

## General Payment and Delivery Terms

of the company CS Metallbau GmbH, D-01906 Burkau  
(effective: January 2007)

### 1. Miscellaneous

- 1.1. The following terms apply to all transactions made with us for the complete duration of the business relationship. They also apply to future transactions, even when not referred to explicitly.
- 1.2. All arrangements between us and the customer are described in writing in these General Payment and Delivery Terms as well as in the order confirmation.
- 1.3. Our General Payment Terms and Conditions apply exclusively. Deviating Business or Purchase terms of the customer are herewith explicitly objected. Our Payment and Delivery Terms also apply, when we implicitly carry out the delivery to the customer despite our knowledge of the terms of the customer that contradict or deviate from our Terms.
- 1.4. Our offers are non-binding.
- 1.5. Our General Payment and Delivery Terms only apply to contractors in the sense of § 310 section 1 BGB (German Civil Code).

### 2. Prices

- 2.1. The prices stated in our order confirmation are binding.
- 2.2. Our prices are net prices. The statutory Value Added Tax is not included; it will be invoiced to the customer separately.
- 2.3. Our prices are "ex works" in D-01960 Burkau. The customer bears the costs for packaging, dispatch and insurance. They are invoiced separately.
- 2.4. In the event that our costs for materials, goods or external services as well as taxes, custom duties, charges or fees of any kind that influence the initial price, change between the conclusion of contract and its fulfilment, we are entitled to correct the price to be paid by the customer accordingly. An increase in price is limited to the price realised or realisable by us on the market.

### 3. Payment Terms

- 3.1. Our claims are payable net, that is, without any deductions, within 30 days from the invoice date at the latest. After expiration of this term of payment the customer is in default; a reminder is not necessary. We grant a discount of 2% for payments within 10 days. Freight, packaging, custom duties, charges or fees of any kind are not discountable.
- 3.2. Customer payments always settle the oldest claim from the business relationship.
- 3.3. All payments must be effected to us free of charge. The customer bears all expenses for bills of exchange or checks as well as discount or other costs of withdrawal.
- 3.4. Apart from that the legal regulations concerning default in payment apply.
- 3.5. In the event of cash flow problems on the part of the customer, particularly in the event of default in payment, procedures on cheques or bills of exchange, as well as if after the conclusion of contract reasonable doubts in the customer's solvency or creditworthiness arise, we are entitled to demand advance payment for any further deliveries, to accelerate all open – also deferred – invoiced amounts immediately and to demand cash payment or sureties against the return of bills of exchange already received for payment. In the event that we have exercised the aforementioned rights to the customer, we are not obliged to carry out further deliveries from any current contract, as long as the customer has not fulfilled his respective obligation to pay.
- 3.6. The customer is only entitled to set off claims to the extent that his counterclaims are undisputed, acknowledged by us or are determined without further legal recourse. The same applies for the retention due to an outstanding debt. Furthermore, the customer is only entitled to exercise his right of retention to the extent that his counterclaim is based on the same contractual relationship.

### 4. Delivery Period, Extension of Delivery Period, Default

- 4.1. The delivery period is stated in our order confirmation.
- 4.2. If a binding delivery period was agreed, it begins with the dispatch of the order confirmation. The delivery date is met, when the item has left our premises before the end of the delivery period or the customer has been notified of the readiness for dispatch by this time. Our obligation to keep the delivery period always implies that the customer has duly fulfilled his contractual duties, particularly his duties to collaborate in due time. We reserve the defence of non-performance of contract.
- 4.3. In the event of acts of God or factors that were not foreseeable at the time of the conclusion of contract and for which we are not responsible (e. g. strike, lockout, staff shortage, lack of transportation, official orders, subsequently arising difficulties in procuring materials and operating troubles due to water, fire and machinery breakdown) the delivery period is extended by the duration of the relevant factors. This also applies if such factors occur with our suppliers.
- 4.4. Before the expiration of the delivery period extended in accordance with 4.3., the customer is neither entitled to withdrawal, nor compensation. The exclusion of the right of withdrawal ends, when the impediment to performance lasts longer than 3 months. The exclusion does not apply if the customer has a contractual or legal right of withdrawal even without setting a final deadline. If the impediment to performance lasts longer than 3 months, we are entitled to withdraw from the contract, too.
- 4.5. We are liable for default of delivery in accordance with legal regulations,
  - (a) if the underlying purchase contract is a firm deal in the sense of 286 section 2 no 4 BGB or § 376 HGB (German Commercial Code);
  - (b) if, as a result of a default of delivery for which we are responsible, the customer is entitled to claim that his interest in the further fulfilment of the contract is discontinued;
  - (c) if the default of delivery is based on a grossly negligent breach of contract or on a breach of contract for which we are responsible; if the default of delivery is not based on an intended breach of contract for which we are responsible, our liability for damages is limited to the foreseeable, typically occurring damage;
  - (d) if the default of delivery for which we are responsible is based on a culpable violation of an essential contractual obligation; in this case the liability for damages is also limited to the foreseeable, typically occurring damage.
- 4.6. Apart from that, the customer's claim to compensation for damage due to the default of delivery is limited to a sum amounting to 1% of the net value of the items for each completed week of default, which in total, however, is limited to a sum amounting to 15% of the net value of the item.
- 4.7. A culpability of our representative or proxy is attributed to us.
- 4.8. If the customer culpably breaches his duty to cooperate, we are entitled to claim compensation for the incurred damage including possible additional expenditures. Further claims are reserved.

### 5. Withdrawal in the Event of Default of Acceptance

If the customer fails to accept the goods for longer than 10 days, and if the extra time limit of 14 days set by us has expired without result, we are entitled to withdraw from the contract and to claim compensation for the damages caused.

### 6. Passage of Risk, Dispatch

- 6.1. Delivery "ex works" is agreed. The risk of accidental loss or accidental deterioration of the goods shall pass to the customer with the dispatch of the goods to the customer. This also applies if the dispatch is carried out by our own staff.
- 6.2. Delivery shall have occurred even if the customer is in default of acceptance. This also applies if the dispatch is delayed for reasons for which the customer is responsible.
- 6.3. In the cases of aforementioned point 6.1., we are entitled to insure the goods at the customer's charge against theft, fire, water, and similar risks, even without the customer's consent.
- 6.4. We are entitled to determine delivery time, way and route of transportation at equitable discretion.

### 7. Retention of Title

- 7.1. Until complete payment of the purchase price, the delivered item shall remain our property.
- 7.2. The customer shall be entitled to resell the goods subject to retention of title in ordinary course of business only in accordance with the following regulations: The purchaser transfers his claims from the resale of the goods subject to retention of title – including all secondary claims – to us in the amount of the total invoiced amount (incl. VAT) owed to us. We herewith accept the transfer. The transferred claims serve as a surety to the same extent as the goods subject to retention of title. Even after the transfer, the customer is entitled to collect the claims. Our authority to collect the claim ourselves remains unaffected. However, we commit ourselves not to collect the claim, as long as the customer fulfils his liabilities to pay from the collected proceeds, is not in default, no application to open settlement or insolvency proceedings is filed or commercial failure is given. Should this be the case, we are entitled to demand that the customer discloses the transferred claims as well as the relevant debtors, provides all information necessary for the collection, hands out the relevant documents and informs the debtor (third party) about the transfer.
- 7.3. We commit ourselves to release the sureties entitled to us, if their value exceeds the ensuring claims, as far as not settled yet, by more than 20%.
- 7.4. If (a) the customer is in default, (b) an application for opening settlement or insolvency proceedings is filed, (c) the customer's pecuniary circumstances considerably worsen to an extent that commercial failure is feared, or (d) the customer breaches a substantial contractual obligation, we are entitled to reclaim the goods subject to retention of title. The withdrawal of goods by us is equivalent to our withdrawal from the contract.

### 8. Customer Rights and Duties in the Event of Flaws

- 8.1. The customer shall inspect the delivered goods properly immediately after delivery. Possible flaws, differences in quantity or misdeliveries shall be notified to us without delay, obvious flaws or flaws noticeable during proper inspection within one week after delivery at the latest in writing. The customer shall give us the opportunity for a joint inspection of the stated flaws. In the event of deliveries abroad it is sufficient that the foreign customer notifies our relevant foreign representative in accordance with these regulations and with legal regulations (§377 HGB). If the customer offends against these regulations, he loses his rights arising from product flaws.
- 8.2. If the goods are flawed, we are entitled to supplementary performance in the form of removal of flaws or delivery of a new, flawless item at our own discretion. If the supplementary performance fails, the customer is entitled to demand withdrawal or reduction at his own discretion.
- 8.3. The period of limitation for claims for flaws amounts to 24 months, starting from the transfer of risk.
- 8.4. The statutory period of limitation in the event of a delivery regress in accordance with §§ 478, 479 BGB remains unaffected by no 8.3.; it amounts to a maximum of five years starting from the delivery of the flawed good.

### 9. Implementation Documents

- 9.1. The implementation documents left with the customer (plans, drawings, illustrations, indications of weight and dimensions) shall only be disclosed to thirds within the scope of the contractual purpose and/or for the fulfilment of possible obligations subject to public law. A transfer to third parties for other purposes (particularly for the reconstruction of the product) without the prior written consent of the company CS Metallbau GmbH is forbidden. As far as the customer does not need the implementation documents provided by us (any more), he shall return them on request. The sentences 1 and 2 apply accordingly for the customer's implementation documents; they may be, however, disclosed to those third parties that we have permissibly assigned with deliveries and/or services.
- 9.2. If the implementation documents contradict each other, then the contractual parties will come to an agreement concerning the further procedure. Jointly agreed specifications precede possibly deviating statements of the customer in the documents on the procurement. Compulsive regulations regarding the procurement remain unaffected.

### 10. Liability of the CS Metallbau GmbH

- 10.1. We are liable according to legal regulations, if the customer claims for damages based on intent or gross negligence, including intent or gross negligence of our representatives or proxies. Unless we are accused of intentional breach of contract, each liability for damages is limited to the foreseeable, typically arising damage.
- 10.2. We are liable according to legal regulations, if we intentionally breach an essential contractual obligation; also in this case the liability for damages is limited to the foreseeable, typically arising damage.
- 10.3. The liability due to culpable injury of life, body or health remains unaffected from the limitation of liability in no. 8. and 10 and is subject to legal regulations; this also applies for the compulsory liability according to the product liability law.
- 10.4. A further liability of the CS Metallbau GmbH than stated in these General Payment and Delivery Terms is excluded, namely irrespective of the legal nature of the asserted claim. This particularly applies for further compensation claims, such as due to negligence in contracting, due to other breaches of duties or due to tort claims for restitution of damages in accordance with § 823 BGB.
- 10.5. The limitation of liability in accordance with no. 10.4. also applies, if in the event of a claim for restitution of damage the customer demands the restitution of futile expenses instead of performance.
- 10.6. As far as the liability of damages towards us is excluded or limited, this also applies in view to the personal liability of damages of our board members, employees, staff members, representatives and proxies.

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

- 11.1. Only applicable law is that of the Federal Republic of Germany. The application of UN sales law is excluded.
- 11.2. Unless otherwise stated in the order confirmation, place of performance for all services of both contractual partners is our headquarters in 01906 Burkau.
- 11.3. For all disputes arising from this contract that court shall have exclusive jurisdiction, at which the CS Metallbau GmbH has its general jurisdiction. We are, however, entitled to sue the customer at its location.

### 12. Severability

Should any provision of these Payment and Delivery Terms be invalid in part or as a whole, the validity of the other provisions or part-provisions or the whole contract remains unaffected. Instead of the invalid (part-) provision legal regulations shall apply.