

MN Metall GmbH

General Terms and Conditions of Delivery and Payment (GTC) applying in business transactions with merchants,
valid as of 1 July 2016

1. Scope of application/incorporation of GTC

All supply contracts concluded by us shall be subject to the following General Terms and Conditions of Delivery and Payment (GTC); said GTC shall always override and supersede any terms and conditions of the Buyer. Terms and conditions of the Buyer shall apply only insofar as explicitly consented to by us in writing. The Buyer's consent to the order confirmation and the exclusive application of these GTC shall be deemed given, at the latest, upon his acceptance of the first delivery (or the first partial delivery). It is hereby agreed that also any follow-up orders shall be governed by these GTC.

2. Prices/additional costs

Our prices are exclusive of any statutory VAT and costs for packaging and shipping. Shipping shall be at expense and risk of the Buyer.

3. Passing of risk

The risk in any goods ordered shall pass to the Buyer upon the goods being handed over to the transport operator. Responsibility for transport damages or a mix-up on the part of the transport operator shall be assumed by the Buyer.

4. Acceptance of goods

Where acceptance is provided for by law or agreed upon, such acceptance is to be carried out at our registered office and at the Buyer's expense. If such acceptance is not carried out within a reasonable delay (such delay in no event to exceed 14 days), the goods shall be deemed accepted.

5. Nature and condition of goods

The qualities of the item to be delivered shall be deemed exhaustively defined by the nature and condition prescribed in the performance specification. In particular, no public statements made by the seller, the manufacturer, their performing agents or any third parties (i.e., by depicting the qualities of a product in the public) shall constitute a description of the delivery item amending or modifying the said performance specification. Warranted characteristics of goods need to be designated as such, explicitly and in writing, in each specific case.

6. Excess/short deliveries; tolerances

With respect to the total quantity ordered (or to any single partial delivery), deviations of up to 10% (for speciality goods: up to 30%) in weight and number of pieces occurring in the manufacturing or shipping process shall be permitted. For complaints about goods standardized according to DIN, the tolerances specified by DIN shall apply. The weight ascertained by the supply plant shall be authoritative. Where dimensions, bending radii and the like deviate from the processing guidelines (such guidelines to be admissible according to the respective standard(s)), no warranty as to the result to be achieved shall be given. In the production of paint-coated plates, pieces from different batches may slightly differ in colour due to technical reasons. This shall not constitute a defect. The final products may be covered by a foil for protection; we shall not bear any costs for removing such foil.

7. Warranty/liability

In case of any goods being defective, the Buyer shall comply with his inspection and notification duties under § 377 of the German Commercial Code [HGB]. At our request, samples of the goods claimed to be defective are to be made available without delay. In the event of breach of any of the aforesaid obligations, any and all warranty claims shall be excluded. We shall have the exclusive right to choose between a rectification of defect and a replacement delivery/renewed performance. Any demand for subsequent performance shall be made in writing. For carrying out subsequent performance, a reasonable grace period is to be granted to us; such grace period shall in no event be less than 2 weeks. If the expenses required for subsequent performance increase due to the place of delivery/performance not being the place where the Buyer's business is located, such increased expenses shall be borne by the Buyer. Subsequent performance shall be deemed failed only after two unsuccessful attempts. Any further claims of the Buyer (whether in contract or under law), particularly any claims for damages not caused to the delivery item itself, shall be excluded; however, this shall not apply to claims based on intentional misconduct or gross negligence. All warranty claims shall become statute-barred within 6 months from delivery/assembly. This shall also apply in case of hidden defects.

8. Tools/samples/intellectual property rights of third parties

Notwithstanding any claims of the Buyer based on his copyright in a design, tools shall remain our property, even if the costs of such tools are partially paid for. As long as the Buyer fulfils his purchase commitment and payment obligations, the tools shall be used for the sole purpose of performing deliveries to the Buyer. If, however, one year has passed since the date of the last delivery, we shall be entitled to use the tools otherwise. If three years have passed since the date of the last delivery, we may scrap the tools. Any samples on which a delivery may be based shall only be deemed an approximate benchmark for the delivery. If delivery is based on drawings or other details provided by the Buyer, and any third party intellectual property rights are infringed thereby, the Buyer shall release us from any claims arising out such infringement. In the event of any breach of contract committed by the Buyer, the Buyer's intellectual property rights shall not constitute an obstacle to our right to use the goods according to the contract.

9. Delivery times

For adherence to delivery times, the moment when the goods are delivered ex works shall be authoritative. Even if a delivery date was agreed, we shall be deemed in default only upon receiving a reminder. The right to claim damages for non-performance or delayed performance shall be excluded, unless such default is based on intentional misconduct or gross negligence.

In the event that we are prevented from fulfilling our obligation to perform due to unforeseen circumstances which, despite reasonable precautions, could not be avoided, the delivery time shall be extended by the duration of such impediment; such cases may include industrial disputes, disruptions in our operating procedures, disruption in the operating procedures of our sub-suppliers (including the transport operators), disruptions through actions taken by the public sector, disruptions of transport routes etc. In the event of impossibility of performance, the delivery time shall no longer be binding upon us, without giving rise to any claims for damages.

For single partial deliveries, calling-off and sending of specifications is to be made for regular periods and quantities (where possible), and at a time sufficient to allow for a proper manufacturing and delivery within the contractual deadline. If no deadline is specified for splitting-up a delivery into partial deliveries, a three-months deadline shall be deemed agreed. If a deadline for acceptance has been agreed, we shall not be obliged to deliver, once the deadline has expired, if no call-off is made.

10. Retention of title

We retain title to all goods delivered by us, and also to all products resulting from treatment and processing of the said goods (retained goods), until any present or future claims we may have against the Buyer from the business relationship are settled. Any retained goods shall be stored separately and marked by the Buyer.

Any treatment or processing of such goods by the Buyer shall be made without creating any obligations whatsoever on our part. If the Buyer processes any retained goods by mixing them with other goods, we shall acquire co-ownership of the new resulting products in proportion of the value of the processed retained goods to the value of the other goods, such value being the respective value at the time when the treatment or processing was done. The Buyer hereby assigns to us his eventual co-ownership of any products resulting from the Buyer combining, mixing or blending the delivered goods with other goods. The Buyer shall keep for us any objects owned by us with the diligence of a prudent businessman.

The Buyer may sell the delivered goods and the products resulting from the goods' treatment, processing, combining, mixing or blending, provided that such sale is made in the course of the Buyer's regular business and payment is either in cash or, if a due date for payment is agreed, the Buyer retains title to the goods sold. Transfer by way of security, pledging or other dispositions putting our rights at risk shall not be admissible.

By way of security, the Buyer hereby assigns to us his claims resulting from the resale of the retained goods, or from any other legal basis with regard to the retained goods, in the amount of the value of the retained goods resold (or in the amount of the proceeds realized in the resale, if such proceeds are below the value of the goods). If the Buyer sells the retained goods together with other goods, he assigns his claims either in the amount of the full purchase price payable for the retained goods or, if the retained goods have already been treated or processed by mixing them with other goods not belonging to us, in the amount of the value of the retained goods processed. If such sale is made at an overall price, the Buyer assigns his purchase price claim in the amount of the value of the retained goods that are the object of the sale.

As long as the Buyer fulfils his obligations, the assignment shall be treated as an undisclosed assignment, and the Buyer shall remain entitled to collect the assigned claim. The assertion of title and the demand for restitution under these Terms shall not constitute a withdrawal from the contract.

The Buyer shall be entitled to demand release of securities to the extent that the value of the securities exceeds our claims by more than 20%.

In case of any access by third parties to the retained goods or the assigned claims, the Buyer shall inform us promptly and submit any documentation necessary for an intervention.

The cost of such intervention shall be borne by the Buyer.

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11. Set-off/retention

The Buyer is entitled to offset against our payment claims or to withhold payments only if his counterclaims are expressly acknowledged by us in writing or assessed in a legal binding judgement.

12. Credit conditions

In the event that any contractual due dates for payment are not met by the Buyer, or bills of exchange or cheques cannot be encashed, we shall have the right to render services only on advance payment or on a delivery-versus-payment basis, i.e. against payment in cash. If the Buyer fails to make advance payments as requested, or if no payment in cash is made upon delivery, we shall be released of our duty to perform and may, after a grace period for payment has elapsed with no result, withdraw from the contract and, as the case may be, claim damages.

13. Applicable law/venue

The law of the Federal Republic of Germany shall apply; the Convention on Contracts for the International Sale of Goods (CISG) shall be excluded. The exclusive venue for any disputes arising from this contractual relationship shall be at 23730 Neustadt i.H., Germany.