

# General Standard Terms and Sales Conditions of Stahl Gerlafingen AG

Stand: 26.09.2011

## 01.0 General Terms

- 01.1. All of our – also future – deliveries and services (in the following consistently called “Services”) shall be subject to the following terms. They apply equally to companies, legal entities governed by public law and special funds under public law (in the following “Buyer”). By accepting these terms without raising objections, the Buyer is declaring his agreement to their exclusive application for the respective delivery and all subsequent business transactions. Stahl Gerlafingen AG (in the following consistently called the “Supplier”) does not recognize any terms of the Buyer which deviate from our terms unless we have expressly agreed to the application of such terms in writing. Our terms apply even if, despite having knowledge of terms of the Buyer which opposes or deviate from our terms, we carry out deliveries to the Buyer without reservation.
- 01.2. Our offers shall not be binding.
- 01.3. Information and data contained in the data sheets, brochures and other advertising or information material only serve as a guideline and shall only become binding part of the contract if we have expressly agreed to this in writing.
- 01.4. The agreement shall only be binding for us after we have issued the written confirmation of order which can occur through facsimile or e-mails.
- 01.5. Any trade terms shall be interpreted according to the actualized version of the Incoterms, if case of doubt.

## 02.0 Prices and payment terms

- 02.1. The selling prices indicated in the price per unit lists for the respectively specified products shall apply for the contractually stipulated products unless otherwise agreed with the Supplier. As far as business affairs at the national level are concluded, the value-added tax is not included in any prices and will be indicated separately on invoices.
- 02.2. Unless otherwise agreed or indicated in our invoices the selling price is to be paid within 30 days calculated from the invoice date with no deduction for any kind of discounts, expenses, taxes and fees. The payment transaction has to be done so that we can dispose of the amount on the due date. In case of partial deliveries payment shall be made on the due amount of the delivered part(s).
- 02.3. If the payment is not realized within the time allowed, the Buyer shall be in default, without a special reminder needing to be sent. In the event of a delay in payment, interest shall become due at a rate of 8 percent points p.a. above the basic

interest rate, unless higher interest rates are agreed. The right to provide evidence of a more extensive default damage is reserved.

- 02.4. The Buyer is not authorized to deduct the outstanding amount from any statute-barred or disputed counter-claims. The Buyer may not hold
- 02.5. back any payments based on any claims by it that are disputed by the Supplier. The Buyer shall only have a right of set-off if its counter-claim is undisputed or has been conclusively established by law.
- 02.6. In the event that the Buyer is in arrears with a payment for any reason, or if the Supplier has good reason to fear, based on an event that occurred following conclusion of the Agreement, that it will not receive payment from the Buyer in full or when due, the Supplier shall be entitled, without limiting its right to legal recourse, to suspend any further fulfilment of the order and to hold back any deliveries ready to be sent until new payment deadlines and new terms and conditions for payment and delivery have been agreed, and the Supplier has received sufficient security. If the parties are unable to come to such an agreement within a reasonable period of time or if the Supplier does not receive sufficient security, the Supplier shall have a right to withdraw from the Agreement and claim damages.
- 02.7. In the event that the Buyer becomes insolvent, all account balances shall become due and may be called in immediately, notwithstanding any agreed deadlines. The Supplier shall have the right, in this case, to suspend or rescind all delivery obligations.

## 03.0 Inability to deliver

In the event that circumstances arise that are outside the control of the Supplier, which makes it impossible to the Supplier to complete a delivery, the Supplier shall be released from his obligations under this Agreement. This shall not be grounds for any claim by the Buyer for damages.

## 04.0 Dispatch, delivery terms, packaging, transfer of risk

- 04.1. Our written confirmation of order is decisive for the extent and manner of our service. We have the right to partial performance if this is reasonable for the Buyer.
- 04.2. Call orders require the Buyer to take delivery of the call order with the total amount. Unless in the call order, no specific call dates have been

- agreed, the entire amount shall be retrieved within the period of time specified in the general contract.
- 04.3. Delivery times shall not be strictly binding but only give an approximate estimation unless they have explicitly and in writing been agreed as binding. The delivery time shall begin with the date of our confirmation of order but shall not begin before all questions relevant for the execution of the agreement have been finally clarified and actions to be carried out by the Buyer have been executed. In particular, the delivery time shall not begin before we have received all necessary information for the delivery by the Buyer or his representative. Any changes belatedly desired by the Buyer disrupt the time of delivery. After the conciliation about the desired changes the time of delivery starts anew.
- 04.4. We keep the time of delivery if until its expiry the contractual good has left our plant or if we have indicated our readiness to dispatch and, without our responsibility, the product can not be shipped in due time.
- 04.5. All cases of force majeure, strikes, blockage, insufficient supplies of materials, raw materials or energy, labor conflicts, tremendous production disturbances, accidents, lack of transport possibilities or other similar events or causes outside the scope of our influence shall release us from our obligations to fulfill this agreement for the duration and scope of such hindrances. This shall also apply if such circumstances arise among our Suppliers. The above mentioned circumstances shall not be our responsibility even if they arise when we are already in delay with delivery. We shall inform the Buyer of the beginning and end of such hindrances as soon as possible.
- 04.6. The goods are not packed and not protected against rust. If usual in the trade, we shall deliver packed goods. Packaging, protection and / or transport means are organized by ourselves according to our experiences and at the expense of the Buyer.
- 04.7. If the delivery of the goods is not possible on time due to the reasons for which the Supplier is not responsible, the goods shall be invoiced and stored by the Supplier at the expense and risk of the Buyer.
- 04.8. The Buyer shall have no right or claim due to any delays in deliveries or services other than those set out in this clause. The limitation shall not applied to any illegal intent or gross negligence on the part of the Supplier, however it shall apply to any illegal intent or gross negligence on the part of any auxiliary support staff.

## **05.0 Warranty of quality**

- 05.1 The Supplier warrants that any goods delivered shall possess the contractually agreed and/or customary characteristics and that they do not

- contain any defects which significantly impair their value. This warranty shall remain in effect until expiry of the warranty period at the latest.
- 05.2. The following documents, in the sequence they are listed, shall apply to determine the conditions, dimensions and weight of the goods delivered:
- Agreement
  - Factory standards of the Supplier
  - DIN and EN norms
- 05.3. The Supplier shall be authorized to deliver amounts over or under the specified delivery amount to the extent of 10%.
- 05.4. The date pursuant to clause 04.4. shall apply with respect to the contractually agreed condition of the goods.
- 05.5. The Supplier gives no warranty in respect of any goods that are sold as degraded.

## **06.0 Inspection and approval of the goods**

- 06.1. If an inspection test through a third party is agreed, it can only be made in the delivery plant particularly in our warehouse immediately after the notification of the inspection test. The personal costs are borne by the Buyer as well as the material costs of inspection which are based on our price list or on the price list from the delivery plant.
- 06.2. If the inspection test does not take place or does not take place on time or happens to be incomplete without our fault, we reserve the right to ship the goods without prior inspection or to store it at the Buyer's cost and risk.
- 06.3. The Buyer shall inspect the goods at the place of destination immediately upon receipt and give notice by way of letter, fax or e-mail of any obvious defects noted, within 14 days after delivery of the goods and shall notify the Supplier of any missing units and any underweight otherwise the goods shall be deemed approved, subject to clause 07.2.
- 06.4. The Supplier shall be immediately notified of any hidden defects discovered not later than three (3) months following the receipt of the goods at the place of destination otherwise the goods shall be deemed approved.

## **07.0 Clarification in the event of notice of defects**

- 07.1. In the event that the Supplier receives notice of a defect, the Supplier shall immediately verify its accuracy. For this purpose, the Buyer shall provide the Supplier with an opportunity to verify the defective goods first-hand at the location where the goods were delivered. Upon request, the Buyer shall make the defective goods or samples of same available to the Supplier. Any returns shall require the approval of the Supplier.

- 07.2. The Buyer shall not have any claim for liability if it fails to comply with the obligations of clause 06.3.
- 07.3. Any defects due to the improper handling, storage, working or processing, excessive use of the goods by the Buyer and any other reasons for which the Supplier is not responsible, shall not be grounds for any liability claim against the Supplier.

## 08.0 Liability

- 08.1. If a notice of defect is justified and was given in a timely and proper manner, the Supplier shall take back the goods in question and deliver in their place goods that are in good working order. The Supplier may instead refund the loss in value. The Buyer shall have no right of conversion.
- 08.2. The Supplier shall have no further contractual or non-contractual liability for damage including, but not limited to, consequential damage.
- 08.3. The Buyer shall be fully in relation to third parties due to any event causing damage or loss in connection with the delivery. In the event that a claim is made against the Supplier due to such an event, the Supplier shall have the right of recourse against the Buyer for all expenses. The Buyer shall be excluded from having any right of recourse against the Supplier pursuant to articles 50 and 51 of the Swiss Code of Obligations.

## 09.0 Retention of title to goods and tools

- 09.1. Until the payment of the sales price is fully made and any other claims that the Supplier has against the Buyer are solved, the following shall apply:
- the Supplier shall retain title to the goods delivered
  - once the agreement has entered into effect, the Buyer shall allow the Supplier to have the retention of title recorded in a public register or other record in the appropriate form and in compliance with any relevant national laws and to fulfill all formalities relating to the same at the expense of the Buyer.
  - as long as title to the goods is retained, the Buyer shall be responsible for maintaining the goods and for insuring them in favour of the Supplier against theft, damage due to the breakage, fire and water and against other risks. Furthermore the Buyer undertakes all necessary steps in order to safeguard all respects of the Supplier's retention of title.
  - no new object may be created as a result of working on and/or processing the goods delivered except at the behest of the Supplier. Title to any such new objects shall therefore be retained by the Supplier.
  - if the goods delivered are mixed with similar goods from the Buyer or a third party, the Supplier shall remain the pro rata co-owner of such mixed goods.

- the Buyer shall only have the right to sell the goods delivered in the normal course of business at market terms and conditions. It shall not have any right to dispose of them in any other manner (e.g. by pledge or other third-party intervention in the Supplier's right of title).

To secure the rights of the Supplier, the Buyer herewith assigns any claims arising as a result of any sale of the goods. In the event that the Buyer is in arrears with any payments, the Supplier shall have the right, without having an obligation, to give notice of his assignment to third party purchasers and to demand that payment be made to it. The Buyer shall provide the Supplier on a weekly basis with all information required to enable the Supplier to preserve his rights.

- 09.2. Any tools require to manufacture the goods shall remain the property of the Supplier, even if the costs of the tools were paid in full or in part by the Buyer.
- 09.3. The retention of title to goods destined for export shall be governed by the laws of the country of destination.

## 10.0 Exclusion of any further liability on the part of the Supplier

- 10.1 All cases of breach of contract and the legal consequences thereof, as well as all claims to which the Buyer may be entitled, irrespective of the legal basis on which they are made, shall be conclusively settled pursuant to these General Standard Terms and Sales Conditions. In particular, the Buyer shall not make any claim for compensation for damage or loss, reduction in value, rescission or withdrawal from the Agreement, if not expressly specified in this Agreement. Under no circumstances shall the Buyer be entitled to claim for compensation for damage or loss not caused directly to the goods delivered, i.e. the Buyer shall not be entitled to claim for compensation due to any production stoppage, loss of use, loss of orders, lost profits or any other direct or indirect damage or losses. This limitation of liability shall not apply to any illegal intent or gross negligence on the part of the Supplier. However it shall apply to any illegal intent or gross negligence on the part of any auxiliary support staff.
- 10.2 In all other respects this limitation of liability shall not apply if it is in contravention of any statutory requirement.

**11.0. Applicable law**

In addition to these General Standard Terms and Sales Conditions, substantive Swiss law shall also apply, to the exclusion of the United Nations Convention on Contracts for the International Sale of Goods of 11<sup>th</sup> of April 1980.

**12.0. Jurisdiction**

The parties agree that the place of jurisdiction for any indirect or direct disputes arising out of or in connection with business between them shall be the registered office of the Supplier. This notwithstanding, the Supplier shall have the right to commence legal action against the Buyer at the place of its registered office.