

General Terms and Conditions of Sale

of the Ervin Germany GmbH, Auf dem Bruch 11, 45549 Sprockhövel

Section 1 Scope and legal form

- (1) These General Terms and Conditions of Sale shall apply to all our business relationships with our customers ("Buyers"). The General Terms and Conditions of Sale shall only apply if the Buyer is a company (Section 14 of the German Civil Code (Bürgerliches Gesetzbuch – BGB)), legal entity under public law or special trust under public law.
- (2) The General Terms and Conditions of Sale shall apply, in particular, to agreements on the sale and/or delivery of movable objects ("goods"), regardless of whether such goods are manufactured by ourselves or purchased from external suppliers (Sections 433 and 651 BGB). Unless otherwise agreed, the General Terms and Conditions of Sale shall apply in the version effective at the time the Buyer places the order or, in any case, in the version last provided to the Buyer as a framework agreement even for similar future agreements without us having to refer to this fact in each individual case.
- (3) These General Terms and Conditions of Sale shall apply exclusively. Deviating, contrary or additional general terms and conditions of business of the Buyer shall only form part of the agreement if explicitly approved by us. This obligation to obtain approval shall apply in any case, even if we deliver the goods to the Buyer without reservations in knowledge of the general terms and conditions of the Seller.
- (4) Individual agreements concluded with the Buyer (including additional agreements, addendums and amendments) shall always take precedence over these General Terms and Conditions of Sale. For the content of such agreements, subject to evidence to the contrary, a written agreement and/or our written confirmation shall be authoritative for the content of such agreements.
- (5) Declarations and announcements of the Buyer relevant by law relating to the Agreement (such as deadlines, notification of defect and withdrawal) shall be placed in writing or text form (e.g. letter, e-mail, fax). Legal form requirements and other proof, particularly in doubt about the legitimation of the declaring party, shall not be affected.
- (6) References to the applicability of legal provisions shall only serve for clarifying purposes. Even without such clarification, the legal provisions therefore shall apply, unless they directly amend these General Terms and Conditions of Sale or are explicitly excluded.

Section 2 Conclusion of Agreement

- (1) Our offers are non-binding. The same shall apply if we have provided the Buyer with catalogues, technical documentation (such as drawings, plans, computations, calculations, references to DIN standards), other product descriptions or documents, including in electronic form, in which we reserve intellectual property rights and copyright.
- (2) Goods orders placed by the Buyer shall be regarded as binding contractual offers. Unless specified otherwise in the order, we may approve the contractual offer within a period of five days from its receipt.
- (3) We may declare our approval in writing (e.g. by confirming the order) or by delivering the goods to the Buyer.

Section 3 Delivery deadline and delay

- (1) The delivery deadline shall be agreed individually and/or stated by us when approving the order. If we have not specified a delivery deadline, it shall be approx. 2 weeks from the conclusion of the Agreement.
- (2) If we are unable to meet binding delivery deadline for reasons outside our scope of control (unavailability of services), we shall notify the Buyer immediately and at the same time announce an estimated new delivery date. Should the service remain unavailable even within the new delivery deadline, we may withdraw from the Agreement, in whole or part thereof, and we shall reimburse any consideration already provided by the Buyer immediately. Unavailability of service within the meaning of this provision shall be, in particular, delays in supplies delivered to us by our suppliers, if we have concluded congruent hedging transaction, the delay falls outside the scope of control of us or our supplier, or we are not responsible for procurement in individual cases.
- (3) The occurrence of delivery delays on our part shall be based on the legal provisions. In any case, however, the Buyer shall send us a reminder. The Buyer may claim fixed compensation for any damages incurred due to the delivery delay should it fall within our scope of control. The fixed compensation shall be 0.5% of the net price (delivery value) for each full calendar week, but no more than a total of 5% of the delivery value of the goods delivered with a delay. We may provide proof that the Buyer has incurred no, or significantly less, damage than the above fixed rate.
- (4) This shall not affect the Buyer's rights in accordance with Section 8 of these General Terms and Conditions of Sale and our legal rights, particularly under exclusion of the duty to provide services (e.g. due to impracticability or unreasonableness of the service and/or subsequent fulfilment).

Section 4 Delivery, risk transfer, approval and delayed approval

- (1) Deliveries shall be ex warehouse, which shall also be the place of fulfilment of the delivery and any subsequent fulfilment. The goods may also be dispatched to another destination at the request and cost of the Buyer (sale by dispatch). Unless otherwise agreed, we may determine the type of dispatch (particularly transport company, transport path and packaging).
- (2) The risk of accidental destruction and deterioration of the goods shall be transferred to the Buyer no later than upon transfer of the goods. For sales by dispatch, however, the risk of accidental destruction and deterioration of the goods as well as the risk of delays shall be transferred already upon delivery of the goods to the freight forwarder, carrier or other person or organisation engaged to dispatch the goods. If an approval of the goods has been agreed, this shall be the date on which the risk is transferred. The legal provisions of the law applicable to works and services shall further apply correspondingly in the event of an agreed approval of goods. Any delay in the Buyer's receipt of goods shall not affect the transfer and/or approval of goods.
- (3) Should the Buyer be delayed with the approval of goods, fails to perform a cooperative action or our delivery is delayed for other reasons within the scope of control of the Buyer, we may claim compensation for any resulting damages, including additional costs (such as storage costs). In such case, we shall invoice for fixed compensation in the amount of EUR 7,50 € per calendar day, starting with the delivery deadline and/or notification of goods ready for dispatch in the case of no delivery deadline having been agreed. This shall not affect our entitlement to prove that the damage is higher and our legal claims (particularly the reimbursement of additional costs, reasonable compensation and termination). However, the fixed compensation shall be offset against further reaching monetary claims. The Buyer may provide proof that we have incurred no, or significantly less, damage than the above fixed rate.

Section 5 Prices and payment conditions

- (1) Unless otherwise agreed in individual circumstances, our current prices at the time of the conclusion of Agreement shall apply ex warehouse plus statutory VAT.
- (2) For sales of dispatch (Section 4 Paragraph 1), the Buyer shall carry the transport costs ex warehouse as well as the costs of any transport insurance requested by the Buyer. Actual transport costs incurred in each individual case The Buyer shall pay any customs duties, fees, taxes and other public levies.
- (3) We may present the buyer with an additional invoice for the alloy surcharge, scrap surcharge and/or surcharge to cover rising costs applicable on the date of delivery. If alloy surcharges, scrap surcharges and surcharges to cover rising costs are stated separately in the offer or confirmation letter and should those change once the offer has been submitted or the contract concluded, but no later than prior to delivery, we may adjust the invoiced amount accordingly.
- (4) The purchase price shall be due and payable within 14 days from invoice date and delivery and/or approval of the goods. However, we may, at any time, perform a delivery in whole or part thereof on advance payment, even within the scope of an ongoing business relationship. We shall declare such intention no later than in the order confirmation.
- (5) The Buyer shall be deemed as having defaulted on payment if payment has not been made within the above payment period. The respective applicable statutory default interest shall be added to the purchase price during the default period. We reserve the right to claim further damages caused by delay. This shall not affect our claim for commercial interest payable on due date from business persons (Section 353 HGB).
- (6) The Buyer's right of set-off and retention shall only apply if the Buyer's claim has been found to be legally binding or is undisputed. The Buyer's counterclaims, particularly those in accordance with Section 7 Paragraph 6 Sentence 2 of these General Terms and Conditions of Sale, shall not be affected if deliveries are defective.
- (7) If after the conclusion of the Agreement it becomes apparent (e.g. through an application to open insolvency proceedings) that our claim is endangered through the Buyer's lack of ability to make payment, we may withdraw from the Agreement in accordance with the legal provisions, and, if applicable, after giving a period of grace (Section 321 BGB). In the case of agreements on the manufacture of untenable items (one-off production), we may declare our withdrawal immediately. This shall not affect the legal provisions regarding the necessity of a period of grace.

Section 6 Retention of title

- (1) We shall reserve the title to the goods sold until full payment for all our current and future receivables arising from the purchase agreement and an ongoing business relationship (secured receivables) has been made.
- (2) The goods subject to retention of title shall not be pledged or transferred by way of security to third parties until full payment for the secured receivables has been received. The Buyer shall notify us immediately and in writing of any application to open insolvency proceedings or any third-party access (such as seizure of goods) to the goods owned by us.
- (3) In the event of the Buyer violating the Agreement, particularly in the event of non-payment of the purchase price due, we may withdraw from the Agreement in accordance with the legal provisions and/or request for the goods to be returned to us on the grounds of retention of title. The request to return the goods to us shall not automatically include our notice of withdrawal. We

rather may request only the return of the goods and reserve the right to withdraw at a later date. If the Buyer fails to pay the purchase price, we may only enforce these rights if we have first given the Buyer a reasonable period of grace and the Buyer has failed to perform during such period or such period of grace is not required in accordance with legal provisions.

(4) Except in the event of a rescission in accordance with section (c) below, the Buyer may sell and/or process the goods subject to retention of title during the proper course of business. In such case, the following additional provisions shall apply.

(a) The retention of title shall also apply to the full value of the products manufactured by processing, mixing or combining our goods. In such case, we shall be classed as the manufacturer. Should the retention of title of third-party goods remain in effect when processing, mixing or combining them with our goods, we shall acquire pro-rata co-ownership of the calculated values of the processed, mixed or combined goods. The products manufactured in this manner shall be subject to the same provisions as goods delivered subject to retention of title.

(b) The Buyer shall herewith assign to us the receivables to third parties arising from selling on the goods or products in the total amount of our potential co-ownership shares in accordance with the above provision by way of security. We shall herewith accept this assignment. The Buyer's obligations stated in Section 2 shall also apply with regard to the assigned receivables.

(c) The Buyer shall remain entitled to collect the receivables alongside us. We shall agree not to collect the receivables as long as the Buyer meets its payment obligations to us, its performance is not impaired and we have not enforced the retention of title by exercising a right in accordance with Section 3. However, should this be the case, we may request for the Buyer to disclose to us the assigned receivables and their debtors, provide all information required for collecting the receivables and related documents and notify the debtors (third parties) of the assignment. In such case, we may also rescind the Buyer's authorisation to sell on and process the goods subject to retention of title.

(d) Should the resell value of the securities exceed our receivables by more than 10%, we shall release securities of our choice upon request by the Buyer.

Section 7 Buyer's claims for defects

(1) Unless otherwise agreed below, the legal provisions shall apply to the Buyer's rights in the event of physical and legal defects (including incorrect and short deliveries and inadequate assembly instructions). The special legal provisions for goods delivered to end customers shall not be affected in any case (supplier recourse in accordance with Sections 478 and 479 BGB).

(2) Our liability for defects shall primarily be based on the agreement regarding the properties of the goods. All product descriptions that form part of the individual agreements or have been published by us (particularly in catalogues and on our website) shall be classed as an agreement regarding the properties of the goods.

(3) If the properties have not been agreed, it shall be assessed if a defect exists or not in accordance with the legal provisions (Section 434 Paragraph 1 Sentences 2 and 3 BGB). However, we shall not assume any liability for public statements issued by the manufacturer or other third parties (such as advertising statements).

(4) The Buyer's claims for defects shall only be valid if the Buyer has met all of its statutory investigation and complaint obligations (Sections 377 and 381 HGB). We shall be notified immediately and in writing of any defects found during delivery, inspection or at any other time in the future. In any case, obvious defects shall be notified in writing within five working days from delivery and within the same period from discovery in the case of hidden defects. Should the Buyer fail to perform a proper investigation and/or submit a notification of defect, our liability for the defect not notified properly or on time shall be excluded in accordance with the legal provisions.

(5) In the event of the delivered goods being defective, we may initially choose subsequent fulfilment by way of rectification of defect (subsequent fulfilment) or delivery of non-defective goods (replacement delivery). This shall not affect our right to reject subsequent fulfilment under the legally prescribed conditions.

(6) We may make the subsequent fulfilment owed to us dependent on the Buyer paying the purchase price due. However, The Buyer may retain a reasonable share of the purchase price in relation to the defect.

(7) The Buyer shall grant us the time and opportunity required for the subsequent fulfilment and, in particular, provide us with the goods declared to be defective for testing purpose. In the event of a replacement delivery, the Buyer shall return the defective items to us in accordance with the legal provisions. Subsequent fulfilment shall not include the removal of the defective items nor re-installation if installation was not part of our original obligations.

(8) We shall carry the expenses, particularly transport, travel, labour and material costs (not including removal and re-installation costs) incurred for the purpose of testing and subsequent fulfilment if a defect is actually present. If no defect has been found, we may otherwise request compensation from the Buyer for the costs incurred through the unauthorised request to rectify a defect (particularly testing and transport costs), unless the Buyer was unable to detect the lack of defect.

(9) In accordance with Section 439 Paragraph 3 BGB, we shall reimburse the Buyer for the installation and removal costs if proof is provided of our liability. Reimbursement regardless of responsibility shall be excluded.

(10) In urgent cases, e.g. if operating safety is compromised or unreasonable damage has to be prevented, the Buyer may rectify the defect and claim compensation from us for the expenses objectively incurred by such action. We shall be notified immediately, ideally in advance, of such self-performance. The Buyer shall not be entitled to rectify defects if we would be entitled to reject a corresponding subsequent fulfilment in accordance with the legal provisions.

(11) In the event of the subsequent fulfilment being unsuccessful or a period of grace to be granted by the Buyer expiring without any successful action being taken, or if such period of grace does not have to be granted in accordance with the legal provisions, the Buyer may withdraw from the purchase agreement or reduce the purchase price. However, immaterial defects shall not entitle to a withdrawal from the agreement.

(12) Any claims of the Buyer for damages and/or compensation for expenses incurred for unsuccessful actions shall only be valid in the case of defects in accordance with Section 8 and shall otherwise be excluded.

Section 8 Other liability

(1) Unless stated otherwise in these General Terms and Conditions of Sale, including the following provisions, we shall assume liability in accordance with the legal provisions for any violations of contractual and non-contractual obligations.

(2) We shall be liable to pay compensation for damages, for whatever reason, within the scope of the responsibility for the damage if we act with malicious intent or gross negligence. In the case of simple negligence, we shall only assume a reduced level of liability in accordance with the legal provisions (e.g. for due diligence in our own matters) for

a) damages arising from injury to life, limb and health,

b) damages arising from a major violation of a material contractual obligation (obligation whose fulfilment is essentially required for the proper performance of the agreement and compliance with which the Contractual Partner does, and may, regularly rely on); in such case, however, our liability shall be limited to compensation for any foreseeable, typical damage.

(3) The limited liability stated in Section 2 shall also apply to violations of obligations by and/or to the benefit of persons for whose actions we are responsible in accordance with the legal provisions. It shall not apply in the event of us maliciously concealing a defect or assuming a guarantee for the properties of the goods not to the Buyer's claims in accordance with product liability law.

(4) The Buyer may only withdraw from or terminate the Agreement on the grounds of a violation of obligations that does not constitute a defect if such violation falls within our scope of control. The Buyer's unrestricted right to termination (particularly in accordance with Sections 650 and 648 BGB) shall be excluded. The legal requirements and consequences shall apply besides.

Section 9 Statute of limitation

(1) Deviating to Section 438 Paragraph 1 No. 3 BGB, the general statute of limitation for claims arising from physical and legal defects shall be one year from receipt of delivery. The statute of limitation shall start upon approval if such approval has been agreed.

(2) However, in the event of the goods being a building or item which has been used for the construction of a building according to its purpose which has caused the defectiveness of the building (construction material), the statute of limitation shall be five years from receipt of delivery in accordance with the legal provisions (Section 438 Paragraph 1 No. 2 BGB). This shall not affect any further special legal provisions regarding the statute of limitation (particularly Section 438 Paragraph 1 No. 1 and Paragraph 3 and Sections 444 and 479 BGB).

(3) The above statute of limitation specified by the sale of goods law shall also apply to contractual and non-contractual claims for damages by the Buyer based on defective goods, unless the application of the regular statutory statute of limitation (Sections 195 and 199 BGB) would result in a shorter statute of limitation in individual cases. However, claims for damages raised by the Buyer in accordance with Section 8 Paragraph 2 Sentences 1 and 2(a) as well as product liability law shall exclusively expire by limitation after the statutory statute of limitation.

Section 10 Governing law and place of jurisdiction

(1) These General Terms and Conditions of Sale and contractual relationship between us and the Buyer shall be governed by the laws of the Federal Republic of Germany under exclusion of international uniform law, particularly the United Nations Convention on Contracts for the International Sale of Goods (CISG).

(2) If the Buyer is a business person within the meaning of the German Commercial Code, legal entity under public law or special trust under public law, the exclusive, including international, place of jurisdiction for all disputes arising directly or indirectly from the contractual relationship shall be the location of our head office in Sprockhövel (Germany). The same shall apply if the customer is a business person within the meaning of Section 14 BGB. In any case, we may file claims at the place of fulfilment of the delivery obligation in accordance with these General Terms and Conditions of Sale and/or any individual agreement which takes priority or at the general place of jurisdiction of the Buyer. This shall not affect any legal provisions which take priority, particularly regarding exclusive responsibility.