

General Standard-Metallwerke GmbH Terms of Delivery

1. Scope of Application

1.1 These General Terms of Delivery apply to all deliveries or services provided by Standard-Metallwerke GmbH for its customers under explicit exclusion of any General Terms and Conditions of the customers and subject to deviating written agreements. They also apply to all future business conducted between the customers and Standard-Metallwerke GmbH. Furthermore, General Terms and Conditions of the customer that deviate from these General Purchase Terms shall only be deemed to be a constituent part of the contract with the explicit written approval of Standard-Metallwerke GmbH. Neither remaining silent, nor the provision of a delivery or service by Standard-Metallwerke GmbH can be interpreted as being a recognition of contradictory terms of the customers.

1.2 The following provisions and acts of law have supplementary applicability to these General Terms of Delivery in the following order of precedence: the: The latest versions of the International Chamber of Commerce in Paris INCOTERMS, the German commercial code, and the German civil code.

2. Scope of the Performance, Text Form

The Standard-Metallwerke GmbH written order confirmation is decisive regarding the type and scope of the delivery or service it is to provide, as long as the customer does not contradict it immediately after it has been received. Agreements that deviate from the order confirmation or other contractual agreements are to be in a text form in order for them to be effective. All offers made by Standard-Metallwerke GmbH are not binding and are subject to a written acceptance by the customer.

3. Prices

3.1 All prices are deemed to be net prices and do not include the statutory Value Added Tax, customs duties or other taxes and charges. Subject to the existence of a written agreement with a different content, domestic deliveries with a net weight (not including the packaging) exceeding 500 kg shall be delivered by Standard-Metallwerke GmbH carriage paid to the German place of destination (CIP clause of the INCOTERMS). Any additional costs that are incurred due to the merchandise having a special quality, are to be borne by the customer, however.

3.2 Supplied packaging containers remain the property of Standard-Metallwerke GmbH. Standard-Metallwerke GmbH charges the refundable deposit stated in its offer for this. The refundable deposit shall be credited to the customer if he returns the packaging container in a perfect condition and deliveries carriage and expenses paid within a deadline of four weeks of it being received.

3.3 The confirmed prices are based on the labour and energy costs and the raw material prices that have validity on the date of the order confirmation. If these costs should increase or decrease by the date of delivery, the customer or Standard-Metallwerke GmbH can provide corresponding proof and make a request so that the confirmed prices are to be adapted accordingly. If the delivery is made carriage paid this is based on the carriage charges and supplementary fees that have validity at the time the offer is issued so that such shall be adapted to the changed carriage charges and supplementary fees, either to the benefit or the detriment of customer, without the customer having a cancellation right in this regard.

4. Partial Delivery, Passing of the Risk, Acceptance

4.1 Standard-Metallwerke GmbH is entitled to make partial deliveries.

4.2 The risk of an accidental deterioration or an accidental loss of a delivery item passes to the customer upon acceptance at Standard-Metallwerke GmbH or as soon as the shipment has left the Standard-Metallwerke GmbH works at the latest. The customer is not entitled to refuse acceptance should there be an insignificant defect. Loading and shipping is not insured subject to Clause 3.1. This is also the case if partial deliveries are made or if Standard-Metallwerke GmbH has accepted other performances such as shipping costs, delivery, or assembly. Should the shipping be delayed on grounds for which the customer is responsible, the risk passes to the customer as from the date of the readiness for shipping or acceptance and as from the date on which notification is made of the readiness for shipping or acceptance should non-binding periods of delivery exist. Upon request of the customer, Standard-Metallwerke GmbH shall have the merchandise insured against the standard risks at the expense of the customer for the period during which the merchandise remains in storage at Standard-Metallwerke GmbH.

4.3 Should the delivery item require testing according to special conditions or agreements, then the customer is to accept on the premises of Standard-Metallwerke GmbH. The customer bears the costs of the acceptance. Should the customer dispense with an acceptance on the premises of Standard-Metallwerke GmbH, the item is deemed to have been accepted as soon as it leaves the works.

5. Period of Complaint, Quantity Deviations, Liability for Defects

5.1 The customer is to inspect each delivery without delay with regard to material defects and defects of title, including any quantity deviations, in addition to him taking samples if appropriate, and providing Standard-Metallwerke GmbH with written notification of any obvious defects without delay. The delivery item is otherwise deemed to have been accepted. An assertion of a claim for obvious defects at a later moment in time is excluded. The weight of the delivery item that is determined by Standard-Metallwerke GmbH is decisive should the customer not contradict this without delay after he has received the delivery item.

5.2 Concealed defects, i.e. defects that cannot be detected despite the fact that a careful incoming goods inspection has been carried out, are to be notified to Standard-Metallwerke GmbH immediately after they have been detected. An assertion of a claim for concealed defects is excluded after expiry of a period of one year. The time limit commences as from the acceptance on the premises of Standard-Metallwerke GmbH, or as from receipt of delivery otherwise. The statutory limitation period has validity as regards fraudulent intent.

5.3 The following has validity should the defect complaint made by the customer be justified:

a) Should there be max. 10% deviations between the ordered and the delivered quantities, based on the weight and/or the quantity, Standard-Metallwerke GmbH can within a reasonable time limit, decide whether to subsequently deliver the missing quantity (subsequent delivery) or demand the excessive quantity back, or it can increase or decrease the purchase price stated in the order confirmation, thereby requesting a modified price pursuant to Clause 3.3 above. This has validity both

with regard to the entire contractual quantity and individual partial deliveries. Should the subsequent delivery attempt of Standard-Metallwerke GmbH be unsuccessful twice in succession or should the subsequent delivery be refused, the customer can either repudiate the contract should the decreased quantity be unreasonable for him, or it can demand a reasonable reduction to the purchase price as he chooses.

b) As far as other material defects and defects of title are concerned, Standard-Metallwerke GmbH can initially decide whether to remedy the defect within a reasonable time-limit (defect remedy) or whether to

c) initially choose to remedy the defect (defect remedy) within a reasonable time-limit or deliver merchandise that is free from defects concurrent with a returning of the defective merchandise (replacement delivery). Should a delivery shortfall exceed 10%, the defect is to be remedied with a corresponding subsequent delivery. The expenditure that is incurred for the purpose of a supplementary performance (defect remedy or replacement delivery), especially transport and travel costs, labour and material costs, are borne by Standard-Metallwerke GmbH, in as far as these are not increased due to the delivery item having to be transported to a place other than the place of performance. Should the defect remedying or replacement delivery attempt by Standard-Metallwerke GmbH be unsuccessful twice in succession, or should it be refused, the customer can decide whether he wishes to repudiate the contract or demand a reasonable price reduction.

d) The liability of Standard-Metallwerke GmbH for compensation for a culpable breach of duty, especially for compensation in lieu of performance, and the entitlement to a reimbursement of futile efforts or expenses is limited to triple the value of the invoice or other performance. Claims asserted by the customer over and above the foregoing, especially claims for additional compensation including a loss of profits or other pecuniary damage suffered by the customer, and the entitlement to a replacement of damages that have not occurred on the delivery item itself, are excluded.

e) The foregoing restriction of liability is not valid in cases where damages are caused by an intentional or grossly negligent breach of duty, or in cases of physical injury liability pursuant to the German Product Liability Act or should compulsory legal provision stipulate an extended liability. Should an essential contractual obligation be breached, the liability is restricted to the foreseeable damage.

f) The statutory two-year period of limitation for all claims for defects is reduced to one year subject to this not contradicting mandatory legal provisions.

6. Periods of Delivery, Force Majeure

6.1 Standard-Metallwerke GmbH periods of delivery are as stated in the written agreements concluded by the parties to the contract. The Standard-Metallwerke GmbH periods of delivery are non-binding subject to written agreements that stipulate otherwise. Periods of delivery that are deemed to be binding can also be extended by a reasonable period, should it be the result of a non-observance of an incidental obligation on the part of the customer, or by unforeseeable and unforeseen or extraordinary circumstances and events. This also has validity for delays that result from a delayed or incorrect delivery that is made to Standard-Metallwerke GmbH by its suppliers. In the event of a culpable non-adherence to an agreed

period of delivery, a delayed delivery is only deemed to exist after a reasonable extension of time has been granted.

- 6.2 If and the extent to which, the non-performance, the non-performance within the time-limit, or the incorrect performance of a contract by Standard-Metallwerke GmbH is caused by a force majeure, Standard-Metallwerke GmbH shall be released from its contractual obligations for the duration of the disturbance. A force majeure is especially deemed to be operational disorders, a non-adherence to periods of delivery or a lack of deliveries by sub suppliers, a lack of raw materials and energy, traffic disturbances, official orders, industrial action, insurrection, war, natural catastrophes, pandemics, fire, flooding, etc. Standard-Metallwerke GmbH shall inform the customer of the commencement and termination of such circumstances without delay. Should the delivery of the delivery item be delayed for longer than three months due to the existence of a force majeure, either of the parties is entitled to repudiate the contract as regards the quantity that is affected by the delivery disturbance, under exclusion of all claims.
- 6.3 Standard-Metallwerke GmbH cannot assume any liability for the adherence to periods of delivery or shipping dates. Should the freight costs be increased between the sending of the order confirmation and the delivery of the delivery item, Standard-Metallwerke GmbH can demand that the resulting additional costs are to be borne by the customer, irrespective of other delivery agreements that are concluded. Should the freight costs be reduced, the customer can demand a corresponding adjustment, in as far as he is to bear the costs.

7. Reservation of Title

- 7.1 Standard-Metallwerke GmbH reserves the title in the delivery item in order for it to secure all claims that it is entitled to assert against the customer from the business relationship. This also has validity for accessory claims and claims for compensation including such from the redemption of bills of exchange or cheques. The reservation of title remains in force should individual receivables of Standard-Metallwerke GmbH be included in a current account and the balance has been determined and recognised.
- 7.2 The ownership by Standard-Metallwerke GmbH extends to new products that result from the processing, blending and connection of the reserved merchandise. The processing is carried out for Standard-Metallwerke GmbH as the manufacturer. In the event of a processing, connecting, or blending with items that do not belong to Standard-Metallwerke GmbH, Standard-Metallwerke GmbH gains co-ownership in these new items in the ratio of the value of the invoice for its reserved merchandise to the value of the invoice for the other materials.
- 7.3 The customer assigns all receivables from the sale of reserved merchandise including any outstanding balances and receivables from the redemption of bills of exchange and cheques to Standard-Metallwerke GmbH as from this moment in time, in order to secure the respective claims. Standard-Metallwerke GmbH accepts the assignment. When selling reserved merchandise that Standard-Metallwerke GmbH has co-ownership of, the assignment is restricted to the part of the receivables that correspond to its co-ownership share. In the case of processing being carried out in the scope of a contract for work, the customer assigns his work claim in the proportional amount of his invoice for the co-processed reserved merchandise to Standard-Metallwerke GmbH and Standard-Metallwerke GmbH accepts the assignment.

7.4 The customer takes the reserved merchandise into storage for Standard-Metallwerke GmbH free of charge and it is to adequately insure it against the standard risks (fire, theft, water, etc.). The customer already assigns any claims for compensation it has against an insurer to Standard Metallwerke GmbH in the amount of the value of the invoice.

7.5 The customer is entitled to dispose of the reserved merchandise that is owned or co-owned by Standard-Metallwerke GmbH and collect the receivables that have been assigned to it as long as the customer is prepared and is able to correctly meet its obligations towards Standard-Metallwerke GmbH. Transfers of ownership by way of security, pledgings and assignments of claims including by way of a sale of claims by the customer, are only permissible with the prior written approval of Standard-Metallwerke GmbH. A taking of reserved merchandise back is only deemed to be a repudiation of the contract if Standard-Metallwerke GmbH explicitly declares this in writing.

7.6 Should the value of the collateral that is provided to secure the claims exceed the claims that are to be secured by more than 20%, Standard-Metallwerke GmbH shall release collateral to this extent as it chooses. Should the retention of title not be permissible or only be permissible to a restricted extent pursuant to the laws of the country of the customer, the aforementioned rights of Standard-Metallwerke GmbH have validity restricted to the legally permissible scope.

7.7 The customer is to provide Standard-Metallwerke GmbH immediate notification of third-party access to the reserved merchandise or the assigned claims, including the documents that are required for an intervention. The customer is to bear the costs incurred for the intervention.

8. Right to Refuse to Perform

Standard-Metallwerke GmbH reserves the right to refuse to perform should the assets of the customer be subjected to a fundamental worsening after conclusion of the contract, that would place the payment claim at risk. In such a case, Standard-Metallwerke GmbH is entitled to demand advance payments or repudiate the contract with immediate effect should the customer not affect the counter-performance in advance after a reasonable time-limit has been set or should it provide collateral. A fundamental worsening of the assets is especially deemed to be assumed should an application be filed for the commencement of insolvency proceedings, the rejection of such due to a lack of assets, the liquidation, the transferring of the corporate customer or substantial parts thereof to another party and the non-payment of invoices from Standard-Metallwerke GmbH that are due despite a reminder having been issued.

9. Right of Lien

The customer and Standard-Metallwerke GmbH agree that Standard-Metallwerke GmbH has a right of lien with regard to all items that are placed at the disposal of the Standard-Metallwerke GmbH customer, irrespective of the legal ground. The right of lien serves to secure all existing, future, and conditional claims that Standard-Metallwerke GmbH is entitled to against the customer, irrespective of the legal ground.

10. Terms of Payment

10.1 The customer is only entitled to set claims off against the claims that Standard-Metallwerke GmbH has or can assert a retention claim if the counterclaim is undisputed or has been finally determined by a court of law.

10.2 Should nothing to the contrary be agreed to, the payment that is due to Standard Metallwerke GmbH net of taxes, customs duties and incidental costs is to be transferred to a bank account stated by Standard-Metallwerke GmbH by the customer within a time-limit of 14 days net after receipt of the invoice or after a possible prior acceptance of the delivered item. Should this term of payment not be adhered to, the customer shall be in arrears without

an additional reminder being required.

10.3 Should a cash payment have been agreed to, only payments in cash, by bank transfer or by cheque are deemed to be cash payments. Should the payment be made with bills of exchange, cheques or other securities, the costs incurred for discounting and collection are to be borne by the customer.

11. Place of Performance, Applicable Law, Place of Jurisdiction

11.1 The place of performance and the place of jurisdiction is Werl for all liabilities that arise from a commission or an order. This is also the case regarding legal action regarding bills of exchange. Standard-Metallwerke GmbH is also entitled to take legal action against the client at its head office. The contractual relationship is governed by German law.

The legal invalidity of individual contractual provisions does not otherwise release the customer from the contract; invalid provisions are to be replaced by valid provisions that come as close as possible to having the same intended legal or commercial purpose. Should the invalidity be in relation to an unreasonably high or low time or performance provision, this is to be replaced with the maximum or minimum permissible measure. The rights of the customer from the contract cannot be transferred.

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