

General Terms and Conditions of Purchase of Klöckner Stahl- und Metallhandel GmbH

I. Applicability

1. These General Terms and Conditions of Purchase shall apply to all – also future – orders of goods and services and to their execution. Any terms and conditions used by the Seller which are inconsistent with or deviate from these General Terms and Conditions of Purchase will not be recognized by us unless otherwise provided for in these General Terms of Purchase or in the agreement with the Seller. If we accept goods without any express objection, this shall in no way constitute acceptance of the Seller's conditions by us.
2. Any agreements made by our employees orally shall become binding only upon written confirmation by us.
3. Offers submitted to us shall be cost-free and non-binding for us.
4. Commercial terms and conditions shall be interpreted in accordance with the Incoterms, as amended.

II. Prices

1. The agreed price is a fixed price.
2. If the price is quoted "free delivery", "free ... destination" or if delivery is made in any other way "free -/freight paid", the price includes freight and packaging costs. If delivery is not made freight paid, we will pay only the lowest possible freight costs unless we require a special kind of shipment.

III. Payment

1. In the absence of other agreements or of more favourable conditions of the Seller, payments must be made within fourteen days with a discount of three percent or net by thirty days time.
2. Payment and discount periods shall begin to run upon receipt of the invoice, but not before receipt of the goods or, in the case of services, not before their acceptance and, where documentation, test certificates (e.g. works certificates) or similar documents are a part of contractual performance, not before their delivery to us in compliance with the agreement.
3. Payments shall be made by cheque or bank transfer. Payment is made in time if the cheque is mailed on the due date or the transfer instructions are given to the bank on the due date.
4. Maturity interest cannot be demanded. The default interest rate is 5% above the base interest rate. In all cases, we have the right to prove a lower amount of loss than demanded by the Seller.
5. We have set-off and retention rights to the extent provided for by the law.

IV. Delivery Periods / Default in Delivery

1. Agreed delivery dates and periods are binding. We must be informed promptly in writing of any imminent delay in delivery. At the same time, suitable measures to avert the consequences must be proposed to us.
2. The delivery date or the delivery period shall be deemed observed if the goods are received in time by us, unless otherwise agreed in writing.
3. If the Seller is in default in delivery, we shall have the statutory claims. In particular, we shall have the right to demand damages instead of performance after a reasonable additional period fixed by us passes without delivery being made. Our right to demand delivery shall be excluded only if and when the Seller pays damages.
4. The Seller can refer to the absence of necessary documents to be delivered by us, in the event of a default in delivery, only if the Seller did not receive the documents in spite of a written reminder.

V. Retention of Title

1. With respect to the Seller's rights arising from retention of title, the simple retention of title shall be deemed agreed so that title to the goods shall pass over to us upon payment for the goods, and accordingly the extended retention of title (processing reservation) and the prolonged retention of title (retention of title extending to customer claims) as well as the current account reservation shall not be deemed agreed on.
2. The Seller can demand that the goods be returned on the basis of retention of title only if the Seller first cancels the agreement.

VI. Deliveries, Passing of the Risk

1. The Seller shall bear the risk of accidental destruction and of accidental deterioration, also in the case of delivery "freight paid" and "free house", up to the delivery of the goods at the place of destination.
2. Part shipments require our consent.
3. The delivery of excess or insufficient quantities shall be allowed only within the limits customary in trade.
4. Packing costs shall be borne by the Seller, unless otherwise agreed in writing. If in any case we bear the packaging costs, they must be invoiced to us in the lowest possible amount. The duties to take back packaging shall be subject to the Packaging Regulation of 21 August 1998, as amended.

VII. Declarations on Status of Origin

If the Seller makes declarations on the status of origin of the goods sold, the following shall apply:

1. The Seller undertakes to make the verification of documentary evidence of origin by the customs authorities possible and to give the necessary.
2. The Seller shall be obliged to pay damages which arise if the declared place of origin is not recognized by the competent authorities, in consequence of a defective confirmation or the absence of a possibility for the authorities to verify the status of origin, unless the Seller is not responsible for these consequences.

VIII. Liability for Defects, Limitation

1. The Seller must provide the goods to us free from any defects and free from legal imperfections in title. The Seller warrants in particular that its deliveries and services will be in compliance with the recognized state of the art and with the contractually agreed properties and norms.
2. Suppliers who supply products which are intended to be built into motor or utility vehicles must at the time of the conclusion of the Agreement have sufficient motor vehicle recall insurance coverage including the recall of utility vehicles.

Products are deemed to be intended to be built into motor or utility vehicles if:

their use for this purpose is provided for in the Agreement between the Supplier and us;

or

the products are suitable for use in motor or utility vehicles and are made in a way which is usual or common for things of the same kind to be built into motor or utility vehicles, or which the Buyer can expect in view of the nature of things.

In the event of a violation of sentences 1 and 2 above, the Supplier shall be liable to us for damages, especially in the amount of the recall costs as well as any legal costs. The supplier must release us from any third-party damage claims in this respect.

The existence of the recall insurances is to be proved by the Supplier upon the conclusion of the Agreement.

3. Upon receipt by us, the goods will be checked for quality and completeness, to the extent reasonable and technically possible for us. Notices of defects are made in time if they are received by the Seller within eight workdays by letter, telefax, email or telephone. The period for making a notice of defect shall begin at the point in time at which we or, in the case of chain-of-delivery business, our buyers become or should have become aware of the defect.
4. If the goods are defective, we shall have the statutory rights at our option. Remedial efforts by the Seller shall be deemed to have failed already after the first unsuccessful attempt. We have the right to cancel the agreement also if the Seller's breach of duty is insignificant.
5. We can demand a refund of expenses from the Seller in connection with a defect to the extent that we must bear such expenses in relation to our Buyer, provided the defect existed also at the time of the passing of the risk to us.
6. Our defect-based claims shall be subject to the statutory limitation periods. They shall begin to run upon a notice of defects made in time within the meaning of no. 2 above. The Seller's liability for defects shall end no later than ten years after the delivery of the goods. This limitation shall not apply insofar as our claims are based on facts which the Seller knew or which he could not fail to know and which he did not disclose to us.
7. The Seller hereby already assigns – on account of performance – to us all claims which he may have against his suppliers on the occasion of or in connection with the delivery of defective goods or of goods lacking promised or warranted properties. The Seller shall deliver all documents to us which are necessary to assert such claims.

IX. Place of Performance, Jurisdiction, Governing Law

1. The place of performance for delivery is our place of business, unless otherwise agreed.
2. The place of jurisdiction is the domicile of our main office. We can also sue the Seller at his place of jurisdiction and at the place of jurisdiction for our branch office registered in the commercial register which the agreement was concluded with.
3. All legal relations between us and the Seller shall in addition to these provisions be governed by German law, including the provisions of the United Nations Convention on Agreements for the International Sale of Goods of 11 April 1980.