

General terms and conditions of sale, Stadler Metalle GmbH & Co. KG

1. Scope

The following General Terms and Conditions of Sale (abbreviated to T&C) are an integral part of all sales contracts between Stadler Metalle GmbH & Co. KG (Seller) and the buyer (Buyer). The T&C shall apply even if the Seller does not specifically refer to them in future business transactions. Any general terms and conditions of sale deviating from, supplementing or contradicting these General T&C shall not become part of the contract even if the Seller is aware of them, unless their applicability is expressly confirmed by the Seller in writing.

2. Interpretation

In addition, the "Handelsüblichen Bedingungen für die Lieferung von legiertem Eisen- und Stahlschrott" (Commercial Standard Terms and Conditions for the Supply of Alloyed Iron and Steel Scrap) issued by the Bundesvereinigung Deutscher Stahlrecycling und Entsorgungsunternehmen e. V. (BDSV - German Association of Steel Recycling and Disposal Companies) and the "Usancen des Metallhandels" (Practices in the Metal Trade), published by the Verein Deutscher Metallhändler e. V. (VDM - Association of German Metal Retailers) shall apply.

3. Quotations

Insofar as something else not being expressly specified in the quotation, the quotations from the Seller can only be accepted immediately. The Seller can revoke a quotation at any point prior to receipt of acceptance. In the event of any doubt, the exact contents of the agreement are determined by the written sales confirmation or sales confirmation sent via fax or e-mail. Any information provided by the Seller in the contract offer may not be furnished to third parties.

4. Pricing

Obvious errors in the Seller's pricing may be corrected at any time. All of the Seller's prices are net prices are exclusive of any applicable sales tax. All waste shall be subject to Reverse Charge. In the event of the Buyer claiming that the product is exempt from sales tax and separate evidence is required, the deliver will only be billed without sales tax when the required evidence has been furnished.

5. Delivery and shipment

The arrangements for delivery and shipment are determined by the INCOTERMS® clause as amended in the quotation and in the confirmation of sale. The same shall also apply to any agreement about the transfer of risk during the shipping of the goods.

6. Packaging

Packaging, packing protection and transport aids will not be taken back by the Seller. Costs for the disposal packaging, packing protection and transport aids shall not be covered. Packaging or protection over and above the standard requirements for a dispatch, or other special protective measures for the goods to be supplied shall require express agreement.

7. Delivery time

The delivery times shall start with the date of the order confirmation from the Seller with specification of timeframes (such as days, weeks etc.). In the event of non-compliance with the delivery times, the Buyer shall only be legally entitled to statutory rights, if he has set the Seller a reasonable period of grace for the delivery, with the written declaration that he will reject receipt of delivery once this period of grace has expired. The fulfilment of requirements is regarded as excluded after an unsuccessful expiry of the period of grace.

8. Over- or short delivery

Deviations are to +/-5% within the contractual tolerance limits for weight, quantity and dimensions for deliveries. Notwithstanding the provisions in Clauses 11 and 12, there is no right to return of the delivered goods. The permitted deviations of +/- 5% apply in the event of partial delivery for each separate partial delivery.

9. Force majeure

In cases of force majeure, the contractual obligations of both parties shall be suspended and dates and deadlines for fulfilment of contractual obligations are delayed accordingly. Force majeure events include in particular transport delays, severe weather conditions, fire, industrial disputes, sovereignty measures, wars and other circumstances beyond the control of either party. The party that is hindered in the fulfilment of their contractual obligations by a force majeure event, shall be obliged to notify the other party about the occurrence of a force majeure in writing while providing information about the exact circumstances (within 5 working days of each case). The party affected by the force majeure event shall be obliged to provide evidence about the type and kind of force majeure. Continuation of the force majeure event and a duration of 8 weeks after receipt of notification at the earliest shall entitle both parties to withdraw from the contract. Withdrawal caused by a force majeure event shall not entitle either party to compensation. However, any advance payments for non-delivered goods shall be refunded. Goods that are out for delivery but have not been delivered shall be returned.

10. Lien – offset – transfer of contract

The Buyer shall be entitled to lien only in relation to main performance obligations arising from the same contract. The Buyer may offset only uncontested or legally established claims. The Seller may offset existing claims with all receivables to which it or any other of the group companies is entitled. The Buyer shall not assign any contractual claim against the Seller to any third party without express written consent from the Seller.

11. Examination and quality determination

The goods supplied shall be considered to be free of defects when, at the time of the passing of risk, they do not or only insignificantly deviate from the specifications agreed upon for the particular delivery. The specifications of the goods are exclusively determined on the basis of the express arrangements regarding quality and quantity of the goods, taking into consideration customary due business standards and terms. Immediately after delivery, the Buyer shall be obliged to examine the goods and give notice of any obvious defects. In order to detect other defects, the Buyer shall be obliged to immediately perform a sampling inspection and/or analysis of the goods and promptly give notice of any defects detected in the course thereof. Notice of any defects shall be submitted in written form (fax, email, letter etc.). The defect notice shall contain a reasonable substantiation of the defects. Goods for which the Buyer has submitted a defect notice shall be stored separately in unchanged condition in order to enable the Seller and/or Buyer, and/or their representatives, to perform an examination of the goods. The goods are considered to be accepted without defects, when no or no timely examination has been made, when no defect notice has been submitted, or when the defect notice has not been made in time or been made in an inappropriate manner. In order to inspect delivery goods for defects and ascertain the quality of the goods, the Buyer shall be obliged to examine perform a sampling inspection and/or (if necessary) conduct an analysis. The "Sampling inspection" as defined in the provisions involves taking a representative sample from a specific delivered portion of the goods in order to determine the agreed quality. Analysis refers to the process of examining the goods by means of a recognised analysis method in order to ascertain the quality particularly in respect to the included metals and other constituents. The sampling inspection is performed in the following manner: The sampling inspection shall be performed in the presence of both parties or their respective representatives as soon as both parties agree upon the number and composition of the samples to be taken at the agreed upon and contracted place for sampling. The Buyer may only perform a legally binding sampling inspection in the absence of the Seller, or a representative authorised by the Seller, if both parties have made an express arrangement. At least three consistent samples are prepared for analysis from the sample taken in the sampling inspection. Customarily, the analysis is undertaken by a contractually determined laboratory at the expense of both parties – arbitrary analysis. If no agreement has been made with regard to an arbitrary analysis, the following method shall be used: First an analysis shall be undertaken by the Buyer. In the event of differences between the Buyer and the Seller about the results of the analysis, an exchange analysis shall be performed, i.e. both parties may procure a respective further analysis at their own expense. When a further analysis is performed, a spare sample shall be sealed and deposited with the Buyer in the event of an arbitrary analysis having to be made. If the parties still disagree with the results, an arbitrary analysis is required. If a laboratory has not been specified in the contract, the parties will appoint an independent third person with sufficient technical knowledge and proven expertise who will conduct the arbitrary analysis. Differences between the Buyer and Seller regarding the results of the analysis shall not affect the due date for the remuneration to the extent in which remuneration is owed according to the results made and recognised by the Buyer.

12. Warranty for defects

Within the terms of this Clause 12, a "Defect" shall mean any defect of the goods delivered, which has been noticed and a defect notice has been submitted and confirmed in acc. with Clauses 11. In the event of a Defect being established, the Seller may carry out a subsequent performance by means of substitutional and/or additional delivery at its sole discretion yet taking into consideration the respective interests of the Buyer. If the Seller fails to carry out a subsequent performance within an appropriate period of time, the Buyer shall be entitled to reduce the purchase price by an amount reasonable in respect to the defects – reduction. A termination of the agreement including its rescission subsequent thereto (Rescission) shall be excluded unless the Buyer is able to establish to the Seller that the goods are unsuitable for his purposes or may merely be used with considerable difficulties. If a defect cannot be removed by means of subsequent performance, reduction or rescission, the Buyer shall be entitled to claim compensation, in accordance with Clause 16; the Buyer is not entitled to make any claims in addition to such compensation. Claims on the part of the Buyer shall expire one year following delivery of the respective goods, provided the Seller did not act on wilful intent. Any subsequent performances do not legally affect in any way an expiry of such a limitation period.

13. Retention of title

The Seller shall retain the legal title for all goods delivered by it until all of its claims arising from the business relationship with the Buyer are settled. The retention of title shall continue to exist even where the Seller's individual and collective claims are summed up in an open account and the balance is struck and acknowledged. The retention of title shall include any future and conditional claims. The retention of title shall be expanded and extended according to the following provisions and referred to as "supply collateral" in its entirety. In case the goods should be handled and processed by the Seller into new product(s), the Seller shall be considered to be the manufacturer and hence receives (co-)ownership of the new product according to Article 950 of the German Civil Code (BGB). If the Buyer has agreed also with other suppliers to consider them solely or in part as manufacturer and if their goods should also be incorporated in the final product produced, the Seller is entitled to the co-ownership of the new product on a pro ratio basis to the objective value of the goods of the Seller at the time of delivery to the objective value of the other incorporated goods delivered under the retention of title. The Seller will receive proportionate (co-)ownership also in case that the Buyer should mix the goods inseparably with his own goods or with the goods of other suppliers. Articles 848, 847 of the German Civil Code (BGB) shall apply hereto. The Buyer may sell the property of the Seller only in the ordinary course of business at his normal terms and conditions. In case of such resale, the Buyer is obliged to arrange for a retention of title. The Buyer shall be prohibited from pledging or transferring the goods as collateral. The claims of the Buyer from a resale of goods supplied under retention of title – even after processing or mixing of the goods – are hereby now already assigned to the Seller in order to secure its claims. The scope of the assignment corresponds in value to (co-) ownership of the Buyer in the resold product(s). The Buyer is entitled to collect claims from its resale agreement until revocation by the Seller. Upon request by the Seller, the Buyer is obliged to provide the recipient with a notification of the assignment to the Seller, to prove such notification to the Seller and to submit to the Seller the information and documents required for the collection of the assigned claims together with the notification. The Buyer is obliged to inform the Seller immediately of any seizure or any other interference of the collateral security by a third party. If the value of the collateral security of the Seller should exceed the value of its claims by more than 10 percent, the Seller is obliged to release the disproportionate collateral security on its sole discretion.

14. Terms of payment

If the terms of payment have not been negotiated separately, the invoices shall be due and payable promptly after the invoice date without deduction. In the event of payment deadlines being exceeded, the legal default interest shall be applied. The assertion of further damages is not excluded. If the Buyer is in arrears with payments for more than two weeks, the Seller is entitled to supply further goods only after receipt of an advance payment thereto. The Seller is also entitled to render any and all payments due immediately, if legal insolvency proceedings, composition proceedings or comparable foreign proceedings have been requested or opened against the assets of the Buyer. The same shall apply when there is an inability to pay or a public register indicates the possibility of an imminent or existing inability to pay. In this case, the Seller is entitled to suspend outstanding deliveries until the Buyer makes advance payments in the full amount of the value of the outstanding services, plus a security premium of 5% for any potential deviations.

15. Dimensions, weights and quality

For a determination of the weight which is to form the basis of the invoice, within tolerance limits, the net weight determined by the Buyer when performing unloaded and loaded weighing on calibrated scales upon arrival of the goods shall be decisive. Tolerance limits in this sense are deviations from the net weight determined on calibrated scales by the Seller prior to shipping. With truck deliveries (including shipping container), a tolerance limit of less than +/- 0.5% of the Seller's net weight shall be assumed. Differences in weight within the tolerance limits mentioned hereinabove do not relieve the Buyer from proving to the Seller that the goods upon arrival have been properly weighed on calibrated scales. In case of weight differences beyond the tolerance limits mentioned, the net weight determined on calibrated scales by the Seller prior to shipping will be used as basis for settlement. However, prior to further assigning and/or processing the goods, the Buyer may contact the Seller and request a weight determination by a neutral entity. In the event of deliveries to be weighed by a neutral entity, the Buyer shall be obliged to keep deliveries separate and unspoiled. The Buyer is obliged to notify the Seller immediately of the weight in the event of said weight being outside of the tolerance limit. In turn, if the weight is beyond the tolerance limit when weighed by the Seller, the Seller is obliged to inform the Buyer immediately of the weight determined.

16. Liability

The Seller shall only be liable in the event of negligent violation of essential contractual obligations. However, liability in this case shall be restricted to the foreseeable damage. Essential contractual obligations are such obligations which protect the contractual positions of the customer that must be granted to him in accordance with the content and purpose of the contract; furthermore, essential contractual obligations are such obligations the fulfilment whereof is subject to the proper execution of the contract and the observance of which the customer relies on and may regularly rely on. The Seller is exempt from any further liability. The liability restrictions may be applied *mutatis mutandis* to the liability of the Seller for any of its employees, assistants and of its board members.

17. Assignment of claims – use of information

The Seller is entitled to transfer claims arising out of the business relationship with the Buyer as well as any claim ancillary hereto to any third party at its sole discretion. The Seller may collect, store and use any data and information submitted about the Buyer. The Seller shall be entitled to forward any such data and information to any third party in order to prepare, allow, perform and carry out any claim transfer in the full extent as required under admissible laws and contracts.

18. Place of performance and jurisdiction

The place of performance and sole place of jurisdiction shall be the place of business of the Seller. This applies also to document, bills of exchange and check processes. The Seller may also choose to file any legal action against the Buyer at the Buyer's registered place of business. All legal relationships between the Buyer and the Seller, as well as all non-contractual obligations related to this agreement shall be governed by and construed under German Law, excluding the United Nations Convention on Contracts for the International Sale of Goods (CISG) and provisions of international private law.

19. Consumer dispute resolution act

Stadler Metalle GmbH & Co. KG shall not participate in a dispute resolution process in front of an arbitration board.

20. Final provisions

If individual provisions of the agreements including these terms and conditions are or become invalid either in whole or in part, the remaining provisions shall remain unaffected hereby (severability clause). Invalid provisions shall be replaced by such that are closest to the economic intent. This provision shall apply accordingly for any gaps or omissions.

21. Code of Conduct

The customer confirms compliance with the Code of Conduct of the Ceratizit Group in the current version.