

General Conditions of Sale and Delivery

Umicore Metalle & Oberflächen GmbH, Essen (As per November 2014)

1. **Essential Part of Contract:**
These General Conditions of Sale and Delivery apply to all contracts relating to deliveries and services rendered to commercial customers. Our General Conditions of Sale and Delivery apply exclusively. Any inconsistent, diverging or additional conditions of the Purchaser shall not apply even if they are incorporated in a purchase order following our offer ("purchase order") and we do not expressly object to these or we execute the order without reservation. Our silence signifies our rejection of the conditions of the Purchaser.
2. **Offers, Contracts:**
Our offers are subject to change without notice. Any contract requires our acceptance in writing or an order acknowledgement issued with the aid of automatic facilities, whereby the execution of an order is deemed acceptance. Any amendment, supplement or cancellation of a contract or of any of the provisions of these conditions shall be valid in writing only. Statements or notifications by the Purchaser after conclusion of contract shall only be effective if submitted in writing.
3. **Prices:**
Prices - unless otherwise agreed expressly in writing - do not include the costs of packing, insurance, freight and the value-added tax. The quantities, weight or number of pieces determined at our supply plant are authoritative for invoicing.
4. **Offsetting and retention:**
The Purchaser may only offset uncontested counterclaims or counterclaims recognized by declaratory judgment. The Purchaser may only assert a right of retention if this is based on the same contract; this restriction shall not apply if the counterclaims of the Purchaser are uncontested or have been recognized by declaratory judgment. The customer does not have a right to satisfaction pursuant to Section 371 of the German Commercial Code.
5. **Tools and Models:**
Tools and models remain our property, even if the Purchaser pays for them in full or in part.
6. **Prepayment, Security:**
We reserve the right to request in writing a prepayment or security amounting to the invoice value of the delivery if circumstances arise or become known to us subsequently which could endanger the collection of the purchase price. If the Purchaser fails to make the prepayment or provide the security within a reasonable period after such written request, we have the right to rescind the contract forthwith.
7. **Place of Performance:**
Place of performance for the delivery is our production plant or warehouse.
8. **Dispatch, Deliveries:**
Unless otherwise agreed in writing, all goods are dispatched at the risk of the Purchaser. We reserve the right to select the method of transport, the route and the carrier. Partial deliveries are permitted. Item 7 remains unaffected. Unless otherwise agreed in an individual case, the Purchaser is responsible for compliance with statutory and official regulations on import, transport, storage and use of the goods.
9. **Date of Delivery:**
Even if a reminder suffices or is not required in accordance with the law, we shall not be deemed in delay until after the expiry of a reasonable deadline for final delivery set by the Purchaser in writing.
10. **Transport Insurance:**
We are authorized to take out appropriate transport insurance on behalf and at the expense of the Purchaser for an amount at least equal to the value of the goods/the invoiced value.
11. **Retention of Title:**
(1) The goods sold shall remain our property until payment in full of all current and future claims arising under or in connection with the entire business relationship with the Purchaser, irrespective of the legal ground. Hence, this includes in particular claims to performance of the contract, to damages based on default, non-performance or the breach of other contractual or pre-contractual duties and claims based on the law of torts and the right to satisfaction.
(2) The processing or transformation of the reserved goods by the Purchaser is carried out by the Purchaser on our behalf as producer. If our goods have been combined, mixed or processed to produce new goods, our title shall extend to the new product. The Purchaser hereby assigns to us his rights to the new product. If a third party's right of ownership continues to exist when our goods are processed, combined or mixed with the third party's goods, we shall acquire co-ownership of the processed goods in relation to the new product. The value of the processed goods at the time of such processing, combination or mixing shall be relevant. If the Purchaser combines or mixes our reserved goods with the main goods of a third party for compensation, the Purchaser hereby assigns to us his right to compensation from such third party. The above ratio applies accordingly to the amount of the assigned claim.
(3) The Purchaser may, in the ordinary course of his business, resell any goods which are subject to our retention of title. The Purchaser hereby assigns to us all his claims arising from such resale up to the amount of the value of the reserved goods at the time of the resale. The Purchaser is authorized to collect payments for claims from such resale for as long as he meets his obligations towards us in due form. If so requested by us, the Purchaser shall advise his customers of such assignment of rights and provide us with the information and documents necessary to enforce our rights vis-à-vis these parties.
(4) The Purchaser is obligated to insure the reserved goods to a reasonable extent against fire, water damage, burglary and theft at his expense. The Purchaser hereby assigns to us any possible claims against the insurance up to the amount of the value of the reserved goods at the time of the occurrence of the insured event.
(5) The Purchaser is not authorized to dispose of the reserved goods in any manner other than as stated above. In particular, the Purchaser may not lend on the reserved goods or assign them as collateral, pledge or sell them. Access by third parties to goods and receivables belonging to us shall be notified without undue delay in writing. If so requested by us, the Purchaser shall provide all the information required on the stocks of the goods belonging to us and on the receivables assigned to us. The Purchaser shall also mark the goods belonging to us as our property on our request and notify his buyers of the assignment.
(6) In the event of payment default on the part of the Purchaser, we are entitled to revoke the Purchaser's authorization to resell the reserved goods and to collect the receivables assigned to us, to disclose the assignment of the receivables and/or the demand the provisional surrender of the goods belonging to us at the expense of the Purchaser even without rescission of the purchase contract and without granting any grace period.
(7) The receivables assigned based on paragraphs 2 to 4 serve to secure all receivables under paragraph 1.
(8) In the event that the value of the security exceeds our claims against the Purchaser by more than 10 percent, we shall be obligated to release the security in excess of said limitation.
12. **Force Majeure:**
In the event of force majeure, such as war, civil commotion, and natural disasters as well as labor disputes and disruptions of transport or plant operations, directions by authorities, scarcity of energy or raw materials, or similar difficulties beyond the control of the parties affecting either party during the term of a contract, all commitments arising from a contract shall be suspended for the duration and scope of the impediment. In each case the parties shall amicably agree if and to which extent suspended deliveries caused by force majeure shall be effected subsequently.
13. **Infringement of Industrial Property Rights and Copyrights:**
In case of items produced based on the specifications of the Purchaser, the Purchaser shall assume the warranty that the industrial property rights of third parties are not infringed by the production and operation of such items. The Purchaser shall indemnify and hold harmless us against all third-party claims in this connection. The Purchaser is responsible for independently checking the existing property rights of third parties and is obligated to notify us of such rights.
14. **Product Information, Nature:**
Details in product brochures or other advertisements about our products, equipment, plant and processes are based on our research and our experience in the field of applied engineering and are merely recommendations. It is not possible to infer any warranted qualities or warranted use from these details, unless they were expressly agreed as a warranted quality. We reserve the right to make technical modifications in the course of our product development. The Purchaser must verify the suitability of our products and processes for the use or application intended by him on his own responsibility. This shall also apply to the protection of third party property rights as well as to applications and processes. The properties of samples and specimens are binding only if these have been expressly agreed to define the quality of the goods. Information on the quality and durability and other particulars are warranted only if these are agreed and designated as such. The specifications agreed with the Purchaser in writing are relevant for the quality of the goods and if specifications have not been agreed in writing, the information contained in our technical data sheets, specifications or drawings. Any additional or diverging agreements on the quality must be in writing. Any suitability of the product for the presupposed or customary use which supplements or diverges from the agreed quality is out of the question.
15. **Rights of the Purchase in the Event of Defects:**
The Purchaser shall notify us of all defects without undue delay in writing, however no later than 5 working days after the receipt of the goods (in the event of hidden defects without delay, however no later than 5 working days after the discovery thereof). Should the Purchaser fail to give such notification, the goods shall be deemed accepted.
16. **Warranty:**
In the event of defective goods, we shall, at our discretion, either replace or repair the goods upon demand by the Purchaser (subsequent performance). Should our subsequent performance fail to remedy the defects, the Purchaser shall be entitled, at his discretion, to either reduce the purchase price or to withdraw from the contract. The Purchaser is entitled to claim for damages only to the extent specified in item 18. Claims based on defects by the Purchaser become time-barred one year after the delivery of the goods; notwithstanding this, the statutory limitation periods apply
 - in the event of liability based on intent or gross negligence or the fraudulent concealment of a defect;
 - for claims based on a defective product if this has been used in a building in accordance with its customary use and caused the defectiveness of the building;
 - to damage caused by death, injury or an impairment to health which we, our legal representatives or our vicarious agents caused intentionally or negligently;
 - in the event of recourse by the Purchaser based on the provisions on consumer sales.
17. **Delivery Shortages:**
In the event of short deliveries, we shall, if reasonable, cover the shortage. Otherwise item 16 sentence 2 applies accordingly. Item 16 sentences 3 and 4 remain unaffected.
18. **Limitation of Liability and Exclusion from Liability:**
Our liability is based on the law as a basic principle, unless otherwise specified in these General Conditions of Sale and Delivery. In the event of a slightly negligent breach of contractual duties, the performance of which renders the proper implementation of the contract possible in the first place and compliance with which the contracting parties can usually rely on, our liability is limited to compensation of the typical, foreseeable damage; in cases of a slight negligent breach of other contractual duties, our liability is excluded. The limitation of liability and exclusion from liability does not apply to damage caused by death, injury or an impairment to health, and if and to the extent that we have compulsory liability under the Product Liability Act or for other reasons.
19. **Statements of Account, Offsetting Prohibition:**
The Purchaser shall verify the correctness and completeness of statements of account, in particular balance confirmations, as well as notifications and settlements of accounts. Objections to statements of account shall be made in writing within one month from the date of the respective statement. Any other objections shall be made without undue delay. Failure to make timely objections shall constitute approval. The Purchaser may only offset uncontested claims or claims recognized by declaratory judgment and enforce a right of retention if his counterclaim is uncontested, has been recognized by declaratory judgment or is ripe for judgment.
20. **Place of Jurisdiction:**
The place of jurisdiction shall be the registered office of our company exclusively if the customer is a merchant. However, we are entitled to bring action against the Purchaser at his place of general jurisdiction.
21. **Applicable Law:**
The laws of the Federal Republic of Germany are applicable. The United Nations Convention on Contracts for the International Sale of Goods of April 11, 1980 shall not apply.
22. **Trade Terms:**
If the INCOTERMS of ICC Paris are agreed, these apply in the version applicable upon conclusion of contract, which are available for perusal under www.iccwbo.org/.