

**Terms of Sale and Delivery**  
**Firma Metallschmelzwerk Ulm GmbH,**  
**89079 Ulm**

**I. Scope**

The following terms apply exclusively to all, including future, offers submitted by us as well as to all current and future contracts concluded with us. Customer terms which deviate from these Terms shall only apply if confirmed by us in writing.

**II. Conclusion of contract**

1. All our offers, including but not limited to those in catalogues, sales materials and on the internet, shall be without obligation. Legally such offers shall be deemed as invitations to treat.
2. Orders shall be deemed to be accepted if confirmed by us in writing or if such orders are performed on schedule or immediately following receipt of the order.
3. In cases of doubt, the terms of the contract shall accord with our acknowledgement of order or, should no such acknowledgement be issued, with our delivery note or, in the absence of such delivery note, our offer or price list.
4. Should the customer alter the quality description of the product and should such alteration be confirmed by us in writing, the alterations thus confirmed by us shall be authoritative for all subsequent orders even if the customer does not make reference to the applicability of such alterations to subsequent orders.
5. If no agreement is reached regarding quality or condition, product characteristics shall be subject to the requirements stipulated in the EN 1982 standard for ingots (CB) relating to copper-zinc, copper-tin and copper-tin-lead alloys, subject to the restriction that no specific mechanical properties are required.
6. Quality descriptions and agreements shall not imply the provision of a warranty.

**III. Price**

All prices are quoted in euros as net prices to which currently valid statutory value-added tax shall be added, ex works Neu-Ulm, and are exclusive of customs, border, insurance, transport, unloading and packaging costs which shall be borne by the customer.

Should the parties have agreed that packaging will be taken back, such packaging shall be returned carriage paid and free of expenses, immediately and in faultless condition.

We reserve the right to increase the agreed prices in the event of an increase in commodity, energy or raw material prices, or increases in wages and salaries or transport costs in the period intervening between conclusion of the contract and delivery.

#### **IV. Delivery and passage of risk**

Delivery periods shall only commence upon final clarification of all implementation provisions. Compliance with delivery periods which may have been agreed shall be contingent on fulfilment of the customer's contractual duties. In the event of delays in delivery and performance as a result of *force majeure* and owing to events for which we are not responsible and which render delivery significantly more difficult, including but not limited to strikes, lockouts, directives issued by public authorities, transport disruptions, etc., including if such events affect our suppliers and subcontractors, the agreed period shall be extended for a reasonable period of time. We and the customer shall, however, be entitled to withdraw from the contract 5 months subsequent to expiry of the original delivery time. Neither we nor the customer shall be entitled to assert further claims or rights following such termination.

We endeavour to comply with agreed delivery periods. Should we culpably fail to comply with delivery periods, the customer shall be required to provide us with a specified reasonable period of grace. Following abortive expiry of said period of grace, the customer shall be entitled to withdraw from the contract. Damages for delay and damages for non-performance shall be subject to Clause VIII.

Partial deliveries may be made on a reasonable scale.

Delivery shall be made ex works. Transport shall be at the risk of the customer. Unless otherwise agreed, the shipping route and means of transport used shall be specified at our discretion.

In all other respects the risk shall pass upon transfer of the goods to an appropriate carrier. This shall also apply if we transport the delivery with our own personnel. At the customer's request we shall provide transport insurance cover for the delivery at the customer's cost.

If shipment is delayed owing to circumstances for which the customer is responsible, the risk shall pass to the customer on the day on which readiness for shipment has been notified; however, we shall be required to obtain requisite insurance cover at the request and cost of the customer.

Should the customer fail to call off goods subject to make-and-take order on the agreed intermediate or final deadlines, the purchase price shall increase in line with any increases in commodity, energy or raw material prices, or increases in wages and salaries or transport costs, which may take place in the period between the release date and the actual call off.

#### **V. Payment**

Our invoices shall be due for settlement immediately. All payments shall be made exclusively to us or to one of the accounts specified in the acknowledgement of order or invoice.

Cash discounts which may be agreed shall not be granted should the customer be in arrears in payment of earlier deliveries.

The customer shall be deemed to be in arrears at the latest should it fail to settle within 3 weeks of receipt of the delivery. The statutory provisions relating to default in payment shall additionally apply.

We only accept bills of exchange if explicitly agreed and only on account of payment.

Bills of exchange and cheques shall only be credited on the value date of receipt of their redemption value minus expenses.

The customer shall only be entitled to offset against claims which are not contested by us or claims which have been recognised by non-appealable declaratory judgment. The assertion of a right to retain on the basis of disputed counterclaims or counterclaims which have not been recognised by non-appealable declaratory judgment if such claims are not based on the same contractual relationship.

## **VI. Retention of Title**

The delivered goods shall remain our property pending settlement of the purchase price and all future claims arising from the business relationship with the customer. Retention of title shall continue to apply if individual receivables are added to an open account and the balance drawn and accepted.

Should the customer be in arrears with its payment, we shall be entitled – after issuing a reminder and without withdrawing from the contract in advance - to demand surrender of the reserved goods.

The customer shall be entitled to resell the reserved goods in the ordinary course of business. The customer shall, however, herewith assign to us all receivables – equivalent in value to our invoice amount - due from the customer's own purchasers or third parties which accrue from the resale of the reserved goods by the customer regardless of whether or not further work has been done on the supplied goods prior to or after they are resold.

Should the customer add a receivable, which has been acquired from the resale of the goods and which has been assigned to us, to an open account for its own customer, said current account receivables shall also be assigned to us.

Following balancing of the account, the assigned receivable shall be replaced by the recognised balance which shall be assigned up to the value of the amount equivalent to our original claim.

Subject to revocation the customer shall be authorised to collect assigned receivables. We shall refrain from exercising our right to collect such receivables provided that the customer complies with its payment obligations to us.

On request the customer shall provide us with the names of debtors of the assigned receivables and shall inform said debtors of such assignment; we retain the right to notify such assignment to the debtor ourselves.

Should the goods be processed or transformed, this shall be performed on our behalf. We shall therefore be deemed to be the manufacturers as defined by Section 950 BGB (German Civil Code). In the event that the goods are processed with other objects which we do not own, we shall acquire co-title to the new object based on the ratio of the value of the reserved goods to the value of the other goods at the time of their processing.

Should the reserved goods be joined, blended or mixed with objects which we do not own pursuant to Sections 947, 948 BGB, we shall acquire co-title as governed by statutory provisions.

Should the customer acquire sole title to the goods by virtue of joining, blending or mixing, the customer shall herewith grant us co-title to the new object based on the ratio of the value of the reserved goods to the value of the goods created as a result of such joining, blending or mixing.

In all cases the customer shall store our exclusive property or jointly-held property, which shall also be deemed to be reserved goods as defined in the following provisions, on our behalf at no charge.

In the case of the cheque or bill of exchange transactions, our retention of title in all degrees shall only cease when the customer has fulfilled all its obligations to us.

The customer shall not be entitled to pledge the reserved goods or to assign the same by way of security.

The customer shall inform us in writing immediately in the event of any seizure or other act of intervention by third parties to enable us to bring an action under Section 771 ZPO (German Code of Civil Procedure). Should the third party not be able to reimburse to us the court or out-of-court costs of an action brought under Section 771 ZPO, the customer shall be liable for any losses we may incur.

Pending acquisition of unrestricted title to the delivery item, the customer shall provide (comprehensive) insurance at its own cost to cover all risks and provide verification on request of such insurance cover. Should damages be incurred, the customer's insurance claims shall be deemed to be assigned to us to the value of the receivables due to us from the customer.

We undertake to release the collateral security due to us at the request of the customer to the extent that the realizable value of such collateral exceeds the value of the secured receivables by more than 20%. The choice of collateral security to be released is ours. The value of the collateral in simple retention of title is assessed according to Clause 1 on the basis of our relevant invoice amounts; should receivables have been assigned, the value of such collateral shall be assessed on the basis of the customer's invoice amounts for the resold goods.

Should goods which have undergone further processing still be in the possession of the customer, the value of the securities is determined according to our price for reuse. This shall be communicated to the customer in writing.

Upon receipt of this communication the customer may inform us, within a period of 14 days, of purchasers who are prepared to pay a higher price than our price for reuse. Provided the payment is assured, we are obliged to release collateral security valued at the higher price.

Should the customer hold co-title to the resold reserved goods, the assigned receivable shall be equivalent in value to the amount equal to the share, in value terms, of the jointly-held property held by the customer.

## **VII. Notification of defects, liability for defects**

The customer shall inspect the goods received immediately with regard to quantity, quality and defects. The goods shall be deemed as approved should discernible defects not be notified in writing immediately, within 1 week of receipt of the goods at the latest, or if a defect becomes apparent at a later time if such defect is not notified immediately upon its detection. Visible transport damages shall be notified immediately and a notice made on the receipt.

Should the customer detect defects in the goods, the customer shall not dispose of the goods in any way – i.e. the goods shall not be split, resold or reprocessed.

In the event of defects or lack of agreed quality characteristics in the goods delivered, we shall be entitled to opt to remedy said defects or provide replacement delivery of goods in perfect condition at our own discretion.

In the event that we opt to provide subsequent improvement, we shall be entitled at our own discretion to demand that the defective product is sent to us for reworking or exchange and subsequent re-delivery, or that the customer keeps the defective product ready for reworking or exchange by us or by persons commissioned for this purpose by us at the customer's location. The customer shall be entitled to demand the latter remedy should it be unreasonable to expect the customer to return the defective product to us.

Expenses necessarily incurred in relation to subsequent improvement work (including but not limited to costs of travel and transport, labour and material) shall be borne by us.

This shall not apply to increased expenses arising owing to the relocation of the purchased item to a place other than the place of delivery or the customer's commercial branch unless said relocation corresponds with such item's intended purpose.

Should subsequent improvements or substitute delivery prove abortive, or should it be impossible, unreasonable for the customer, refused by us or should the same be delayed for longer than a reasonable period of time for reasons for which we are responsible, the customer shall be entitled at its own discretion to withdraw from the contract or to demand a reduction in the purchase price or reimbursement of expenses. We shall be liable for damages incurred by the customer in the framework of the general liability provisions under Clause VIII.

The limitation period for warranty claims is 12 months. The statutory provisions shall continue to apply to the limitation period for recourse claims pursuant to Section 478 BGB.

### **VIII. General liability**

1. Claims for damages, regardless of their legal standing, asserted by the customer shall only be accepted

if damages arise as a result of the culpable breach of contract which jeopardizes the very purpose of the agreement, or

if we have warranted the characteristics of the delivered goods or have guaranteed quality, or in the case of

damages result in injury to life, body or health, or

we would have been able and it would have been reasonable for us to take out insurance cover for insurable damages, or

damages are due to wilful intent or gross negligence, or

we are liable under the German Product Liability Act (Produkthaftungsgesetz).

2. Should we be liable pursuant to Clause 1 a) for breach of contract without having acted with gross negligence or with wilful intent, the amount of the liability shall be limited to those damages which we must have been able to anticipate as intrinsic to the contract, on the basis of the circumstances known to us at the time, at the time the contract was concluded.

3. We shall only be liable for recommendations confirmed by us in writing.

4. The limitation of liability provisions referred to above shall apply analogously to the actions and personal liability of our employees, agents in performance, representatives or other agents.

### **IX. Final provisions**

No verbal additional agreements have been made. Should employees or other of our agents conclude verbal additional agreements, or issue representations on our behalf, which deviate from our offer or the written contract, these shall only be valid if confirmed in writing by us; this shall not apply to verbal declarations made by persons who have unlimited powers to represent us or are otherwise fully authorized to act on our behalf in dealings with third parties.

The place of performance for both contracting parties and for all present and future claims arising from the business relationship shall be Ulm.

The sole legal venue for registered traders, legal persons and special funds under public law for any actions on cheques and bills of exchange as well as for all other direct or indirect legal disputes shall be Ulm. We shall, however, also be entitled to bring an action at the customer's place of business or before other courts which may have jurisdiction for such matters on the basis of German law or the law of any other country.

The legal relationship with the customer shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

Should one or several provisions be null and void, either wholly or in part, this shall not affect the validity of the remaining provisions. Should clauses which are null and void contain elements which are reasonable and valid, the valid elements of the same shall continue to apply. The contracting parties undertake herewith to substitute any provisions which are null and void with provisions which correspond as closely as possible to the business purpose and intent of the provisions which are null and void.

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**TERMS OF PURCHASE  
METALLSCHMELZWERK ULM GMBH,  
89079 ULM**

**I. Scope**

1. The following provisions apply exclusively to all current and future business relationships between the supplier and us. The terms of business of the supplier shall only be binding on us if explicitly agreed to by us in writing.

2. Our purchase orders shall be non-binding until such time as they are accepted by the supplier. In cases in which we have an ongoing business relationship with the supplier, the order shall become effective upon acceptance of the purchase order or, if no response is received from the supplier, on expiry of a period of 2 weeks.

**II. Prices and terms of payment**

The price specified in the purchase order is binding. Unless otherwise agreed in writing, the price includes delivery carriage paid including packaging, customs, border, insurance, transport and unloading costs.

Unless otherwise agreed, we shall pay the purchase price within 30 days of receipt of goods and approval.

We retain the right to make payment by promissory note or customer bills of exchange refunding appropriate discount charges on the basis of the discount calculated on the day when the bills of exchange were delivered.

**III. Delivery period**

The agreed delivery periods shall be absolutely binding. In the event that no delivery period is agreed, delivery shall be made promptly following receipt of our letter of confirmation. The supplier shall inform us immediately in writing should circumstances occur or become apparent which prevent compliance with the agreed delivery period.

We shall be entitled to assert our statutory rights in the event of delayed performance.

In the event of delays in partial deliveries we shall also be entitled to assert our rights regarding remaining partial quantities.

#### **IV. Shipment, insurance, risk**

Unless otherwise agreed in writing, all shipments shall be made carriage paid.

If, in exceptional cases, ex works or ex supplier's warehouse shipment is agreed, the supplier shall be responsible for loading the goods at the supplier's own cost. If shipment is made by rail, the costs, expenses and freight charges incurred up to the forwarding station shall be borne by the supplier.

Notification of shipment shall be provided at least 2 working days before shipment itself.

The risk to the goods of total or partial perishing, loss, disappearance, deterioration, damage or seizure shall in all cases only pass to us upon delivery of the goods to our works, including in cases in which the goods have been transferred to a shipping agent.

The supplier shall also bear the risk of shipment delays and any additional costs which may arise as a result.

#### **V. Warranted characteristics of goods**

The goods shall be true to samples and shall be delivered in compliance with specified classifications. Specified characteristics shall be warranted.

If scrap metal is delivered, blending with processing residues and blending of scrap metal of different quality levels shall not be permissible. In the event of infringements we shall be entitled to identify adhering material and contamination in our works following receipt of the goods at the cost of the supplier or to screen and segregate scrap metals of different qualities and to deduct the same from the delivered volume according to our inspection findings. External material which has been segregated shall be made available to the supplier and kept ready on request. Segregated external material and scrap metal shall be repossessed at the supplier's cost. If such material is not repossessed within a reasonable period of time specified by us, we shall be entitled to dispose of the same at the supplier's cost.

At the time of delivery the goods must comply with the applicable statutory regulations, including but not limited to accident prevention regulations and generally recognised safety and occupational safety rules and regulations.

The supplier shall perform state-of-the-art quality inspections suitable in type and scope to ensure the quality of the goods.

#### **VI. Inspections for defects and warranty**

The goods shall be inspected in compliance with our quality guidelines. We shall be required to inspect the goods for quality and quantity nonconformities within a reasonable period of time.

Notification of defects shall be deemed to have been made in good time if submitted to the supplier for obvious defects within 8 working days of delivery and for hidden defects on detection. Our duty to notify defects shall be met by performing sample inspections. We shall in no circumstances be required to undertake trial production. We shall not be required to notify defects if, in the case of sample purchases, deliveries fail to conform to samples.

Nonconforming partial deliveries shall entitle us to assert rights with regard other partial quantities.

## **VII. Product liability, indemnification and liability insurance**

If the supplier is responsible for product-related damages, the supplier shall indemnify us against claims for damages asserted by third parties on first request if the cause of such damages falls within the realm of the supplier's control and/or organizational responsibilities and the supplier is liable to third parties.

In this context, the supplier shall, pursuant to Sections 683 and 670 of the German Civil Code (BGB), also reimburse the costs arising from or in relation to any recall action organized by us. We shall inform the supplier about the type and scope of any recall action undertaken by us.

The supplier shall take out product liability insurance which provides adequate cover. If damages occur, the supplier's insurance claims shall be assigned to us to cover the value of our claims. We reserve the right to assert more extensive claims.

Persons who undertake work on our business premises in connection with fulfilment of the supply agreement shall be subject to our company rules. We disclaim all liability for any accidents suffered by such persons on our premises or in our factory buildings.

## **VIII. Settlement**

The invoice shall be submitted separately immediately after the delivery has been made and shall not be sent with the shipment. We are only able to process invoices – as specified in our purchase order – which quote our purchase order number. The supplier shall be responsible for any consequences resulting from noncompliance with this obligation.

Settlement shall be based exclusively on weights determined in our works. In the case of carload shipments the authoritative weight shall be the weight of full and empty carloads measured on official railway freight car scales at the entrance to our works. If a shipment is found to be underweight, weight notes shall be issued on request.

Settlement shall be based on our conscientiously determined inspection findings.

## **IX. Final provisions**

The supplier shall only transfer rights arising from contracts to third parties with our written consent. This shall apply in particular to assignments of claims against us provided they are not made to the supplier's house bank.

Unless otherwise specified in the purchase order, the place of performance for supplies and services shall be the delivery or performance locations specified by us.

Our legal relationship with the supplier shall be subject to German law to the exclusion of the UN Convention on Contracts for the International Sale of Goods (CISG).

The sole legal venue for registered traders, legal persons and special funds under public law for any actions on cheques and bills of exchange as well as for all other direct or indirect legal disputes shall be Ulm. We shall, however, also be entitled to bring an action at the supplier's place of business or before other courts which may have jurisdiction for such matters on the basis of German law or the law of any other country.

Should one or several provisions be null and void, either wholly or in part, this shall not affect the validity of the remaining provisions. Should clauses which are null and void contain elements which are reasonable and valid, the valid elements of the same shall continue to apply.

The contracting parties undertake herewith to substitute any provisions which are null and void with provisions which correspond as closely as possible to the business purpose and intent of the provisions which are null and void.

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