

General Terms and Conditions of Sales of Standard-Metallwerke GmbH

1. Scope of Application

1.1 These General Terms and Conditions of Sale (hereinafter referred to as "Terms and Conditions") shall apply to the exclusion of any General Terms and Conditions of Sale of the Customer and shall apply to all goods and services provided by Standard- Metallwerke GmbH to its customers unless there is a written agreement to the contrary. If a Customer wishes to reject the application of these Terms and Conditions, he must notify Standard-Metallwerke GmbH of same within a time limit of five working days from his receipt of the first delivery and he must refuse to take delivery of the goods.

1.2 These Terms and Conditions shall be supplemented by the following enactments in the following order of precedence: the INCOTERMS of the International Chamber of Commerce in Paris, the German Commercial Code (*Handelsgesetzbuch*) and the German Civil Code (*Bürgerliches Gesetzbuch*), each in the currently applicable version,

2. Scope of Contract & Writing

2.1 Unless there is a special agreement to the contrary the nature and scope of the goods or services to be provided by Standard-Metallwerke GmbH shall be in accordance with the written order confirmation issued by it; this applies as long as the Customer did not immediately reject the written order confirmation upon receipt. No variation of this order confirmation or other contractual agreement shall be effective unless agreed in writing. All offers made by Standard-Metallwerke GmbH shall be subject to alteration unless the Customer accepts them in writing without delay.

3. Prices

3.1 All prices stated are net prices excluding VAT, customs duty or other taxes and dues. Unless there is a written agreement to the contrary domestic deliveries whose net amount (without packaging) exceeds 500 kg will be delivered by Standard- Metallwerke GmbH carriage paid to a German place of destination (CIP clause of the INCOTERMS). Any additional costs which result from the nature of the goods (bulky goods etc.) shall, however, be borne by the Customer.

3.2 Packaging containers delivered with the goods shall remain the property of Standard- Metallwerke GmbH. Standard-Metallwerke GmbH shall impose the fee stated in its offer on the packaging. If the Customer sends back the packaging containers in perfect condition, freight and charges prepaid, within four weeks of receiving a delivery, he will be credited with the fee paid.

3.3 The prices confirmed are based on the wage costs as well as the energy and raw material prices valid on the day on which the order is confirmed. If these costs increase or decrease by the delivery date, prices that have already been confirmed may be adjusted at the request of the Customer or Standard-Metallwerke GmbH provided that the relevant evidence of same is supplied.

Where delivery free of freight has been agreed, the prices specified are based on the freight and additional charges that applied at the date the offer was made. The prices shall therefore be adjusted to the benefit or detriment of the Customer in accordance with the altered freight and additional charges for the delivery. This shall not entitle the Customer to rescind the contract.

4. Partial Deliveries, Transfer of Risk, Acceptance

4.1 Standard-Metallwerke GmbH shall be entitled to make partial deliveries unless there is an express agreement to the contrary.

4.2 The risk of the accidental deterioration or destruction of a delivered item shall pass to the Customer upon acceptance of the item by him at Standard-Metallwerke GmbH's factory or at the latest as soon as the item has left Standard-Metallwerke GmbH's factory. The Customer shall not be entitled to refuse acceptance of the goods if they contain minor defects. Subject to the provisions in clause 3.1 the loading and shipment of goods shall not be covered by insurance and shall be at the Customer's risk. The aforementioned shall also apply in the case of partial deliveries or where Standard- Metallwerke GmbH has assumed other obligations, such as, for example, shipment costs, delivery or assembly. If the Customer is responsible for delays in shipment, the risk shall pass to him as from the date the goods are ready for shipment or acceptance. In the case of delivery dates which are subject to alteration, the risk shall pass as from the date notice of shipment is given, or as the case may be, as from the date notice that the goods are ready for acceptance is given. If requested to do so by the Customer, Standard-Metallwerke GmbH will, however, insure the goods against the usual risks at the Customer's expense during the period in which it continues to store them. The foregoing shall be without prejudice to any contrary agreements made by the parties in writing in a particular case.

4.3 In the event that the goods have to be examined for compliance with special conditions or agreements, the Customer shall perform the acceptance procedure at Standard- Metallwerke GmbH's factory. The Customer shall bear the costs for carrying out the acceptance procedure. If the Customer waives its right to take delivery of the goods at Standard-Metallwerke GmbH's factory, the goods shall be deemed to have been accepted at the time when they left the factory.

5. Notice Period for Defects, Quantity Variance, Warranties

5.1 The Customer shall be obliged to examine all goods delivered without delay after receipt for the purpose of discovering whether they contain defects in quality or defects in title, including any quantity variances, and, where appropriate, shall be obliged to carry out random tests. All obvious defects must be notified to Standard- Metallwerke GmbH in writing without delay. Otherwise the goods will be deemed to have been approved. No claim based on the existence of an obvious

defect may be brought at a later time. The weight of the goods ascertained by Standard-Metallwerke GmbH shall be binding unless the Customer objects to the same immediately after he has received the goods.

5.2 Hidden defects, i.e. defects which could not be discovered in spite of careful inspection of incoming goods must be notified in writing to Standard-Metallwerke GmbH immediately after they have been discovered. Warranty claims based on the existence of obvious and hidden defects may not be brought under any circumstances after the expiry of one year. The time limit for bringing claims shall commence as from the time the Customer takes delivery of the goods at Standard-Metallwerke GmbH factory or otherwise as from the time they are received. The statutory limitation period shall apply in cases of fraud.

5.3 If a warranty claim is justified, the following will apply:

- a) In the case of variations of up to 10% in the weight or quantity between the goods ordered and the goods delivered Standard-Metallwerke GmbH shall be entitled to elect to deliver within a reasonable period of time the missing part or quantity (delivery) or, as the case may be, reclaim the quantity of goods greater than that provided for in the contract. Alternatively, it shall be entitled to increase or reduce within a reasonable period of time the purchase price specified in the confirmation order or, as the case may be, the unit or bulk price of the goods modified pursuant to clause 3.3 of these Terms and Conditions. The foregoing applies both with respect to the quantity to which a contract relates as a whole as well as with regard to separate partial deliveries. Where Standard-Metallwerke GmbH has made two unsuccessful attempts in a row to deliver the missing part or quantity or it refuses to attempt such delivery, the Customer shall be entitled to elect whether to rescind the contract, if he cannot reasonably be expected to accept the short delivery, or he may demand a reasonable reduction in the price.
- b) In the case of other defects in quality or defects in title Standard- Metallwerke GmbH may elect to repair the goods within a reasonable time (repair) or contemporaneously with the return of the defective goods replace them with goods that are free from defects (replacement). Repair shall be effected in the case of short deliveries exceeding 10 % by the delivery of the appropriate quantity. Standard- Metallwerke GmbH shall be obliged to bear all expenses associated with reattempting performance of its obligations (repair or replacement), including but not limited to the necessary expenses for transport, carriage, labour and materials provided that these do not increase due to the fact that the goods purchased were brought to a place other than the original place of performance. Standard-Metallwerke GmbH shall have no right to repair or replace where this would be unreasonable for the Customer, if

two consecutive attempts to repair or replace by Standard-Metallwerke GmbH fail or it refuses to make any such attempts, the Customer shall be entitled to elect whether to rescind the contract or demand a reasonable reduction in the price.

- c) Standard-Metallwerke GmbH's liability for damages if it fails to perform any of its obligations, in particular its liability for damages in lieu of performance, as well as its liability for wasted expenses shall be limited to three times the invoice value of the goods or services supplied. Any claims by the Customer over and above the foregoing, in particular, other claims for damages including for lost profits or other property damage, as well as claims for consequential damage shall be excluded. The aforementioned exclusion of liability shall not apply to damage resulting from an intentional or grossly negligent breach of obligation or in cases of personal injury or in cases of liability pursuant to the Product Liability Act (*Produkthaftungsgesetz*) or in cases where further liability is provided for under a mandatory legal provision. In cases where there is a fundamental breach of contract, liability shall be limited to the damage which was foreseeable.
- d) Tire statutory two-year limitation period for the assertion of all warranty claims is reduced to one year unless such limitation is prohibited by law.

6. Delivery Dates & Force Majeure

6.1 The delivery dates for Standard-Metallwerke GmbH are those agreed in writing by the contracting parties. Unless otherwise agreed in writing such delivery dates shall not be binding on Standard-Metallwerke GmbH. Even contractually binding delivery dates will be extended by a reasonable period of time if the extension results from a breach of obligation by the Customer or from extraordinary occurrences in Standard- Metallwerke GmbH's factory. The same applies to delays caused by suppliers of Standard-Metallwerke GmbH failing to deliver on time or failing to deliver conforming goods. Where Standard-Metallwerke GmbH fails to comply with an agreed delivery date, Standard-Metallwerke GmbH will not be in default until after it has been allowed a reasonable grace period.

6.2 If, and to the extent that, due to force majeure Standard-Metallwerke GmbH fails to perform any of its obligations under the contract or fails to perform them on time or fails to perform them in conformity with the contract, it will be excused from performance of its contractual obligations for the term of the impediment and to the extent it affects its ability to perform. Force majeure includes, but is not limited to, disruptions to operations, late or non-delivery by suppliers, shortages of energy or raw materials, traffic delays, administrative orders, strikes, uprisings, war, natural disasters, fire, floods etc. Standard- Metallwerke GmbH shall notify the Customer without delay as to when such circumstances begin and as to when they end. In the event that delivery of the goods is delayed by more than three months due to an event of force majeure, either party to the contract may rescind the contract in respect of the quantity of the

goods affected by the interruption to delivery and shall be exempt from further liability' in respect thereof.

6.3 Standard-Metallwerke GmbH cannot guarantee that delivery or shipment will occur on a certain date. In the event that freight costs increase between the date when the order confirmation is sent and the delivery date of the goods, Standard-Metallwerke GmbH may elect to pass on the resulting increase in costs to the Customer notwithstanding any other delivery terms agreed with him. In the event that the freight costs decrease, the Customer may if he has to bear the costs demand that they be adjusted accordingly.

7. Retention of Title

7.1 Standard-Metallwerke GmbH will retain title to the delivered goods in order to secure all claims which it acquires against the Customer based on the business relationship. This retention of title also applies to any ancillary claim and to claims for compensatory damages, including claims that arise in connection with the payment of bills of exchange or checks. The retention of title will also continue to apply in the event that individual claims held by Standard-Metallwerke GmbH are incorporated into a current account and that account is netted and acknowledged.

7.2 The ownership or title retained by Standard-Metallwerke GmbH extends to any new products that are created by processing the goods (*Verarbeitung*), inextricably mixing them with other goods (*Vermischung*) or incorporating them in other goods whereby they retain their identity (*Verbindung*). The processing will be deemed to have been carried out for Standard-Metallwerke GmbH as manufacturer. In the event that the secured goods are processed, mixed or incorporated in items of property which are not owned by it, Standard-Metallwerke GmbH will acquire a co-ownership interest in the new goods in a proportion reflecting the ratio between the invoiced value of the secured goods and the invoiced value of the other materials.

7.3 In order to secure the relevant claims, the Customer agrees to assign to Standard-Metallwerke GmbH any and all claims arising from the sale of the secured goods, including any claims to current account balances and claims arising in connection with the payment of bills of exchange or checks. Standard-Metallwerke GmbH accepts the assignment. If the goods in which Standard-Metallwerke GmbH holds a co-ownership interest are sold, then the assignment will be limited to that share of the claim which reflects its co-ownership interest. If the processing occurred in connection with a contract for work and materials (*Werkvertrag*), the Customer agrees to assign to Standard-Metallwerke GmbH the compensation in an amount equal to the pro rata share of the Customer's invoice for the jointly processed secured goods. Standard-Metallwerke GmbH accepts the assignment.

7.4 The Customer agrees to store the secured goods on behalf of Standard-Metallwerke GmbH at no charge and to adequately insure them against the usual risks

(fire, theft, water, etc.). The Customer agrees to assign to Standard-Metallwerke GmbH any indemnity claims, which it holds against an insurance carrier, in the amount of the invoice. Standard-Metallwerke GmbH accepts the assignment.

7.5 As long as the Customer is prepared and in a position to duly comply with the obligations it owes to Standard-Metallwerke GmbH, it may in the ordinary course of business use the goods owned or co-owned by Standard-Metallwerke GmbH and may itself seek to collect on the claims assigned to it. The Customer may not grant any security interests, make any pledges or assign any claims, even in connection with a sale of receivables, without the prior written consent of Standard-Metallwerke GmbH. Any action to recover the secured goods will be deemed a rescission of the contract only if Standard-Metallwerke GmbH has expressly agreed thereto in writing.

7.6 If the value of the security exceeds the secured claims by more than 20%, then at the request of the Customer Standard-Metallwerke GmbH agrees - upon its selection - to release this excess amount of security. If a retention of title is prohibited or restricted under the statutory provisions applicable in the Customer's country, then the rights of Standard-Metallwerke GmbH as described above will be limited to the extent allowed under those laws.

7.7 Should any third parties take legal action in respect of the secured goods or the assigned claims, then the Customer must immediately notify Standard-Metallwerke GmbH of same and provide it with the documents needed for a defence. The Customer shall bear the costs of the defence.

8. The Right to Refuse Performance

Standard-Metallwerke GmbH reserves the right to refuse performance in the event that there is a significant deterioration after the conclusion of the contract in the Customer's financial situation endangering its right to payment. Standard-Metallwerke GmbH shall also be entitled in such a situation to elect whether to demand payment in advance or to rescind the contract with immediate effect if the Customer has not effected payment of the consideration or provided security. Indications of a significant deterioration in the Customer's financial situation include, but are not limited to, a petition for the institution of insolvency or settlement proceedings, refusal to commence such proceedings because the Customer does not have sufficient assets, closing-down of business, transfer of the Customer's business or significant parts of it to a third party and the non-payment of invoices from Standard-Metallwerke GmbH which are due and payable in spite of having received a reminder.

9. Right of Lien

The Customer and Standard-Metallwerke GmbH agree that Standard-Metallwerke GmbH shall acquire a lien over all items left for whatever legal reason with it by the Customer. The lien shall secure all of Standard-Metallwerke GmbH's existing, future and contingent claims against the Customer irrespective of their legal basis.

10. Terms of Payment

10.1 The Customer shall only be entitled to withhold payment or set off its own claims against Standard-Metallwerke GmbH's claims against it if its claims are uncontested or non-appealable.

10.2 Unless there is an agreement to the contrary, the Customer must pay the purchase price or compensation for work plus taxes, customs duty and ancillary costs within 14 days of receiving the goods or, as the case may be, within 14 days from when he took early delivery of the goods and make such payment without any deductions to a bank account specified by Standard-Metallwerke GmbH. In the event that the Customer does not meet the payment deadline, he will be in default without it being necessary for Standard-Metallwerke GmbH to issue a payment reminder.

10.3 If the Customer is in default of payment, Standard-Metallwerke GmbH shall be entitled to demand interest notwithstanding any other claims by it for damages. Interest shall be payable at the base interest rate applicable between the date when payment is due and the date when payment is made plus 8 %. Where the Customer is in default of payment and where Standard-Metallwerke GmbH has good reason to doubt its solvency or creditworthiness, Standard-Metallwerke GmbH shall be entitled to demand security or advance payment in relation to outstanding deliveries notwithstanding any other rights it may have.

10.4 If cash payments were agreed, only payments in cash, bank transfers or cheque will be considered as cash payments. If payment is made by bill of exchange, check or using other negotiable instrument, the Customer shall be responsible for discounting and redemption costs.

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

11.1. The place of performance for all obligations arising from a contract or an order is Werl. The courts of Werl shall have jurisdiction in relation to same. The same applies to actions involving cheques or bills of exchange. Standard-Metallwerke GmbH shall also be entitled to start legal proceedings at the place where the Customer's headquarters are located. The contract shall be subject to German law. The invalidity of individual contractual provisions shall not relieve the Customer from the performance of the remaining provisions; invalid provisions shall be replaced by valid provisions which approximate as closely as possible the legal or economic purpose of the invalid provisions. If the invalidity of a provision results from its containing a time or performance stipulation that is too high or too low, it shall be replaced with a provision stipulating the highest or lowest amount which is permissible. The Customer shall not be entitled to assign his rights under this contract.

Standard-Metallwerke GmbH

Rustigestr. 11

59457 Werl/Germany

Phone: +49 2922 808-0

Fax.: +49 2922 808-185

E-Mail: info@standard-metall.de

Register office: Arnsberg HRB 8584

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