

General Terms and Conditions of Sale (GT&C) for Deliveries and Services (March 2023)

1. Scope

These Terms and Conditions of Sale apply exclusively and only vis-à-vis enterprises within the meaning of Section 310, para 1 BGB (German Civil Code).

2. Content of contract

2.1 We supply and provide services in accordance with our written confirmation of order and these General Terms and Conditions of Sale. The following regulations for deliveries therefore apply accordingly even for other services

2.2 Contrary contractual conditions of the party ordering or contractual conditions of the party ordering which deviate from the General Terms and Conditions of Sale shall only become binding for us if we expressly recognize them in writing. Acceptance of the delivered goods shall be considered recognition of our terms and conditions

2.3 The contract of delivery shall apply even if individual provisions are not effective. The party ordering cannot assign rights ensuing from the contract. These General Terms and Conditions of Sale also apply for all future business transactions with the party ordering providing it is a case of legal transactions of a related nature.

3. Price and payment

3.1 Offers are non-binding. Our prices are based on the costs stated in the order confirmation and are stated net without the value added tax and other expenditures statutory in the recipient's country. These costs are to be paid by the ordering party unless an agreement is made to the contrary. Appropriate price adjustments can be made in the case of significant changes in our processing costs. Metal price fixations cannot be adjusted retrospectively. Specification of the metal price fixation has to be effected at short notice. Acceptance has to be effected within 3 months after the fixing date stated in the metal price fixation unless agreed upon to the contrary. Should the goods not be accepted within this period, we are entitled as from the due date, to claim compensation for the remaining quantity, to hold the quantity not delivered at disposal and to invoice with price adjustment for prompt payment. The Terms and Conditions of Payment, the determination of the decisive processing and material price, the treatment of the packaging and the freight charges shall be regulated in accordance with price lists valid at the time, which are therefore an integral part of these Terms and Conditions of Sale.

3.2 We reserve the right to adjust our prices on equitable discretion with reference to the development, which is not attributable to us, of external cost, which have a proven impact for our price calculation. A price increase will be made, if for example there's an increase of costs based on purchase of raw material (e.g. transport or packing), the purchase of energy (e.g. power or gas), regulations by public authorities (e.g. taxes, environmental fees, market regulations like minimum prices) or Force Majeure (e.g. pandemics, war, riots, strikes), which leads to a change for our cost situation. Increases in these external cost parameters will be used in an appropriate range, taking into account the respective situation between benefit and reward as well as the interests of the buyer. The buyer may prove that the increase, calculated by the seller, is smaller due to less increases in the external cost parameters.

3.3 In case of an increase in customs fees the respective contract price will be increased accordingly by the same amount. The buyer may prove that the increase is smaller.

3.4 Payment of the purchase price is to be made exclusively to one of our bank accounts. Unless an agreement is made to the contrary, the purchase price is to be settled immediately after delivery of the goods.

3.5 Discount is only granted in case of an express written agreement. Payment has to be made to one of our bank accounts.

4. Delay in payment and credit expiry

4.1 The party ordering comes into arrears without any reminder having to be sent if he does not pay in accordance with the agreement. In the case of delay in payment our entire claims shall become due. The party ordering is not permitted to sell goods which remain in our ownership or co-ownership. The same applies if we contend that justifiable doubt exists concerning the credit worthiness of the party ordering.

4.2 Irrespective of other claims on account of default in payment, we are entitled to payment of interest on our claim – as from the due date of payment – at a rate of 9 percent above the basic interest rate.

4.3 The ordering party grants us a right of lien on the material left with us for execution of the contract and claims arising in its place as security with respect to all present and future claims arising from the business relationship with him. If the party ordering should come into arrears or his credit should expire, we shall be entitled to sell the pledged material privately at the price rate valid on the exchange (quotation of the London Metal Exchange), in the case of the price not being quoted, at the average German market price on the day of coming into arrears of payment or the credit expiring.

5. Rights of set-off, retention and transfer of payment rights

5.1 The party ordering only has the right to set-off if his counter claims are legally ascertained or undisputed. In order to exercise a right of retention, the ordering party is only authorized to do so providing his counter-claim ensues from the same contractual relationship.

5.2 The buyer hereby expressly agrees that we are entitled to transfer our payment rights from the respective order/contract to third parties for financing issues (e.g. factoring).

6. Obligation to deliver

6.1 After expiry of an acceptance period, we are no longer obliged to deliver. Partly deliveries are permissible.

6.2 Our delivery obligation is subject to the reservation of proper and timely self-delivery, unless the improper or delayed self-delivery is the result of our culpability.

6.3 We may resign from the contract, demand payment in advance or make our delivery dependent on the provision of securities if, after concluding the contract, circumstances become known to us which justify doubt in the credit worthiness of the ordering party. These rights exist in particular when due claims are not settled immediately despite a reminder.

6.4 Fulfilment of the contract on the part of KME is subject to the nonexistence of hindrances in execution due to national or international provisions of foreign trade law and to the non-existence of embargos as well as no embargos and/or other sanctions which might be an impediment.

7. Delivery period

7.1 Delivery periods or dates only show the approximate time of delivery ex works or warehouse. Commencement of the delivery period indicated by us assumes clarification of all technical questions as well as the punctual and correct fulfillment of the obligations of the ordering party. Defense of lack of performance of the contract remains possible. If the party ordering comes into delay with acceptance or negligently violates other obligations of co-operation, then we shall be entitled to demand compensation for any damages which might arise for us, including any extra expenses. We also reserve the right to enforce further claims. In so far as circumstances as described above exist, the risk of the accidental loss or of an accidental deterioration of the item of sale is transferred to the ordering party at the time when the latter comes into default concerning acceptance or debt.

7.2 If a binding delivery period is agreed upon, this period will be extended by an appropriate and reasonable time in the case of force majeure.

7.3 We only come into default if delivery is not effected within a reasonable period of grace after a written reminder being issued by the ordering party. A further pre-requisite is that the ordering party himself is not in default regarding a business transaction in the context of this business relationship.

8. Place of fulfilment and transfer of risk and force majeure

8.1 Place of fulfillment for the delivery is the location of our supplying plant in question. Place of fulfillment for the payment is our business domicile.

8.2 All risks are transferred to the ordering party at the latest when the goods leave the supplying plant, or are registered as ready for collection or shipping.

8.3 Force majeure is to be considered as such circumstances and incidents which it is impossible to prevent with the due care and caution of due and proper business management. Force majeure of any kind, loss of production, operational interruptions or stoppages of traffic, fire damage, flooding, lack of labour, power, raw and process materials, strikes, lockouts, obstructions in shipments, official decrees or other obstructions which are not our responsibility and which delay, reduce or render unacceptable the production, dispatch, acceptance or consumption shall discharge us from the obligation for effecting deliveries or acceptance for the duration and the scope of the obstruction. If the delivery and/or acceptance is extended by more than eight weeks as a result of the disturbance, we are entitled to withdraw. In the event of partial or complete loss of our procurement sources, we shall not be obliged to obtain cover from outside suppliers. In such cases, we shall be entitled to distribute the available quantities of goods taking account of own requirements. No further claims exist on behalf of the ordering party.

9. Packaging material

Providing nothing has been agreed to the contrary, we only take back packaging material in cases when we are obliged to do so by means of the law governing packaging.

10. Guarantee against defects and notice of defects

10.1 Guarantee rights of the ordering party assume that the latter has correctly fulfilled the duty he owes according to section 377 HGB (German Commercial Code) to examine and requirement to make a complaint in respect of a defect immediately on receipt of the goods. Should complaints arise despite the greatest of attention, obvious defects are to be put forward immediately, at the latest 14 days after receipt of the goods, concealed defects immediately after they have been discovered, otherwise the goods shall be considered as approved.

10.2 Claims concerning defects in the quality expire in 12 months after delivery of the goods supplied by us has taken place to our ordering party. There is no guarantee in the case of used goods. The above provisions do not apply in so far as the law imperatively prescribes longer periods in accordance with section 438 para 1 item 2 BGB (structures and things) section 479 para 1 BGB (right of recourse) and section 634a para 1 BGB (construction defects). We have to give our consent before goods are returned to us.

10.3 If, despite all the care applied by us, a defect is discovered in the delivered goods, which was already present at the point in time of the transfer of risk, we shall either repair the goods or supply a replacement at our own choice, provided the complaint was made in time. We are always to be given the opportunity of subsequent fulfillment.

10.4 If the subsequent improvement is not successful, the ordering party – regardless of any claims to damages – can rescind the contract or reduce the remuneration. The ordering party cannot demand replacement for efforts which have failed.

10.5 All claims based on defects assume that the defect was communicated to us directly after it was ascertained and a sample of the goods complained about was made available to us. Claims based on defects do not exist in the case of only insignificant deviations from the agreed quality, in the case of only insignificant restriction of use, in the case of natural wear and tear as well as of damages which occur after the transfer of risk as a consequence of incorrect or negligent treatment, excess use, unsuitable equipment, faulty construction work, unsuitable building ground, or due to special external influences which are not provided for in the contract. If the party ordering or a third party undertakes incorrect maintenance work or alterations, equally no claims based on defects can be enforced for these and the consequences ensuing from this.

10.6 Claims by the ordering party on account of expenses necessary in connection with the subsequent improvement, in particular transport costs, tolls, labour and material costs, are excluded in so far as the expenses are increased because the goods supplied by us were subsequently brought to a location other than the establishment of the party ordering, unless this removal of the goods was in compliance with the use for which they were intended.

10.7 Recourse claims of the ordering party against us only exist in so far as the party ordering did not make any agreements with his customer going beyond the legally compelling claims based on defects. Concerning the extent of the ordering party's recourse claim against the supplier clause 10.6 shall furthermore apply accordingly.

10.8 More extensive claims or claims other than those of the nature provided for here in clause 10 of the ordering party against us and our vicarious agents on account of a material defect are excluded.

10.9 For other claims for compensation due to defects and additional expenses of the ordering party the provisions of clause 12 shall furthermore apply.

10.10 In the case of the fraudulent non-disclosure of a defect or in the case of taking over a guarantee for the quality of the goods at the point in time of the transfer of risk within the meaning of section 443 BGB (declaration of the seller that the object of sale had a particular property at the time of transfer of risk and that the seller, irrespective of liability, wants to be answerable for all consequences of the defect) the rights of the ordering party are exclusively in accordance with the legal provisions.

11. Industrial property rights, copyrights; defects of title

11.1 Providing nothing else is agreed, we are only obliged to bring the delivery to the country in which the place of delivery is located free of industrial property rights and copyrights of third parties (hereinafter referred to as „property rights“). Should a third party bring justified claims against the ordering party on account of violation of property rights by deliveries made by the supplier and used in accordance with the contract, we are liable vis à vis the ordering party within the period stipulated above in clause 11.1 as follows:

a. We shall, according to our own choice and at our expense, either obtain a usufructuary right for the deliveries in question, or change them in such a way that the property right is not violated, or make an exchange. If it is not possible for us to do this according to reasonable conditions, the ordering party shall be entitled to enforce the statutory rights concerning rescission and reduction. The ordering party cannot demand compensation for futile expenses.

b. The provisions of clause 12 shall apply with regard to any claims for compensation.

c. Our above-mentioned obligations only exist providing the ordering party has informed us immediately in writing about the claims being enforced by the third party, a violation is not recognized and we are entitled to take all defensive measures and conduct settlement negotiations. If the ordering party stops use of the delivery for reasons of reducing the damages or other important reasons, he is obliged to point out to the third party that ceasing to use the objects is in no way linked to recognition of a violation of protective rights.

11.2 Claims by the ordering party are excluded insofar as he has to represent the violation of protective rights.

11.3 Claims by the ordering party are furthermore excluded in so far as the violation of property rights has been caused by special instructions of the ordering party, by an application which could not have been foreseen by us or as a result of the fact that the goods supplied were changed by the ordering party or used together with goods not supplied by us.

11.4 In the case of violations of property rights, the provisions of clauses 10.3 and 10.7 furthermore apply accordingly with regard to claims of the ordering party as provided for in clause 11.1 a.

11.5 In the case of the presence of other defects of title the provisions of paragraph 10 shall apply accordingly.

11.6 Claims which are more extensive or different from those provided for in this paragraph 11 by the ordering party against us and our vicarious agents on account of a defect in title are excluded.

11.7 In the case of the fraudulent non-disclosure of a defect or in the case of taking over a guarantee for the quality of the goods at the point in time of the transfer of risk within the meaning of section 443 BGB (declaration of the seller that the object of sale had a particular property at the time of transfer of risk and that the seller, irrespective of liability, wants to be answerable for all consequences of the defect) the rights of the ordering party are exclusively in accordance with the legal provisions.

12. Other claims or damages

12.1 In the case of a pre-contractual, contractual and / or non-contractual violation of duty, also in the case of a defective delivery, tortious act and producer's liability, we are liable concerning compensation for damages and compensation for expenses – subject to further contractual or statutory liability requirements – only in the case of intent, gross negligence as well as in the case of violation of an essential contractual duty (contractual duty, the violation of which endangers the fulfillment of the contractual purpose) with slight negligent violation. However, our liability – except in the case of intent and gross negligence – is limited to the damages typical to the contract which were foreseeable at the time the contract was concluded. It is not permissible for the ordering party to enforce futile expenses.

12.2 In case of a delay, which is attributable to us, we will pay liquidated damages up to 0.5 % per full delayed week of the purchase price for the delayed delivery, however, limited up to a maximum amount of 5 % of the purchase price for the delayed delivery.

12.3 Under no circumstances and for no legal reasons whatsoever the Parties will be liable to each other for any consequential, indirect, punitive and special damages or losses – as far as legally possible.

12.4 Apart from a violation of essential contractual duties, liability for minor negligence is excluded. The provision of item 12.2 remains unaffected.

12.5 The exclusions and restrictions of liability contained in the provisions of clauses 12.1 to 12.3 do not apply in the case of taking over a guarantee for the quality of the goods within the meaning of section 443 BGB, in the case of the fraudulent non-disclosure of a defect, in the case of damages involving injury to life, bodily harm or damage to health as well as in the case of obligatory liability in accordance with the product liability law.

13. Inspection and acceptance of goods

An agreed acceptance of goods under special test conditions is to be carried out in our works. The costs of the acceptance orders are to be borne by the ordering party. If the ordering party omits this test the goods shall be considered as supplied in accordance with the contract when they leave our works.

14. Binding nature of drawings, illustrations, dimensions and weights

Drawings, illustrations, dimensions and weights are only approximate indications unless they have been expressly described as being binding. Deviations of up to 10 % are possible in weight, no. of pieces or dimensions, providing DIN/EN norms are not an obstacle to this. Supplies of goods are subject to deviations in diameter, weight or structure as a result of the raw material or production: overlengths or underlengths as customary in the trade are permissible. The ordering party has to vouch for the fact that drawings for execution of the order submitted by him do not impede the property rights of third parties. He is to keep us free of damages in the case of recourse claims.

15. Documentation submitted to us

We retain property rights as well as copyrights concerning all the documentation submitted to the ordering party in connection with the placing of the order, e.g. calculations, drawings etc. This documentation must not be made available to third parties unless we give the ordering party our express written agreement on this subject. If we do not accept the offer of the ordering party this documentation is to be returned to us immediately.

16. Quality of the goods, technical advice, use and processing

16.1 Information on the scope of supply, measurements, weight, materials, looks and performance serve as descriptions of the delivery item and are no guarantee of the goods' quality and durability. An acceptance of guarantee has to be effected explicitly and in writing in order to become legally effective. If, at the time of passing of risk, the goods are lacking a warranted property, the rights of the ordering party shall be in strict accordance with the legal regulations. Under no circumstances can a property be guaranteed, if it is not identified until after mixing or joined with other substances or objects. Public statements, sales pitches and advertisements do not represent a quality description of our products.

16.2 Our written or verbal advice or trials with regard to application are carried out to the best of our knowledge, nevertheless they are to be considered as non-binding information only, also with regard to possible property rights of third parties; this information does not release the ordering party from verifying and testing the products delivered by us on his own behalf in order to ascertain their suitability for the envisaged processes and purposes. The application, use and processing of our products takes place outside the sphere of our control, and is therefore exclusively the responsibility of the ordering party.

17. Rights to tools

By paying a share of the cost of the tools, the ordering party does not acquire any rights to the tools.

18. Retention of title

18.1 Until complete payment of all our claims, also claims which arise in future, the goods remain our property. The ordering party is obliged, as long as ownership has not yet been transferred to him, to store the goods separately and treat them with great care. The ordering party is entitled to process and to sell the goods under consideration of the following conditions: In so far as the goods are further processed or re-formed by the ordering party, we are considered as manufacturer within the meaning of section 950 BGB and acquire ownership of the interim or final products. The working and processing or reforming of the item of purchase is undertaken for us by the ordering party without any obligations arising from this. The processor is only the safekeeper. If the goods under retention of title are combined or processed together with other objects which do not belong to us, we acquire co-ownership of the new item in the proportion of the value of the goods under retention of title to the other objects.

18.2 The goods may only be sold in the context of customary and correct business transactions and only providing that claims ensuing from selling on have not previously been assigned to third parties. The claims ensuing from the selling on which are due to the ordering party are considered to be assigned to us on conclusion of the contract of sale, also in cases where our goods are combined or processed with other objects. In this case the assigned claims serve as our security only to the amount of the value of the goods under retention of title in each case. The ordering party is entitled to collect the debts himself as long as he has not received any orders from us. He has to transfer the money he has collected to us immediately in so far as our claims are due. The ordering party, however, is obliged on request to surrender the third debtor to us and to notify him of this assignment. Our authority to collect the claim ourselves remains unaffected by this. We shall, however not collect the claim providing the ordering party fulfils his obligations to pay from the proceeds collected, is not in default of payment and, in particular, no application has been made to instigate bankruptcy proceedings and no suspension of payments exists.

18.3 Pledges or transfers by way of security of the goods under retention of title and the assigned claims are not permissible. The ordering party is to inform us immediately in writing about any access by third parties to the goods delivered under retention of title or to the assigned claims. In so far as the third party is not in the position to reimburse us the costs of proceedings in court or out of court in accordance with section 771 ZPO (Code of Civil Procedure), the ordering party is liable to us for the loss. We commit ourselves to release the assigned claims according to our choice, providing they exceed our claims requiring security by more than 20% and they are based on supplies, which have been fully paid for.

18.4 In the case of violations of duty by the ordering party, in particular in the case of default in payment, we are entitled to cancel and withdraw: The ordering party is obliged to surrender possession. The withdrawal or enforcing of the retention of title does not require any cancellation on our part.; these actions or a pledging of the goods under retention of title by us does not constitute a cancellation of contract unless we had expressly declared this.

18.5 If, in the case of sales abroad, the right of retention of title agreed in this clause 18 is not permissible with the same effect as in German law, the goods shall remain our property until the payment of all claims ensuing from the contractual relationship relating to the sale of goods. If this right of retention of title is also not permissible with the same effect as in German law, it is, however, allowed to reserve other rights to the goods, and we are therefore authorized to exercise all these rights. The ordering party is obliged to cooperate in measures which we want to enforce in order to protect our property rights or want to have an other right to the goods in lieu of this.

19. Notes concerning electronic business transactions

If for the purpose of concluding a contract concerning the supply of goods or concerning the provision of services, we use the services of a tele or media service (contract in electronic business transactions) within the meaning of section 312a of the BGB, the ordering party dispenses a) with the provision and explanation of a system with the help of which he can recognize and correct entry mistakes prior to submitting his order and b) with information regarding (i) the steps to be implemented prior to concluding the contract, (ii) the storing of the contract text after concluding the contract and accessibility for the customer (iii) the languages available for concluding the contract.

20. Data protection

For the purposes of the contractual relation, the processing of personal data will be carried out in compliance with current legislation on personal data protection and, specifically, with the provisions of General Data Protection Regulation (EU) 2016/679 ("GDPR") and subsequent modifications and additions, as well as any other regulatory provisions applicable to the processing in question.

21. Applicable law and place of jurisdiction

21.1 On all legal relationships ensuing from the sale, the material law of the Federal Republic of Germany shall apply, excluding its conflict of law provisions and the regulations of the UN Sales Convention on Contracts for the International Sale of Goods (“CISG”).

21.2 Place of jurisdiction for both parties is our place of domicile. If we are appearing as plaintiff, we are also entitled to bring action at the place of domicile of the ordering party.