

**General Conditions of Sale  
of Heinrich Dittmar GmbH & Co. KG  
Stahlhandel**

**(Version 12/2017)**

**Note: This is a translation of the German version. In cases of uncertainty or conflict, the German version shall prevail.**

**I. Application / Conclusion of Contracts**

1. These General Conditions of Sale (Conditions) shall apply to all present and future contracts with commercial buyers, with public legal entities as well as public trusts in regard to deliveries and other services, including contracts relating to the supply and manufacture of non fungible goods. In case of ex-work sales ("Streckengeschäfte"), the producer's conditions as laid down in its price list and its shipping instructions shall apply in addition to these conditions. The Buyer's purchase conditions shall not be binding even if we do not expressly object to them again after their receipt.
2. Our offers are open and subject to change. Oral agreements, promises, assurances and guaranties made or given by our sales staff before or at conclusion of the contract shall not be binding unless confirmed by us in text form.
3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

**II. Prices**

1. Unless otherwise agreed, only such prices and terms shall apply as contained in our price lists effective at the time when the contract is concluded. The goods will be invoiced "gross for net".
2. In case of back-to-back direct deliveries we may increase the agreed price to the same extend they are increased by our sub-supplier before delivery of the goods provided there is a period of more than three months between the conclusion of the contract and delivery. The Buyer may in such cases rescind from the contract provided that his notice of repudiation of contract reaches us instantly after receipt of our notice of increment.

**III. Payment and Set-Off**

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately upon delivery and in such a manner that we can dispose of the sum on the due date. This also applies if the test certificates according to DIN EN 10204 are not part of the delivery or arrive late. Any payment transfer costs shall be borne by the Buyer.
2. The Buyer may retain or set off any counterclaims only in so far as such claims are undisputed or have become legally binding and as they are based on the same contractual relation with the Buyer and/or as they would entitle him to refuse the fulfilment of his contractual duties under section 320 BGB.
3. Should the Buyer exceed the payment deadline or should he default in payment, we will debit him with interests at 9 pct-points above the basic rate of interest, unless higher rates have been agreed upon. Additionally, we charge a default fee of 40,00 €. We reserve the right to claim additional damage resulting from late payment.
4. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a considerable portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the conclusion of the contract, we shall be authorised to make use of rights under section 321 BGB. This also applies in case the performance of our contractual obligation is not yet due. In such cases, we are also authorized to make due any and all of our non statute-barred accounts receivable resulting from the same legal relationship.

**IV. Delivery Times**

1. Our commitment to deliver is subject to our correct and timely self-delivery in accordance with our contract terms unless we are responsible for the deficient or late self-delivery.
2. Any confirmation as to delivery times shall be approximate only. Delivery times shall commence with the date of our order confirmation and are subject to the timely clarification of any details of the order as well as of the fulfilment of any of the Buyer's obligations, e.g. to produce official certifications, to provide letters of credit and payment guarantees or to pay agreed instalments.
3. Any agreed delivery time shall be considered to be met if and in so far the goods have left the works or our warehouse at such time or date. If and in so far the goods fail to be despatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for dispatch.
4. If the delivery is delayed by our fault, the Buyer, after setting a reasonable grace period, may withdraw from the contract if and in so far as the goods have not been delivered by this date. Damage claims for delay and non-performance may be made in accordance with clause XI of these Conditions.

## **V. Retention of Title**

1. The goods delivered to the Buyer shall remain our property until the full purchase price is paid. The Buyer shall take all measures required to preserve the retention of title – or of an equivalent security in the country of his branch or in a different country of destination -, and to provide the corresponding evidence upon our request.
2. To the extent permitted by the laws of the country, in which the goods are located, the following additional regulations apply:
  - a. The 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 (current account reservation). This condition shall apply to any future as well as any conditional claims 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. The current account reservation is not applicable in in prepayment or delivery vs payment cases. In these cases, the goods remain our property until the purchase price for these goods has been paid in full.
  - b. 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 2 a 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 2 a of these Conditions.
  - c. 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 d) - e) of these conditions. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.
  - d. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. The assignment is hereby accepted. Assigned 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, the assignment shall be limited to the part which corresponds to our co-ownership rights.

- e. 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.
- f. 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, to separate or to remove the Reserved Property, if and in so far as such costs are not borne by a third party.
- g. 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.

## **VI. Weight**

1. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight ticket. Where provided by law, the weight may be determined without weighing in accordance with the applicable standards. We may calculate the weight without weighing on the basis of such standards ("theoretical weight") plus 2 ½ pct ("commercial weight").
2. Any indications given in the delivery notes as to the number of pieces, bundles etc. are not binding, if and in so far as the goods are invoiced by weight. Where, in accordance with trade usage, the goods are not weighed piece by piece, the total weight of the delivery shall prevail. Any difference with regard to the calculated weight of the single pieces shall be proportionally allocated to them.

## **VII. Inspection and Inspection Documents**

1. Any supply of Inspection Documents („Mill Test Certificates“) acc. to EN 10204 must be agreed upon in writing. We may transmit such document as a copy. In case the price for such documents has not been agreed within the contract, we will calculate it on the basis of our price list resp. the issuer's (manufacturer's) price list.
2. Where inspection of the goods has been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for inspection. The Buyer shall ensure that we can authorize the inspection company designated by him in his or his purchaser's name and on his account. Unless otherwise agreed, this authorization shall be regarded as granted as soon as the Buyer designates an inspection company.
3. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our price list.
4. Should, without our fault, the inspection fail or be delayed or be incomplete, we shall be entitled to ship the goods without the inspection or to store them at the Buyer's costs and risk and to invoice them to him.

## **VIII. Dispatch, Passing of Risk, Packaging, Partial Delivery**

1. We shall be entitled to choose the route and mode of dispatch as well as the forwarding agent and the carrier.
2. The Buyer shall immediately request delivery of those goods which have been notified to him as ready for dispatch. Otherwise we are entitled, upon reminder, to ship such goods at the Buyer's cost and risk or to store them at our discretion and to invoice them to the Buyer.
3. Can, by reasons not attributable to us, the goods not be shipped or will it become substantially difficult to ship the goods via the designated route or to the designated place within the designated time, we reserve the right to ship them via a different route or to a different place. Any additional costs will be borne by the Buyer. We will, in such cases, ask the Buyer for his prior comments.

4. In all transactions, including 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. We will buy insurance only if requested by the Buyer and at his costs. The Buyer shall unload the goods at his costs.

5. The goods will be delivered unpacked and not be protected against rust. Where so provided by trade usage will the goods be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. We will take back such devices at our warehouse within a reasonable period of time. We will not bear any costs for their re-transport or disposal.

6. We shall be entitled to make partial deliveries at reasonable quantities. We may also exceed or reduce the agreed quantities as appropriate. Where quantities are indicated as "circa", we may exceed or fall below the agreed quantity up to 10 %.

#### **IX. Callable and Continuous Deliveries**

1. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.

2. Where the single calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

#### **X. Warranty Provisions**

1. The inner and outer properties of the goods, especially their quality, grade and dimensions are to be determined by the agreed or short of a deviating agreement by the DIN and DIN EN standards effective at the time of the conclusion of the contract, otherwise by practice and commercial custom. References to standards and other sets of regulations, to test certificates according to DIN EN 10204 and other attestations as well as particulars of qualities, grades, dimensions and use of the goods are no warranties or guaranties, just as little declarations of conformity and corresponding markings such as CE and GS.

2. For the inspection of the goods and the indication of defects the statutory provisions apply, it being understood that the duty to inspect the delivered goods includes the inspection of eventual test certificates according to or correlating to EN 10204 and any defects of the goods and test certificates are notified to us without delay in text form. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery must be notified to us in text form immediately after their discovery.

3. In case the Buyer intends to install the goods into another object or attach the goods to another object, prior to installation resp. attachment, the Buyer has the obligation to inspect the goods with regard to properties relevant for the application in question and to notify us of defects without delay. In case the Buyer, in the event of an installation of the goods into another object or attachment of the goods to another object, fails to inspect the properties of the goods relevant for the designated end use at least at random prior to installation resp. attachment, this represents a particularly grave disregard of the care required in the ordinary course of business (gross negligence) in relation to us. In such a case, the Buyer may assert rights in relation to these properties only if the defect had been deliberately concealed or in case of a guarantee for the respective quality of the goods.

4. If the Buyer fails to immediately give to us the opportunity to inspect the defect, especially if he fails - upon our request - to immediately make the goods or samples hereof available to us, he will lose all of his warranty rights

5. If and in so far the Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect or deliver non-defective goods. Place of performance for the cure is our seat ("substitution"). Should we fail or decline the substitution, the Buyer may resort to his statutory rights. 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.

6. In case the Buyer has installed the goods, in accordance with the goods' type and

designated use, into another object or attached the goods to another object, he may claim reimbursement of his necessary costs for the dismantling of the defective goods and the installation or attachment of goods free from defects (“dismantling and installation costs”) only in accordance with the following provisions:

- Necessary dismantling and installation costs are only those, which directly result from the dismantling resp. removal of the defective goods and the installation resp. attachment of identical goods, have accrued on the basis of competitive market prices and have been proven by the Buyer by appropriate documents in text form.
- Additional costs of the Buyer for consequential damages such as e.g. loss of profit, down time costs or additional costs for cover purchases are no dismantling and installation costs and therefore not recoverable under Sect. 439 para. 3 of the German Civil Code. The same applies for sorting costs and for supplementary costs resulting from the fact that the sold and delivered goods are at a place other than the agreed place of delivery.
- The Buyer is not entitled to request advance payments for dismantling and installations cost or other expenses required for the remedy of the defective delivery.

7. We will reimburse the Buyer for his expenditures in connection with the substitution only in so far as such expenditures are reasonable and not disproportionate in relation to the value of the goods. Disproportionate expenditures are especially given in case the expenditures requested by the Buyer, in particular dismantling and installation costs, exceed 150 % of the purchase price of the goods invoiced by us or 200 % of the value of the defective merchandise. Costs of the Buyer related to the self remedy of defects without the legal requirements being fulfilled, are excluded, the same applies for costs for disassembly of the defective and assembly of replacement goods, in case due to a transformation of the buyer before the assembly, the assembled goods provide substantially different features than the original goods delivered by us. Expenditures accrued by delivery of goods to another place than that of the agreed performance, will not be accepted.

8. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the Buyer, by his own negligence, not learned of the defect, and then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.

9. No warranty shall be given to goods sold as declassified material with regard to such defects either specified in the contract or to those normally to be expected. Goods classified as “Ila-Ware” (“secondaries”) are not subject to any warranty.

10. Our further liability is subject to Section XI of these Conditions. Any of the Buyer’s rights of recourse according to sections 478, 479 BGB (German Civil Code) shall remain unaffected.

## **XI. Restriction of Liability and Limitation Periods**

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 and shall not, in cases of gross negligence, exceed the foreseeable losses and damages characteristic for the type of contract in question.

2. The aforesaid restriction shall not apply to such cases where we breach our fundamental contractual obligations and therefore the accomplishment of the purpose of the contract is at risk or where the non-fulfilment of the obligations the contracting party relies on renders the proper completion of the contract impossible. 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, including claims for damages for defective goods, shall fall under the statute of limitations within a period of one year after the goods have been delivered to the Buyer. This restriction shall not apply to our liability and to the limitation of claims resulting from the delivery of goods that have been used for a building and have resulted in the defectiveness of the building, as well as from breaches of contract caused by our wrongful intent or by our gross negligence; neither to damages to life, to the body and to health caused by our fault nor to any recourse claims under sections 478, 479 BGB. For these claims, the statutory limitation periods shall apply.

## **XII. Place of Performance, Jurisdiction and Applicable Law**

1. The place of performance for our deliveries shall be the supplying work in cases of ex-work deliveries, in all other cases it shall be our warehouse. The place of performance of the Buyer's payments is our seat. The place of jurisdiction shall be at Osterode. Alternatively, we may - at our discretion – file an action against the Buyer at his seat.

2. All legal relationships between us and the Buyer shall be governed by the non-standardised laws of the Federal Republic of Germany supplementing these Conditions, especially the German BGB/HGB, excluding the provisions of the United Nations Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).

## **XIII. Applicable Version**

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