

# General Conditions of Sale of Hoesch Schwerter Extruded Profiles GmbH

## I. Application/Offers

1. These General Conditions of Sale (Conditions) of Hoesch Schwerter Extruded Profiles GmbH 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 relating to the manufacture and supply of non fungible goods. In case of direct sales ("Streckengeschäfte"), the producer's conditions as laid down in its price list shall apply in addition to these conditions. 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 not binding to us. All oral agreements and assurances given by our sales staff shall not be binding unless confirmed by us in writing, this demand being met also in cases of telefax and e-mail transmission. We shall, however, have the option to accept a purchase order by commencing performance without prior order confirmation.

3. Any trade terms shall, in cases of doubt, be interpreted according to the Incoterms as amended from time to time.

## II. Prices

1. Unless otherwise agreed to, only such prices and terms shall apply as contained in our price lists effective at the time when the contract is concluded. Unless otherwise agreed to, our prices are based ex works or ex the place of warehouse plus freight, VAT and any import duties.

2. Should our external expenses (duties, taxes or other third-party charges) included in the agreed price change or newly incur later than 4 weeks after the conclusion of the contract, we shall be authorised to modify the price accordingly with regard to the goods not yet delivered to the Buyer as of the beginning of each calendar month concerned.

3. In the event that the modified price surpasses the originally agreed price by more than 15%, the Buyer may, within one week after receipt of our price modification notice, withdraw from the contract with respect to the goods affected by the price modification.

## III. Payment and Set-Off

1. Unless otherwise agreed or stated in our invoices, payment shall be made without cash discounts immediately so that we can dispose of the sum on the due date. The Buyer shall bear any costs and expenses connected thereto.

2. Should the Buyer exceed the payment term or default in payment, he will be liable to pay interest at 9 %points above the basic interest rate, unless higher rates have been agreed upon. In addition, a fee of 40,00 € will be charged. We reserve the right to claim additional damages resulting from late payment.

3. Should it become evident after the conclusion of the contract, that payment is jeopardised by the Buyer's lack in financial means, or should the Buyer be in default with a not merely insignificant portion of the amount due or should other circumstances arise which show a material deterioration in the Buyer's financial position after the contract has been concluded, we shall be entitled to exercise the rights arising from sec. 321 BGB (German Civil Code), to refuse performance and to make due any and all of our not yet due accounts receivable deriving from the current business relationship.

4. Any agreed upon cash discount always relates to the invoiced value excluding freight and will only be granted if and in so far as the Buyer has completely paid all payables due at the time of the discount. Unless otherwise agreed to discount periods shall begin with the date of the invoice.

5. The Buyer may retain or set off any counterclaims only in so far as his claims derive from the same contractual relationship (claims for defects and claims for completion costs) or are undisputed or have become legally binding.

## IV. Execution of Delivery, Delivery times and Delivery dates

1. Our commitment to deliver is subject to our own correct and timely self-delivery, unless we are responsible for the deficient or late self-delivery.

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 or to pay agreed instalments.

3. Any agreed delivery time or date shall be considered to be met if the goods have left the works or the warehouse at such time or date. If and in so far the goods fail to be dispatched at the agreed time for reasons not attributable to us, the agreed delivery time shall be considered to have been met at the day on which the goods are notified to be ready for loading.

4. Within events of force majeure we shall be entitled to postpone deliveries for the period of the impediment and for a reasonable time necessary for adaptation. The same shall apply to such events which arise during prevailing delays. Force majeure shall include measures affecting currency, trade policy and other governmental acts, strikes, lockouts, operating shutdowns not caused by us (for example fire, machinery and rolls breakdown, deficiency in raw material or energy), obstruction of traffic routes, delay in customs/import clearance, as well as any other circumstance which, not due to our fault, either substantially jeopardises our deliveries and services or makes them impossible for us to fulfil, no difference whether such circumstances will affect us or our supplier(s). Should, in consequence of the aforementioned circumstances, the performance of the contract become unreasonable to fulfil to one of the contractual parties, such party may then declare withdrawal from the contract after an additional time period of reasonable length fixed by such party has elapsed .

## V. Retention of Title

1. 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 including accepted notes 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.

2. With regard to processing or manufacturing of the Reserved Property, we shall be deemed to be manufacturer within the meaning of sec. 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 V/1 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. Such transfer is hereby accepted. Our co-ownership rights shall be regarded as Reserved Property within the meaning of para. 1 above.

3. 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 para. 4 through 6 below. The Buyer shall not be entitled to dispose of the Reserved Property in any other way.

4. The Buyer hereby assigns to us any claims resulting from the resale of the Reserved Property. Such assignment is hereby accepted. 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 according to para. No. 2 above, the assignment shall be limited to the part which corresponds to our co-ownership rights.

5. The Buyer shall be entitled to collect any receivables assigned to which result 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.

6. 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 or removal of the Reserved Property, if and in so far as such costs are not borne by a third party.

7. Should the Buyer default in payment or should he fail to honour a draft and after expiry of a reasonable period of grace we shall be entitled to take back the Reserved Property and to enter, for this purpose, the Buyer's premises and to resell the Reserved Property best possible by crediting the proceeds to the purchase price. The same shall apply should, after the conclusion of the contract, it become evident that payment resulting from this contract or from other contracts is jeopardised by the Buyer's lack of ability to pay. If we take back the Reserved Property, this shall not be regarded as withdrawal from the contract. The provisions of the German Insolvency Code shall remain unaffected.

8. 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. Grades, Sizes and Weight

1. Agreed grades and sizes shall be determined in accordance with the DIN-/EN or mills' standards, in absence of such standards with the trade usage. Any reference to such standards, mill's standards or work-certificates as well as any indication with regard to grade, size, weight or usage of the goods shall not be regarded as a description, a warranty or a guarantee. The same shall pertain to any declaration of origin or conformity, to mills' confirmations and to any related marks such as CE and GS.

2. The weight of the goods shall be determined on our or our suppliers' scales and shall be evidenced by the presentation of the pertinent weight check. Where provided by law, the weight may be determined without weighing in accordance with the standards. Deviations in weight above or below the total quantity charged (trade weight) pursuant to the common practice in steel trading within the Federal Republic of Germany, shall remain unaffected. 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. Where, according to the contract, the goods are not weighed piece by piece, 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. Test certificates / Inspection

1. Any supply of Test Certificates („Mill Test Certificates“) acc. to EN 10204 is subject to prior written agreement. We are entitled to hand over such document as a copy. In case the price for such documents has not been agreed within the contract, we will calculate it on the basis of our price list resp. the issuer's (manufacturer's) price list.

2. Where testing and inspection of the goods have been agreed upon, the goods must be inspected in the mill or in our warehouse immediately after the Buyer has been informed that the goods are ready for dispatch. The Buyer shall bear his personal inspection costs, whereas the costs of inspection will be invoiced to him in accordance with our or the mill's price list.

3. Should, through no fault of ours, the 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. 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.

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 our reminder and after a reasonably fixed additional time period has elapsed, 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 shall it become substantially difficult to ship them 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. In all transactions, including freight prepaid and freight-free deliveries, the risk of loss or damage to the goods shall pass to the Buyer at the time where we hand them over to the forwarding agent or to the carrier, at the latest with their departure from our warehouse. We will buy insurance only if and in so far as requested to by the Buyer and at his cost. The Buyer shall unload the goods at his cost.

5. The goods will be delivered unpacked and not be protected against rust. Only where so provided by trade usage the goods will be packed. Any package, protection and/or transport device will be supplied according to our experience and at the Buyer's cost. We will take back such devices only at our warehouse. We will not bear any costs for their re-transport or disposal.

6. We shall be entitled to make partial deliveries with reasonable quantities. Where and in so far as allowed by trade usage, we may exceed or reduce the agreed quantities. Where quantities are indicated as "circa", we are entitled to exceed or fall below the agreed quantity by up to 10 pct.

#### **IX. Call Orders / Continuous Delivery**

1. Where the contract provides for continuous deliveries, the Buyer shall divide the quantities and grades of the goods into approximately equal monthly shipments. Otherwise we shall be entitled to specify them at our own fair and just discretion.

2. Where the individual calls for delivery exceed the total contractual quantity, we shall be entitled, yet not committed, to deliver the surplus quantity and invoice it at the prices applicable at the time of the call or the delivery.

3. Unless otherwise agreed, callable deliveries shall be completed in full within 365 days from conclusion of the contract. Upon expiry of this period, we may store the uncalled goods at the Buyer's cost and risk.

#### **X. Warranty Provisions**

1. The Buyer shall immediately, at the latest seven days after delivery, notify us in writing of any defects of the goods and any defaults within test certificates according or similar to EN 10204. Defects of the goods which, even upon careful inspection, cannot be discovered within this period shall be notified to us in writing immediately upon their discovery, at the latest before the elapse of any agreed or statutory warranty period. In such cases the Buyer shall immediately suspend any processing or manufacturing of the goods.

2. If and in so far as Buyer's claim for defects is justified and has been made in time, we may, upon our discretion, remedy the defect ("improvement") or deliver non-defective goods ("replacement", improvement and replacement hereinafter: "cure"). Should we fail or decline the cure, the Buyer may, upon the elapse of an adequate additional period of time set by him, withdraw from the contract or reduce the purchase price. In cases where the defect is minor, where the goods have already been processed or transformed, he may only reduce the purchase price.

3. We shall bear any expenditure related to the cure in so far as these expenses are reasonable and not disproportionate in relation to the goods purchase price. We may refuse to bear these expenditures in so far as they exceed the goods purchase price by more than 150%. We shall bear any further expenditures such as for the mantling and dismantling of the defective goods only in accordance with the provisions of sec. XI of the present conditions. We will not compensate for any expenditures in connection with the delivery of the goods to any other place than the place of performance, unless such delivery corresponds to the contractual use of the goods.

4. If and in so far the goods are subject to contractually agreed testing and inspection by the Buyer, such testing and inspection shall bar any claims for such defects which might have been determined by the agreed type of testing and inspection. Has the Buyer, by his own negligence, not learned of the defect, then he may claim only such defects which we have knowingly not disclosed to him or which are subject to a guarantee.

5. In the event the Buyer fails to give us the opportunity to immediately inspect the defect, or the Buyer, especially when asked to do so, fails to make the objected goods or samples therefrom available without delay, any warranty claims shall be void.

6. 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.

7. Our further liability is subject to sec. X of the present conditions. Any of the Buyer's rights of recourse according to sec. 478, 479 BGB shall remain unaffected.

#### **XI. Restriction 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 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, in case of gross negligence, shall in no case exceed the foreseeable losses and damages characteristic for the type of contract in question. Apart from that, our liability for damages resulting from defects including consequential damages shall be excluded.

2. The aforesaid restrictions shall not apply to such cases where we breach our fundamental contractual obligations and where such a breach of contract will endanger the contractual purpose; 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 pursuant to the German Product Liability Act. Our contractual obligations shall be considered to be fundamental if they are required to safeguard the due performance of the contract and on which Buyer typically may rely on. 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 limitation shall also apply to such goods which, according to their normal purpose of use, have been used for constructional works related to real estate property and which have caused damage within this construction, unless this purpose of use has been agreed upon in writing. This restriction shall not apply to our liability 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 nor to any statutory recourse claims.

#### **XII. Place of Performance, Jurisdiction, Applicable Law**

1. The place of performance for our performances shall be, if applicable, the supplying work or our warehouse. The place of jurisdiction is, at our discretion, the city of Schwerte (Germany) or the Buyer's seat.

2. All legal relationships between us and the Buyer shall be governed by the laws of the Federal Republic of Germany. The provisions of the UN Convention on Contracts for the International Sale of Goods of 11 April 1980 (CISG) shall not apply.

#### **XIII. Export Clearance, Turnover Tax (EU)**

Should any Buyer resident outside the Federal Republic of Germany (extraterritorial customer) or a person authorised by him collect goods and transport or ship them to that foreign country, the Buyer shall provide us with the export clearance documents required for fiscal purposes. Without provision of this certification the Buyer is obliged to pay the turnover tax applicable for deliveries within the Federal Republic of Germany on the invoiced amount.

2. When invoicing supplies from one EU member state to another, the turnover tax regulations contained in the 6th EC Directive is applicable in its operative form unless precluded by national law. Insofar as turnover tax is to be levied by us, the Buyer shall pay the respective turnover tax in addition to the agreed (net) purchase price.

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