and future contracts with legal entities under German public law and all contracts and future contracts with special funds under German public law. The present General Sales Conditions apply in respect of deliveries and other services rendered including contracts for work and services and particularly apply in respect of the delivery of manufactured materials and the use of such materials at construction sites, in respect of consultancy services and proposals and in respect of any supplementary services rendered.
2. Our offers are without engagement. Oral agreements, undertakings, commitments and guarantees made by our employees in connection with the conclusion of an agreement shall not become valid until confirmed by us in writing.
3. In the event of any doubt arising as to the correct interpretation of trade terms Incoterms as respectively amended shall apply.
4. All information such as dimensions, weights, diagrams, descriptions, assembly plans and drawings which are provided in pattern books, price lists and other printed materials are calculated as exactly as possible. Notwithstanding this, such information is approximate only and to this extent is non-binding on our part. Models and drawings remain our property.
5. A "Purchaser" within the meaning of the present General Sales Conditions equates to the "Orderer" in the case of a contract.

II. Prices

1. Prices are ex-works or ex-warehouse and do not include freight or value added tax.
2. Insofar as nothing to the contrary has been agreed, prices and conditions contained within our price list valid at the time a contract is concluded shall apply.
3. In the event of any change to information or other external costs contained within the agreed price occurring later than four weeks after conclusion of a contract or in the event that new information or external costs occur we shall be entitled to amend prices to an appropriate extent.
4. We reserve the right to increase the agreed price for any quantities of goods not yet supplied in the event that a change in the situation regarding raw materials and/or in the general economic situation give rise to circumstances which render the manufacture and/or the procurement of the article in question materially more expensive compared to the time at which a price agreement was concluded. In such a case the customer shall have the right to cancel orders so affected within four weeks of notification of such a price increase.

III. Payment and Offsetting

1. Insofar as nothing to the contrary has been agreed and insofar as nothing to the contrary is stated in our invoices, the purchase price shall fall due immediately after delivery. Payment shall be made without the application of a cash discount and shall be made in such a way so that the sum payable is at our disposal on the due date. The purchaser shall bear any payment transfer costs arising. Right of retention and the right to offset payments shall only be accorded to the purchaser to the extent that any counterclaims are undisputed or have become legally binding.
2. In the event that a payment deadline is not met or in the event of default we shall charge interest in the amount of 8 percentage points above base rate insofar as a higher rate of interest has not been agreed. This shall be without prejudice to the right to assert any further claims for damages caused by a delay in payment.
3. The purchaser shall be deemed to be in default of payment no later than 10 days after the due date and receipt of the invoice/demand for payment or receipt of goods and services.

4. We shall be entitled to offset all receivables which the purchaser is able to assert against us regardless of legal reason. The above shall also apply in circumstances where a cash payment has been agreed for one party and fulfilment by means of bill of exchange or by means of the provision of other services has been agreed for the other party. Where such agreements apply, they shall only apply in respect of the balance owed. In the event that such receivables are due at different due dates, our receivables shall to this extent fall due no later than the time at which our liability falls due and shall be accounted for at the value date.
5. Should it become evident after the conclusion of the contract that payment of our claim is jeopardised by the purchaser's lack of financial means we shall be entitled to seek recourse in the rights accorded to us pursuant to § 321 German Civil Code, BGB, (defence of insecurity). In such a case we shall further be entitled to deem that all non-lapsed receivables arising from the ongoing business relationship with the purchaser shall also fall due. Said defence of insecurity shall also extend to cover all further due deliveries and services arising from the ongoing business relationship with the purchaser.
6. Any cash discount agreed shall always only apply to the value of the invoice not including freight and shall require full settlement of all due liabilities of the purchaser at the time such a cash discount is granted.

IV. Execution of Delivery, Delivery Deadlines and Delivery Dates

1. Our duty to deliver shall be subject to correct and timely delivery to ourselves insofar as we are not responsible for incorrect and delayed delivery to ourselves.
2. Information in respect of delivery times is approximate. Delivery deadlines shall commence at the time of our confirmation of order and shall only apply insofar as all details relating to an order have been clarified in a timely manner and insofar as all obligations of the purchaser, such as provision of all government certification, setting up of letters of credit or rendering of advance payments, have also been fulfilled in a timely manner.
3. Compliance with delivery deadlines and times shall be determined by the time at which dispatch of goods from the works or warehouse takes place. In the event that goods cannot be dispatched in a timely manner for reasons not attributable to us, such delivery deadlines and times shall be deemed to have been met in circumstances where notification that goods are ready for dispatch is given.
4. In the event of an Act of God we shall be entitled to delay delivery by the period during which such circumstances appertain and may further delay delivery by an appropriate lead-time. Such an entitlement shall also apply in circumstances where such events occur during an existing period of default. Acts of God include currency, trade policy and other measures undertaken by sovereign states, strikes, lock-outs, operational malfunctions not attributable to us (such as fire, breakage to machines or rollers, shortage of raw materials or energy), hindrance to transport routes, delays in import/customs procedures and all other such circumstances which are not attributable to us and which materially hamper delivery or which render delivery impossible. It is in this regard immaterial whether such circumstances occur so as to affect us or one of our pre-suppliers. In the event that execution of an agreement shall become unreasonable for one of the contractual parties by dint of one of the events stated above and in particular in the event that the execution of material parts of such an agreement is delayed for a period exceeding 6 months, the party thus affected may declare the cancellation of such an agreement.

V. Retention of Title

1. All goods supplied shall remain our property ("goods subject to reserved ownership rights") pending the settlement of all claims receivables, particularly until such time as all account balances arising within the scope of the business relationship have been settled ("reserved rights with respect to balance") and until such time as the receivables established by any insolvency administrator on a unilateral basis as part of choice of fulfilment have been settled. The above shall also apply in respect of any future or conditional claims such as those arising from accepted bills and shall further apply to circumstances where payments are rendered in respect of specifically designated claims. Said reserved rights with respect to balance shall finally expire once all claims outstanding at the time of payment and included within said reserved rights with respect to balance have been settled.
2. We shall be deemed to be the manufacturer of goods subject to reserved ownership rights within the meaning of § 950 German Civil Code. Notwithstanding this, this shall involve no commitment on our part. Manufactured and processed goods shall be deemed to be goods subject to reserved ownership rights pursuant to Clause 1 above. In the event that the purchaser processes, combines or mixes such goods subject to reserved ownership rights with other goods, we shall be entitled to co-ownership rights in the new article thus created in proportion to the invoice value of the goods subject to reserved ownership rights compared to the invoice value of the other goods. In the event that our ownership right expires by dint of such combining or mixing, the purchaser shall herewith transfer to us any rights which the purchaser has in the new stock or goods in proportion to the invoice value of the goods subject to reserved ownership rights and shall keep such goods in safe custody free of charge on our behalf. Our co-ownership rights shall be deemed goods subject to reserved ownership rights pursuant to Clause 1 above.

3. The purchaser may resell the goods subject to reserved ownership rights only within the purchaser's normal course of business and in accordance with the purchaser's normal business terms and provided the purchaser is not in default of payment and provided also that any rights resulting from such resale will be transferred to us in accordance with Clauses 4 to 6 above. The purchaser shall not be entitled to dispose of the goods subject to reserved ownership rights in any other way.
4. The purchaser hereby assigns to us any claims resulting from the resale of the goods subject to reserved ownership rights and further assigns to us all collateral acquired by the purchaser in respect of this receivable. Such claims shall serve as our security to the same extent as the goods subject to reserved ownership rights. In the event that the goods subject to reserved ownership rights are resold by the purchaser together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in proportion to the invoice value of the goods subject to reserved ownership rights compared with the invoice value of the other goods sold by the purchaser. In the case of resale of goods in which we have co-ownership rights pursuant to Clause 2 above, such an assignment shall be limited to the part which corresponds to our co-ownership rights. In the event that goods subject to reserved ownership rights are used by the purchaser for the purpose of fulfilment of a contract for works and services claims arising from such a contract for works and services shall be assigned to us in advance in the same scope.
5. The purchaser shall be entitled to collect any receivables resulting from the resale of the goods subject to reserved ownership rights. This right shall expire in the event such a right is revoked by us and shall expire at the latest in the event the purchaser defaults in payment; fails to honour a bill of exchange; or files for bankruptcy. We shall exert such a right of revocation only if and insofar as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts with the purchaser is jeopardised by the purchaser's lack of ability to pay. The purchaser shall at our request immediately inform the purchaser's customers of such an assignment in our favour and shall forward to us any information and documentation necessary for collection.
6. Assignment of claims from resale shall not be permitted insofar as such an assignment does not constitute part of a genuine factoring transaction of which we are notified and in respect of which the proceeds from factoring exceed the value of our secured claim. Our claim shall immediately fall due when the proceeds from factoring are credited.
7. The purchaser shall immediately inform us of any seizure or any other impairment of the goods subject to reserved ownership rights by a third party. The purchaser shall bear all costs necessary for the suspension of any such seizure or for the return transport of the goods subject to reserved ownership rights insofar as such costs are not borne by a third party.
8. In the event that the purchaser is in default of payment or in the event that the purchaser fails to honour a bill of exchange falling due, we shall be entitled to take repossession of the goods subject to reserved ownership rights and shall have the right to enter the purchaser's premises for this purpose if necessary. The same shall apply should it become evident after the conclusion of the contract that our payment claims arising from this contract or from other contracts with the purchaser are jeopardised due to lack of ability to pay on the part of the purchaser. Such a repossession of goods subject to reserved ownership rights shall not constitute withdrawal from the contract. This shall be without prejudice to the stipulations contained within the German Insolvency Act.
9. In the event that invoiced value of existing collateral exceeds the amount of the secured receivables including additional claims (for interest, costs etc.) by more than 50 %, we shall at the request of the purchaser be committed to releasing pro tanto collateral at our discretion.

VI. Confidential information and intellectual property rights

1. "Confidential information" means any and all information, in whatever form or format, that a party discloses in any manner to the other party in connection with this agreement, including but not limited to data, technical data, designs, drawings, lists materials, models, apparatus, sketches, specifications, production or product know-how, and any other material or information of confidential or proprietary nature. Confidential information shall not include information that: (a) is or becomes generally available to the public other than a result of a disclosure by the receiving party in breach of this section; (b) is or becomes available to the receiving party on a non-confidential basis from another source not bound by a confidentiality obligation; (c) is independently developed by the receiving party without reference to the confidential information of the disclosing party.

2. The receiving party shall, to the same extent as under the same standard of care as it protects its own confidential information, treat and handle all confidential information of the disclosing party in strict confidence and shall not copy, reproduce, reverse engineer, release, disclose, or make available, in whole or in part, to any third parties, or use for any purpose other than performance under this agreement, any of the confidential information of disclosing party. The receiving party shall restrict disclosure of confidential information of the disclosing party solely to those of its employees, representatives, agents, and sub-suppliers who have a need to know for purposes of performance of this agreement and shall ensure that each recipient of confidential information is aware of and is made subject to the obligations to keep such information confidential.
3. The receiving party shall, upon completion of its obligations under this agreement or earlier if so requested by the party, promptly return to the disclosing party all materials containing or reflecting any confidential information of the disclosing party, or destroy such and so promptly certify to the disclosing party in writing, except for the confidential information contained in the documentation concerning the equipment mentioned in scope of delivery / schedule 1.
4. All confidential information of the disclosing party, and all products, inventions, technology, or know-how developed with use of confidential information of the disclosing party, is and shall remain the property of the disclosing party (or, where applicable, its licensors).

VII. Grades, Sizes and Weights

1. Grades and sizes shall be determined in accordance with the DIN/EN Standards or in accordance with technical leaflets effective at the time of the conclusion of the contract. In the absence of such standards, grades and sizes shall be determined in accordance with trade usage. Any reference to such standards, works standards, technical leaflets or test certificates and any information provided with regard to grade, size, weight or usage of the goods shall not be regarded as a representation, assurance or guarantee. The same shall apply in respect of declarations of conformity, manufacturer's declarations and relevant marks such as CE and GS.
2. Weight of goods shall be determined by prior weighing conducted by us or by our pre-supplier. Evidence of weight shall be provided by presentation of the weight certificate. Weight may be determined without weighing goods according to a standard where legally permissible. Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding if and insofar as the goods are invoiced by weight. Total weight of the delivery shall apply accordingly insofar as goods are not individually weighed in accordance with trade usage. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated.

VIII. Inspections

1. Where inspection of the goods has been agreed upon, such an inspection of goods must take place in our warehouse immediately after the purchaser has been informed that the goods are ready for dispatch. The purchaser shall bear all inspection costs. Costs of inspection shall be invoiced to the purchaser in accordance with our price list or in accordance with the price list of the supplier.
2. In the event that inspection does not take place in a timely or full manner for a reason not attributable to us we shall be entitled to dispatch goods without inspection or store such goods at the expense and risk of the purchaser and shall be further entitled to invoice the purchaser for such storage of goods.

IX. Dispatch, Transfer of Risk, Packaging, Partial Shipments

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and carrier.
2. In the event that goods cannot be shipped via the designated route or in the event that shipping goods via the designated route or to the designated place or within the designated time should be impossible or materially hampered, we reserve the right to ship such goods via a different route or to a different place. Any additional costs incurred shall be borne by the purchaser. The purchaser shall in such circumstances be afforded the opportunity to comment.
3. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the purchaser at such time when goods are handed into the care of the forwarding agent or carrier or at the latest when such goods leave our warehouse. We shall only take out insurance if so instructed by the purchaser and at the expense of the purchaser. The purchaser shall bear the duty and costs of unloading.

4. Goods will be delivered unpacked. Goods will be packed in the event that this is normal trade usage. We will supply packaging, protection and/or transport devices according to our experience and at the purchaser's expense. We will take back such packaging, protection and/or transport devices at our warehouse. We will not bear any of the purchaser's costs in respect of the return of such packaging, protection and/or transport devices nor will we any of the purchaser's costs in respect of the purchaser's own disposal of packaging.
5. We shall be entitled to make partial deliveries comprising reasonable quantities. Where and in so far allowed by trade usage, we may exceed or reduce the agreed quantities.

X. Blanket orders

1. In the case of blanket orders, goods which have been notified as ready for dispatch must be requisitioned without delay. Having issued a warning, we shall otherwise be entitled as we see fit to dispatch such goods at the cost and risk of the purchaser or at our discretion to store such goods and invoice such storage immediately.
2. Where contracts provide for continuous deliveries, the purchaser shall issue orders for goods and grades of goods into approximately equal monthly shipments. We shall otherwise be entitled to specify such orders at our own fair and just discretion.
3. In the event that individual quantities of goods requisitioned exceed the total quantity stipulated within the contract, we shall be entitled to supply such a greater quantity but shall not be obliged to do so. We shall be entitled to invoice such a greater quantity at the prices applying at the time of requisition or delivery.

XI. Liability for Material Defects

1. Written notification of material defects in goods shall be made without delay and not later than seven days after delivery. Material defects which, notwithstanding careful inspection, cannot be discovered within this period must be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the purchaser shall suspend any processing or manufacturing of the goods.
2. In the event that an inspection of goods has taken place, material defects in goods which were discernable by the purchaser within the agreed scope of such an inspection may not form the object of a notification of material defects.
3. If and insofar the purchaser's notification of defects is justified and insofar as such a notification has been made in a timely manner we may, at our discretion, choose to remedy the defect or deliver non-defective goods (supplementary performance). In the event that we fail or decline to render such supplementary performance the purchaser may reduce the purchase price or else withdraw from the contract upon the elapse of an adequate deadline set by the purchaser. In the event that a defect is minor in nature, the purchaser shall only be accorded the right to reduce the purchase price.
4. All rights in respect of material defect shall be void in the event that the purchaser does not provide us with an immediate opportunity to inspect such material defects for ourselves and particularly in the event that the purchaser does not make the goods or samples forming the object of the claim for material defect available immediately.
5. The purchaser shall be accorded no rights in respect of claims for material defect in the case of goods which have been sold as declassified materials, such as so-called "seconds". Such rights may not be applied to the reasons for declassification nor to such defects as may customarily be expected. Any liability for material defects on our part is excluded in respect of the sale of "secondary" materials.
6. We shall bear costs arising in connection with supplementary performance insofar as such costs relate to individual cases and particularly to the extent to which such costs are appropriate to the purchase price of the goods. We shall not bear any costs arising as a result of transportation of goods sold to any location other than the domicile of the purchaser insofar as such a transportation was not in accordance with the contractually agreed use of the goods.
7. This shall be without prejudice to the purchaser's right of recourse pursuant to § 478 German Civil Code, BGB.

XII. General Limitation of Liability

1. Our liability for breach of contractual or extra-contractual obligations, in particular in respect of 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 restricted 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 of contract endangers the contractual purpose. The aforesaid restrictions shall further not apply to damage to life, limb or to health caused by our fault. Nor shall such restrictions affect our statutory liability pursuant to the German Product Liability Act. Nor shall such restrictions apply to any cases where we have deliberately and wilfully concealed defects of the goods or guaranteed the absence of such defects. This shall be without prejudice to any statutory rules regarding the burden of proof.
3. Insofar as nothing to the contrary has been agreed, all contractual claims the purchaser may assert against us for cause or may assert in connection with the delivery of the goods shall lapse one year after the delivery of the goods. Said deadline shall also apply in respect of such goods which have been deployed in a construction work in accordance with their usual purpose and have occasioned damage within said construction work. This shall be without prejudice to our liability arising from intentional and grossly negligent breaches of contract and without prejudice to the lapsing of statutory rights of recourse. The period of limitation does not recommence in cases of subsequent performance.

XIII. Place of Performance, Place of Jurisdiction and Applicable Law

1. Place of performance in respect of our deliveries is the works supplying the goods in the case of delivery ex-works. We have selected the location of the Head Office of our works in Lich /Hessen as Place of Jurisdiction.
2. All legal relationships between us and the purchaser shall be governed by the non-standardised laws of the Federal Republic of Germany supplementing the present Conditions. The provisions contained within the United Nations Convention on Contracts for the International Sale of Goods (CISG) of 11 April 1980 shall not apply.

XIV. Other Provisions

1. In the event that a purchaser who is domiciled outside the Federal Republic of Germany (foreign buyer), or a representative of such a purchaser collects or transports goods or sends such goods abroad, such a person shall provide us with the export certificate required for tax reasons. In the event that such proof is not provided the purchaser shall be charged the statutory rate of VAT applying to deliveries within Germany on the invoice.
2. In the case of deliveries from the Federal Republic of Germany to other EU member states, the purchaser shall provide us prior to delivery with the purchaser's VAT number under which the purchaser conducts VAT payments within the EU. In the event that the purchaser does not provide such a VAT number, the purchaser shall be liable to pay the amount of VAT legally owed by us in addition to the agreed purchase price.
3. In respect of the invoicing of deliveries from the Federal Republic of Germany to other EU member states, the prevailing VAT regulations within the respective recipient state shall apply in circumstances where either the purchaser is registered for VAT in another EU member state or in circumstances where we are registered for VAT in the recipient member state.