

## **General Conditions of Delivery and Payment of International Metal Service Nord GmbH**

**Version 10/2022**

### **I. Application, Conclusion of Contract**

1. These General Conditions of Delivery and Payment (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 for work and services, contracts for the delivery of fungible and non-fungible goods to be manufactured or produced. 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 non-binding to us. Orders of the buyer are only binding for us if they have been confirmed by us in text form. The same applies to changes to orders. However, we are entitled to accept an order by executing the order without prior confirmation. Acceptance can take place within a reasonable period of time after receipt of the order.
3. Oral agreements, promises, assurances, guarantees and statements about the intended use or application made by our employees in connection with the conclusion of the contract are non-binding and only become binding upon our confirmation in text form.
4. In case of doubt, the Incoterms in their latest version shall be decisive for the interpretation of trade terms.

### **II. Prices**

1. Unless otherwise agreed, the prices are understood ex works or ex warehouse plus freight, value added tax and import charges. The goods shall be invoiced "gross for net".
2. If, more than four weeks after conclusion of the contract, the sum of the costs incurred outside our company which are included in the agreed price changes, we shall be entitled to adjust the prices to the corresponding extent in each case on the first day of the calendar month.
3. In the event that the adjusted price exceeds the initial price by more than 10%, the buyer shall have the right to withdraw from the contract with regard to the quantities affected by the price adjustment upon the price adjustment taking effect. The right of rescission can only be exercised within one week of becoming aware of or being able to take note of the price adjustment.

### **III. Payment and Set-Off**

1. Unless otherwise agreed or stated in our invoices, the purchase price is due immediately after delivery without discount and is to be paid in such a way that we can dispose of the amount 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. If, after conclusion of the contract, it becomes apparent that our payment claim is endangered by the buyer's lack of ability to pay or if the buyer is in default of payment with a considerable amount, or if other circumstances arise which indicate a significant deterioration in the buyer's ability to pay after conclusion of the contract, we may refuse agreed advance performance and exercise the rights under § 321 BGB. This also applies insofar as our obligation to perform is not yet due. We shall then also be entitled to demand payment of all claims not yet due from the current business relationship with the buyer. A lack of ability to pay on the part of the buyer is also deemed to exist if the buyer is at least three weeks in arrears with a substantial amount (from 10% due), furthermore the substantial downgrading of the limit existing for him with our trade credit insurance.
3. If the term of payment is exceeded or in case of default, we shall charge interest in the amount of the statutory default interest rate, unless higher interest rates have been agreed. In addition, we shall be entitled to charge a lump sum for default amounting to 40.00 EUR. We reserve the right to claim further damages.
4. The buyer is only entitled to a right of retention and a right of set-off to the extent that his counterclaims are undisputed or have been legally established, they are based on the same

contractual relationship with the seller and/or they would entitle the buyer to refuse his performance according to section 320 BGB (German Civil Code).

5. If discount deduction has been agreed, this always refers only to the invoice value excluding freight and presupposes the complete settlement of all due obligations of the buyer at the time of discount allocation. Unless otherwise agreed, discount periods shall commence from the invoice date.

6. Claims against us, with the exception of monetary claims, may only be assigned to third parties after our approval in text form.

#### **IV. Execution of Deliveries, Delivery Times**

1. Our commitment to deliver is subject to our correct, timely and contractual self-delivery and in case of imported material additionally under provision of timely receipt of monitoring documents and import licenses, unless we are responsible for the incorrect or delayed self-delivery. In particular, we are entitled to withdraw from the contract if we have concluded a proper covering transaction, but are not supplied by our supplier for reasons for which we are not responsible, e.g. if our supplier is insolvent.

2. Any confirmation as to delivery times shall only be approximate. 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, to pay agreed advance payments or to forward drawings approved by the buyer.

3. In the case of deliveries EXW, the date of receipt of our notice of readiness for collection shall be decisive for compliance with delivery periods and dates; otherwise, the date of dispatch ex works or ex warehouse shall be decisive. In these cases, too, delivery periods and dates shall be deemed to have been met upon notification of readiness for dispatch if the goods cannot be dispatched on time through no fault of our own.

4. The buyer has to ensure an undisturbed delivery of the goods and shall refer timely to difficult delivery conditions. The buyer shall unload properly and without delay. If we or third parties assist in unloading, no legal obligation is incurred and the risk is entirely with the buyer.

5. Force majeure events, in particular wars, natural disasters or political unrest and the associated effects, entitle us to postpone the deliveries for the period of the hold-up and an appropriate start-up time. This also applies if such events occur during a present default. Force majeure is the equivalent of monetary or trade measures or other acts of sovereignty (e.g. anti-dumping or countervailing investigations, registration of imports, embargoes, sanctions or the like) strikes, lockouts, breakdowns not caused by us (e.g. Fire, machinery or roller breakdown, shortage of raw materials and lack of energy), pandemics and their effects, obstruction of transport routes, delays in clearing the goods for import and in customs clearance, insolvency of our supplier as well as of all other circumstances, that essentially impede or render the deliveries and performances impossible resp. economically unreasonable, without being caused by us. Thereby, it is irrelevant if the circumstances occur with us, the mill or with one of our suppliers. If performance becomes unacceptable for one of the parties due to the abovementioned events, the party shall be able to withdraw from the contract by instant declaration in text form.

#### **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. All 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. 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 applies not in in prepayment or delivery vs payment cases.

b. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of section 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 2 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. We hereby accept the assignment. Such 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 pursuant to clause 2 b, 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 sort out 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. Weights**

1. For the weight of the goods, the weight determined by our or our suppliers' scales shall be decisive. The weight shall be evidenced by presentation of the pertinent weight check. Weights can alternatively be determined theoretically without weighing in accordance with the size of the goods, it being understood that we can determine the size of the goods by recognized statistical methods. We are also entitled to increase the theoretical weight by 2 ½ % (commercial weight) to compensate for rolling and thickness tolerances.

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. Unless individual weighing has been agreed, 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. Testing and Inspection**

1. The delivery of test certificates ("certificates") according to EN 10204 requires an agreement in text form. We are entitled to hand over copies of such certificates. The fee for agreed inspection certificates shall be € 15 per certificate unless otherwise agreed.

2. Where testing and inspection of the goods has been agreed upon or where corresponding material standards provide for such testing and inspection, it can only take place in the supplying plant or in our warehouse immediately after notification of readiness. The buyer shall ensure that we can commission the desired accepting company on his behalf and for his account or for his customer's. Unless otherwise agreed, this authorisation shall be deemed to have been granted if an accepting company is named in the order.
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, through no fault of ours, an inspection of the goods fail or be delayed or be incomplete, we shall be authorised to dispatch the goods without prior inspection or to store them at the buyer's expense and risk and to invoice the goods to him.

#### **VIII. Call orders, Continuous Deliveries**

1. In the case of contracts with continuous delivery, we must be given call-offs and classifications for approximately equal monthly quantities; otherwise we shall be entitled to make the determinations ourselves at our reasonable discretion.
2. Call orders shall oblige the buyer to accept the total quantity on which the call order is based. Unless otherwise agreed, the entire quantity shall be called off within the period stipulated in the contract.
3. If the individual call-offs exceed the total contractual quantity, we shall be entitled, but not obliged, to deliver the additional quantity. We may invoice the additional quantity at the prices valid at the time of the call-off or delivery.

#### **IX. 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. Unless otherwise agreed in text form, our deliveries shall be made EXW in accordance with the Incoterms in the version applicable at the time of conclusion of the contract. The place of delivery may also be the factory or warehouse of a third party.
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 significantly 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. In such cases we will ask the buyer for his prior comments.
4. The goods will be delivered unpacked and not be protected against rust. Only if agreed upon, the goods will be delivered packed. Besides, any package, protection and/or transport device will be supplied according to our experience and at the buyer's cost. Packaging will be taken back at our warehouse within a reasonable period of time in order to meet the requirements of the German Packaging Act (Verpackungsgesetz). We will not bear any costs for their re-transport or disposal.
5. In the case of call-off orders, the risk shall be transferred to the buyer at the time of the provision of the goods for collection. Otherwise, the risk, including the risk of confiscation of the goods, shall pass to the buyer upon transfer of the goods to a forwarding agent or carrier, at the latest, however, upon leaving the warehouse or the supplying plant, in all transactions, including pre-paid and free deliveries. We shall only provide insurance at the buyer's instruction and expense. Unloading and its costs shall be borne by the buyer.
6. We shall be entitled to make partial deliveries at reasonable quantities. Furthermore, we are entitled to reasonably exceed or fall short of the agreed delivery quantities. The indication of a "circa" or "approximate" quantity entitles us to exceed/fall short of the delivery quantities by up to 10 %.
7. Unless otherwise agreed, call-off orders are to be processed within 365 days of conclusion of the contract. After expiry of this period, we shall be entitled to store the goods not called off at the expense and risk of the buyer and to charge him for them.

## **X. Warranty Provisions**

1. The internal and external properties of the goods, in particular their quality, grade and dimensions, shall be determined primarily in accordance with the agreed quality, in particular in accordance with the contractually agreed standards or material sheets. References to standards and other sets of regulations, to test certificates according to EN 10204 and other attestations as well as particulars of qualities, grades, measures 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. Insofar as the quality has not been agreed, the goods shall be free from defects if they are suitable for the use presumed under the contract. A use is contractually presumed only if we were informed of this use by the Buyer in text form at the latest upon conclusion of the purchase contract and have expressly agreed to this use in text form.

3. Insofar as the goods have the agreed quality in accordance with clause X.1 or are suitable for the use stipulated in the contract in accordance with clause X.2, the Buyer may not invoke the fact that the goods are not suitable for normal use or have a quality which is usual for goods of this type and which the Buyer has expected. In this respect, our liability is excluded in accordance with Section XI of these Terms and Conditions.

4. 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 in text form. Any transport damage can only be taken into account if it is noted on the delivery note. In this respect, the notification obligations of the German Freight Forwarders' Standard Terms and Conditions (AdSP) shall apply. Defects that cannot be discovered immediately after delivery, even with the most careful inspection, must be reported to us in text form immediately after discovery.

5. 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 at least randomly 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.

6. 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 (subsequent performance). The place of performance for subsequent performance is our registered office. Should we fail or decline the supplementary performance, 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.

7. 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 section. 439 para. 3 BGB (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.

8. We will reimburse the buyer for his expenditures in connection with the supplementary performance only in so far as such expenditures are reasonable and not disproportionate in relation to the value of the goods. Disproportionate expenditures are 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. If the last contract in the supply chain is a consumer sale, the reimbursement of expenses shall be limited to the appropriate amount. 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.

9. After performance of an agreed acceptance of the goods by the buyer, the notification of material defects which were detectable during the agreed type of acceptance shall be excluded. If a defect has remained unknown to the buyer as a result of negligence, the buyer may only assert rights on account of this defect if we have fraudulently concealed the defect or have assumed a guarantee for the quality of the goods.

10. If the buyer does not immediately give us the opportunity to convince ourselves of the defect, in particular if he does not immediately make the rejected goods or samples available for testing purposes upon request, all rights due to the material defect shall lapse.

11. 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, subject to section X no. 2 of these Conditions.

12. Our further liability is subject to Section XI of these Conditions. Any of the buyer's rights of recourse according to section 445a BGB (German Civil Code) are excluded, unless the last contract in the supply chain is a consumer sale. Section 478 BGB (German Civil Code) shall remain unaffected.

## **X. General Limitation 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 in case of gross negligence not exceed the foreseeable losses and damages characteristic for the type of contract in question. In all other respects, our liability, also for damages caused by defects and consequential damages, is excluded.

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, any contractual claims which the buyer is entitled to in connection with the delivery of the 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 in connection with the delivery of goods which have been used for a building in accordance with their customary manner of use and which have caused its defectiveness and claims resulting 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, in cases of mandatory liability under the Product Liability Act, and to the limitation of statutory recourse claims. In these cases, the statutory limitation periods shall apply.

## **XII. Additional conditions for contract work**

1. The General Conditions of Delivery and Payment shall also apply mutatis mutandis to contract work
2. A delivery note must be enclosed with the material handed over to us for processing. This must contain the following minimum information:
  - a. Designation of the material, number of pieces and net weight;
  - b. Desired processing;
  - c. Desired test procedures;
  - d. Other information or requirements necessary for the success of the processing.

If the required minimum information is missing or incomplete or incorrect, we shall carry out the processing to the best of our ability.

3. On account of our claim arising from the order, we are entitled to a contractual right of lien and retention on the material that has come into our possession on the basis of the order. The contractual right of lien and retention can also be asserted on account of claims from work carried out earlier, replacement deliveries and other services, insofar as they are connected with the subject matter of the order. The contractual right of lien and retention shall only apply to other claims from the business relationship insofar as these are undisputed or a legally binding title exists and the object of the order belongs to the client.

## **XIII. Place of Performance, Jurisdiction and Applicable Law, Data protection**

1. The place of performance for our deliveries and for payments of the buyer shall be our registered office. If the buyer is a merchant (Kaufmann) in the terms of the German Commercial Code (HGB), a legal entity under public law or a special fund under public law or does not have a general place of jurisdiction in Germany, the exclusive - including international - legal venue for any dispute arising from the business relationship shall be our registered office. However, we shall also be entitled to sue the buyer at any other general or special place of jurisdiction.
2. For all legal relationships between us and the buyer, the law of the Federal Republic of Germany shall apply in addition to these Conditions, excluding the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG).
3. The data of our customers are stored and processed by us in accordance with the requirements of the DSGVO.

## **XIV. Applicable Version**

In cases of doubt, the German version of these General Conditions of Delivery and Payment shall apply.