

Elektro-Metall Export GmbH

Conditions of Sale, Delivery and Payment

1. Area of Application

(1) Unless otherwise expressly agreed in writing, the following terms and conditions apply for our business relations with companies, legal persons of public law or special funds under public law (in the following called Customer). Even if not expressly agreed upon, these terms and conditions shall also be valid for all future business relations.

(2) Deviating terms and conditions of the Customer not expressly acknowledged by us are not binding for us, even if we do not expressly disagree. The following conditions shall also be valid if we execute the purchaser's order without any reservations, fully aware of the Customer's conflicting or deviating conditions.

2. Offer and Conclusion of Contract

(1) Our offers are subject to change and without obligation unless we have expressly labelled an offer as binding.

(2) We can accept an order from the Customer, which is to be qualified as offer for the conclusion of a purchase contract, within two weeks by sending a written confirmation or by executing the contractual obligation within the same period.

(3) Drawings, illustrations, measurements, weights or any other performance data shall only be obliging if this is expressly agreed in writing.

3. Delivery

(1) Our delivery commitment shall be subject to delivery by our own supplier.

(2) We shall be entitled to partial delivery and partial performance unless partial delivery and partial performance are not of interest to the Customer.

(3) Any quoted delivery times are to be considered as approximate, unless otherwise agreed with the Customer. They do not start before all performance details have been completely clarified and require the Customer's timely and due fulfilment of his obligations.

(4) Should the Customer be in default with release, acceptance or collection of goods, we shall be entitled to demand indemnity for any loss suffered; upon default of acceptance the risk of accidental deterioration and accidental loss passes to the Customer.

(5) The risk of accidental loss and accidental deterioration shall pass to the Customer as soon as the goods are delivered to the person performing transport or leave our warehouse for the purpose of shipment. This shall also apply if we bear the freight charges. Should delivery be delayed at the Customer's request, the risk passes upon advice of readiness for sale.

4. Prices / Conditions of Payment

(1) Our prices do not include the applicable value added tax in Germany and are quoted ex works or ex warehouse.

(2) Packaging normally used for transport / shipment will be charged at cost price unless otherwise agreed with the Customer.

(3) Our invoices are due and payable immediately and without deductions.

(4) Against our receivables the Customer may only set off such claims that are undisputed and recognized by us or by declaratory judgment. The Customer is only entitled to exercise his right of retention as far as his counterclaim is based on the same contractual relationship.

(5) If the Customer is in arrears with his payments, legal regulations apply.

5. Retention of Title

(1) We retain title to the delivered goods until complete payment of all claims due to us or which may subsequently arise from the business relation. In case of several receivables or unpaid invoices the retention of title is used to safeguard outstanding balance claims, even if individual delivered goods have already been paid for.

(2) After setting an adequate time limit we shall have the right to reclaim the goods under reservation if the Customer acts in violation of the contract, e.g. if he is in default of payment. If we take back any goods under reservation, this constitutes a cancellation of the contract. Attachment of goods under reservation by us also constitutes a cancellation of contract. We shall be entitled to exploit any goods under reservation after having reclaimed them. After deduction of an adequate sum for the exploitation costs, the proceeds from the exploitation are to be set off against the amounts the Customer owes us.

(3) If the goods under reservation are seized by third parties, mainly in case of levy of execution, the Customer shall advise such third party of our property rights and shall inform us immediately so that we can enforce our property rights. The Customer shall furthermore be liable for any judicial and extrajudicial costs accruing in this context, which the third party is not able to pay.

(4) Processing or remodelling the goods will always be carried out for us as manufacturer, but without any obligation for us. If the delivery items are combined with other items not belonging to us, we acquire the joint ownership in the new item in relation of the value of the delivery item to the other combined items at the time of combination. If the delivery items are inseparably compound with other items not belonging to us, we acquire the joint ownership in the new item in relation of the value of the delivery item to the other compound items. The Customer shall keep custody of our joint ownership.

(5) The Customer has the right to process or sell the goods under reservation in the normal course of business, provided that he is not in default. Pledging the goods as collateral or transfer by way of security is not permitted. The Customer already assigns to us now by way of security and to the full extent any claims arising from resale or any other legal principle (insurance, unlawful act) connected with the goods under reservation. Subject to revocation at any time, we authorize the Customer to collect in his own name the claims for his invoices which have been assigned to us. This authorization to collect shall expire, if the Customer does not duly fulfil his obligation to pay, is in financial difficulties, if compulsory execution is instituted against him, insolvency proceedings are opened against his assets or the opening of insolvency proceedings is refused for insufficiency of assets.

(6) We are obliged to release the securities we are entitled to insofar as the liquidable value of our securities is by more than 10 per cent higher than the claims to be secured; we shall decide which securities are going to be released.

6. Violation of Contractual Obligations; Liability

(1) In case of violation of a contractual obligation the Customer shall be entitled to the rights towards us in compliance with legal regulations in accordance with the following agreements.

(2) The Customer must report defects, false amounts or false goods in writing immediately or within ten days after receipt of goods at the latest. Should a defect be detected later, it must be reported in writing immediately or within ten days after detection at the latest.

(3) Within the warranty period and in case of a qualified notification of defects

in due time, the Customer shall have the right to supplementary performance; we shall have the right to choose the type of supplementary performance – remedy of defects or delivery of an item free of defects. If the supplementary performance goes awry or further attempts at supplementary performance are unacceptable for the Customer, the Customer shall be entitled to reduction or to cancel the contract.

(4) We will be responsible for a violation of a contractual obligation insofar as a main obligation or another cardinal contractual obligation has been violated due to negligence or intent by us, our legal representatives, own employees or vicarious agents.

(5) We shall be responsible for violation of contractual obligations other than those referred to under fig. (4) in compliance with legal regulations, unless we allege that the violation of obligation is due to a not grossly negligent act or wilful intent by us, our legal representatives, own employees or our vicarious agents.

(6) The burden of proof for a lack or the degree of fault is incumbent upon us.

(7) Our liability for damages shall be limited to predictable, typical damages.

(8) The Customer can only assert claims for damages against us on grounds of damage or loss during transport if he has notified us of such damages or losses within a cut-off period of 10 calendar days after receipt of goods at the destination or after the intended date of delivery if the goods are not received, and has kept the goods including packaging – in case of damage – ready for inspection by us.

(9) The provisions under sections (4) through (8) also apply in case of tortious liability. The liability under the compulsory provisions of the Product Liability Act remains unaffected.

The provisions of sections (4) through (9) are valid neither for claims for damages caused by delay of performance, nor for claims for damages arising from injuries to life, body or health, nor for the Customer's right to cancel the contract because of violation of an obligation.

Even in case of bindingly agreed dates and time periods we shall not be responsible for delays in delivery and performance caused by Force Majeure and by unforeseeable obstacles beyond our control – including mainly strikes, lockouts, official orders, business disruptions and delays in supply of essential materials that could not have been prevented by us –, as far as such obstacles have a wide influence on the delivery of the delivery item. This also holds true if our suppliers or their sub-suppliers experience those circumstances. The aforementioned circumstances give us the right to extend the time of delivery and performance, respectively, for the duration of the impediment plus an adequate start-up period, or to completely or partially withdraw from the contract on account of the part that has not been fulfilled yet. We can only rely on the described circumstances if we immediately inform the Customer thereof.

(12) If an agreed date or period of delivery is exceeded, the Customer shall be entitled to allot a reasonable period within which to make delivery. If delivery does not take place within this period, the Customer shall be entitled to cancel the contract and claim damages instead of performance. Before expiration of the time limit the Customer shall not be entitled to derive any rights from the fact that we are momentarily not able to deliver.

(13) The Customer is not authorized to resell faulty goods.

(14) If one or several of his buyers or consumers make(s) a claim on the Customer on grounds of a defect of the supplied commodity that had already existed when the transport hazard was transferred to the Customer or that had been already reclaimed by a consumer as end user, the Customer's legal claims under a right of recourse against us in compliance with art. 478 of the German Civil Code remain unaffected by dint of the provisions under sections (5) and (8).

(15) The Customer's rights on grounds of a fault or defect are subject to a limitation period of one year. The limitation period commences with the passage of the transport hazard to the Customer. This does not apply to claims for damages in cases of injuries to life, body or health caused by us, our legal representatives or our vicarious agents, or if we or our legal representatives have acted with gross negligence or intent, or if our simple vicarious agents have acted with intent: the limitation period under the Product Liability Act remains unaffected.

7. Applicable Law, Place of Jurisdiction, Partial Invalidity

(1) Place of performance for all delivery commitments on our part and for all obligations to pay and other contractual obligations of both parties shall be Ingolstadt.

(2) These terms and conditions and the entire legal relationship between the Customer and us shall be governed by the substantive law of the Federal Republic of Germany; all references to any other legal systems and international treaties shall be excluded. Application of the Uniform Laws on International Sales Act and the UN Convention on the International Sale of Goods is excluded.

(3) Ingolstadt shall be the place of jurisdiction for all disputes arising out of the contractual relationship; however, we shall be entitled to bring action against the Customer at his place of residence/business as well.

(4) Should all or part of one of these provisions be or become invalid or inexecutable, or should there be a gap or an omission, this shall not affect the validity of the remaining provisions.