

# General Terms and Conditions

## I. General

These terms and conditions apply to all - including future - deliveries and services. Deviating regulations require written confirmation by the supplier; this also applies to verbal agreements. Conflicting terms and conditions of the contractual partner do not bind the supplier; this also applies if the objection is not expressly made. Our offers are non-binding. Verbal agreements, promises, assurances and guarantees of our employees in connection with the conclusion of the contract shall become binding only upon our written confirmation. In case of doubt, the incoterms in their most recent version shall be decisive for the interpretation of commercial clauses.

## II. Prices

All prices are ex works Germany and do not include statutory VAT, packaging, loading, freight, customs, and insurance. **Unless otherwise agreed, the prices and conditions of our price list valid at the time of conclusion of the contract apply.** Orders for which fixed prices have not been expressly agreed will be charged at the list prices valid on the day of delivery. In the event of significant changes in material, wage, salary or other price-determining costs, the supplier can make a price adjustment. Changes to the order subsequently requested by the customer also entitle the purchaser to correct the price. In the case of contract work and repair work, there is no remuneration for waste and cuttings.

## III. Payment and settlement

Unless otherwise agreed or stated in our invoices, the purchase price is due immediately before delivery without deduction of discount and to be paid in such a way that we can dispose of the amount on the due date. The buyer bears the costs of the payment transaction. A right of retention and a right of offsetting are available to the buyer only insofar as his counterclaims are undisputed or have been legally established. If the buyer issues a SEPA-based mandate / SEPA company mandate to KERN Stahl Service GmbH, the collection takes place on the debit date indicated in the invoice. If the debit date stated in the invoice falls on a public holiday, the debit date shifts to the first following working day. The pre-notification deadline will be reduced to 5 days. The buyer assures to provide for the cover of the account. In case of exceeding the term of payment or default we charge interest of 8,0%. The assertion of further damages remains reserved. In the event of delayed payment, the supplier can, after giving written notice to the customer, suspend the fulfilment of his own obligations until the payment has been received. If the purchaser is more than three months in arrears with his payments, the supplier can withdraw from the contract by notifying the purchaser in writing and demand compensation from the purchaser for the damage incurred. The compensation may not exceed the agreed purchase price. In the event of delayed payment, the supplier can, after giving written notice to the customer, suspend the fulfilment of his own obligations until the payment has been received.

## IV. Delivery time

The time of the deliveries or services is indicated approximately and not binding. The delivery time begins 2 working days after all implementation details, releases, approvals and agreed payments have been credited. The delivery date is deemed to have been met when the goods are ready for dispatch or when the goods are dispatched. Compliance with the delivery deadlines requires the receipt of all documents to be provided by the customer, the necessary permits, etc. as well as compliance with the agreed terms of payment - including those from previous contracts; Another prerequisite is correct and timely delivery by the upstream suppliers. In the event of force majeure and other unforeseeable, extraordinary and non-culpable circumstances, e.g. B. in the event of material procurement difficulties, operational disruptions, Strikes, lockouts, lack of means of transport, official interventions, energy supply difficulties, natural disasters, etc. - even if these circumstances occur at sub-suppliers - are extended if the supplier is prevented from fulfilling his obligation, the delivery period to a reasonable extent. If the specified circumstances make the delivery or service impossible or unreasonable, the supplier is released from his delivery obligations. The customer will be informed immediately of the beginning and end of such obstacles. If the delivery time is extended or if the supplier is released from the obligation to deliver or perform, the customer cannot derive any claims for damages from this. Natural disasters etc. - even if these circumstances occur at sub-suppliers - are extended if the supplier is prevented from fulfilling his obligations, the delivery period to a reasonable extent. If the delivery or service becomes impossible or unreasonable due to the circumstances mentioned, the supplier is released from his delivery obligations. The customer will be informed immediately of the beginning and end of such obstacles. If the delivery time is extended or if the supplier is released from the obligation to deliver or perform, the customer cannot derive any claims for damages from this. Natural disasters, etc. - even if these circumstances occur at sub-suppliers - are extended if the supplier is prevented from fulfilling his obligation, the delivery period to a reasonable extent. If the delivery or service becomes impossible or unreasonable due to the circumstances mentioned, the supplier is released from his delivery obligations. The customer will be informed immediately of the beginning and end of such obstacles. If the delivery time is extended or if the supplier is released from the obligation to deliver or perform, the customer cannot derive any claims for damages from this. If the specified circumstances make the delivery or service impossible or unreasonable, the supplier is released from his delivery obligations. The customer will be informed immediately of the beginning and end of such obstacles. If the delivery time is extended or if the supplier is released from the obligation to deliver or perform, the customer cannot derive any claims for damages from this. If the specified circumstances make the delivery or service impossible or unreasonable, the supplier is released from his delivery obligations. The customer will be informed immediately of the beginning and end of such obstacles. If the delivery time is extended or if the supplier is released from the obligation to deliver or perform, the customer cannot derive any claims for damages from this.

## V. Liabilities from services such as consulting, project planning, tests and problem solving of all kinds

In the event that the order is not placed for the above services or only this service was requested, the billing takes place according to the service fee regulations for engineers (LHO). The fee for individual cases is 14% of the project value. If the order is placed, these services can be partially offset against the order. Services of the type mentioned above remain the intellectual property of KERN Stahl Service and may only be made accessible to third parties with express written approval. The misuse of this provision entitles us to assert claims for damages without restriction.

## VI. Retention of title

The delivered goods remain the property of the supplier until the purchase price has been paid in full. In the case of goods that the customer purchases in the course of his commercial activity, the supplier's retention of title applies until all claims - including future claims from contracts concluded at the same time or later - that the supplier has against the customer have been settled. The setting of individual claims in the current account, the balancing of claims and their recognition do not **affect** the retention of title. The claim shall only be deemed to have been paid upon receipt of the equivalent value by the supplier or upon availability of the equivalent value by the supplier. In the event of a breach of important contractual obligations, in particular in the event of default in payment, the supplier is entitled to take back the goods and the customer is obliged to surrender them. The supplier is entitled to pick up the reserved goods or have them picked up by the customer, to collect the reserved goods or to have them picked up. The withdrawal of the reserved goods by the supplier does not necessarily mean withdrawal from the contract. If the goods subject to retention of title are taken back, the supplier is entitled to make the best possible use of them, offsetting the outstanding claims, by means of private sale on the account of the customer or to take them over at the value that the goods taken back have for the supplier. The customer is obliged to adequately insure the reserved goods against all risks, in particular against fire, burglary, theft and water damage. The insurance claims are already assigned to the KERN Stahl Service in the amount of the value of the goods; this accepts the assignment. The purchaser is not permitted to seize or transfer ownership as security or to sell after the suspension of payments.

**The claims with all ancillary rights of the customer from the resale of the goods subject to retention of title are already now assigned to the KERN Stahl Service company; this accepts the assignment.**

At the request of the supplier, the customer must disclose the assigned claims and his debtors from the resale. Furthermore, all information required for collection must be provided, the associated documents handed over and the debtors notified of the assignment. If goods purchased from the supplier are resold with third-party goods or items, the customer's claim against his debtor in the amount of the list price agreed between KERN Stahl Service and the customer is deemed to have been assigned to KERN Stahl Service. Any treatment or processing of the reserved goods by the customer cannot result in any obligations for the supplier. When processing, Mixing or amalgamation of the reserved goods with third-party goods or objects is entitled to the supplier the resulting co-ownership share in the new item in the ratio of the value of the reserved goods to the other processed goods at the time of processing, combining, mixing or blending. If the reserved goods are resold together with other goods, regardless of whether they have been processed, combined, mixed or blended with or after processing, the above-agreed advance assignment shall apply to the amount of the value of the reserved goods. The purchaser must immediately inform the supplier of any foreclosure measures taken by third parties in relation to the goods subject to retention of title or in the claims assigned in advance, handing over the documents necessary for an intervention.

#### **VII. Grades, dimensions, and weights**

Grades, dimensions, and weights are determined according to the agreed, in the absence of agreement according to the valid at the time of conclusion of the contract DIN / EN standards for lack of such according to commercial custom. References to standards such as DIN / EN standards or their components such as material sheets, test certificates or test standards as well as information on types, dimensions, weights and usability are no representations or warranties, nor declarations of conformity, manufacturer's declarations and corresponding marks such as CE and GS. The weights are determined by the weighing carried out by us or our upstream supplier. The proof of weight is provided by presentation of the weighing note. For factory packages, the weighing is done gross for net. We can theoretically determine the weights of the steel products without weighing by length or area. We are also entitled to increase the theoretical weight by up to 5% to compensate for rolling and thickness tolerances (commercial weight) and to calculate based on a trade weight of 8.1kg / dm<sup>3</sup>.

#### **VIII. Call orders, on-going deliveries**

For deals with continuous delivery, we are to give up on orders and sorting for approximately equal monthly quantities; otherwise we are entitled to make the determinations ourselves at our reasonable discretion. If the individual calls exceed the contract volume in total, we are entitled to deliver the additional quantity, but not obliged. We are then entitled to charge the excess quantity at the prices (daily prices) valid at the time of retrieval or delivery.

#### **IX. Liability for material defects**

For the examination of the goods and notification of defects, the statutory provisions shall apply with the proviso that the obligation to inspect the goods after delivery also for defects or the absence of any certificates according to or according to EN10204, performance declarations, CE mark, Ü Signs, safety data sheets and substance lists and defects are to be reported to us in writing. In the case of justified, timely notification of defects, we can, at our discretion, rectify the defect or deliver a faultless product (supplementary performance). In case of failure or refusal of supplementary performance, the buyer can withdraw from the contract or reduce the purchase price after an unsuccessful expiry of a reasonable period. If the defect is not significant, or if the goods have already been sold, processed, or redesigned, then they are entitled to the right of reduction. We shall only assume any expenses in connection with supplementary performance insofar as they are reasonable in individual cases, in particular in relation to the purchase price of the goods, but in no case exceed 150% of the value of the goods. Excluded are costs in connection with the installation and removal of the defective item. Expenses arising from the fact that the sold goods were transported to a place other than the agreed place of fulfillment, we do not accept, unless this corresponds to their contractual use. After execution of an agreed acceptance of the goods by the buyer, the complaint of material defects, which were ascertainable in the agreed manner of acceptance, is excluded. If the buyer has remained unaware of a defect as a result of negligence, he can only assert rights due to this defect if we have fraudulently concealed the defect or assumed a guarantee for the condition of the goods. If the purchaser does not immediately give us the opportunity to convince ourselves of the material defect, in particular if he does not provide the rejected goods or samples thereof promptly for inspection purposes, especially on request, all rights due to the material defect shall be void. In the case of goods sold as declassified material, the purchaser is not entitled to any rights due to material defects with regards to the specified reasons for declassification and such defects as he is likely to expect. When selling Ila-Ware our liability for material defects is excluded. Our further liability is based on section XI of these conditions. Rights of recourse of the buyer according to §§ 478, 479 BGB remain unaffected.

#### **X. General Limitation of Liability**

The supplier's liability is based exclusively on the agreements made in the previous section. Claims for damages due to the impossibility of delivery or service due to breach of secondary contractual obligations and unlawful acts are excluded unless they are based on intent or negligence on the part of the supplier or his vicarious agents. All warranty claims of the customer expire no later than 24 months after receipt of the goods or services.

#### **XI. Shipping, packing and transfer of risk**

We determine the shipping route and means as well as the freight forwarder and carrier. When the goods are handed over to the carrier, the risk is transferred to the customer. If the goods are ready for dispatch and dispatch or acceptance is delayed for reasons for which the supplier is not responsible, the risk is transferred to the purchaser when the goods are ready for dispatch. If goods that are ready for dispatch are not called off, the supplier is entitled to choose either to dispatch the goods or to store them at the purchaser's expense. If dispatch or delivery is delayed at the request of the customer, the supplier is entitled, starting 1 month after notification of readiness for dispatch, to charge storage costs of 0.5% of the invoice amount for each month or part thereof. The storage costs are limited to 5% of the value of the goods; unless higher costs can be proven. The supplier is entitled, but not obliged, to insure deliveries against transport damage in the name of and for the account of the customer. Pick-up times are to be agreed in advance, no liability is assumed for waiting times. Packaging is calculated at cost price and is not taken back. We are entitled to partial deliveries to a reasonable extent. We are entitled to exceed the agreed delivery quantities adequately. The specification of a "circa" amount entitles us to exceed or fall short of and corresponding calculation up to 10%.

#### **XII. Fulfillment and place of jurisdiction**

The place of performance and place of jurisdiction result from the applicable law. The place of performance for delivery and payment is Neuss. The law of the Federal Republic of Germany. It should also be noted that the Vienna UN Sales Convention (CISG) may apply. If this is not desired, an express exclusion is required. For all disputes arising from the contractual relationship, legal action must be brought to the court responsible for the KERN Stahl Service headquarters.

#### **XIII. Binding nature of the contract**

Should any provision of the general terms and conditions or other contractual agreements be or become ineffective, this shall not affect the validity of the contract. The contractual partners are obliged to replace the ineffective provision with a legally permissible provision that comes as close as possible to the intended purpose.