

Terms and Conditions of Delivery and Payment of Aluminium-Werke Wutöschingen AG & Co. KG

The following Terms and Conditions of Sale and Delivery apply to all our contracts, quotations, deliveries and other services, including any future such agreements. The customer's general terms and conditions of business do not apply. This is even the case if they are sent to us in confirmation correspondence or in any other way and we do not state otherwise. Our terms and conditions of sale apply only in relation to entrepreneurs ("Unternehmer") within the meaning of Paragraph 14 German Civil Code (*BGB*), public-sector legal entities or special bodies or funds under public law.

1. Conclusion of Contract

- 1.1 A contract is not formed until we have issued our written order confirmation or the goods/services are delivered.
The legal relationship between us and the customer shall be governed solely by the purchase contract concluded in writing including these Terms and Conditions of Delivery and Payment. Said contract fully reflects all of the agreements between the contracting parties regarding the subject matter of the contract. Any verbal commitments by us prior to the conclusion of this contract are not legally binding and verbal agreements between the contracting parties shall be substituted by the written contract unless in the individual case it expressly ensues from them that they continue to apply as binding.
- 1.2 Any details concerning the delivery item (e.g. weights, dimensions, use values, load-bearing capacities, tolerances and technical data) and our representations of the same (e.g. illustrations, descriptions, drawings) in our brochures, price lists, catalogues and our quotation are only approximate unless the usability for the contractually intended purposes require an exact match. They do not constitute any guaranteed quality features, rather they are descriptions or designations of the delivery. Deviations that are customary in the trade and deviations which constitute technical improvements are permitted provided they do not adversely affect the usability for the contractually intended purpose.
- 1.3 Compliance with our Code of Conduct shall form an integral part of the contract.

2. Prices and Terms of Payment

- 2.1 Our prices apply ex factory and do not include packaging, shipping or insurance unless expressly agreed otherwise. The prices are net. The statutory VAT will be charged in addition.
- 2.2 Our prices are based on the cost of personnel and materials at the time at which the quotation and contract were concluded. We may increase the agreed prices by the extent to which our staffing and cost of materials or public taxes have increased since the contract was concluded if there is a period of more than 6 weeks between the contract being concluded and provision of our goods/services and if we are not responsible for the increase in cost.
- 2.3 Unless otherwise agreed, payment is due in full within 30 days of the invoice date. Interest on arrears, amounting to eight percent above the base interest rate, shall be charged if the customer falls into payment arrears unless there is legal justification for us charging a higher rate of interest. We reserve the right to claim further damages and other statutory rights resulting from late payment.
- 2.4 If the customer is in default of payment or if a further deadline which we have set of at least two weeks has expired to no avail we may immediately call in the total debt due to us. We are furthermore entitled to immediately call in the balance of the purchase price if it becomes apparent after having concluded the contract that our claim to the consideration is at risk because of a lack of ability to pay on the part of the customer, in particular because of a worsening of the customer's financial situation. However this shall only apply if we have previously set the customer a reasonable deadline to furnish us with security in the amount of the balance of the purchase price and said deadline has expired to no avail.
- 2.5 If the customer owes us several outstanding debts and a payment made by the customer is not sufficient to fully satisfy all of the debts, then satisfaction of the debts shall be in accordance with the statutory provisions (Paragraph 366(2) German Civil Code (*BGB*)), even if the customer expressly made payment towards one particular debt.
- 2.6 The customer may only offset claims, which are undisputed or which have become final and absolute, against our claims. Furthermore the customer may exercise a right of retention only to the extent that the customer's counterclaim is based on the same contractual relationship or on a claim which is undisputed or has become final and absolute.

3. Delivery, Passing of Risk

- 3.1 All deliveries are made ex factory or ex distribution warehouse. The risk of accidental loss or deterioration of the delivery item shall pass to the customer as soon as the goods have been handed over for transport or we have given notice that they are ready for shipping. This applies regardless of whether shipping takes place from the place of performance and regardless of who pays the transport costs.
- 3.2 Part deliveries are possible if the part delivery can be used by the customer for the contractually intended purpose and the customer does not thereby incur any significant extra expense or additional costs.
- 3.3 Increased deliveries or short deliveries are permitted whereby the deviation may be up to 10% of the weight or quantity. The deviation is permitted for part deliveries as well as for complete deliveries. For order quantities below 500kg, over-deliveries of up to 40% are possible.
- 3.4 If it has been agreed that the goods will be inspected according to certain conditions said inspection shall be carried out in the supplying factory. The customer shall pay the travel and accommodation costs of the person undertaking the acceptance. We shall pay the cost of materials incurred in connection with the acceptance.
- 3.5 If the customer waives the right to acceptance in the factory, the goods shall be deemed to have been accepted as soon as they leave the factory.
- 3.6 If call orders have been placed, the customer must call off the individual part quantities in sufficiently good time that correct production and delivery is possible within agreed deadlines. If quantities beyond the order quantity are called off, we shall be entitled to cancel the excess or to charge for it at the current price valid on the date of delivery.

4. Delivery Deadlines

- 4.1 Delivery deadlines depend on the agreement made in each individual case. A delivery deadline is deemed to have been met if the delivery item is handed over for transport or readiness to ship has been established and notice thereof has been given.
- 4.2 If we are not able to meet the delivery deadline for reasons for which we are not responsible (stoppages, strike, lockout, power supply problems, delays in the delivery of essential raw materials and base materials etc.), we shall inform the customer thereof without undue delay. In any such case if it is not foreseeable whether we will be able to produce our goods/services within a reasonable period, but within four months at the latest, the customer and we may withdraw from the contract. The same applies if the reasons for the delay still exist four months after our notice. If the reasons for the delay were already discernible to us when the contract was concluded, we shall not be entitled to withdraw.

5. Liability and Warranty

- 5.1 The customer is under a duty to give written notice of any discernible defects without undue delay, however no later than within two weeks following delivery of the goods, and is under a duty to give written notice of any non-discernible defects without undue delay after they have been discovered, however at the latest within two weeks following discovery. Said deadlines are preclusion deadlines. Whether the notice of defect(s) is on time shall depend on when it is received by us.
- 5.2 If goods/services which we have provided prove to be defective, we shall be under a duty to – at our option – deliver replacement goods or to rectify the defect. In all other respects the statutory provisions shall apply unless otherwise regulated in these Terms and Conditions of Delivery and Payment.
- 5.3 We shall pay the costs associated with the replacement of goods to the extent that they are not increased as a result of the delivery item having been taken to some place other than the place of performance.
- 5.4 If the delivery is inspected in accordance with Clause 3.4 and if the purchase is a commercial transaction for both sides we shall not be liable for defects that were discernible at inspection if no notice of the defect was given at inspection or without undue delay thereafter.
- 5.5 A compensation for futile disbursements shall be excluded.

- 5.6 The following shall apply to any liability for damages regardless of the legal ground as well as for the liability for defective delivery:

We shall be liable in accordance with the statutory provisions for a breach of material contractual duties for which we are responsible, i.e. contractual duties which characterise the typical purpose of the contract, the performance of which is required in order to enable the contract to be properly implemented and compliance with which the contract partner may usually rely on. However, provided we are not guilty of intentional conduct we shall only be liable for the foreseeable damage which typically occurs.

For all other breaches of duty we shall only be liable if damage has been caused by one of our statutory representatives or by a senior vicarious agent intentionally or grossly negligently. In that case we shall only be liable for the foreseeable damage which typically occurs if the damage was not caused intentionally.

Our liability under the German Product Liability Act (*Produkthaftungsgesetz*) shall remain unaffected; this also applies to our liability for an intentional or negligent injury to life, body or health. Where we have given a guarantee we shall be liable in accordance with the statutory provisions.

Unless otherwise provided in this Clause any claims against us for damages arising out of breaches of duty are excluded.

The limitation under this Clause shall also apply insofar as the customer demands reimbursement of futile expenses instead of a claim for compensation for the damage in lieu of performance.

- 5.7 Warranty claims shall be time-barred 12 months after delivery of the goods. Claims for damages under Clause 5.6 shall be time-barred after the statutory time limit. If the purchased goods have been used for a building in accordance with their usual manner of use and have caused said building to be defective warranty rights pertaining thereto shall likewise be time-barred after the statutory time limit.
- 5.8 In the event that damage is due to mistakes by a third party we shall be entitled to assign our own claims for damages against the third party to the customer. The claim may only be made against us if the customer has asserted claims against the third party in court to no avail. The customer is under a duty to inform us without undue delay of any assertion of the assigned claims in court and to obtain our consent to all agreements relating to the assigned claims.
- 5.9 If the end customer is a consumer and asserts defects, Clauses 5.2 to 5.4, 5.7 and 5.8 shall not apply to claims of the customer to subsequent performance under the right of recourse against the supplier pursuant to Paragraph 478 German Civil Code (*BGB*). This is without prejudice to the reimbursement of expenses pursuant to Paragraph 478(2) German Civil Code (*BGB*), withdrawal or reduction of the purchase price, Paragraph 377 German Commercial Code (*HGB*) shall remain unaffected.

6. Scope of Goods/Services

- 6.1 When orders are placed we do not check whether the goods are fit for the purpose intended by the customer.

- 6.2 Complimentary services – advice or recommendations – which are provided free-of charge are based on our careful checks and details provided by the customer. We assume no liability in such instances.

7. Reservation of Title

- 7.1 Goods supplied by us shall remain our property until all our claims resulting from the entire business relationship with the customer have been satisfied in full.
- 7.2 The customer is under a duty to store and label the goods subject to the reservation of title separately.
- 7.3 The customer is entitled to sell the goods subject to the reservation of title in the ordinary course of business provided that the customer is not in arrears of payment. The goods subject to the reservation of title may not be pledged or transferred as security.
- 7.4 The customer hereby already assigns the accounts receivable arising out of any re-sale of the goods subject to the reservation of title to us in full. We accept said assignment. The customer is authorised to collect the accounts receivable, which have been assigned to us, in its own name for our account. We may revoke said authority to collect if the customer falls into arrears of payment, a petition for insolvency proceedings to be opened over the customer's assets is filed or there is some other deficiency in the customer's ability to pay. If we revoke the authority to collect the accounts receivable the customer shall be under a duty to disclose the assignment and to hand over the information and documents necessary for collecting the account receivable. The same shall apply to substitute receivables (insurance payments, claims for damages etc.).
- 7.5 If the customer acts in breach of contract, particularly if the customer is in arrears of payment, we shall be entitled to take back the goods subject to the reservation of title at the customer's cost without withdrawing from the contract.
- 7.6 If the goods subject to the reservation of title are combined with other property or if the goods subject to the reservation of title are processed, said combining or processing is done in our name and on our behalf. The reservation of title shall continue in the newly produced items. We thereby acquire a share of the joint title, which share shall be in the proportion which the value of the goods subject to the reservation of title (invoice value) has to the value of the new items. The customer shall keep the new items, including our (reserved) share of joint title, safe free-of-charge. If the goods subject to the reservation of title are re-sold as part of the new items, Clause 7.3 shall apply *mutatis mutandis* but only in the amount of the invoice value of the goods subject to the reservation of title.
In case we do not acquire title in this way the customer hereby already assigns its future title or joint title – in the above-mentioned proportion – to the newly produced items to us as security. If the goods subject to the reservation of title are combined or inseparably mixed with other items to become a homogenous item and if one of the other items is to be considered the main item the customer shall assign to us its pro rata share of joint title to the homogenous item in the above-mentioned proportion if the main item belongs to it.

8. Copyright and Right of Ownership

- 8.1 The customer may only pass on to third parties or inform third parties of the drawings, plans, illustrations, calculations, samples, technical documents, which we have produced and the know-how disclosed to him if we have previously agreed to this in writing. We expressly reserve the right to any copyrights.
- 8.2 When deliveries are made according to the customer's drawings, models or details the customer shall indemnify us from and against any and all intellectual property claims by third parties. The customer must ensure that use of the goods we have supplied does not infringe any intellectual property rights of third parties.
- 8.3 Tools which we use to produce the ordered goods shall remain our property. This even applies if the customer pays the production or repair costs itself either in whole or in part. We shall store the tools for a period of 4 years after processing the related order. If no other orders are placed during this time, the tools shall then be scrapped.

9. Final Provisions

- 9.1 This contract shall be governed by German law.
- 9.2 The application of the UN Convention on Contracts for the International Sale of Goods is excluded.
- 9.3 The place of performance for all obligations of both parties to the contract shall be Wutöschingen. If the customer is a merchant ("*Kaufmann*") within the meaning of the German Commercial Code (*Handelsgesetzbuch*) or a public-sector legal entity the place of jurisdiction for any and all legal disputes in connection with this contract shall be determined by our registered office. Irrespective of this we shall also be entitled to sue the customer at its registered office.
- 9.4 The invalidity of individual provisions of these Terms and Conditions shall not affect the validity of the other provisions and the survival of the contract. The invalid provision shall be replaced by a regulation, the commercial substance of which comes closest to the invalid provision. The same shall apply *mutatis mutandis* in the event of any loophole