

GENERAL TERMS OF SALE AND PAYMENT OF STARK DEUTSCHLAND GMBH

1. General

These terms of sale and payment are legally binding for all our business relations, sales and other legal transactions. Divergent purchasing terms of the customer are hereby expressly rejected. Agreements which deviate from these terms of sale and payment must be confirmed by us in writing, otherwise they are invalid.

2. Offer

Our offers remain non-binding with respect to prices, quantities, delivery periods and availability of the goods. Rights are reserved with respect to prior sale as well as correct and punctual delivery to ourselves. Should the delivery be completed more than 2 months after conclusion of the contract, we are entitled to increase the agreed price, insofar as the valid prices of our suppliers or other costs applying to our goods (including public charges) increase between conclusion of the contract and delivery. The price increase shall become effective as soon as we have informed the customer about it in writing. The documents and details associated with our offer as well as any other sales documents, insofar as they are not expressly described as binding, are only to be regarded as approximate values. The same applies to details of production plants. Models and drawings remain our property.

3. Order confirmation

Orders, agreements, composition specifications and guarantees and similar require our express written confirmation in order to become legally effective. A guarantee of condition will only be provided in exceptional cases and must be expressly described as such. Orders become binding on receipt of our order confirmation or through our delivery. Complaints about confirmations must be asserted immediately, at the latest within a week, in writing.

4. Delivery

4.1 General

Delivery is effected at the expense and risk of the customer. At the latest with the loading of the goods on the means of transport the risk is passed to the customer. Goods which are not accepted will be stored at the expense and risk of the customer. Partial deliveries are permitted; they will be regarded as separate deliveries. We expressly reserve the right to select the transport route and the means of transport.

A delivery, paid or unpaid, to a construction site, a warehouse or to another place named by the customer includes delivery without unloading on condition that a public road is there which can be used by a heavy articulated vehicle. Should the delivery vehicle be instructed by the customer to drive off the public road, the customer shall be liable for any damages which occur. Insofar as own or external personnel help with unloading, this fundamentally takes place at the customer's risk. Unloading must be effected immediately and correctly by the customer.

The risk of accidental damage, deterioration and the loss of the goods is transferred at the latest on delivery to the delivery address provided by the customer, insofar as the goods are delivered during the usual business hours (Mon. – Fri. 6am to 6pm, Sat. 6am to 6pm) and the customer had been previously informed about the probable delivery date. The customer must ensure that the goods can be received by an authorised person upon delivery.

4.2 Delivery dates and delivery periods

Information about the delivery time is subject to change without notice. Specified delivery dates are not fixed dates. Delivery periods are valid subject to correct and punctual deliveries to ourselves. We shall not be bound by delivery periods if we ourselves are not supplied on time or in full and we have notified this without delay. Unforeseeable exceptional circumstances such as industrial actions, sovereign measures, traffic hold-ups or other cases of force majeure release us for the duration of these effects or, in the case of impossibility, in full, of the duty to deliver.

In the event of a delay in our performance or the impossibility of performance by us, claims for compensation by the customer are excluded unless they are a result of deliberate intent or gross negligence on the part of ourselves or one of our legal representatives or vicarious agents.

In the event of a delay on the part of the customer in his obligations towards us, we shall be entitled to amend a firmly agreed delivery date in writing in such a way that the delivery period is extended by the length of time of the delay.

4.3 Packaging

The goods are packaged and delivered in the manner customary in the trade. Pallets and special forms of packaging will be charged separately. The return and compensation for such packaging material will only be made in the event of immediate return free of charge in defect-free condition subject to the deduction of adequate handling costs.

4.4 Transport and breakage insurance

Insurance against damage in transit, transport losses or breakages will only be taken out at the express request of the customer and at his expense and for his account. Damage in transit and shortfalls in delivery must be ascertained immediately on receipt of the shipment by official railway inventory control or similar evidence and certified on the accompanying documents (consignment note, delivery note and similar).

5. Notification of defects and liability for defects

Obvious defects should be reported to us immediately **in writing** (an E-mail does not suffice), at the latest, however, 10 days after delivery, and in any case prior to installation or processing. Deviations between the delivered and the ordered quantities or the type of delivery which are apparent on the delivery note are obvious deficiencies. If the customer acts as an entrepreneur, hidden defects must be reported immediately, but at the latest within 10 days of discovery or attaining knowledge of them. § 377 HGB (German Commercial Code) remains unaffected. If an inspection is carried out by the supplier/manufacturer on our initiative, its declarations shall not be binding for us.

6. Warranty

6.1 Goods which, due to circumstances which occurred temporally prior to the time of the actual transfer of risk, are ascertained to be either unusable or considerably impaired with respect to their usability, justify the choice for us, at our reasonable discretion, between an improvement free-of-charge and a new delivery.

6.2 Claims by the customer due to material defects shall become statute-barred one year after delivery of the object of purchase; this shall not apply to claims for defects by consumers and claims for damages due to injury to life, limb and health as well as claims for damages due to grossly negligent and intentionally caused damages by us. Insofar as longer periods are prescribed by law, these shall apply.

6.3 We accept no liability for damages or defects which – without us being responsible for them – have occurred for the following reasons:

unsuitable or improper use, faulty assembly or start-up of operation by the customer or third parties, natural wear and tear, faulty or careless handling, unsuitable operation, unsatisfactory construction, common organic/chemical processes (efflorescence).

6.4 The customer shall grant us the necessary time and opportunity after notification to carry out all subsequent improvements and replacement deliveries which appear necessary at our reasonable discretion, otherwise we shall be released from subsequent performance.

6.5 The place of supplementary performance shall be the selling company's registered office. We are entitled to refuse subsequent performance if the costs amount to more than 150% of the value of the defect-free item. If the buyer is an entrepreneur, the reimbursement of expenses according to § 439 para. 3 BGB [German Civil Code] is limited to four times the acquisition costs and the buyer cannot demand advance payment. If the buyer is a consumer, we are entitled to propose three specialist contractors for the purpose of subsequent performance as defined in § 439 para. 3 BGB [German Civil Code], which the customer may only reject for good cause. If the consumer customer receives an advance payment according to § 475 para. 6 BGB [German Civil Code] he is obliged to invoice within 6 months. Sorting costs are not according to § 439 para. 2 BGB and are not refunded. The replacement item and improvement are subject to the warranty up to the expiry of the warranty period for the originally delivered items.

6.6 Further claims by the customer, in particular claims to compensation for damages, which did not occur to the item delivered itself, as well as compensation in lieu of subsequent performance pursuant to § 439 para. 1 to 3 BGB [German Civil Code] are excluded unless they are a result of deliberate intent or gross negligence for which we are responsible. Possible claims arising from the product liability law because of injury to life, limb or health, the assumption of a guarantee or a procurement risk, remain unaffected by this. We accept no liability for manufacturer and product details in product data sheets, manufacturer and supply lists, catalogues or other documents from our suppliers presented by us and also do not assume any obligation to provide advice in this respect.

7. Liability for secondary obligations

Consultations by employees do not result in independent consulting contracts, but are carried out exclusively in fulfillment of a secondary contractual obligation. We shall be exclusively liable for consulting mistakes made by our employees in accordance with § 831 BGB [German Civil Code].

8. Right of the customer to cancel the order

In the event of a delay in performance, the customer is only entitled to withdraw from the sales contract after the granting and expiry of a reasonable period of grace with express notice of refusal of acceptance.

9. Returns

Goods supplied by us from our stock range may only be returned in faultless condition following receipt of our written consent and carriage paid. The value of the returned goods will be credited less appropriate redemption costs of at least 20%, whereby a minimum amount of 30.00 euros will be deducted.

The following goods (with the exception of cases according to § 439 para. 5 BGB [German Civil Code]) are excluded from returns: special orders and goods produced specially at the customer's request (commissioned goods), goods with limited durability as well as batch articles. The return of goods which are endangered by frost is excluded during the winter months.

10. Payment

10.1 Terms of payment

Our invoices are due for immediate payment if not expressly agreed otherwise in writing. If they are not paid within 30 days of the invoice date, the buyer is in default. Cash discounts are only granted for purchasing goods if expressly agreed in writing and all previous invoices – with the exception of invoices for which our customer has justifiable objections – have been settled. The discountable gross invoice amount for goods is decisive for discount invoices. This results from the stated net invoice amount for goods less an appropriate, industry standard flat rate of at least 15 % as well as less any discounts, returned goods credits, etc., plus VAT on the net amount remaining after deduction. The further invoice items such as toll, freight, packaging and various services are non-discountable. We reserve the right to refuse non-cash means of payment.

Cash payments can only be accepted against duly receipted invoices. Setting-off or the assertion of a right of retention against our payment claims is only permissible in case of undisputed or legally established counterclaims. A right of retention from earlier or other business during the current business relationship cannot be asserted.

10.2 Creditworthiness

In the event of at least two delays in payment as well as in the event of payment by instalments having been agreed with regard to previous invoices, we reserve the right, without prejudice to further statutory rights, to make outstanding deliveries only against advance payment or to demand special securities at the customer's expense. Under the aforementioned conditions, we can also offset advance payments/price security payments made by the customer for certain objects against open claims.

We are authorized to obtain information about the creditworthiness of our customers from Schufa Holding AG, infocore Consumer data GmbH, EOS Holding GmbH, Creditsafe Deutschland GmbH and Creditreform AG. The customer is in agreement that for the purposes of checking his creditworthiness under compliance with the legal regulations, in particular of the data protection law, we may obtain information from data or information pools operated by third parties, insofar as these are properly registered with the responsible data protection authority and are not prohibited. We are authorised to provide such data or information pools with data about behaviour of the customer which is not in accordance with the terms of the contract, such as, for example, delay in payment, cancelled direct debits, notices to pay a debt etc. The customer must be informed of this. The data transmitted and information obtained are to be communicated to him or deleted free of charge at his request. Disclosure to third parties without the customer's consent is prohibited.

11. Reservation of title

11.1 Our deliveries are carried out exclusively under the condition of the extended and expanded reservation of title. The ownership of the delivered goods is only then transferred to the customer, when he has fulfilled all his liabilities towards us in connection with the delivery. For transactions against a running account, the retained ownership is deemed as security of our balance claim. The handling, processing, assembly or other utilisation of goods delivered by us and still in our ownership, shall be regarded as having been carried out by our order. Should the goods delivered by us be mixed or connected with other goods, then the customer transfers his ownership or co-ownership of these mixed goods or of the new good to us when of these terms of sale and payment come into effect and shall keep them safe for us, free of charge, with due business diligence. The customer may only sell the delivered product in the course of ordinary business transactions and not agree on any prohibition of assignment with his customers. Furthermore, he is obliged to impose our reservation of title on his buyers. The customer must inform us or notify us of impairments of our rights, particularly seizures and similar, immediately in writing.

11.2 The customer assigns all claims to us with all secondary rights and securities, which result from him from future disposals of goods delivered by us, against his buyers up to the complete settlement of all our claims, namely up to level of the invoiced amount for the goods delivered by us and sold by the customer plus 20 %. In the same way, all claims by the customer arising from services or work performed in connection with the processing or installation of the goods delivered to him as well as claims accruing to the customer against a third party due to the combination of the goods delivered with a plot of land shall be assigned to the customer. Should retained goods be installed as an essential component by the customer in his own property, then the customer already now transfers the revenues to be attained from the disposal of the property plus 35% to us. The assignment in advance also extends to balance claims.

If the value of the assignments and securities together exceeds our total claims by more than 35%, then we undertake, at the request of the customer, in this respect to release corresponding securities at our option.

11.3 At our request, the customer is obliged to inform his buyer of the assignment and to provide us with the necessary information for the assertion of our rights against the buyer, in particular the names and addresses of debtors and construction sites. We are also authorised to inform our customer's buyer of the assignment. The customer is authorised to collect the assigned claim on our behalf, however, only as long as he meets his financial obligations towards us in accordance with the terms of the contract. The authorisation of the customer to collect the claim may be revoked by us at any time. Processing, assembly, installation in a property or other utilisation are regarded as a disposal in the sense of these terms of sale and payment. In the event of delay in payment or significant deterioration in the customer's financial situation, we reserve the right of redemption and collection of the goods which remain in our ownership. The collection of the retained goods by us is regarded as a declaration of our withdrawal from the contract with respect to the collected goods. The customer grants us the right to enter his premises for the purpose of labelling or removal of the delivered goods. The customer shall bear the costs of redemption.

12. Loading procedures

The maximum permissible speed when driving on our business premises is walking pace. Forklift traffic has absolute priority. Loading, in particular by forklift trucks, is not owed by us. In individual cases it takes place without recognition of a legal obligation and exclusively at the customer's risk. Claims for damages due to injury to life, limb and health as well as claims for damages due to grossly negligent and intentionally caused damages by us are exempt from this.

13. Drop shipments

In the case of agreed direct delivery to the builder or end customer, fulfilment of the contractual delivery obligations shall commence with the handover of the goods and confirmation of handover by signature of the builder or end customer on the delivery note. Figure 5 or these terms is applicable.

14. Surcharge for low volume purchases

For orders below a net invoice value of 60.00 euros we allow ourselves to impose a minimum surcharge 10.00 euros.

15. Applicable Law / Place of Jurisdiction / Dispute Resolution Procedure under the Consumer Dispute Resolution Act

15.1 For the business relationship including the claims arising from cheques or bills of exchange, German law is applicable under exclusion of the UN Sales Convention on the International Sale of Goods (CISG).

15.2 The place of jurisdiction is Frankfurt am Main, Germany. We are entitled, at our discretion, to sue our customer at his general place of jurisdiction or at the seat of our branch office from which the contract was concluded.

15.3 We do not participate in dispute resolution proceedings under the Consumer Dispute Resolution Act.

16. Final provisions

16.1 The ineffectiveness of individual contractual provisions does not affect the validity of the rest of the contract, which must then be supplemented analogously. Agreements which deviate from these terms of sale and payment must be confirmed by us in writing, otherwise they are invalid.

16.2 The customer is in agreement that we process product, order and personal data in our data processing system in compliance with the legal regulations. This also includes the transmission of this data in accordance with §§ 15 ff. of the AktG [German Stock Corporation Law].