

General Conditions of Purchase of UnionStahl GmbH 47229 Duisburg (Version 2006)

I. Placing of Orders

1. Purchases will be initiated by formal purchase orders of the Purchaser. Such purchase orders shall be exclusively governed by the following terms and conditions of purchase. General terms and conditions of the Supplier which are inconsistent therewith shall be without effect in respect of the Purchaser. The Incoterms 2000 shall apply.
2. Purchase orders which are made orally need to be confirmed in writing in Order to become effective. Purchase orders are only binding if they indicate the department of the Purchaser that initiated the order and the authorising persons. Purchase orders can be revoked until the Purchaser receives an order confirmation. Order confirmations have to be made in writing. The same shall apply to order modifications. Any documents transmitted by fax or other means of electronic communication (eg. e-mail) are considered to be in writing.

II. Object of Purchase

1. The specifications of the goods purchased shall be exclusively taken from the purchase order. Any variance in the order confirmation needs to be expressly reconfirmed by the Purchaser.
2. Upon request of the Purchaser the Supplier shall procure the each of the goods ordered a preferential or non-preferential certificate of origin. Preferential certificates of origin shall comply with EU preferential treaties.

III. Price, Payment Conditions

1. The purchase price shall be determined in accordance with the purchase order and shall be understood delivered duty unpaid (DDU) unless provided otherwise. The purchase price shall be inclusive of all costs of delivery and packaging unless the agreed delivery term indicates otherwise.
2. Following delivery the Supplier shall issue an invoice in accordance with the purchase order and these conditions of purchase. The invoice shall indicate the order number. The Purchaser shall arrange for payment within 30 days from receipt of a properly issued invoice, unless provided otherwise on the purchase order.
3. The Supplier is not allowed to declare the contract avoided for non payment of the purchase price, unless the Purchaser does not perform his obligation to pay the purchase price within an additional period of at least 2 weeks to be fixed by the Supplier in writing after expiry of the payment time and after having demanded payment in writing.

IV. Delivery, Carriage, Acceptance

1. Delivery shall be effected DDU to the place the Purchaser has indicated in the purchase order, unless the purchase order states another delivery address or another delivery term.
2. The Supplier shall procure the export and import licenses and any other official approvals or consents, and shall perform any customs clearance required for the export and import of the goods and, where applicable, for their transit through a third country.
3. The Supplier is not allowed to delay delivery until payment of the purchase price or until satisfaction of any other claim against the Purchaser, unless such claims have been approved by the Purchaser or awarded by final judgement rendered by a court of competent jurisdiction.
4. Delivery shall be effected within the delivery time stated in the purchase order unless the Purchaser expressly agrees otherwise. Where according to the purchase order delivery is subject to being requested by the Purchaser the delivery shall be effected within 1 week after communication of the request. Unless provided otherwise in the purchase order the Purchaser may request delivery within 6 months from the time since the Supplier had to be ready for delivery. Failure to request delivery within such period of time does not amount to a fundamental breach.
5. Part delivery is subject to prior approval by the purchaser.
6. The Purchaser is allowed to return packaging material for the goods at the expense and risk of the Supplier.

7. The risk of damages to or loss of the goods shall not pass until the Purchaser takes over the goods, unless the Purchaser commits a fundamental breach of contract by failing to take over the goods within a reasonable additional period to be fixed by the Supplier in writing after the time of delivery has elapsed.

V. Conformity of the Goods

1. The Supplier guarantees for a period of 2 years from delivery that the goods conform to the agreed specification and that they are fit for the purpose as can be derived from the purchase order. For goods which, according to their normal purpose of use, have been used or are intended for constructional works related to real estate property, the guarantee period shall be 5 years from delivery.
2. Non-conformity of the goods to an agreed specification shall constitute a fundamental breach of contract. The same shall apply if the goods do not comply with the regulations existing in the country of destination.
3. The Purchaser may require replacement of defective goods instead of repair notwithstanding whether a lack of conformity amounts to a fundamental breach of contract. Other remedies shall remain unaffected thereby. The Purchaser may exercise a right to declare a contract avoided for an indefinite period of time; however, upon written demand of the Supplier, the Purchaser may declare the contract avoided only within a reasonable period of time.
4. The Purchaser is required to give notice of a lack of conformity of the goods only to the extent that such lack of conformity is apparent and the Supplier could not have discovered such despite thorough quality controls. The Purchaser does not otherwise lose the right to rely on a lack of conformity of the goods, whether or not he inspects the goods or gives notice of a lack of conformity.

VI. Impediment to Performance, Insolvency, Bankruptcy

1. To the extent that the Purchaser is not liable for a failure to perform any of his obligations because failure was due to an impediment beyond his control the Supplier may not claim damages nor exercise any other remedy.
2. If the Supplier stops or suspends payments, or if a petition to commence an insolvency proceeding is filed or equivalent proceedings provided by the laws applying to his business are initiated, the Purchaser may declare the contract avoided in whole or to the extent performance is outstanding without giving prior notice and without preventing him from exercising any other remedy.

VII. Reservation of Title

The Purchaser acknowledges a retention of title by the Supplier until payment of the goods. The Purchaser shall, however, be entitled to dispose of the goods in the ordinary course of his business. The Supplier shall not be entitled to require a return of the goods or to avoid a resale or proceeding of the goods, unless he has rightfully declared the contract avoided and the Purchaser has obtained knowledge of such declaration.

VIII. Avoidance of Contract

1. The Purchaser may exercise a right to avoid a contract notwithstanding an offer or notice of the Supplier to remedy a failure to perform his obligations, unless the Purchaser has expressly consented to such late performance.
2. In the event that the Purchaser has exercised a right to avoid a contract he shall be entitled to recover as damages the difference between the contract price and the market price at the time of the avoidance without prejudice to any right to claim further damages. The Purchaser shall be entitled to interest of 8 per cent points above the official base rate applicable at his place of business on his payment claims resulting from an avoidance of contract without prejudice to any other remedy available to him.

IX. Liability of the Purchaser

Any liability of the Purchaser shall be excluded unless it results from a fundamental breach of contract. Any liability of the Purchaser not resulting from the contractual relationship with the Supplier shall remain unaffected.

X. Applicable Law, Jurisdiction

1. Any contract resulting from the business relationship between the Supplier and the Purchaser shall be governed by the United Nations Convention on the International Sale of Goods (CISG). Questions concerning matters which are not governed by this Convention, or which cannot be settled in conformity with general principles on which it is based, shall be settled in conformity with the laws of Germany.
2. Any dispute, controversy or claim arising out of or in relation to this contract, including the validity, invalidity, breach or termination thereof, shall be finally settled by arbitration in accordance with the Rules of Arbitration of the German Institution of Arbitration ("Deutsche Institution für Schiedsgerichtsbarkeit, DIS") in effect at the time of serving of the statement of claims. The arbitration panel shall consist of three arbitrators. The arbitration shall be held at Nürnberg. Proceedings shall be in German language or – at the Purchaser's discretion – in English language.
3. Alternatively, the Purchaser may address the Regional court of Duisburg or any other court competent for legal actions against the Supplier.

XI. Miscellaneous

1. Communications to the Purchaser shall only be observed if made in writing and in German or English language. Communications may be transmitted by fax or by electronic means. They become effective at the time when they reach the recipient or would have reached him under normal circumstances with the means of transmission used. Communications reaching the Purchaser on a Saturday or Sunday or on an official holiday at the place of his business shall become effective on the next following working day. Communications which are not required to reach the recipient shall become effective not later than 3 days after being dispatched.
2. If individual terms of a purchase order placed on the basis of these Purchase Conditions are invalid or unenforceable this shall be without prejudice to the validity of other terms. In such event the parties shall replace the invalid or unenforceable term as closely as possible.
3. The German version of these Purchase Conditions shall be authoritative.