

Terms and Conditions of Purchase of Scholz Edelstahl

I. Sphere of application

1. These General Terms and Conditions of Purchase apply to all - present and future - orders of goods and services and the processing of these. We do not recognise any Seller's terms and conditions that conflict or deviate from these Terms and Conditions, unless anything is agreed to the contrary in these Terms and Conditions or in the contract with the Seller. If we accept the goods without express opposition this does not imply in any circumstances that we recognise the Seller's terms and conditions.
2. Any verbal agreements made by our employees are not binding until confirmed by us in writing.
3. Orders may be revoked until receipt of an order confirmation. Order confirmations must be in writing. The Supplier is obliged to accept our order within 2 weeks.
4. Quotations shall be issued without cost to us and non-binding on us.
5. The interpretation of commercial terms shall be based on the Incoterms valid at the moment in question.

II. Pricing

1. The agreed price is a fixed price provided nothing specific has been agreed elsewhere. Any increase in costs between conclusion of the contract and delivery by the supplier shall not affect the price.
2. When prices are quoted "carriage free", "free to destination" and other "free delivery/post-free" delivery types, the price shall include the carriage and packaging costs. Where delivery is not included, we will only bear the reasonable carriage costs unless we have specified a particular type of shipment.

III. Payment

1. In the absence of any other agreement or more favourable Seller's condition, payments shall be made within 14 days less 3% discount or within 90 days net.
2. Payment and discount periods shall run from the date of receipt of the invoice, but not before receipt of the goods, or in the case of services, before they have been accepted and, to the extent that documentation, test certificates (e.g. factory certificate) or other similar documents are included in the scope of supply, not before these have been handed over to us in accordance with the contract.
3. Payments shall be made by cheque or bank transfer. Payment is deemed to be on time provided that the cheque is sent by post on the due date, or the instruction to the bank for the bank transfer is made on the due date.
4. Interest after the due date may not be charged. Interest on arrears is 5% over the base interest rate. In all cases we are entitled to prove a lower loss caused by delay than that claimed by the Seller.
5. We are entitled to rights of offset and retention in the scope provided for by law.

IV. Delivery dates/late delivery

1. Agreed delivery deadlines and periods are binding. We must be informed in writing immediately of any potential delays to deliveries. Appropriate countermeasures to alleviate consequential loss should also be proposed.
2. Unless anything is agreed to the contrary in writing, the relevant date for the delivery deadline or delivery period is the date of receipt of the goods by us.
3. If the Seller fails to deliver on time, we shall be entitled to the claims provided for by law. In particular we shall be entitled to claim compensation in place of the performance if a reasonable period of grace set by us has expired unheeded. Our claim to the delivery itself shall only be extinguished once the Seller has paid the compensation.
4. The Seller may only rely on the non-availability of documents to be provided by us if the documents have not been received even after a written warning.

V. Reservation of proprietary rights

1. With regard to the Seller's entitlement to reservation of proprietary rights, simple reservation of proprietary rights shall apply, so that ownership of the goods shall be transferred to us on payment for them, and accordingly any extended reservation of proprietary rights (rights to processing) and time-extended reservation of proprietary rights (reservation of proprietary rights extended in accordance with customer demands) and the current account reservation shall not apply.
2. The Seller may only demand return of the goods on the basis of the reservation of proprietary rights if the Seller has already withdrawn from the contract.

VI. Completion of deliveries and transfer of risk

1. In principle, the supplier must fulfil the order itself. The order may only be passed on, even if the supplier delivers in its own name, with our consent.
2. The Seller bears the risk of any destruction or any deterioration, even in the case of "free delivery" and "post-free" deliveries, until the goods have been handed over at the destination.
3. Partial deliveries may only be made with our consent.
4. Excess deliveries or short deliveries are only allowed within the scope usual in the trade.
5. Packaging costs shall be borne by the Seller, provided nothing else has been agreed in writing. If, in individual cases, we agree to pay the packaging costs, this must be charged to us as cheaply as possible. The obligations to accept returns are in accordance with the latest version of the Packaging Order of 21.08.1998.

VII. Declaration of original status

- In cases where the Seller makes declarations on the original status of the goods sold, the following applies:
1. The Seller undertakes to enable the customs officials to inspect certificates of origin and to provide the necessary information and any necessary confirmations.
 2. The Seller is obliged to pay compensation for any losses incurred as a result of the stated origin not being recognised by the relevant authority as a result of defective certification or lack of proof, unless the Seller is not responsible.

VIII. Liability for defects and limitation

1. The Seller shall deliver the goods free of any material and legal defects. The Seller must certify in particular that the goods and services supplied are in accordance with the recognised technical regulations and comply with all contractual requirements and standards.
2. The Supplier's liability towards us is in accordance with the legal provisions. We do not accept any further exclusions or limitations of liability. If the Supplier is responsible for product damage, it is obliged to indemnify us against claims for damages by third parties on first demand, to the extent that the cause lay in its own sphere of control and organisation and the Supplier itself is liable in relation to third parties.
3. Insofar as recall measures are proposed in connection with such product damage, the Supplier shall also be obliged to reimburse the necessary expenses to the same limits. As far as is possible and reasonable, we shall notify the Supplier of the content and scope of the recall measures to be taken, and provide the opportunity to make comment.
4. Other claims on our part shall remain unaffected.
5. The Supplier undertakes to take out adequate product liability insurance cover with a recognised insurance company and to maintain the cover throughout the duration of the business relations, including warranty periods. Proof must be provided to us of the existence of such insurance cover in the form of appropriate written confirmation (includes fax) from the insurance company to the most recent cover date. Unless such proof is provided, the Supplier shall not be entitled to claim payment. This shall not affect any further claims for damages to which we may be entitled.
6. We are obliged to examine the goods on a random sample basis within a reasonable period for any obvious quality defects or quantity problems. A prerequisite for this is the provision of an acceptance certificate in accordance with APZ 3.1 DIN 10204.
7. Defect notifications are deemed to have been received in good time provided they are sent to the Seller by letter, fax, e-mail or telephone within eight working days. The period for notification of defects starts at the time when we - or in the case of drop shipment transactions, our purchaser - discover the defect or should reasonably have discovered it.
8. Should recognisable business procedures mean that immediate inspection of the goods for defects is unreasonable or inexpedient for us, complaints of such defects shall still be deemed to be in good time if made immediately on discovery of the defect, unless the defect could have been seen on delivery without further examination.
9. If the goods have a material defect, we are entitled to our choice of the legal remedies available. If the Seller attempts to effect a repair, this shall be deemed to have failed on the first unsuccessful attempt. We shall also be entitled to withdraw from the contract even if the Seller's breach of duty is only slight.
10. We may claim from the Seller reimbursement of the defect-related expenditure incurred by us with regard to our purchaser, if the defect was already in existence on transfer of risk to us.
11. The statutory limitation periods apply to our claims in respect of defects. These begin on the timely notification of defects as provided by subparagraph 7 above. The Seller's liability for defects ends at the latest ten years after delivery of the goods. This limitation does not apply should our claims depend on facts that were known by the Seller or of which the Seller could not have been ignorant, but of which we were not informed.
12. The Seller hereby assigns to us - by way of provisional performance - all claims to which the Seller is entitled against its upstream suppliers caused by and in connection with the supply of defective goods or if the goods do not have the assured or warranted properties. The Supplier shall provide us with all the documents required to make such claims.

IX. Rights of withdrawal

1. We reserve the right to withdraw from the contract up to the moment of delivery by means of written declaration to the supplier. If this right of withdrawal is exercised, the supplier shall be entitled to remuneration, calculated in accordance with the provisions of § 645 I German Civil Code.
2. If we no longer need the goods ordered due to the effect of force majeure, we may withdraw from all or part of the contract, or require fulfilment at another point in time, without this entitling the Seller to make any claims against us.
3. If a party to the contract ceases to make payments or insolvency proceedings are opened in respect of its assets, or composition proceedings are applied for in court or out of court, the other party shall be entitled to withdraw from the contract in respect of the unfulfilled part.
4. This does not affect our further rights of termination and withdrawal in accordance with these Terms and Conditions of Purchase.

X. Place of performance, legal venue and applicable law

1. Provided nothing is agreed to the contrary, the place of performance for delivery is our business premises in Essingen. The place of performance for payment is Essingen.
2. If the customer is a fully qualified merchant, Essingen is deemed to be the legal venue for all disputes arising in connection with the contractual relationship; the legal dispute may also be pursued at our discretion at the place of performance. Otherwise, the statutory legal venue applies.
3. In addition to this condition, the law of the Federal Republic of Germany, including the provisions of the United Nations Convention of 11.04.1980 on Contracts for the International Sale of Goods, applies to all legal relations between us and the supplier.

XI. Closing provisions

1. Should a provision of the terms of the contract be or become unworkable, this shall not affect the validity of the remaining provisions. The parties undertake to replace the unworkable provision with a provision that most closely approximates to its economic objective.