

SALES AND DELIVERY CONDITIONS OF STEULER-KCH GmbH

I. Offer and Conclusion

1. Seller's offers are non-binding and subject to change. Contracts shall be considered as having been concluded after seller's written confirmation of order only.
2. If the Buyer delivers drawings after Seller's written confirmation or quality samples, the Buyer has the responsibility to take care that the rights of a third party are not affected by their use.
3. Seller reserves all property rights and intellectual property rights to cost estimations, drawings and other documents forming part of the offer. The Buyer shall, however, neither publish them, make them accessible to any third parties nor copy them for any other purpose than that for which they were intended, especially not for tenders nor for subsequent deliveries or replacement work by third parties, without the permission of the Seller. Infringements shall impose an obligation for compensation.

II. Prices

1. All offers are based on the wages and prices for raw materials and fuels, freight charges, duties and exchange rates valid at the time when the offer is made. Should the basis for the calculation change afterwards, prices are subject to change in accordance with the rise of costs. Prices are subject to change, if between the conclusion and delivery more than 4 months have passed.
2. Any supplemental charges which are caused by order amendments later in time for which the Seller is not responsible are to be borne by the Buyer.
3. All duties as well as taxes and costs to be paid outside of the Federal Republic of Germany are to be borne by the Buyer.

III. Delivery

1. Delivery shall be done ex work (Incoterms 2010). The delivery period begins with the dispatch of the Order Acknowledgement, however not before the documents, permits and releases the Buyer is responsible to procure have been delivered nor before the down payment agreed upon has been received by the Seller. Should the Buyer not respect his obligations resulting from the contract, the Seller is not bound to keep to the agreed deadlines.
2. The Seller shall not be held responsible for the delay in delivery or non-delivery of the goods in case the delivery of the contracted goods is prevented or delayed by reason of war, serious fire, flood, earthquake, or other Force Majeur Causes like strike and lock-out. In this case, the Seller has the right to prolong the delivery time correspondingly or to declare the contract void in parts or completely if it is partially or completely impossible to maintain the management of the factory or the dispatch.
3. In case a delay in delivery exists which is attributable to the Seller the Buyer may grant a reasonable grace period in writing, indicating that it refuses to accept delivery after expiry of the grace period. If a partial fulfillment is not of interest to the Buyer he can withdraw from the entire contract. Further rights, especially claims for compensation of damages are excluded unless a case is given as stipulated in number IX section 2.

IV. Manufacture

Inspections and examinations in the works are subject to German rules.

V. Acceptance

1. If the goods are inspected by the Buyer prior to shipment, they are deemed accepted unless a written complaint has been submitted to the Seller within fourteen days after the defect was detected or should, according to equitable discretion, have been detected.
2. If goods that are ready for dispatch are stored at the Buyer's disposal for reasons that are under his responsibility they can be invoiced immediately and payment be claimed. Goods are then stored on account and at the risk of the Buyer.

VI. Invoicing and Payment

1. The goods' weight determined by the seller shall be relevant for the determination of the weight of the goods to be invoiced.
2. Seller's invoices have to be settled latest within 14 days after the date of invoice without any discounts.
3. In case of delay of payment the Seller is entitled to demand interest for default amounting to 9 percent annually above the relevant base interest rate of the European Central Bank from the relevant due date.
4. In case bills of exchange and cheques have been accepted on account of performance any costs and charges have to be borne by the Buyer.
5. The Seller shall have the right to offset Buyer's claims for payment against any such counter-claims to which the Seller or any of his affiliated companies (in which the

Seller holds an ownership greater than 50 percent) are entitled. The Buyer may offset or retain payments against recognized claims or claims which have been declared final and absolute by a court only. Only counter-claims that have been accepted by the Seller give the Buyer the right to retain due payments.

6. In case of justified doubts in the solvency of the Buyer, the Seller may declare further deliveries to be dependent on the presentation of sufficient securities.

VII. Retention of title

1. The goods' weight determined by the Seller shall be relevant until all claims resulting from the delivery contract or from earlier contracts between the parties have been settled.
2. In case the purchaser fails to pay on the due date or in case of imminent insolvency or other essential deterioration of the Buyer's financial situation, the seller may - without withdrawing from the contract and without prejudice to its other rights - demand immediate return of the goods already delivered. In this case the costs of return transport are borne by the Buyer. The same applies if substantiated doubts arise about the Buyer's ability of willingness to pay, after delivery.
3. Provided the Buyer is not in delay of payment, he may sell or use the goods within the normal line of business. If goods under reservation of title of the Seller are processed to new mobile goods or mixed or bound with mobile goods which are not the property of the Seller, this is done on the Seller's orders without any obligations resulting from this. These goods become thus the full or partial property of the Seller and are being stored on his account by the Buyer. Claims resulting from the sale or processing of goods on the Buyer's behalf, even if the goods are incorporated into immovable, are assigned to the Seller already at this period of time. The amount is the sum claimed from the Buyer for the goods under reservation of title or resulting from collective invoices, the rank being higher than the balance.
4. The Buyer is not authorized to pledge the goods or to transfer their ownership by way of security. The Seller has to be informed immediately by the Buyer about levy of execution against the Buyer.
5. As long as the Buyer is not in delay in payment, he may resell or further process the goods according to proper business operations. The Buyer assigns any claims arising from processing, mixing or selling the goods supplied by the Seller, to the Seller with top level priority. The assigned claims shall be the Seller's security in the amount of the goods' value that has been sold. The Buyer is obliged to tell the Seller, on his request, the name of the garnishee, as well as the above specified amounts. The Seller may inform the garnishee about the assignment and claim the assigned amount. The Buyer may collect the assigned amount only until he has fulfilled his duties towards the Seller. The Seller becomes automatically the owner of the collected amounts, which have to be put aside by the Buyer. As soon as the payments are due the Buyer has to transfer the money to the Seller. The Buyer is not allowed to transfer any rights of the claims to garnishees.
6. If the value of the securities offered to the Seller exceeds the sum claimed by more than 20 %, he has to release parts of the securities on the Buyer's demand and at the Buyer's choice.
7. In the case the given securities are not valid or insufficient and the Buyer has not given other securities, the Seller may request from the Buyer at any time other securities. Retention of title and all others securities of the Seller are as long valid as all Seller's obligations, that he has entered into in the interest of the Buyer, are released

VIII. Warranty

1. The Seller warrants, within the framework of the clauses stipulated herein, that the goods he delivers are, at the point in time of passing the risk, free of any defects that would nullify or be otherwise detrimental to the goods' value or suitability for common use or for the use stipulated in the contract to more than a merely minor extent.
2. The Buyer shall examine without undue delay, whether the goods delivered have the contractually agreed quality. Furthermore § 377 HGB (German Commercial Code) shall apply. No claims for defects that were detectable immediately upon receipt of the goods may any longer be raised after the goods have been sold, processed or built into any other object(s). The Buyer does not accept any warranty for the durability of any Goods.
3. Claims for defects shall only relate to the defective part of the delivery. From this point of view, all deliveries shall be considered divisible.
4. After a justified claim has been made within the warranty period, the Seller shall, at his discretion, either eliminate the defect or make a substitute delivery within an appropriate period. If the original order included the delivery of documentation for construction or assembly and these are incorrect, the Seller shall only be liable within a warranty period of one year from date of delivery of the documentation for correcting said documents and only, in so far as this is required as a result of the defects involved, for a substitute delivery free-of-charge of the material purchased from the Seller. The same applies if the Seller gives written consultations and/or technical details. Verbal advice and information is provided under exclusion of any liability.
5. If any repair or substitute delivery fails multiple times, or if the Seller still finds himself in arrears as to the fulfilment of his duties after expiry of a subsequent dead-

line to remedy the defects, such deadline having been stipulated to the Seller in writing, then the Buyer may demand an appropriate reduction in price. The Buyer may only request cancellation of the contract in cases in which his interest in the goods is proven to be significantly prejudiced by the defect, especially in cases in which the substitute delivery of the goods agreed upon in the contract turns out to be impossible. Except as otherwise agreed, further warranty claims are excluded.

6. In case of disputes regarding the warranty of chemical-physical properties of the material(s), a decision shall be made exclusively by a neutral specialist institute named by the Seller. Random samples shall be taken together, if at all possible. The Party who proves to be wrong shall bear all costs for testing.
7. In case the Seller, upon the Buyer's request, carries out tests, replacement deliveries or repair work and it becomes apparent that there are either no defects or the defect in question results from circumstances which do not comprise a warranty obligation, the Buyer is obliged to compensate the Seller for its efforts hereunder in accordance with the conditions of the purchase order.
8. In case the Seller provides supervision or monitoring services, he shall only be liable for the selection of qualified personnel and that said personnel provides correct advice. Any further liability and warranty is excluded.
The Seller's total liability is limited to three times the amount of the price payable for the services or, if no price for these services has been specified, three times of the price usually payable for such services. In terms of the monetary amount, the Seller's liability is limited to three times the compensation agreed upon for this monitoring work or, should no specific compensation have been stipulated for the monitoring work, to three times the amount normally paid for such work. This shall apply unless it is a matter settled under Sec. IX Para. 2. If delivery and installation of the materials has been agreed, the Seller's service conditions shall apply.

IX. Liability

1. Except as otherwise provided herein, the Seller shall be liable for damages caused by the breach of contractual and non-contractual duties under statutory regulations.
2. The seller is liable for damages in the event of wilful intent and gross negligence. In case of simple negligence the seller is only liable
 - a) for damages ensuing from injury to life, body or health,
 - b) for damages ensuing from violation of an essential contractual duty (obligation, the fulfilment of which permits the correct execution of the contract in the first place and on the observation of which the contractual partner regularly relies and is entitled to rely); in this case the Seller's liability for damages is limited to a predictable damage that might typically occur. The Seller's liability hereunder is, however, limited to 110 % of the contract price.

3. The limitations of liability according to the preceding paragraph 2) shall not apply in case the Seller fraudulently concealed a defect or if the Seller granted warranty of the qualities of a good hereunder. Liability in accordance with the German Product Liability Law remains unaffected.
4. The buyer can only rescind or terminate for a breach of duty that does not comprise a defect if the seller is responsible for the breach of duty. Free right of termination for the buyer (in particular pursuant to §§ 651, 649 BGB (German Civil Code)) is excluded.
In all other respects, the statutory provisions and legal consequences shall apply.

X. Limitation of time

1. Except as otherwise provided herein the statutory period of limitation shall apply for the claims of either Party.
2. By derogation from § 438 Section 1 No. 3 BGB (German Civil Code), the general limitation period for claims arising from material defects and defects of title is one year from delivery.
3. This does not affect statutory special provisions regarding third-party claims for return (§ 438 Section 1 No. 1 BGB (German Civil Code)), for buildings and building materials (§ 438 Section 1 No. 2 BGB (German Civil Code)), for claims in recourse against suppliers (§ 479 BGB (German Civil Code)) as well as for the damages claims specified in Item IX. In these situations, the statutory limitation provisions apply exclusively.
4. To the extent that the seller owes damages pursuant to Item IX due to or as a consequence of a defect, the statutory limitations periods under sales law apply (§ 438 BGB (German Civil Code)) also to competing non-contractual claims for damages if the application of the regular statutory limitation (§§ 195, 199 BGB (German Civil Code)) does not lead to a shorter limitation period on a case-by-case basis. In any event, the limitation periods under the German Product Liability Act are unaffected.

XI. Place of performance and jurisdiction

1. Place of performance for payment and delivery is Hoehr-Grenzhausen.
2. The competent court for jurisdiction for both parties is the court appropriate to the Seller's branch establishment. The Seller has the right, however, to suit the Buyer at the court appropriate to Buyer's place of business.
3. The Agreement is subject to German law without its conflict of law rules.

XII. General Provisions

Buyer's personal data are handled by the Seller in compliance with the provisions of the Federal Data Protection Act (BDSG).