

## **Delivery and Payment Conditions of (valid from 01 January 2012) Salzgitter Bauelemente GmbH**

### **A. General Provisions**

#### **I. Contract Formation**

1. Any provision by us of goods and services to any party which is not a consumer in terms of § 13 Civil Code [BGB] shall take place on the basis of the following Delivery and Payment Conditions. Any purchase conditions of the purchaser are hereby excluded.
2. The contract goods shall be limited to those produced by us unless agreed otherwise.
3. Our offers are not binding.
4. Any order by the purchaser, regardless of the form of such, shall be deemed to be accepted only when acceptance is by way of express declaration by us. Silence shall not constitute acceptance in relation to any such order. The same shall also apply correspondingly to any merchant letter of confirmation sent by electronic means unless the use of electronic communication for the business relationship is agreed to and the transmission of such is made to the specific address expressly agreed for such declarations.
5. Any declaration by us as to the concluding, amendment or ending of a contract must be in writing; however, no qualified electronic signature shall be necessary unless agreed otherwise with the purchaser.
6. Any framework agreement as to a fixed amount to be delivered shall oblige the purchaser to accept and pay for the entire quantity to be delivered within the agreed period; any call-off order of the purchaser or prescription of the delivery date within the agreed lead time shall be deemed to be a determination of the performance time for the respective part quantity.
7. Any framework agreement containing prices only in relation to undefined delivery quantities but which contains no obligations of the purchaser to accept specific quantities shall not constitute any duty to supply on our part; any duty to supply shall be established only by way of a binding individual contract, and the concluding of such contract shall be a reserved right.
8. Insofar as it is agreed with the purchaser that the purchaser itself shall be allowed to remove or request goods from a warehouse made available by us to the purchaser or any other warehouse to be supplied by us, the availability of goods in terms of the supply relationship shall be deemed to be a permanent offer – subject to any agreement to the contrary –, which shall be deemed to be accepted at the latest by any authorised removal or request for goods from the warehouse – regardless whether such removal is by the purchaser or by us at the request of the purchaser. We reserve the right to revoke the right of the purchaser to remove or request goods from such warehouses at any time for any important reason – in particular in case of danger to existing or future claims for the purchase price, in case of irregularities in accounting, in case of any danger to the goods or in case of the ending of the supply relationship.

## **II. Purchase Price and Payment Conditions**

1. The purchase price shall be due by no later than the 10<sup>th</sup> calendar day following the delivery ex works or the removal or request for such from the warehouse.
2. In case the goods according to the agreement should be released for dispatch or collected by our purchaser within a specific period after our notice readiness for dispatch (call-off orders), the purchaser shall be obliged to call off or collect the goods within seven calendar days. If the purchaser fails to collect or call off the goods within that period, we shall be entitled, from the time of readiness for dispatch, to store the goods against payment and charge the purchaser accordingly; under these circumstances the purchase price shall be due for payment 17 calendar days from the date of invoice.

The rights under A. II. 5 shall remain reserved.

3. Payment shall be effected without any discount for early payment so that the amount is available to us on the due date. The purchaser may set off any claim only if such is undisputed or fixed by final judgment; any rights of the purchaser to retention of money shall be limited to those amounts arising from the same contractual relationship.
4. In case of failure to pay by the target date interest shall be charged at eight per cent above the basis interest rate.
5. In the event that any subsequent circumstances resulting in a substantial deterioration of the financial situation cause a threat to any payment to us, we are entitled to declare such amount due for payment.
6. In case of 5 above, as well as A. IV. 8, we may revoke any authority to collect (A.IV. 7) and demand payment in advance for any outstanding future deliveries.
7. The legal consequences described in 5 and A.IV. 8 above may be avoided by the purchaser by the provision of security to the amount to the endangered payment due to us.

If the purchaser, in the cases in 5 or A. IV. 8, fails to provide an advance payment or a reasonable security within a reasonable deadline, we shall be entitled to withdraw from the contract to the exclusion of any rights of the purchaser to claim compensation.

8. The provisions of law in relation to late payment and any defence based on uncertainty (§ 321 Civil Code [BGB]) shall not be affected thereby.
9. If any acceptance tests/material tests are agreed, the purchaser shall bear the costs for its own personnel and contracted personnel, and shall reimburse our expenses in terms of our current price list. Acceptance tests shall be carried out at the supplying plant.
10. Any additional services which are not set out in our price list and in relation to which no remuneration agreement has been entered into shall be paid for according to our current hourly rate for extra services, or, in the alternative according to the usual local remuneration rate for comparable work.
11. In case of any substantial change in the costs of raw materials, input materials, energy, transport or environmental protection or in case of the introduction of any new public charges or any substantial increase of existing public charges or in case of any burden with a similar effect, whether of a civil or public nature, which in total or individually lead to a substantial increase in our manufacturing costs in comparison to the costs at the time of the concluding the contract, we may unilaterally increase the prices; however such increase shall be limited to the on-charging of the actual increase in costs by way of adjusting the original basis of calculation. The right to unilaterally increase the prices shall not apply if the binding or non-binding delivery dates are within the first three months from the date of the concluding of the contract; furthermore, this shall not apply if the changes in costs were foreseeable in

concrete terms. In relation to framework agreements in accordance with A. I. 6 and A. I. 7 the above provisions shall apply accordingly on the basis that the three-month deadline shall commence from the time of the concluding of the framework agreement. Any increase in prices shall be limited to the actual changes in costs of the respective pricing elements and the purchaser shall be promptly notified. The purchaser may terminate the framework agreement on an extraordinary basis or withdraw from the respective individual contract within two weeks of receiving notice of such to the exclusion of any further rights.

### **III. Securities**

1. Notwithstanding our other legal and contractual rights, we shall be entitled to demand a recoverable and valuable security for all our claims arising from the provision of goods and services even to the extent that such are conditional or of limited duration. If we fail to exercise our right to receive a security in individual cases or for a certain period or to the full extent, this shall not constitute a waiver of any such right to such security.
2. We shall be granted a contractual lien over any item which is supplied by the purchaser or made available to us by the purchaser or which is processed or finished by us or which otherwise is the subject matter of or an auxiliary means of our provision of services, such lien serving as a securitization towards any of our payment claims resulting from the processing or finishing including any ancillary costs. The provisions of law as to a lien arising from law shall not be affected thereby.

### **IV. Retention of Title**

1. All goods delivered shall remain our property (retention of title goods) until such time as all claims, and in particular, claims related to any outstanding balances owing to us in relation to the business relationship have been satisfied. This shall also apply to future and conditional claims. We may label retention of title goods as such and prohibit the purchaser from removing or making unrecognisable such labels or require the purchaser to subsequently undertake such labelling.
2. The processing of any retention of title goods shall take place for us as manufacturer in terms of § 950 if the Civil Code [BGB] without us being subject to any duty. The processed and finished goods shall be deemed to be retention of title goods in terms of IV. 1.
3. Any processing, connection or mixing of the retention of title goods with other goods by the purchaser shall make us a co-owner in the new object in proportion to the invoice value of the retention of title goods and the invoice value of the other goods used. If our ownership is extinguished by connection, mixing, or processing, the purchaser hereby transfers to us in advance its own rights of ownership or expectant rights to the new stock or to the object to the extent of the invoice value of the retention of title goods and, in case of processing, in proportion to the invoice value of the retention of title goods and the invoice value of the other goods used, and shall store such for us at no charge. . Our rights of co-ownership shall be deemed to be retention of title goods in terms of IV. 1.
4. The purchaser may sell the retention of title goods only in the course of normal business activities subject to its normal business conditions and only if it is not in default delay, provided that the claims arising from the resale in accordance with IV. 5 and 6 are transferred to us. The purchaser shall not be entitled to dispose of the retention of title goods otherwise. The use of retention of title goods to complete work contracts (Werkverträge) shall also be regarded as being a resale in terms of A. IV.
5. Any claims of the purchaser arising from the resale of retention of title goods are hereby assigned to us in advance. The assigned claims shall serve as a security to the same extent as the retention of title goods in terms of IV. 1.

6. If the retention of title goods are sold by the purchaser with other goods, the claim arising from the resale shall be assigned to us in proportion to the invoice value of the retention of title goods and the invoice value of the other goods. In case of any sale of goods in which we have a right of co-ownership in accordance with IV. 3, a share corresponding to our right of co-ownership shall be assigned to us.
7. The purchaser may collect any amounts claimed arising from a resale unless we revoke the right to collect in the cases stated in A. II. 5 and A. IV. 8. Upon our request, the purchaser shall notify its customers at once of the assignment to us – insofar as such is not undertaken by us – and shall provide us with the necessary documentation to collect any money.

In no event is the purchaser entitled to assign a claim.

8. If the purchaser is in default with payment and such constitutes a threat to the ability to obtain a substantial part of our claim, we are entitled to prohibit the further processing of the goods, to recover the goods and in connection therewith to access the premises of the purchaser.
9. The purchaser shall notify us without undue delay of any lien or other encumbrances of a third party.
10. If the value of the existing securities exceeds the secured claim by more than ten per cent in total, we shall, upon the request of the purchaser, release security of our choice to such extent.

## **B. Subject Matter and Performance of Delivery**

### **I. Delivered Goods and Origin of Goods**

1. The delivered goods, and the quantity and quality of such shall be in accordance with the individual written agreement.
2. There shall be no right to receive goods with a place of origin within of the European Union in terms of preferential customs regulations unless such a place of origin is expressly agreed.

### **II. Reservations on Delivery; Delivery Dates; Force Majeure**

1. Delivery periods shall commence from the date of the confirmation of the order, but in no case, however before the clarification of all details of the order; the same applies correspondingly to delivery dates.

All delivery deadlines and dates shall be subject to the reservation that there is no unforeseeable disruption of production and that timely, correct and sufficient supply of the necessary raw materials, input materials and third-party services occur and, insofar as the contract covers normal commercial goods for resale, to the availability and timely, correct and sufficient supply of such.

Any failure to meet a delivery deadline or delivery date which was subject to a confirmation with reservations shall not constitute a default.

2. If the purchaser fails to timely perform any contractual duties – including its duty to assist or supplementary duties – such as the provision of a letter of credit, the obtaining of domestic or foreign certificates, the provision of advance payments or any similar matter, we may extend our delivery dates and deadlines to a reasonable extent – without affecting our rights in relation to the default of the purchaser – according to the requirements of our production procedures.
3. Compliance with delivery deadlines and dates shall be determined in terms of the time of the dispatch from the plant.

4. In case of force majeure the contractual obligations of both parties shall be suspended and the dates and deadlines for the performance of contractual duties shall be postponed correspondingly; force majeure shall include labour disputes in own or third-party plants, substantial limitations on transportation, substantial mechanical failure, measures of any sovereign and any other circumstances for which the parties are not responsible. Any event of force majeure shall be notified to the other party without undue delay. At the earliest after a six weeks period of a force majeure event either of the parties may withdraw from the contract to the exclusion of any duty to compensate. The rights of the purchaser to withdraw under B. I. 7 shall not be affected thereby.
5. Having regard to the long preproduction period typical for the industry of the seller, the purchaser shall be entitled to claim under § 281, § 323 Civil Code [BGB] in the event of non-compliance with delivery dates or deadlines having fixed a further reasonable deadline for delivery which – at variance with § 281, § 323 Civil Code [BGB] – is given in connection with a declaration that it will refuse to accept any delivery after the expiry of the deadline; in case of the expiry of the deadline without delivery any right to claim for performance shall be excluded. It shall not be necessary to set a subsequent deadline with a threat of non-acceptance in case of a final refusal by us to perform.
6. In case of default we shall be liable to the purchaser for all damage and expenses arising out of or in connection with delays in performance only in cases of failure to meet agreed delivery deadlines and dates which are our fault; our liability shall be determined in this regard in accordance with the provisions of C.

Without affecting its legal obligations to mitigate damage, the purchaser shall in particular notify us in writing without undue delay of any recognisable pending damage resulting from delay. We reserve the right to advise the purchaser of the possibilities for covering purchases.

7. The purchaser may withdraw from the contract without setting any deadline if the entire delivery becomes permanently impossible for us before the transfer of risk. In addition, the purchaser may withdraw from the contract if in relation to any order or any part of the order the performance becomes impossible and it has a legitimate interest in refusing part delivery. If this is not the case, the purchaser shall pay the contract price for the part delivery. The same shall apply in case of our inability to perform. In addition hereto the provisions of C shall apply.
8. The purchaser undertakes to fulfil the safety and reliability requirements issued by the German customs authorities for certification as an “Authorised Economic Operator” [“Zugelassener Wirtschaftsbeteiligter”] (ZWB/AEO). Insofar as the purchaser itself does not have or has not applied for recognition as an authorised economic operator, it undertakes to provide us with a separate declaration in the form available from the customs authorities that it will comply with the safety and reliability requirements. The purchaser undertakes to inform us at once if any safety or reliability requirements have been infringed by it or by any auxiliary person used by it in terms of the contract performance or if compliance can no longer be ensured.

We have the right to terminate any contract for an important reason if the purchaser does not comply with necessary safety and reliability requirements for recognition as an authorised economic operator or, if it does not provide any safety declaration to us after being requested to do so or, if the purchaser or any auxiliary person used by it for the performance of the contract culpably and substantially or repeatedly infringes such safety and reliability requirements.

### **III. Size, Weight, Quality**

Any variations in size, weight and quality in terms of DIN or applicable practice are permissible. Any variations in colour of goods from different production batches shall not constitute a defect.

The size of goods shall be determined by us in accordance with industry practice and shall be the basis for invoicing. The purchaser has the right to contest and prove any incorrectness in the measurement procedures used by us. Insofar as the purchaser disputes any of our measurements, it shall allow us the opportunity to undertake subsequent measurements before any installation, processing or resale.

#### **IV. Transport, Packing and Transfer of Risk**

1. Generally, goods shall be transported at the expense and risk of the purchaser and we shall select a suitable carrier or transport company. At the request of the purchaser we shall arrange transport insurance at the expense of the purchaser.
2. For such transport a freight supplement shall be charged in addition to the purchase price in accordance with the provisions agreed in the individual contracts. All additional costs and expenses of transport not covered by the freight supplement shall be invoiced additionally to the purchaser.
3. In case of the collection of goods by the purchaser, we are entitled to refuse to load any vehicles which do not appear to be suitable for correct and safe transport or which do not possess the necessary securing devices.
4. The purchaser is responsible for unloading regardless of the means of transport. It shall return to the transport company all unloaded wagons and loading units fully emptied, correctly cleaned, decontaminated and complete with all moveable parts.
5. If the loading or transport of goods is delayed for reasons for which the purchaser is responsible, we may, at the expense and risk of the purchaser, store the goods at our discretion, undertake all steps which we regard as necessary for safeguarding the goods and invoice the goods as being delivered.

The same shall apply if goods notified as being ready for delivery are not called off within seven calendar days. The provisions of law concerning late acceptance shall be unaffected hereby.

6. The goods shall generally be delivered unpacked and unprotected. Thus, any resulting external corrosion, transport-related soiling or superficial impairments shall not be regarded as being defects. Special packing or protection measures (e.g. for long-term storage or transport by sea) shall be provided only if expressly ordered and at a further charge.

We will accept back any packing, protection and/or transport materials. Any costs of the purchaser for the return transport or for its own disposal of packing materials shall not be accepted by us.

7. Insofar as no agreement to the contrary is reached, any risk of accidental loss or deterioration of the goods during transport shall transfer to the purchaser upon the transfer of the goods to the transporting party, and otherwise upon the readiness for collection by the purchaser. If the goods are delivered or made ready at the request of the purchaser only upon its call-off, risk shall transfer – depending on which occurs first – upon the handing over of the goods or upon the expiry of seven calendar days from notice of readiness for transport. In case of any removal by the customer of the goods from a warehouse or stock made available by us in terms of a further contractual arrangement, the transfer of risk to the purchaser shall take place at the latest upon removal.

#### **V. Defects**

1. The contractual quality and defect-free nature of our goods shall be determined exclusively in accordance with the express agreements as to quality and quantity of the ordered goods at the time of transfer of risk on the condition that any production-related minor variations within the normal tolerance range or those of the industry shall not constitute a defect particularly in relation to colour

variations in goods from different production batches. Any liability for a particular purpose or a particular suitability will be accepted by us only insofar as such is expressly agreed; otherwise the risks of suitability and use shall be exclusively with the purchaser. In particular, the suitability for any intended purpose of ordered trapezoidal profiles, edge parts and other goods in relation to the choice of profile, material, thickness of material, the method and thickness of coating, the colour and any reverse-side protective coat or protective foil, the intended conditions of use and the climatic conditions are not tested by us; such shall be the sole responsibility of the purchaser. We shall not be liable for any deterioration or destruction or incorrect use of the goods after the transfer of risk.

2. Information sheets provided with our goods as to the normal and permissible applications and conditions of use, exclusions of use as well as any assembly, maintenance and servicing information constitute an integral part of the contract and must be strictly observed by the purchaser. In case of any resale the purchaser shall be the duty of the purchaser to make the contents of the information sheets part of the contract with the respective customer. The purchaser is expressly advised that any mechanical or chemical affects resulting from incorrect or improper use not in accordance with the intended application, any use in unsuitable climatic conditions, or any incorrect assembly will adversely affect the quality and durability of the goods and that any damage to the coating must be immediately remedied in a proper manner.
3. The content of any agreed specifications and any other expressly agreed purpose shall not constitute a guarantee; any acceptance of a guarantee shall require a written agreement of such.
4. The purchaser shall inspect any goods received without undue delay upon receipt. A right to claim for any defect shall exist only if notice of such defect is given in writing without undue delay. Notice of the existence of a hidden defect must be made without undue delay after discovery of such defect.

After the carrying out of agreed acceptance testing, any notification of a defect which should have been detected during the acceptance testing is not allowed.

5. In case of a notice of defect, the purchaser shall give us the opportunity without undue delay to examine the goods in question; upon request the goods in question or a sample of such shall be made available to us at our expense. In case of any unjustified notice of defect we reserve the right to charge the purchaser for freight, handling as well as testing expenses.
6. In case of goods sold as sub-grade material (e.g. so-called II a material), the purchaser shall have no rights in relation to identified defects and other defects which would normally be expected.
7. In case of any defect, we shall at our choice – having due regard to the interests of the purchaser – either provide substitute performance by a further delivery or we shall repair the defect. We may refuse substitute performance if such is possible only at a disproportional cost.

If the substitute performance is not carried out by us successfully within a reasonable period, the purchaser may set us a reasonable deadline for substitute performance after the expiry of which the purchaser may either reduce the purchase price or withdraw from the contract. Any further rights, e.g. to compensation or reimbursement of expenses for unsuccessful work shall exist only in terms of the provisions of C.

In relation to defects limited to only a few isolated parts of the goods and which do not substantially limit the use of the remaining parts, the parties shall seek to agree on a reasonable reduction of the purchase price in each case before seeking any rights under sentence 1.

8. The limitation period in case of any defective goods delivered shall end – except in case of wilful acts or gross negligence – after the expiry of one year from the date of delivery. Notwithstanding sentence 1, in relation to any goods which, in accordance with their normal use, would be employed in a building intrinsically fixed to the ground and which are defective the statutory limitation periods shall apply. Any repair or substitute delivery shall not recommence the limitation period.

In case of personal injury or damage to privately-used property or in case of wilful acts, notwithstanding the above provisions, the respective statutory limitation periods shall apply.

9. Any right of recourse of the purchaser against us under § 478 Civil Code [BGB] shall be limited to the extent permitted by law for defect claims made against the purchaser by third parties and shall be subject to the purchaser fulfilling its duty of examination and to notify us of any defects. The purchaser shall defend any such claims – insofar as such is possible.
10. Any claims for lump sum damages or penalties will not be accepted.
11. Insofar as the United Nations Convention of 11 April 1980 as to the International Sale of Goods (UN Sales Law) applies, such shall do so subject to the condition that any claims for damages or expenses against us due to defects in the purchased matter or for any other incorrect performance shall only apply in case of any fault by our legal representatives or agents and only in terms of the limits set out in the following provisions of C. The above limitations shall not apply to personal injury, damage to privately-used property or for cases where liability is required by mandatory law.

### **C. General Limitations of Liability**

1. Our liability for damages or expenses regardless of the legal basis shall be limited or excluded in accordance with the provisions of C.
2. We shall be liable only in case of wilful acts or gross negligence by our legal representatives or agents or in case of culpable and substantial breaches of contractual duties.
3. In case of culpable and substantial breaches of contractual duties we shall be liable – except in case of wilful acts or gross negligence by our legal representatives or agents – only for typical, foreseeable damage.
4. Liability for loss of production and loss of profit shall be excluded in all cases.
5. Our liability, regardless of the legal basis, shall be limited to the total contract value – in case of call-off or individual orders to the basis of the framework agreement for the call-off or individual order value – insofar as no higher insurance coverage or rights to higher levels of compensation exist in relation to any third party outside of the group. In the event that the total contract value or the call-off or individual contract value without statutory turnover tax (Umsatzsteuer) is less than € 50,000, the amount of € 50,000 shall apply as the maximum level of liability insofar as no higher insurance coverage or rights to higher levels of compensation exist in relation to any third party outside of the group.
6. The limitations and exclusions of liability contained in these Delivery and Payment Conditions shall not apply in case of wilful acts or in case of personal injury, damage to privately-use property and in cases where applicable mandatory law requires such liability.

### **D. Miscellaneous**

#### **I. Taxes, Customs, Duties**

1. In addition to the purchase price we shall invoice turnover tax (Umsatzsteuer) on sales in the Federal Republic of Germany at the respective applicable rate.
2. Any cross-border deliveries shall be excluding customs and tax. Insofar as customs, tax and other duties are levied, such shall be the responsibility of the purchaser.

## **II. Proof of Export**

If the purchaser or a party instructed by the purchaser resident outside of the Federal Republic of Germany collects any goods and transports or sends such to a foreign country, the purchaser shall provide evidence thereof to us by way of written documentation satisfying the turnover tax law requirements of the Federal Republic of Germany. If this evidence is not provided within thirty calendar days of the transfer of goods, the purchaser shall pay the turnover tax on the invoice amount in accordance with the level of turnover tax for deliveries within the Federal Republic of Germany.

## **III. Data Processing**

1. Any data in connection with the contractual relationship and the processing of the contract shall be processed and stored automatically in an electronic data processing system.
2. We reserve the right to make available by electronic means to insurance companies as well as institutions for protecting suppliers' credit and any credit rating agencies any data on the contractual and payment processing and any other information suitable for determining credit worthiness in relation to the contractual relationship.

## **IV. Applicable Law**

The law of the Federal Republic of Germany including the "Convention of the United Nations of 11 April 1980 as to the International Sale of Goods" shall apply exclusively to all legal relationships as between the contractual parties.

## **V. Place of Performance and Jurisdiction**

1. The place of performance for delivery and payment for both contractual parties shall be Salzgitter.
2. The exclusive place of jurisdiction is Braunschweig (Brunswick, Germany). We are entitled, however, to issue proceedings at the general place of jurisdiction of the purchaser.