

Regalbuto Steel GmbH

General Terms and Conditions of Sale and Delivery (Edition December 2017)

I. Scope of application

1. Our terms and conditions of sale and delivery shall apply to all present and future contracts with commercial buyers and public legal entities in regard to deliveries and other services, including contracts relating to the manufacture. Any terms and conditions of the buyer shall not be applicable.
2. Our offers are not binding to us. A contract shall not be concluded until the buyer has received our order confirmation in text form, or we begin to perform the deliveries or services. Neither shall be binding any oral agreements and assurances given by our sales staff before or at conclusion of the contract unless confirmed by us in text form.
3. Due to the high complexity of the procurement process for our products (coordination of preliminary suppliers and manufacturers) we are entitled to confirm any order within 4 weeks from receipt of order.
4. Any drawings, analysis, samples and graphs are approximate unless confirmed by us in writing.
5. Our commitment to deliver is subject to our own correct, timely and contractual self-delivery, unless we are responsible for the deficient, late or non-contractual self-delivery.

II. Price and payments

1. Insofar as not otherwise seen from our order confirmation our prices are ex works, for unpacked goods and exclusive of value added tax. Ancillary transport expenses (e.g. taxes, customs duties, freight charges, fees, other levies, insurance premiums, etc) as well as any materials required for dispatch must be paid separately by the buyer. If the goods are shipped by sea, prices are FOB (Free on Board) at the port of departure.
2. In case of carriage paid deliveries ex warehouse/works, the prices are for delivery, unloaded, to the place of use via hard roads.
3. Costs for changes to order shall be borne by the buyer.
4. Orders, for which no fixed prices have expressly been agreed, will be invoiced at the list prices valid on the date of delivery if applicable plus the alloy surcharges.
5. Agreed prices are not binding for follow-up orders.
6. 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 authorized 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. 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.
7. Once we have transferred the purchase object to the buyer or the transporteur and our invoice has been received by the buyer, our invoices are due for immediate payment onto a bank account we specify, without deductions of any kind. The criterion for timely payment is the date on which the amount is credited to our account.
8. The Buyer may retain or set off any counterclaims only in so far as his claims derive from the same contractual relationship or are undisputed or have been recognized by us or have become legally binding.
9. In the event Buyer exceeds the payment term or defaults in payment, he will be liable to pay interest at 9 %points above the basic interest rate, unless higher rates have been agreed upon. We reserve the right to claim additional damages resulting from late payment.
10. Our claims shall become due and payable immediately if terms of payment are not satisfied or should we become aware of any circumstances which are suitable for reducing the creditworthiness of the buyer. We shall in this case be entitled to execute outstanding deliveries and services only against advance payment or provision of security.

III. Delivery times

1. Terms of delivery shall begin on the date the order is confirmed, however not before all details of the order have been clarified. They shall be deemed as having been complied with if the goods have left our warehouse / mill or notification has been given by us that the goods are ready for dispatch by the end of the period of delivery. It shall be extended by a reasonable period of time if the buyer does not satisfy his obligations towards us or undertakes changes to the order.
2. Cases of force majeure (unforeseen circumstances and events occurring through no fault of our own that we cannot have avoided by exercising due diligence, e.g. strike and lock-out, war, fire traffic disruptions, scarcity of raw materials, official measures) shall interrupt our delivery and service obligations for the duration of their impact, even when we have already defaulted on delivery.

IV. Weight, partial deliveries

1. 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.
2. We shall be entitled to make partial deliveries with reasonable quantities. Excess quantities or shortfalls in quantities are permitted in case of special productions for each semi finished product +/- 10%, in the event of pipes at least one production length.

V. Delivery and passing of risk

1. Insofar as not otherwise derived from the order confirmation delivery shall be agreed ex works.
2. Unless explicitly agreed otherwise, the goods shall be delivered in unpackaged form and without protection against rust. Any agreed packing shall be provided against a standard surcharge and in the form commonly used in trade. Any such agreement must be recorded in writing. We will take back packing material only at our warehouse. We will not bear any costs for their re-transport or disposal.
3. In the absence of a separate agreement, the manner and path of dispatch are left to our discretion.
4. The risk of accidental loss of, or accidental damage to the goods, shall pass to the buyer as soon as we have handed over the goods for transportation to a forwarder, to the carrier or to any other person or agency designated to execute the shipment, at the latest, however, when the goods leave our factory or warehouse. If the goods are ready for dispatch and dispatch is delayed through no fault of our own, the risk is deemed to have passed to buyer when notification has been received of readiness for dispatch. In such a case we are entitled to dispatch the goods at our discretion and at the expense and risk of the buyer, or to store the goods at our discretion and to invoice them immediately.
5. If the goods are dispatched using loading aids (pallets, etc.) the buyer is obliged to return the same quantity and quality of loading aids to us at no charge. Should the buyer fail to meet this obligation even after a deadline of one week to be set by us, he shall owe us the amount required to procure the same quantity and quality of loading aids.

VI. 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 (current account reservation). This condition shall apply to any future as well as any conditional claims. The current account reservation is not applicable in prepayment or delivery vs payment cases. In these cases, the goods remain our property until the purchase price for these goods has been paid in full.
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 para. 1 above. 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. 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 jeopardized 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.

VII. Warranty

1. Any properties of the goods, in particular their grade, size and classification shall be determined in accordance with the agreed and, if not agreed, with the ASTM, DIN and EN standards effective at the time the contract is concluded, or in absence of such standards, in accordance with trade practice and usage. Any reference made to such standards and similar rules, to inspection documents according to EN 10204 and similar certificates as well as to grade, classification, size, measure and usability of the goods shall not constitute any warranties or guarantees. The same shall apply to declarations of conformity and similar markings such as CE and GS.
2. As to the Buyer's obligations to examine the goods and to notify us of any defects, the applicable statutory provisions shall apply, subject to the following conditions:

- The Buyer shall examine the goods immediately after delivery with regard to the properties relevant for the use of the goods and shall notify us in text form of any defects of the goods immediately thereafter. In case the Buyer intends to install the goods into another object or attach the goods to another object, the properties relevant for the installation or the attachment include the inner properties of the goods. The Buyer's obligation to examine the goods exists even in cases where an inspection certificate or any other material certificate is provided. Defects which, even upon most careful inspection, cannot be discovered immediately after delivery must be notified to us in text form immediately after their discovery.
 - 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 (e.g. by function tests or a trial installation), 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 any 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.
3. In the event that an inspection of the goods has been agreed upon, the buyer shall not have any right of recourse with respect to any defects which could have been detected during such inspection.
4. 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 he may only reduce the purchase price.
5. 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 sect. 439 para. 3 of the 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 installation costs or other expenses required for the remedy of the defective delivery.
6. In case, on an individual basis, the costs incurred by the Buyer for the remedy of the defective delivery are disproportionate, namely with regard to the purchase price of the goods being free from defects and under consideration of the importance of the infringement of the contract, we are entitled to refuse the reimbursement of such costs. Disproportionate costs are especially given in case the costs 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 goods.
7. 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.
8. 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.
9. In accordance with Section VIII of these Conditions, additional claims are not acceptable. This applies in particular to claims for
- damages which did not occur to the goods themselves (consequential damages),
 - costs of the Buyer related to the self-remedy of defects without the legal requirements being fulfilled and
 - dismantling and installation costs, in case due to a transformation undertaken by the buyer before the installation of the goods into another object or before attachment of the goods to another object, the installed or attached goods provide substantially different features than the original goods delivered by us or have been transformed to new products.

VIII. General restrictions of liability

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; 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 shall not apply insofar as Section 438 para. 1 No. 2, Section 478, 479 or Section 634 lit a) para. 1 No. 2 of the German Civil Code (BGB) require longer limitation periods, in cases of injuries to life, body and health, breaches of contract caused by our wrongful intent or by our gross negligence or in cases where a defect is fraudulently concealed. In the event a cure has been performed the limitation period shall not commence anew.

IX. Place of performance, place of jurisdiction and applicable law, version

1. Unless expressly agreed to the contrary, the place of performance for our deliveries shall be the mill. The place of jurisdiction is, at our discretion, the city of Düsseldorf (Germany) or the Buyer's seat.
2. All legal relations between the Buyer and us 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.
3. In cases of doubt, the German version of these General Terms Conditions of Sale and Delivery shall prevail.