

# General Terms and Conditions

**DEXTRA Stahl GmbH**  
**Lindenstraße 3 - 5**  
**41515 Grevenbroich**

## **I. General**

1. The following conditions apply to all domestic and foreign sales of goods and services related to entrepreneurs pursuant to Section 14 Para. 1 of the BGB [*German Civil Code*].
2. General Terms and Conditions or Purchasing Conditions of the ordering party that contradict these conditions are non-binding for us even if they are the basis for the order and regardless of whether we have expressly objected to the contents thereof. The corresponding General Terms and Conditions of the ordering party are hereby expressly objected to.
3. Our General Terms and Conditions also apply for future deliveries and for deliveries of spare parts and accessories regardless of whether reference is made to our General Terms and Conditions in the process.

## **II. Offers / Conclusion of Contract**

1. Our offers (price lists) are not binding to us. Oral agreements, promises, assurances and guarantees by our officers are only binding through our written order confirmation.
2. Information, drawings, figures and performance descriptions contained in prospects, catalogues, price lists or documents that are part of our offer are customary estimates.
3. Any trade terms shall be interpreted according to the Incoterms 2000.

## **III. Prices**

1. Unless otherwise agreed to, only such prices and terms shall apply as contained in our price lists effective at the time when the contract is concluded. The merchandise will be invoiced "gross for net".
2. Should taxes or other extraneous expenses included in the agreed upon price change or be added later than four weeks after the conclusion of the contract, we shall be authorised to modify the price relative to the respective change.

## **IV. Payment**

1. Payment must be made net without cash deductions, such that we are able to access the funds in the contractually agreed amount and currency on the due date without limitation. Costs for payment transactions are borne by the Buyer. The Buyer may retain or set off any counterclaims only in so far as his claims are undisputed or have become legally binding.
2. We will accept discounted and properly taxed exchanges, provided that this had been expressly agreed upon. Credits via exchange or cheque always apply subject to receipt of corresponding payment amounts. They are executed at the valuation on the date when we have access to the counter value.
3. If the payment deadline is exceeded or in case of default, we will apply annual interest to the amount of 8%-points above the respective basic interest rate. We reserve the right to claim additional damages resulting from late payment.
4. If the Buyer goes into payment default or if after the contract is concluded it becomes clear that our payment claim is at risk, we shall be authorised to make use of rights under Section 321 BGB (German Civil Code). If the

Buyer becomes unable to pay, we are also entitled to make all of our current amounts owed due and payable in full and to demand security deposits or advance payments for outstanding deliveries derived from the relationship to the Buyer or to withdraw from the contract after an appropriate grace period unless an adequate security deposit is provided.

## **V. Delivery**

1. Our delivery obligation is subject to correct and timely supply to ourselves, unless we are responsible for the deficient or late self-delivery. Partial deliveries are permissible unless the extent of the partial deliveries is unreasonable for the ordering party.
2. All schedules and deadlines are not binding to us unless otherwise agreed upon in writing. The delivery deadlines begin on the date of our order confirmation but not before all details of the order are clarified.
3. Delivery deadlines and schedules refer to the time of shipment of the goods ex works. They are deemed to have been met upon notification of shipment readiness if the delivered object cannot be delivered on time for reasons beyond our control.
4. Acts of God [force majeure] entitle us to delay the deliveries by a period equal to the duration of the hindrance and an appropriate lead time. This also applies if such events occur during an existing default period. Acts of God include, among other things, currency, foreign trade and other official sovereign political actions, strikes, lockouts, operational disruptions not caused by us, transportation delays, delays in customs clearance / import clearance and all other circumstances that seriously impede the delivery or render it impossible and that are not caused by us. In the process, it is insignificant whether these circumstances occur at our location, the plant making the delivery or an upstream supplier. If, due to the above events, one of the parties becomes unable to execute the contract, it can withdraw from the contract after an appropriate grace period.

## **VI. Shipment and Transfer of Risk**

1. In all transactions, including DDP, freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse.
2. The obligation and costs for unloading are the Buyer's responsibility.
3. Our goods are in general delivered in unpackaged condition. Only where agreed upon will the goods be packaged. We do not assume the costs that the Buyer incurs to dispose of the packaging.

## **VII. Reservation of Ownership**

1. All goods delivered to the Buyer shall remain our property (Reserved Property) until all of the Buyer's accounts resulting from the business relationship with him, in particular any account balances have been settled. This condition shall apply to any future as well as any conditional claims including accepted notes and such cases where the Buyer will affect payments on specifically designated claims. As soon as the Buyer has settled his accounts with us in full, he shall obtain title to those goods which were delivered to him before such payment was effected.
2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of § 950 BGB (German Civil Code) without committing us in any way. The processed or manufactured goods shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions. If the Buyer manufactures, combines or mixes the Reserved Property with other goods we shall obtain co-ownership in the new goods in proportion to the invoiced price of the Reserved Property to the invoiced price of the other goods. If, by such combining or mixing, our ownership expires, the Buyer herewith transfers to us any rights which the Buyer will have in the new stock or goods in proportion to the invoiced price of the Reserved Property, and he will keep them in safe custody free of charge. Our co-ownership rights shall be regarded as Reserved Property within the meaning of clause V/1 of these Conditions.
3. The Buyer may resell the Reserved Property only within the normal course of his business in accordance with his normal business terms and provided he is not in default of payment and provided also that any rights resulting

from such resale will be transferred to us in accordance with clause V/4 through V/6 of these Conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

4. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such claims shall serve as our security to the same extent as the Reserved Property itself. If the Reserved Property is resold by the Buyer together with other goods not purchased from us, then any receivables resulting from such resale shall be assigned to us in the ratio of the invoiced value of the other goods sold by the Buyer. In the case of resale of goods in which we have co-ownership rights according to clause V/2 of these Conditions, the assignment shall be limited to the part which corresponds to our co-ownership rights.

5. The Buyer shall be entitled to collect any receivables resulting from the resale of the Reserved Property. This right shall expire if withdrawn by us, at the latest if the Buyer defaults in payment; fails to honour a bill of exchange; or files for bankruptcy.

We shall exert our right of revocation only if and in so far as it becomes evident after the conclusion of the contract that payment resulting from this contract or from other contracts is jeopardised by the lack of Buyer's ability to pay. The Buyer shall - upon our request - immediately inform his customers of such assignment and to forward to us any information and documents necessary for collection.

6. The Buyer shall immediately inform us of any seizure or any other attachment of the Reserved Property by a third party. He shall bear any costs necessary to suspend such seizure or attachment or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.

7. Should the Buyer default in payment or should he fail to honour a draft we shall be entitled to take back the Reserved Property, to enter, for this purpose, the Buyer's premises and to sell the Retained Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The statutory regulations of the Insolvenzordnung (= German Insolvency Act) shall remain unaffected.

8. Should the total invoiced value of our collateral exceed the amount of the secured receivables including additional claims for interest, costs etc. by more than 50 %, we shall - upon the Buyer's request - release pro tanto collateral at our discretion.

## **VIII. Grades, Sizes and Weight**

1. Qualities and dimensions are determined in accordance with the agreed standards or, in absence of such an agreement, according to DIN, EN, ASTM, ANSI, GOST or JIS standards and mills standards / material data sheets effective at the time of the conclusion of the contract or in absence of such standards with trade practice and usage.

2. A reference to standards, material data sheets or material test certificates shall not be regarded as warranty of fitness for a special purpose nor as a guarantee, nor is information on qualities, dimensions, weights and utility; neither are certificates of conformity, manufacturers' declarations and corresponding labels. The weight of the goods shall be determined on our or our suppliers' scales.

## **IX. Warranty Provisions**

1. The Buyer shall immediately notify us in writing of any defects of the goods, at the latest seven days after their delivery. Defects which, even upon careful inspection, cannot be discovered within this period must be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the Buyer must suspend any processing or manufacturing of the goods.

2. For justified complaints, we will repair or replace the affected goods at our discretion. The defective goods must be sent back or submitted to us at our request. Should we fail or decline the substitution, the Buyer may, upon the elapse of an adequate additional period of time set to us, withdraw from the contract or reduce the purchase price. In cases where the defect is only minor or where the goods have already been resold, processed or transformed, he may only reduce the purchase price.

3. We will reimburse the Buyer for his expenditures in connection with the substitution only in so far as such expenditures are reasonable and proportional to the purchase price of the goods, in no case more than 150 pct of the purchase price. We will bear any further expenses such as for the mantling and dismantling of the defective goods only in accordance with the rules of Section XI of these Conditions.

4. Our further liability is subject to Section X. Any of the Buyer's rights of recourse according to §§ 478, 479 BGB (German Civil Code) shall remain unaffected.

#### **X. Limitation of Liability and Statute of Limitations**

1. Our liability for breach of contractual or extra-contractual obligations, in particular for non-performed or deferred deliveries, for breach of duties prior to the contract ("Verschulden bei Vertragsanbahnung") as well as for tortuous acts - including our responsibility for our managerial staff and any other person employed in performing our obligations - shall be restricted to damages caused by our wrongful intent or by our gross negligence.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; it shall neither pertain to damages to life, to the body or to health caused by our fault nor to any cases where we have guaranteed certain characteristics of the goods. Nor shall such clause affect our statutory liability laid down in the Product Liability Act (Produkthaftungsgesetz) of 15/12/89. Any statutory rules regarding the burden of proof shall remain unaffected by the aforesaid.

3. Unless otherwise agreed to any contractual claims which the Buyer is entitled to in connection with the delivery of the goods shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This term also applies to such goods that, according to their normal purpose of use, have been used for constructional works related to real estate property and which have caused damage within this construction. Unaffected by this is our liability for wrongful intent and gross negligence as well as the statutory limitation of legal recourse claims.

#### **XI. Place of Performance / Jurisdiction / Applicable Law**

1. The place of fulfillment for our deliveries and for payments of the Buyer is our seat in Grevenbroich.

2. The place of jurisdiction for all present and future claims from this business relationship, and for summary proceedings based on bills of exchange and documentary evidence is Grevenbroich, Germany. However, we reserve the right to initiate legal proceedings against the ordering party before the competent court at its seat.

3. For all legal relationships between the ordering party and us, German law applies exclusively, excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1980.

#### **XII. Miscellaneous**

1. Changes or supplements to the contract must be done in writing; side agreements are not valid. This form requirement can only be waived in writing.

2. If individual clauses of the present terms and conditions or parts thereof become ineffective, neither the effectiveness of the remaining clauses and rules nor the effectiveness of the contract concluded with the ordering party shall be affected. Moreover, with regard to commercial trade, the following applies: In place of the affected clause, a term shall be agreed upon that closely resembles the economic intent of the original clause in a manner permitted by law.

3. In cases of doubt, the German version of these General Conditions of Sale shall apply.

Date: September 2009