

## **GENERAL TERMS & CONDITIONS OF SALE AND DELIVERY (GTC), Damstahl GmbH/Germany**

### **I. General**

1. The following terms and conditions are effective for our deliveries and services (incl. information and advice) in connection with entrepreneurs. The Customer's own general terms and conditions are only valid if our express written consent has been given.
2. Oral or written promises and/or guarantees differing from or supplementing our terms of delivery and/or the order confirmation require the agreement of our organs or the managers authorized to sign for the firm.
3. Our customers' data is stored and processed in our electronic data processing system as far as necessary for proper transaction of the business connection.

### **II. Quotations**

1. Any quotation from Damstahl is made subject unsold. A contract does not come into existence until we have confirmed a customer's order in writing, or until the goods are delivered.
2. All information and data concerning our products are to be regarded as approximate average values. They do not constitute any guarantees of properties and condition. Deviations customary in the industry (manufacturing tolerances) are permissible as well as excess or short deliveries of up to 10 %. Samples are non-committal samples for inspection. Conditions of samples are regarded as not guaranteed.

### **III. Delivery and Transfer of Risk**

1. Delivery periods start with the date of our order confirmation. Terms and dates relate to the time of dispatch of goods. They are already deemed kept with the advice of readiness for dispatch, if goods cannot be dispatched in due time without default on our part.
2. Where delivery dates or times are not expressly declared as fixed in our written order confirmation, the Customer may set a reasonable time limit for delivery two weeks after expiry of the delivery dates or times. We are only in default after expiration of such final time limit.
3. Terms and dates extend by the period of time for which the Customer does not fulfil its obligations towards us, irrespective of our further rights resulting from the Customer's default.
4. Cases of force majeure and other events, on which we have not influence, hindering us significantly in the performance of our delivery or service or making it impossible, release us from the respective contract, temporary hindrances, however, only for the duration of such hindrance plus a reasonable lead-time. As far as the Customer cannot be expected to accept such delay, the Customer can withdraw from the contract by immediate written declaration after having informed us before. We reserve ourselves the right to deliver.
5. We are entitled to partial deliveries if such are not unreasonable to the Customer.
6. Place of performance for our deliveries is our warehouse. Dispatch and transport always happen at the Customer's risk. Risk transfers to the Customer also in case of partial deliveries as soon as the shipment is handed over to the person effecting the transport, or has left our plant /warehouse for the purpose of dispatch.
7. If shipment is delayed for reasons for which the Customer is answerable, then the risk is transferred upon notification of readiness for shipment. Any storage costs incurred after the risk has passed shall be payable by the Customer.
8. Mode of dispatch and packing are at our discretion. Insurance of the shipment against damages in transit and other risks is effected upon Customer's request and for Customer's account. Taking back of packing materials happens in accordance with the respective packaging ordinance in force. Transport packaging soiled by the Customer and/or not assorted by material are only taken back against reimbursement of costs.

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9. In case an acceptance is agreed, it can only take place at the supplier's plant immediately after notification of readiness for acceptance. The costs are borne by the Customer. In case the acceptance does not take place, not in due time or not completely, we are entitled to dispatch the goods without an acceptance or to store them at the Customer's risk and expense. The goods then are considered accepted unless the Customer is entitled to refusal of acceptance.

### **IV. Prices and Payment**

1. The prices valid on the day of delivery apply. We charge alloy, scrap and other surcharges according to the prices valid on the day of delivery. All prices are net ex delivery works or warehouse; the applicable statutory value added tax is charged additionally.

2. Payments are immediately due – unless otherwise agreed - and to be effected free of postage and charges. We are entitled to charge interest from the date of maturity at the rate of the applicable bank rate for overdraft, however not less than in the amount of 8 percentage points above the respective base rate (247 BGB). Each party to the contract is entitled to provide evidence of a differing interest disadvantage. Claims in case of default remain unaffected.

3. Hold back of payments due to or setoff against counterclaims of the Customer is only admissible if these counterclaims are uncontested or final and conclusive.

4. All our claims – also such resulting from other contracts with the Customer – immediately become due for payment in case of the Customer's default or cessation of payment. If circumstances become otherwise known to us, which give reason to serious doubt in the Customer's solvency or creditworthiness, we are also entitled to effect deliveries still pending against pre-payment or provision of security only and, if such pre-payment or provision of security is not made within two weeks, to withdraw from the contract without setting any another deadline. Further claims remain unaffected.

### **V. Retention of Title**

1. All goods delivered remain our property (reserved goods) up to the fulfilment of any and all claims, irrespective for what legal ground, including claims arising in future or conditional claims. Similarly, it applies when payments are made in settlement of specially identified claims.

2. Processing and transformation of the reserved goods is made for us as manufacturer in the sense of 950 German Civil Code (BGB), without obligation to us. The transformed goods are deemed reserved goods within the meaning of clause 1 above. In case of transformation, combining and intermixture of the reserved goods by the Customer with goods of other origin to a new product, we become co-owner of it, namely in the ratio of the invoiced amount of the reserved goods to the value of the other processed goods, respectively. Should our ownership expire due to the combination or mixing of goods, the Customer shall thereupon assign us his ownership rights to the new stock or item to the extent of the invoiced amount of the separate goods, and shall safeguard them for us free of charge. The co-ownership share is held as separate goods within the meaning of clause 1 above.

3. The Customer is entitled, only within the scope of proper business operations and for as long as he is not in default to resell, process, adjunction with other objects or otherwise install the reserved goods (hereinafter shortly referred to as "resale"). In any case of resale, the Customer must reserve its title to the reserved goods in relation to its purchaser under the same conditions under which we reserved ownership when delivering the reserved goods. Any other disposal of the reserved goods is inadmissible. Levy of execution or other seizure of the reserved goods by third parties must be notified to us immediately. All intervention costs are at the Customer's expense, to the extent as it cannot be claimed from the third party (respondent of the action against execution) and the intervention was justified.

4. Receivables of the Customer from resale of the reserved goods are already hereby assigned to us. They serve as collateral to the same extent as the reserved goods. The Customer is only entitled and authorized to resell if it is ensured that the claims due to him there from pass on to us. If the reserved goods are sold by the Customer together with other goods not supplied by us for a total price, then assignment of receivables from the sale is performed in the invoice amount of our respective reserved goods sold. If the receivable assigned is included in a current account, then the Customer already

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hereby assigns a share of the balance including closing balance of the current account corresponding to the amount of this receivable to us.

5. The Customer is authorized to collect receivables assigned to us until our revocation. We are entitled to revoke if the Customer does not properly fulfil his payment obligations from the business relationship with us or if we gain knowledge of circumstances suitable to substantially reduce the credit worthiness of the Customer. If the preconditions for exercising of the right to revoke are fulfilled, then the Customer upon our request must immediately disclose the receivables assigned and their debtors, give all information required for collection of the receivables, hand over the associated documentation and notify the debtor of assignment. We ourselves are also entitled to make notification of assignment to the debtor.

6. In case the value (claims = the nominal value; movables = the appraised value) of securities existing in favour of us exceeds the secured claims altogether by more than 20 percent, we are obligated insofar to release upon the Customer's request securities at our option.

**VI. Warranty and obligation to give notice of defects**

1. The Customer shall diligently examine the goods immediately upon receipt at the place of destination, albeit prior delivery of models or samples. The goods shall be deemed to be accepted, unless the Customer notifies us of any defect within seven (7) days after receipt of the goods at the place of destination or, in case of hidden defects, within seven (7) days after the defect was discovered in writing or by fax specifying the defect. A defect is in no circumstances existent in case of deviations of the goods delivered from the order confirmation to the extend customary in the industry. For goods sold as declassified or used material, the Customer is not entitled to any claims for defects.

2. Damages to goods in transit are to be notified to the forwarder; the notification obligations pursuant to the German General Conditions for Forwarders (Allgemeine Deutschen Speditionsbedingungen) shall apply.

3. In case of justified notification of defects we are in case of defects or in absence of any agreed quality of the supplied goods obliged to subsequent performance through correction or compensation delivery in a manner of our choosing; we shall bear the costs for correction of faults as far as these are not raised due to it that the goods were brought to a place other than the place of performance by the Customer. Should subsequent fulfilment fail, the Customer can demand lowering of the purchase price or rescission of the contract after having granted us adequate additional respite of at least six weeks, unless such is superfluous according to legal requirements. In the event of the withdrawal the Customer shall be liable for any deterioration, destruction and compensation for use, not only for its own due care and attention but also for any damages, regardless of who is at fault. (Vertretenmüssen).

4. For all other Customer claims for damages or reimbursement of expenses or in connection with the defects in the supplied goods – regardless of the legal reason on which they are based - we are only liable pursuant to the regulations in VII.

5. Guarantee claims against us are subject to a period of limitation of one year after delivery of the goods to the Customer or to a place of delivery stated by him; this does not apply to an item that has been accordingly used for a building and has resulted in the latter's defectiveness.

6. Claims against us because of a malicious concealment of a fault or the explicit adoption of a quality guarantee solely follow the legal regulations.

7. Is the end Customer of the goods in the supply chain a consumer, so is the Customer – under the further preconditions of 377 HGB – entitled to recourse according to the legal requirements of 478, 479 BGB - however, any claims for damages and reimbursement of expenses only exist subject to the provisions given in VII., 1 and 2.

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### **VII. Liability disclaimer and limitation of claims for compensation or reimbursement of damages**

1. For claims for compensation and reimbursement of damages regardless of the legal reason on which they are based, e.g. breach of duty, liability for tort, product liability (any liability under the Product Liability Act is excluded) we shall in case of minor negligence only be liable when a violation of essential obligations endangers the purpose of the contract and only and only for the typical and foreseeable damage. Any liability, regardless of negligence or default, is still excluded.
2. The disclaimer and the limitation of liability of Section 1 do not apply in case of liability for personal, fatal or health injuries, in case of takeover of a quality guarantee or in case of fraudulent concealment of a defect.
3. All claims by the Customer to compensation and damages against us, regardless of the legal reason, are subject to a period of limitation of one year after a transfer of the danger to the Customer, in the case of a criminal liability starting with the knowledge or the grossly negligent non-knowledge of the circumstances on which the claim is based or of the person liable to pay compensation. This does not apply in the case of intent, in the previously mentioned cases in 2 and to goods which have been used for a building in accordance with the normal manner of use and which have resulted in the latter's defectiveness. Possible shorter legal limitation periods have priority.
4. If the end customer of the goods a consumer, the statutory provisions apply for the limitation of the Customer's right of recourse against us.
5. The provisions stated in VII shall also apply to our employees.

### **VIII. Manufacture according to Customer's instructions**

1. In cases of manufacture according to Customers' drawings, samples and other instructions by the buyer, we do not assume any guarantee or liability for the functional suitability of the product and/or for other defects, as far as such circumstances are based on the Customer's instructions. The Customer indemnifies us from possible claims by third parties, also arising from product liability, against us because of damages caused by the goods or other performances unless we have caused such damage deliberately or grossly negligent.
2. Moulding, tooling and design documents produced by us for the realization of the order are solely our property. The Customer does not have any entitlement of those, even if the Customer shares part of the costs of producing such moulding, tooling and design documents.

### **IX. Place of jurisdiction and applicable law**

1. Place of jurisdiction for all disputes arising from this contract is either our registered office or the buyer's registered office at our option, for legal actions by the Customer exclusively our registered office. Legal regulations on exclusive competences remain unaffected.
2. The laws of the Federal Republic of Germany are applicable for all legal relationships between the Customer and us. The UN Convention on Contracts for the International Sale of Goods (CISG) does not apply.

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