
General Terms & Conditions of Sale & Delivery of Interfer – Steel and Commodities GmbH

- as of January 1, 2013 -

I. Scope

1. These General Terms & Conditions of Sale & Delivery (hereinafter referred to as the “General Conditions”) shall apply to all – present and future – contracts with the customer on deliveries and other services, including any agreements entered into at any future date. These General Conditions shall also apply in the event that a customer refers to its general terms and conditions in its purchase order or a confirmation notice, unless we have agreed explicitly to these general terms and conditions in writing.
2. For the interpretation of trade terms, in case of any doubt, the Incoterms in their most recent version shall apply.

II. Offers, Conclusion of Contract

1. Our offers are subject to confirmation and are non-binding, unless expressly stipulated as fixed prices.
2. The fulfilment of the contract is subject to a cover note having been granted by a commercial credit insurance company arranged by us. If the cover note is withdrawn by the commercial credit insurance company after the conclusion of the contract and prior to the delivery of the goods for reasons within the responsibility of the customer, the customer shall make available on demand an alternative security for our claims under the contract prior to the delivery of our goods. Otherwise, we shall be entitled to refuse the delivery of the goods and to withdraw from the contract.
3. In case of oral agreements and side agreements, in particular warranties and other details relating to delivery times and quality of materials, our written confirmation shall be binding.
4. Our obligation to deliver shall be subject to the full and punctual delivery of our suppliers, and with respect to import transactions, in addition subject to the granting of an import license by the competent authorities and the receipt of all other documents required for the import and export.

III. Prices

1. Only the price plus any surcharges set forth in our order confirmation shall be binding. Unless otherwise agreed in writing, our prices shall be calculated gross for net.
2. If between the conclusion of the contract and the delivery of the goods to the customer, freight costs, taxes, customs and excise duties, or any other supplementary fees increase, or if such costs, public levies, taxes or fees are newly imposed, particularly, if special (antidumping) levies are imposed with respect to the import of the goods, we shall be entitled - even in case of deliveries made free of freight and/or duties - to charge the customers with such additional costs, upon proof of such additional costs.

IV. Delivery Periods and Dates

1. The time of delivery is set forth in our order confirmation. The time of the goods' dispatch ex works or ex warehouse shall be decisive for compliance with delivery periods and dates. Such time periods and dates shall be deemed met once notice of readiness to dispatch has been given, provided that the goods were dispatched untimely without any fault on our part. Confirmed delivery periods and dates shall be extended by any period of time by which the customer is in default with its obligations towards us, plus a reasonable start-up period, to the extent we have exercised our right to withhold performance pursuant to Section VI.4.
2. We shall not be liable for any impossibility of performance, or any delay in performance, if and to the extent such impossibility of, or delay in performance is caused by a force majeure event, or any other event which was not foreseeable at the time of concluding the contract (e.g. interruption of operations of any kind, strike, lawful lockouts, shortages of man power, energy or raw materials, including fuel, mobilisation, war, blockades, import and export bans, fire, traffic blocks) beyond our control, regardless of whether the force majeure event occurred, to us or to our supplier. The same shall apply with respect to the events set forth in Section II.4 provided that we have – in each individual case – no procurement obligation. We will inform the customer immediately of any delay in supply. Provided that the events set out in sentences 1 and 2 above, not only temporarily, substantially impede or render impossible our delivery of goods or our services, we are entitled to withdraw from, or to terminate the contract. In case of temporary obstacles, the delivery and performance periods will be extended or the delivery and performance dates will be postponed by the period of the obstacle, plus a reasonable start-up time. If and to the extent, as a

result of the delay, the execution of the contract by the customer cannot reasonably be expected, the customer is entitled to withdraw from the contract by means of an immediate written declaration send to us. In case our supplier claims force majeure, we may provide proof of such force majeure event by submitting a confirmation customary in the exporting country.

3. If we should be in default with a delivery, the customer shall be entitled to withdraw from the contract after expiry of a reasonable grace period granted to us, if and to the extent the goods have been neither dispatched upon expiry of such grace period, nor any notice has been given that the goods are ready for dispatch.

V. Partly Deliveries, Excess and Short Deliveries

We are entitled to provide partial deliveries to a reasonable extent. Moreover, we are entitled to provide excess or short deliveries to the extent such excess or short delivery amounts are customary in trade and commerce of this kind. If the delivery amounts are only roughly specified, we are entitled to excess or short deliveries up to plus/minus 10%.

VI. Payment, Setoff

1. Irrespective of the date on which the goods are received, payment shall be made without any discount by the 15th of the month following the date of delivery (i.e. fulfilment of our delivery obligation), unless different terms of payment and payment dates have been agreed. Payment shall be made in such manner that the amount due is available to us by the due date at the latest.
2. We accept rediscountable and proper bills of exchange as payment, if this has expressly been agreed. Credit notes for bills of exchange and cheques will be issued and affected, subject to receipt of payment minus disbursements, as of the value date on which the equivalent amount is at our disposal.
3. If the customer is in default of payment, we shall be entitled to default interest in the amount of 9% above the base interest rate. The right to claim further damages shall remain unaffected.
4. If – following the conclusion of this contract - it becomes apparent, that our payment claims are endangered due to a customer's lack of solvency, or the customer is in default of payment with a material amount, or if any other circumstances occur that indicate a substantial deterioration of the customer's credit worthiness, we are entitled to refuse performance. In this case, we are entitled to accelerate any and all claims due and payable resulting from the ongoing business relationship.

5. The customer shall only be entitled to set-off and retention rights if and to the extent its counterclaims have been either approved by final and court decision, or are undisputed.

VII. Retention of Title

1. All goods supplied shall remain our property (goods subject to retention of title) until all our claims, irrespective of their legal grounds, have been satisfied, including any future and conditional claims, and claims arising out of current and future contracts. This shall also apply if payments are made on specially designated claims.
2. The processing and manufacturing of the goods which are subject to retention of title shall be carried out for us as manufacturer, without any obligation from our side. The processed goods shall be deemed as goods subject to retention of title as defined in Clause VII.1 above. If the customer processes, combines or mixes the goods subject to retention of title with any other goods, we shall be entitled to co-ownership in the new objects at the ratio of the amount invoiced relating to the goods subject to retention of title to the invoiced amount relating to the other goods used. If our ownership ceases as a result of combination or mixing of the goods, the customer herewith transfers to us its ownership rights relating to the new objects limited to the invoiced amount of the goods subject to retention of title, and shall store the goods for us free of charge. The co-ownership rights resulting thereof, shall be deemed as goods subject to retention of title as defined in clause VII.1 above.
3. The customer may only sell the goods subject to retention of title in the ordinary course of business and in accordance with its standard terms and condition, and as long as it is not in default, provided that the claims resulting from any re-sale are assigned to us as defined in Clauses VII.4 to 6 below. Other disposals of the goods which are subject to retention of title are not permitted.
4. The customer herewith assigns to us any claims resulting from the re-sale of the goods subject to retention of title. Such claims shall serve as security to the same extent as the goods subject to retention of title. If the customer sells the goods subject to retention of title along with other goods not sold by us, the assignment of such claims resulting from said re-sale shall be limited to the re-sale value of the respective goods subject to retention of title sold in each case. In the event of the re-sale of goods relating to which we hold co-ownership rights pursuant to Clause VII.2, such claims shall be deemed to be assigned limited to the value of these co-ownership rights.

5. The customer is entitled to collect receivables from any re-sale until we revoke such entitlement, which is permitted at any time. We will only exercise such right to revoke, if the customer does not fulfil its payment obligations, there is a payment default, a bill of exchange could not be encashed, an application to open insolvency proceeding has been filed, or in case of any other significant lack of the customer's solvency. The customer shall only be entitled to assign any claims, including the factoring of claims, with our prior written consent. Upon request, the customer shall immediately notify its customers of the assignment of claims made to us, and provide us with all information and documents required for a collection of the claims. We are also entitled to inform the customer's customers ourselves.
6. If the customer is in default of any payments or – following the conclusion of this contract - it becomes apparent, that our payment claims are endangered due to a customer's lack of solvency, we shall be entitled, after the expiry of an reasonable grace period for the settlement of all outstanding claims, unless such grace period is not required under applicable law, to enter the customer's premises, seize the delivered goods and to make the best possible use of them by means of a private sale taking into account the existing payment claim less costs incurred.
7. If we assert our claim for retention of title, this shall only be deemed to be a withdrawal from the contract if so expressly stated by us in writing. The customer's right to possess the goods subject to retention of title shall cease, if the customer does not comply with its obligations under this or under any other agreement.
8. The customer shall inform us without undue delay of any third party attachment or any other impairment by third parties.
9. If the value of the existing security exceeds the value of the secured claims by more than 10%, we shall – upon the customer's request – be obliged to release security to this extent. In this case, we shall be entitled to freely choose which security shall be released.
10. The customer is obliged to handle the goods with care, for example and without limitation the customer shall insure the goods at its own costs against damage by fire, water and theft in a sufficient manner to the reinstatement value and furthermore to store the goods adequately.
11. In the event of an attachment or any other impairment by a third party, the customer shall immediately notify us in writing in order to enable us to file a third party claim. In case our claim is successful, the customer shall be liable like a guarantor who has waived its remedies to refuse payment as long as the

creditor has attempted without success to enforce its rights against the debtor, for our judicial and extrajudicial costs.

VIII. Standards of Quality, Units of Weight and Measurement

1. Quality and measurements shall be determined in accordance with EN-standards and/or agreed technical specifications for goods, unless foreign standards, qualities or descriptions of goods are agreed in writing. If no EN-standards or technical specifications for goods exist, the respective DIN-standards, and in the absence of such DIN-standards trade customs, shall apply.
2. For weight measurements the weighing carried out by us or our suppliers shall be the relevant measurement. Upon the customer's request, the measured weight shall be proved by furnishing a weight note; in case of delivery by ship, the goods' weight shall be proved by furnishing the official calibration certificate (*Eichbescheinigung*); in case of delivery by truck, the goods' weight shall be proved by furnishing a weight card of an officially calibrated scale. Surcharges and deductions of up to 2% of the total quantity, as customary in the German steel trading business, shall remain unaffected. If there are grounds for the assumption that material has been lost or damaged during transportation, a report on the facts drawn up by an impartial inspection company has to be arranged immediately.
3. We may also determine weights theoretically in accordance with DIN without actual weighing, using the weight tables customary in steel trading in Germany.

IX. Inspection Certificates

1. If pursuant to the relevant material standards an examination or inspection is required, or if this is expressly agreed, the respective material to be delivered will be examined by the manufacturing factory and delivered with an inspection certificate pursuant EN 10204 (depending on the order and applicable material standards, this will be a certificate of compliance with the order (*Werksbescheinigung*), a factory certificate (*Werkszeugnis*) or an acceptance test certificate (*Abnahmeprüfzeugnis*)). Examination and inspection shall be carried out, at the customer's costs, at the supplying factory.
2. Unless expressly agreed otherwise in writing, we do not carry out any examination of the materials on our own and are - as an intermediary - not obliged to do so. In any case, our delivery obligations shall be fulfilled, by providing the respective inspection certificate of the manufacturing factory.

3. Inspection certificates requested by the customer, e.g. in form of an acceptance test certificate pursuant DIN EN 10204 shall be provided to the customer immediately upon the customer's request. Any costs resulting thereof shall be borne by the customer, unless agreed otherwise. Further, the customer shall not be entitled to retain any payments even if the customer has not yet received the required inspection certificates.

X. Dispatch, Passing of Risk

1. We are entitled to determine the shipping route, means of dispatch and (freight) carrier, unless otherwise agreed in writing.
2. If – in accordance with the contract - notice is given that the goods are ready for dispatch, such goods must be called up without undue delay (*unverzüglich*); otherwise we shall be entitled - after a payment reminder has been sent to the customer – at the customer's costs and risk, and at our sole discretion either to dispatch the goods, or to store the goods and to charge the customer immediately.
3. If, without any fault on our part, transportation on the intended route or to the designated place becomes impossible at the scheduled time, we shall be entitled to deliver using an alternative route, or deliver to a different place. In this case, the customer shall bear the additional costs incurred. The customer shall be given a prior opportunity to make comments.
4. The material shall be delivered unpacked and without any anti-corrosive protection, unless otherwise agreed in writing. We will provide packaging, protection and/or transportation aids on the basis of our own experience and at the customer's expense. Packaging, low value protection and transportation aids shall not be taken back by us. Valuable protection and transportation aids, factory-owned loading devices, such as coil frames, container, stowage material, e.g. dunnage, are to be collected at the place of delivery or storage and returned in accordance with our instructions - at no expense to ourselves - to the supplying factory or to the carrier.
5. When the material is handed over to a carrier, at the latest, however, when the material leaves the storage place or the supplying factory, the risk - (including the confiscation of the material) - shall pass on to the customer in all transactions.

XI. Notice of Defects, Warranties

1. Only those external and internal defects of the goods supplied by us which impair to a more than insignificant degree the customary processing or usage of

a certain type of material and form of product and which exceed customary quality tolerances, shall be deemed as defects, if and to the extent not otherwise agreed in writing.

2. Notice of defects must be given without undue delay upon the defects' discovery by letter, fax or telegram, and any processing must cease immediately. Notices relating to obvious defects shall be excluded 14 days after receipt of the goods at their final destination.
3. If the customer fails to immediately give us an opportunity to inspect the goods' defects, particularly, if the customer does not immediately, upon request, make available the rejected goods or samples thereof, the customer's claims based on the alleged defects, become void. The rejected material is to be kept available for the supplying factory free of charge until the supplying factory acknowledges that the complaint is justified.
4. Provided that we have received immediate notification of a justified defect, we will, at our sole discretion take back defective goods and deliver new goods instead, or remedy the defects of the goods delivered. The customer is obliged to provide us with the time and opportunity required for the supplementary performance, particularly, the customer shall hand over the rejected goods for inspection purposes. In case of a replacement of the goods, the customer is obliged to return the defective goods in accordance with statutory law. Neither removing the defective goods, nor mounting the defective goods shall form part of our supplementary performance, provided that we were not originally obliged to mount the goods. We shall bear all expenses required for the inspection and supplementary performance, particularly, costs for transportation, travel, labour and material (not: costs for mounting and removal), in case of a justified defect. In case of an unjustified request for rectification of a defect, we are entitled to charge the customer with any costs resulting thereof.
5. If we do not comply with our obligation to replace the defective goods, or to remedy the defects, the customer shall be entitled to reduce the purchase price or to withdraw from the contract in accordance with applicable law. Claims for damages based on defects of the goods are subject to para. 6. Rights of recourse shall remain unaffected.
6. We are liable for damages - irrespective of their legal basis – in case of wilful misconduct or gross negligence. In case of simple negligence, we are only liable for damages resulting from injuries to life, body or health and for damages resulting from breaches of an essential contractual obligation (obligation, the fulfilment of which enables due execution of the contract, and the observance of which the contractual partners may rely upon); in the latter case, our liability shall be limited to foreseeable and typically occurring damages. These

limitations of liability shall not apply, if we have assumed a quality guarantee for the goods or fraudulently concealed a defect. The same applies to claims under any Product Liability Act.

7. With respect to goods which have been sold as declassified material - e.g. so-called Ila material - the customer shall not be entitled to any claims based on defects in connection with the declassification.

XII. Statute of Limitations

1. All claims arising out of defects of the goods shall become time-barred one year after delivery of the goods. If the parties agreed to an acceptance of the goods, such claims shall become time-barred one year after acceptance of the goods.
2. This one-year limitation period pursuant to para. 1 also applies to goods, which according to their common use were used for the construction of a building and have caused its defectiveness (building material), unless we had knowledge of this intended use, or the customer has advised us with respect to this matter in writing. If we had knowledge of the intended use, or the customer informed us in this respect in writing, claims arising out of defects of the goods become time-barred in accordance with the statutory limitation periods.
3. With respect to our liability for intent or gross negligent, including the fraudulent concealment of a defect, or culpably caused damage to life, body and health, the statutory limitation periods shall apply. The same applies to claims of recourse against the supplier in case of final deliveries to a consumer and claims under any Product Liability Act.

XIII. Jurisdiction, Governing Law, Language

1. To the extent legally admissible, all disputes arising out of or in connection with all contracts shall be finally settled under the Rules of Arbitration of the ICC (International Chamber of Commerce) (the "Rules") by a one or three arbitrators appointed in accordance with the Rules without recourse to the ordinary courts.
2. If the arbitral tribunal is constituted by one arbitrator, this one shall be a practicing lawyer with comprehensive experience in international trade. If the arbitral tribunal is constituted by three arbitrators, at least two of them shall satisfy these requirements.
3. In case multiple arbitration proceedings between us and the customer subject to para. 1 to 4 are pending at the ICC secretariat, it is agreed to consolidate such arbitration proceedings pursuant to article 10 of the Rules.

4. The place of arbitration is Zurich, Switzerland. The language of the arbitration proceedings shall be English, provided that the parties do not agree on another language. Written evidence may be submitted in either the English or the German language.
5. Para. 1 to 4 shall not apply in a contractual relationship towards consumers (*Verbraucher*).
6. All relationships between us and customers are governed by, primarily, the United Nations Convention on Contracts for the International Sale of Goods (“**CISG**”) and, *in subsidio*, Swiss law. This applies to the validity of the provisions under para. 1 to 4, as well.

XIV. Severability

1. Should any provision of these General Conditions be or become invalid, the validity of the remaining provisions shall not be affected thereby. Any such invalid provision shall, to the extent permitted by law, be deemed replaced by such valid provision as comes closest to the economic intent and purpose of such invalid provision.
2. Should any provision of these General Conditions be valid pursuant to the supreme court jurisdiction as applicable on the date of the contract, but becomes invalid pursuant to a change of the jurisdiction following the conclusion of the contract, any such invalid provision shall be deemed replaced by such valid provision as comes closest to the economic intent and purpose of such invalid provision.
