

Terms of Delivery and Payment

General Terms and Conditions of Delivery and Payment

of the company BWS Philipp Boecker + Wender Stahl GmbH & Co. KG

(Translation: The original German version has priority) **As of 03/2009**

1. General provisions
 - 1.1 Our General Terms and Conditions of Delivery and Payment (hereinafter abbreviated as Terms of Sale) shall apply exclusively; we shall not recognise terms and conditions of the customer that conflict or deviate from our Terms of Sale, unless we have expressly approved their validity in writing. Our Terms of Sale shall therefore also apply if we carry out a delivery to the customer without reservation in full knowledge that the terms and conditions of the customer conflict or deviate from our Terms of Sale.
 - 1.2 All agreements made between us and the customer for the performance of a contract shall be fully set out in writing in the respective contract.
 - 1.3 Our Terms of Sale shall only apply vis-à-vis companies in accordance with Art. 310 para. 1 BGB [German Civil Code].
 - 1.4 Our Terms of Sale shall also apply for all future business with the customer.
2. Offer – Offer documentation, Measurements – Weights - Grades
 - 2.1 Our offer shall be provisional. If the customer's order qualifies as an offer in accordance with Art. 145 BGB, we can accept it within a period of two weeks.
 - 2.2 We reserve the right of ownership and copyright to images, drawings, calculations, technical data and other specification documents as well as models. This shall also apply for such written documents that are marked as "confidential". The customer shall require our express written approval before they are passed on to third parties.
 - 2.3 Deviations from measurements, weights, grades and other specifications are permitted in accordance with DIN, EN and other international standards, when this is valid practice.
 - 2.4 The information and images contained in brochures and catalogues are approximate values in line with the industry standard unless they are expressly indicated to be binding by us.
3. Prices, Terms of payment
 - 3.1 Unless otherwise stated in the order confirmation, our prices are quoted "ex works", excluding packaging, which shall be charged for separately. If our feedstock costs change by more than 20% after the signing of the contract, although we have previously protected prices for delivery to us by our suppliers through a contract, and we are not able to avert the price change due to the market power of our supplier (for example in the case of a concerted price increase action of the European steel concerns), each party to the contract shall be entitled to demand a corresponding adjustment to the price.
 - 3.2 If only a target quantity is agreed, we shall base our calculation on the non-binding order quantity expected from the customer. If the customer takes less than the target quantity, we shall be entitled to increase the agreed price accordingly. If the customer takes more than

- the target quantity, we shall lower the agreed price accordingly, provided the customer has advised us of the increased requirement at least 3 months before the delivery.
- 3.3 Our prices do not include VAT. It shall be charged for separately at the statutory amount applicable on the day on which the invoice is issued.
 - 3.4 The deduction of discounts shall require a specific written agreement.
 - 3.5 Unless otherwise stated in the order confirmation, the net purchase price (without deduction) shall be payable after delivery and receipt of the invoice. Statutory regulations shall apply with regard to the consequences of late payment.
 - 3.6 The customer shall only be entitled to set off amounts if its counterclaims are established with legal force, are undisputed and recognised by us. The customer shall only be entitled to rights of retention under the conditions stipulated.
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4. Delivery period – Delayed delivery
 - 4.1 The commencement of the delivery period specified by us shall be subject to clarification of all technical questions. Our notification that the delivery is ready for dispatch or collection shall determine compliance with the delivery date or the delivery period in the case of “ex works” delivery.
 - 4.2 Furthermore, compliance with our delivery obligations shall be subject to the customer’s timely and proper compliance of its obligations. Defence of non-performance of the contract shall remain reserved.
 - 4.3 We shall be entitled to partial deliveries insofar as they are reasonable for the customer.
 - 4.4 If the customer is in default of acceptance or otherwise culpably infringes co-operation obligations, we shall be entitled to demand the damages resulting for us, including the reimbursement of any additional expenses. Further claims shall remain reserved.
 - 4.5 Insofar as the conditions set out in paragraph 4.4 arise, the risk of accidental destruction or accidental deterioration of the sale item shall be transferred to the customer at the time at which it falls in default of acceptance or of payment.
 - 4.6 In the event of delayed delivery, the customer shall be entitled to demand lump-sum compensation for delay. This shall amount to 0.5% for each full week of delay, however, to a maximum not exceeding 5% of the value of the part of the delivery that cannot be used or cannot be used in accordance with the contract due to the delay. Further statutory claims of the customer due to delayed delivery shall remain unaffected. Further claims for damages for delayed delivery are however exclusively established as per Clause 8 of these Terms of Sale.
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5. Delivery obligation – Reservation of availability of supplies - Force majeure
 - 5.1 We shall not accept a delivery obligation without a binding acceptance obligation from the customer, subject to deviating agreements in individual cases. Supply to the customer, even over a long period of time, shall not substantiate a future delivery obligation unless this is expressly agreed. In particular, the unchallenged receipt of a delivery forecast or comparable documents from the customer shall not substantiate a corresponding delivery obligation for us.
 - 5.2 If, in individual cases, we have accepted an unlimited delivery obligation without establishing a total delivery quantity (permanent delivery contract), we shall be entitled to ordinary termination with a notice period of three months. Conversely, the customer shall also be entitled to this right to termination on acceptance of an unlimited purchase obligation without a total delivery quantity being established.
 - 5.3 Proper and timely performance shall be subject to availability of supplies.

- 5.4 In the event of force majeure and other obstacles to delivery that we could not foresee and for which we are not to blame, including industrial action, raw material shortage, operational malfunctions, transportation obstacles and official measures (including those affecting our suppliers), we shall be entitled to postpone the delivery by the period of the delivery obstacle. We shall immediately inform the customer of the unavailability or the delayed availability of the delivery item and, in the event of withdrawal, immediately refund the customer its payment.
- 5.5 Production-related larger or smaller deliveries shall be permitted within a margin of 10% of the total order quantity. The payment shall be adjusted correspondingly.
- 5.6 If it becomes clear after conclusion of the contract that our payment claim is threatened by the customer's inability to pay, Art. 321 BGB shall apply. A threat shall arise, in particular, if our credit insurance company refuses to cover the order or parts of the order made by the customer. In addition, a threat shall also arise when, in particular, the customer inadequately fulfils its contractual obligations to us or to third parties or is slow to pay.
6. Transfer of risks and shipping
- 6.1 Insofar as not otherwise stated in the order confirmation, the delivery shall be agreed to be "ex works". The risk of accidental destruction or accidental deterioration shall equally be transferred to the customer with the dispatch, if we have accepted the shipping costs or other additional services or a partial delivery is made.
- 6.2 If an inspection and approval has to be made, this shall determine the transfer of risk.
- 6.3 Insofar as the customer desires, we shall cover the delivery with transport insurance. The customer shall bear any incurred costs.
- 6.4 Insofar as not otherwise agreed, we shall deliver the goods in our usual packaging. The purchaser shall bear the packaging costs. Packaging differing from this must be requested by the purchaser and correspondingly agreed upon. We shall agree to this packaging if the associated additional expenses are reasonable for us. The customer shall bear the additional costs.
7. Claims for defects
- 7.1 The composition of the goods shall exclusively comply with the technical delivery provisions agreed. If we are to deliver in accordance with diagrams, specifications, models etc. of the customer, the customer shall assume the risk of suitability for the intended purpose.
- 7.2 Claims for defects by the customer shall be subject to its proper fulfilment of its inspection and notification duties, as laid down in Art. 377 HGB [German Commercial Code]. The customer shall not only be responsible for incoming inspections of the material delivered by us. Insofar as parts are manufactured from the delivered semi-finished products, further goods inspections are also to be carried out directly after the beginning of the manufacturing of the parts from the semi-finished products delivered by us.
- 7.3 If there is a defect in the sale item, we shall be entitled to supplementary performance in the form of a remedy of the defect or the delivery of a new item free of faults, at our choosing. In the event of remedy of a defect, we shall be obligated to bear all expenses for the purpose of the remedy of the defect, in particular transport, shipping, labour and material costs, insofar as they are not increased by the fact that the sale item was used in a place different to the place of performance.
- 7.4 If the supplementary performance fails, the customer shall be entitled to other statutory claims for defects. The customer shall be entitled to claims for damages only to the extent set out in Clause 8. of these Terms of Sale.

- 7.5 In the case of goods that are sold as declassified material (e.g. so-called II.-a material), the purchaser shall have no claim for defects with regard to the reported fault and to such faults which would ordinarily need to be expected with declassified material.
- 7.6 The customer's claims for defects shall lapse in accordance with Clause 9.1. of these Terms of Sale.

8. Liability

- 8.1 We shall exclusively be liable for damages as per the following provisions:
- 8.2 In accordance with statutory provisions, we shall be liable insofar as the customer asserts claims for damages that are based on intention or gross negligence, including the intention or gross negligence of our proxy or vicarious agents. Insofar as no breach of the contract due to intention or gross negligence can be attributed to us, liability for damages shall be limited to foreseeable damages that typically arise.
- 8.3 In accordance with statutory provisions, we shall be liable insofar as we culpably infringe an essential contractual obligation; in this case, liability for damages shall however be limited to foreseeable damages that typically arise.
- 8.4 Insofar as the customer is entitled to a claim for compensation for damages instead of performance, our liability shall also be limited to compensation for foreseeable damages that typically arise in accordance with Clause 8.3.
- 8.5 Liability due to culpable harm to life, bodily harm or harm to health shall remain unaffected; this shall also apply for both mandatory liability in accordance with the ProdHaftG [Product Liability Act] and liability within the framework of a guarantee.
- 8.6 The above liability limitations shall also apply insofar as the customer demands compensation for futile expenses in lieu of a claim for compensation for damages instead of performance.
- 8.7 Insofar as our liability for damages is excluded or limited, this shall also apply for the personal liability for damages of our managers, employees, workers, proxies and vicarious agents.

9. Limitation period

- 9.1 The limitation period for claims for defects shall amount to 12 months, calculated from the start of the statutory limitation period.
- 9.2 A preclusion period of 18 months shall apply for the limitation period for other claims made by the customer that are not subject to the limitation period for claims for defects. It shall begin from awareness of the damages and of the author of the damages.
- 9.3 The statutory limitation periods shall remain unaffected by the above regulations in the following cases:
- in the event of a delivery recourse in accordance with Art. 478 and 479 BGB;
 - for defects in construction work/construction material as named in Art. 438 para. 1 no. 2; 634a para. 1 no. 2 BGB;
 - for damages for culpable harm to life, bodily harm or harm to health;
 - in the event of intention or malice or gross negligence by us or by our legal proxy or vicarious agents;

- for the customer's right to withdraw from the contract in the case of a breach of obligations for which we are responsible that does not lie in a fault in the sales item or work;
- for mandatory liability in accordance with the ProdHaftG;
- for claims within the framework of a guarantee.

10. Retention of title

- 10.1 We shall retain ownership of the sale item until all payments resulting from the business relationship with the customer have been received. If the customer breaches the contract, in particular through a delay in payment, we shall have the right to repossess the sale item. The repossession of the sale item by us shall be considered as withdrawal from the contract. After repossession of the sale item we shall be entitled to its utilisation; the utilisation revenues shall then be set off against the customer's liabilities, less reasonable utilisation costs.
- 10.2 The customer shall be obliged to treat the sale item with due care; the customer shall particularly be obliged, at its own expense, to sufficiently insure the item against damages due to fire, water, and theft at replacement value and to store the goods in a dry place at an appropriate temperature. Provided that maintenance or inspection works are required, they shall be carried out by the customer in a timely manner and at its own expense.
- 10.3 In the event of a seizure of property or other interventions of third parties, the customer must immediately notify us in writing so that we are able to take legal action pursuant to Art. 771 ZPO [German Code of Civil Procedure]. To the extent that any such third party may not be capable of compensating us for any legal and out-of-court costs involving such an action according to Art. 771 ZPO, the customer shall be liable for the losses incurred by us.
- 10.4 The customer shall be entitled to resell the sale item in the ordinary course of business; however, the customer shall now assign to us all claims, amounting to the final invoice amount (including VAT) of our claim, to which it is entitled against its buyers or third parties due to resale, regardless of whether the sale item was resold with or without further processing. The customer shall remain authorised to collect any such claim even after the assignment. Our right to collect the claim ourselves shall remain unaffected. We undertake not to collect the claim however if the customer meets its payment obligations from the revenues received, does not enter into any default of payment, and if in particular no application for commencement of any insolvency proceedings has been filed, nor does any case of cessation of payment exist. If this should be the case, we may demand that the customer discloses to us the assigned claims and their debtors, that it provides us with all information necessary for the collection of the claim, that it hands over all relating documents, and that it notifies the debtors (third parties) of such assignment.
- 10.5 Processing or transformation of the sale item by the customer shall always be carried out for us. If the sale item is processed involving items other than those belonging to us, then co-ownership of the item thus processed shall be granted to us in proportion of the value of the sale item (final invoice amount incl. VAT) to the other processed items at the time the processing takes place. With regard to the item generated through further processing, the same shall apply as to the sale item delivered under retention of title.
- 10.6 If the sale item is inseparably mixed with items other than those belonging to us, then co-ownership of the item thus generated shall be granted to us in proportion of the value of the sale item (final invoice amount incl. VAT) to the other mixed items at the time the intermixture takes place. If the mixing is done in a way that the customer's item is to be seen

as the main item, then it shall be deemed to be agreed that co-ownership shall be granted to us by the customer proportionally. The customer shall keep the sole or co-ownership thus generated on our behalf.

- 10.7 The customer shall, for the purpose of securing our claims against it, also assign to us those claims to which it is entitled against any third party due to the combination of the sale item with real estate.
- 10.8 We undertake to release, upon the customer's request, the securities to which we are entitled to the extent that the realisable value of our securities exceeds the claims to be secured by more than 10%. The selection of the securities to be released shall be at our discretion.

11. Special provisions for commission processing
 - 11.1 Insofar as not otherwise stated below, these Terms of Sale shall also apply for commission processing.
 - 11.2 The invoicing shall be made based on the delivery weight. Any loss of material shall be borne by the customer.
 - 11.3 In the event of damage or other detrimental change to the material during processing by us or during storage by us or loading/unloading or transport for which we are responsible on our business premises, our liability for damages shall be limited to the amount of remuneration agreed with the customer for the processing of the damaged material. This liability limitation shall not apply insofar as the customer asserts claims for damages that are based on intention or gross negligence, including the intention or gross negligence of our proxies or vicarious agents. Likewise, it shall not apply for our liability due to culpable harm to life, bodily harm or harm to health and for mandatory liability in accordance with the ProdHaftG and liability within the framework of a guarantee.
 - 11.4 The customer shall hold insurance for its goods at their full value.
 - 11.5 We shall acquire a legal right of lien on the material that the customer provides for machining or processing and that comes into our direct possession. This right of lien applies for all claims that we have against the customer. This right of lien also extends to future or conditional claims and shall expire as soon as approved by us the material leaves our direct or indirect possession. The statutory provisions shall apply for the use of the lien provided that the value of the lien is established with binding effect by an independent expert to be appointed by us.

12. Place of jurisdiction – Place of performance
 - 12.1 Insofar as the customer is a trader, our place of business is in the jurisdiction of Iserlohn; however we shall be entitled to also bring legal action against the customer at its domicile.
 - 12.2 The law of the Federal Republic of Germany shall apply, to the exclusion of the UN law on sales (CISG United Nations Convention on Contracts for the International Sales of Goods).
 - 12.3 Unless otherwise stated in the order confirmation, our place of business in Iserlohn shall be the place of performance.

13. Final provisions
 - 13.1 If individual provisions are or become invalid, this shall not affect the validity of the remaining provisions. In the place of the invalid provisions, such regulations shall be introduced that come as close as possible to the commercial purpose of the contract with respect for the interests of both parties.

13.2 All our previous terms and conditions of sale and delivery shall be superseded by these Terms of Sale.

Note in accordance with Art. 33 BDSG [German Federal Data Protection Act]: the customer's data will be processed electronically.