



GENERAL TERMS AND CONDITIONS OF SALE AND DELIVERY OF ST EXTRUDED PRODUCTS GERMANY GMBH

§ 1 Applicability of the General Terms and Conditions of Sale and Delivery

- 1.1 All deliveries, services, and offers of the seller shall be effected exclusively upon the basis of these General Terms and Conditions of Sale and Delivery ("**GTC**"). These GTC shall be a constituent of all contracts into which the seller enters with its contractual partners ("**Client(s)**") regarding the deliveries and services offered by the seller. These GTC shall also apply to all future deliveries, services, or offers made to the Client, even if such have not been separately stipulated anew.
- 1.2 Any general terms and conditions of business of the Client or of third parties shall not be applicable, even if the seller does not separately object to their application in any individual case. Even if the seller refers to a letter which contains the general terms and conditions of business of the Client or of a third party or cross-references such, there shall still be no consent to the applicability of such terms and conditions of business.
- 1.3 Any (i) verbal ancillary agreements or (ii) divergences from or restatements of these GTC or (iii) the exclusion of these GTC shall require written confirmation by the seller in order to be legally effective.
- 1.4 The German version of the GTC shall be decisive for the interpretation of these GTC, even if translations of these GTC are made available to the customer or have been executed by the parties.

§ 2 Offer and contract formation

- 2.1 All offers of the seller shall be subject to change and non-binding to the extent that (i) they are not expressly designated as binding or (ii) they contain a definite acceptance deadline.
- 2.2 The written order confirmation ("**Order Confirmation**") by the seller shall be solely decisive for the legal relationships between the seller and the Client. Any verbal assurances of the seller prior to issuance of the Order Confirmation shall be superseded thereby to the extent not expressly effected by the Order Confirmation in each case, such that they shall continue to have binding applicability.
- 2.3 Any restatements of and amendments to the agreement entered into, including these GTC, shall require the written-form (*Schriftform*) to be effective. Transmission by telecommunications including, but not limited to, telefax or e-mail, shall suffice to ensure adherence to the written-form (*Schriftform*) to the extent that the copy of the signed declaration is transmitted.

§ 3 Consistency of the goods

- 3.1 Unless otherwise stipulated, the pertinent European standards of the *Deutsche Institut für Normung* (the German Institute for Standardization) shall apply, otherwise the pertinent DIN standards. Apart therefrom, our goods shall be delivered having customary consistency and workmanship which takes into due consideration manufacturing-conditioned, customary tolerances for dimensions, weights, and quality conditions. Any (i) customary divergences and (ii) divergences effected on the basis of any statutory provisions or constituting technical improvements, and (iii) the replacement of component

parts (*Bauteile*) with parts of equivalent value shall be permissible to the extent that such divergences do not impair utility for the contractually intended purpose.

- 3.2 References made to standards, to material data sheets, or to works tests shall not constitute any warranty of consistency. Such references shall solely be specifications or designations of the delivery or the service. Public statements by us, by our agents, or by any manufacturers or their agents including, but not limited to, advertising documents concerning the consistency of our goods, shall be able to substantiate the Client's right to complain of defective quality only if said statements are made into a component of an agreement between the parties concerning consistency.
- 3.3 Any specifications of the seller concerning any deliverable or performance (e.g., weight, dimensions, use value, resilience, tolerances, and technical data) and our representations of the same (e.g., drawings and photographs) shall be approximately decisive to the extent the usability does not presuppose precise congruity for the contractually intended purpose.
- 3.4 The weighing on gauged wares performed by us or our supplier shall be decisive for determining weight. The weight shall be evinced through presentation of the weighing slip.

§ 4 Copyrights of the seller

The seller shall retain ownership or copyright in all offers and quotes submitted as well as in drawings, depictions, calculations, prospectuses, catalogs, models, tools, and other documents and aids that have been provided to the Client. The Client may not disclose or make these objects accessible, either as such or in terms of their content, without the express consent of the seller; nor may it use or reproduce them either itself or through third parties. The Client shall, upon demand of the seller, return such objects in their entirety to the seller and destroy any possible copies made, if these copies are no longer required by the Client in the due and proper course of business, or if using them does not result in an agreement being entered into.

§ 5 Delivery

- 5.1 Unless otherwise stipulated in writing, our deliveries shall, at our discretion, be effected from the works or from the warehouse. Deliveries shall also be possible from the works or warehouse of a third party.
- 5.2 Risk shall be transferred to the Client by no later than upon dispatch to the carrier or to another party for transportation. Such shall also apply if the goods are dispatched by our own employees. In the event that the Client provides no definite instructions, we shall be responsible (*obliegen*) for selecting a suitable party for transportation. The risk shall then also be transferred to the Client if goods are stored with us at the wish of the Client.
- 5.3 Our performance and delivery obligation shall be subject to the proviso that we have been accurately supplied in due time. The seller shall be able – without prejudice to its rights resulting from default of the Client – to demand from the Client (i) an extension of the performance and delivery deadlines or (ii) a postponement of the delivery and performances by the period of time during which the Client does not comply with its contractual obligations vis-à-vis the seller.
- 5.4 Deadlines and dates prospectively set forth by the seller shall always be deemed as merely approximate, unless a delivery date or deadline has been expressly stipulated. In the event of expressly stipulated delivery deadlines, the Client shall accept the goods within a period of two (2) weeks of our notice of transfer or of readiness to ship.

- 5.5 The delivery period shall commence upon dispatch of the Order Confirmation, but not before the Client has furnished any and all required documents, approvals, releases, and the clarification of technical questions. To the extent that shipment has been stipulated, delivery dates and deadlines shall refer to the date of transfer to the carrier, shipper, or any other third party retained for the transportation.
- 5.6 The seller shall not be liable for impossibility of delivery or for delivery delays to the extent that such has been caused by *force majeure* or by other events not foreseeable at the time at which the contract is entered into, for which the seller is not responsible (e.g., operational disruptions of all kinds; difficulties in procuring materials or energy; transportation delays; strikes; lawful lockouts; shortages of labor, of energy, or of raw materials; difficulties in procuring necessary official approvals; official measures; or any omitted, incorrect, or untimely delivery by any suppliers). Insofar as such events make the delivery or performance impossible or materially more difficult for the seller and the hindrance is not of temporary duration, the seller shall have the right to withdraw from the contract. In the case of hindrances of temporary duration, the deadlines for delivery or performance shall be extended, or the dates for delivery or performance shall be postponed by the period of time of the hindrance, plus a reasonable re-commencement period. Insofar as acceptance of delivery or performance is not reasonable for the Client as a result of the delay, the Client shall be able to withdraw from the contract by means of providing a written declaration to the seller without undue delay.
- 5.7 The seller shall have the right to make partial deliveries, if
- / the partial delivery can be utilized by the Client within the parameters of the contractually intended purpose;
 - / the delivery of the remainder of the goods ordered is assured; and
 - / no considerable additional expenses or costs to the Client shall be incurred on account of such partial deliveries (unless the seller declares that it is ready to assume these costs).
- Unless otherwise stipulated, the following shall be permitted: (i) excess or short deliveries of up to 10% of the quantity ordered or (ii) units with a commensurate offset.
- 5.8 For on-call orders, the Client shall request the goods within a period of two (2) weeks of being notified by us that the goods have been transferred or are ready to ship. If more than the quantity ordered is requested for in an on-call order, we shall have the right to deliver only the quantity ordered or to invoice the greater quantity at the market price.
- 5.9 In case of untimely acceptance or untimely call by the Client, we shall have the right, without prejudice to our claim for performance and additional rights, (i) to demand compensation of our additional expenses for the unsuccessful offer and (ii) to store the goods at the expense and at the risk of the Client.

§ 6 Prices

- 6.1 Unless otherwise stipulated, the price lists valid on the date the contract has been entered into shall apply. Prices shall be ex works or ex warehouse, including the typical packaging for the goods concerned. The prices shall apply to the scope of performance and delivery listed in the Order Confirmations. Any additional or special services shall be invoiced separately. Prices shall be in Euro.

- 6.2 To the extent that the delivery (i) shall be effected pursuant to agreement later than three (3) months of the date the contract had been entered into or (ii) is effected only after three (3) months have elapsed of the date the contract had been entered into, we shall have the right to increase the stipulated prices accordingly, if increased costs – including, but not limited to, those due to concluded collective bargaining agreements or to price increases for additional materials – occur after the contract has been entered into.
- 6.3 Statutory value-added tax (*Mehrwertsteuer*) shall not be contained in the prices. It is to be separately itemized in the invoice in the amount provided for by law on the date the invoice has been issued.
- 6.4 Insofar as goods are stored with us at the request of the Client, any expenses incurred for this purpose shall be borne by the Client.

§ 7 Payment

- 7.1 Payments are to be rendered within thirty (30) days of the invoice date. The timelines of payments shall depend upon the date on which the money is received by us or is credited to our bank account unconditionally.
- 7.2 If payment is effected by means of payment which the Client has procured by the discounting of an acceptant bill of exchange, then the claim for payment shall lapse only upon redemption of the bill of exchange by the Client.
- 7.3 If the Client does not perform upon maturity, then the outstanding amounts shall accrue interest from the day of maturity at a default interest rate of 8 % over the base interest rate. The assertion of further claims for damages in the event of default shall not be affected.
- 7.4 If multiple receivables against the Client remain open and a payment by the Client does not suffice to redeem all of the receivables, then repayment shall be effected in accordance with the statutory provisions set forth under Section 366 para. 2 of the *Bürgerliches Gesetzbuch* (the Civil Code), even if the Client has made payment expressly on a certain receivable.
- 7.5 Any set-off against claims of the Client or any withholding of payment of such claims shall be permissible only to the extent that any counterclaims are undisputed or have been judicially determined.
- 7.6 The seller shall have the right to render outstanding deliveries or services against in consideration of either advance payment or a collateral deposit only if, after the date the contract had been entered into, circumstances become known to the seller (i) which are likely to significantly diminish the creditworthiness of the Client and (ii) which jeopardize payment by the Client of the seller's open receivable arising from the respective contractual relationship (including from other Individual Orders for which one and same master agreement applies).

§ 8 Warranty, quality defects

- 8.1 The warranty period shall extend one (1) year commencing as of delivery or, to the extent acceptance is required, as of acceptance.
- 8.2 The deliverables are to be carefully inspected without undue delay of delivery to the Client or to its designated third party. With respect to obvious defects or other defects, which would have been recognizable upon a careful inspection without undue delay, said deliverables shall be deemed as approved by the Client, if a written complaint of defects is not received by the seller within fourteen (14)

business days of delivery. With respect to other defects, the deliverables shall be deemed as approved by the Client if the complaint of defects is not received within fourteen (14) business days of the date on which the defect became manifest. However, if the defect was already recognizable under normal conditions of use for the Client at any earlier date, then such earlier date shall be determinative for the commencement of the notice period for complaints.

- 8.3 If it should prove to be the case upon inspection of asserted defects that the Client has no warranty claim, then the Client shall be obligated to bear the costs caused by the inspection.
- 8.4 In the case of substandard goods and second-tier goods, any defect rights shall be precluded for such defects known to the Client on the date the contract had been entered into. Similarly, the seller shall not be liable for defects resulting from gross negligence, which defects remained unknown to the Client as of the date on which the contract had been entered into, unless in bad faith the seller has remained silent concerning the defect or has assumed a corresponding guarantee for the consistency thereof.
- 8.5 For defects based upon any instructions or guidelines of the Client, the seller shall be liable in accordance with applicable law and with these GTC only if it has assumed the risk in writing vis-à-vis the Client of the occurrence of defects as a consequence of such instructions or guidelines. The Client shall bear the responsibility for any instructions and guidelines not leading to defects in the goods manufactured or delivered by the seller, unless the seller has assumed in writing the above-mentioned risk that defects may occur.
- 8.6 In the case of quality defects in the deliverables, the seller, at its discretion, shall be obligated, and shall initially have the right, to perform subsequent improvement or to affect replacement delivery. In the event of failure – i.e., of impossibility, unreasonableness, refusal, or inappropriate delay in the subsequent improvement or replacement delivery – the Client shall be allowed to withdraw from the contract or shall be able to reasonably reduce the purchase price.
- 8.7 The warranty shall be void, if (i) the Client modifies, or allows third parties to modify, the deliverable without the consent of the seller and (ii) remedying the defect hereby becomes impossible or unreasonably difficult. In each case, the Client shall have to bear the additional costs of defect remediation arising from to the modification.

§ 9 Liability for compensatory damages due to culpable conduct (*Verschulden*)

- 9.1 The liability of the seller for compensatory damages, regardless of the legal basis therefor, including, but not limited to, impossibility, default, deficient or incorrect delivery, breach of contract, breach of duties in the course of contract negotiations, and impermissible (*unerlaubt*) conduct, shall be limited in accordance with § 9 to the extent that in each case it depends on culpability (*Verschulden*).
- 9.2 The seller shall not be liable in the event of simple negligence by its governing bodies, legal representatives, employees, or other vicarious agents to the extent that no breach of material contractual duties is involved. "**Material contractual duties**" shall be (i) the obligation to make timely delivery and installation of the deliverable, (ii) the deliverable's absence of any defects which more than just inconsiderably impair its functional capability or fitness for use, and (iii) any consulting, protection, and safeguarding duties which are supposed to enable the Client to use the deliverable in accordance with the contract or which seek to protect life and limb of the Client's human resources or property from considerable damage.
- 9.3 To the extent that the seller is liable for compensatory damages in accordance with the reasons set forth in § 9 para. 2, said liability shall be limited to damages which the seller has previously foreseen

upon entering into the contract or would have had to have foreseen as a possible consequence of a breach of contract. Indirect and consequential damages resulting from defects in the deliverable shall be compensable only to the extent that such damages are to be typically expected in the case of appropriate use of the object delivered.

- 9.4 In the event of liability for simple negligence, the replacement duty of the seller shall be limited to a maximum of three times the amount of the value of the affected delivery or, in the case of purely economic loss, to a maximum of twice the amount of the value of the affected delivery, however, in every case, to €5 million per damage event and €10 million per calendar year.
- 9.5 The above liability exclusions and limitations shall apply in the same scope to the benefit of the governing bodies, legal representatives, employees, and other vicarious agents of the seller.
- 9.6 To the extent that the seller gives technical information or becomes active in consulting, and this information or consulting is not included in the scope of the contractually stipulated performance owed by it, such shall be performed without compensation and to the exclusion of any and all liability.
- 9.7 The limitations contemplated under § 9 shall not apply to the liability of the seller for malicious conduct, for any warranted product consistency, for injury to life, body, or health, or as contemplated under products liability law.

§ 10 Intellectual property rights of third parties

- 10.1 The seller shall be responsible to ensure that the deliverable is free and clear of any intellectual property rights or copyrights of third parties. Each contractual partner shall inform the other contractual partner in writing without undue delay in the event that claims are asserted against it for violation of such rights.
- 10.2 In the event that the deliverable violates an intellectual property right or copyright of a third party, the seller shall – at its discretion and at its expense – modify or exchange the deliverable in such a manner that no rights of third parties continue to be violated, but that the deliverable still fulfills the contractually stipulated functions, or procures a use right for the Client by entering into a licensing agreement. If it does not succeed in doing so within a reasonable period of time, the Client shall have the right to withdraw from the contract or to reasonably reduce the purchase price. Any and all compensatory damages claims of the Client shall be subject to the limitations contemplated under § 9 of these GTC.
- 10.3 In the case of violations of rights by products of other manufacturers delivered by the seller, the seller shall, at its discretion, assert its claims against the manufacturers and upstream suppliers for the account of the Client or assign such to the Client. Any claims against the seller in such cases shall exist in accordance with § 10 only if judicial enforcement of the above-mentioned claims against the manufacturers and the upstream suppliers was unsuccessful or is without any prospects, due to, for example, bankruptcy.

§ 11 Ownership proviso

- 11.1 The goods delivered (the “**Proviso Goods**”) shall remain our property until such time as all receivables against the Client to which we are now or may in the future be entitled have been satisfied, including all outstanding balances from current accounts. To the extent that the Client acts in a manner contrary to the terms of the contract – , but not limited to, any extent to which it is in default with the payment of a

payment receivable – we shall have the right to take back the Proviso Goods after we have set a reasonable period for performance. Any transportation costs incurred for taking back the goods shall be borne by the Client. To the extent that we take back the Proviso Goods, such shall constitute withdrawal from the contract. It shall also constitute a withdrawal from the contract, if we distraint the Proviso Goods. We shall be allowed to exploit Proviso Goods taken back by us. The proceeds of the exploitation shall be set off against those amounts owed to us by the Client after we have deducted a reasonable amount for the costs of the exploitation.

11.2 The Client shall be obligated to treat the Proviso Goods with due care. The Client must insure them adequately, at its own expense, at their original value against damage from fire, water, and theft. Insofar as maintenance and inspection work becomes necessary, the Client shall have to carry out such in a timely manner at its own expense.

11.3 The Client may use and resell the Proviso Goods in the ordinary course of business so long as it is not in payment default. The Client may, however, not pledge or collateralize the Proviso Goods. The Client hereby assigns to us for security purposes, to the fullest extent, any payment receivables of the Client against its customer from the resale of the Proviso Goods and those receivables of the Client with respect to the Proviso Goods, which rights arise from another legal basis against its customer or third parties (including, but not limited to, receivables from impermissible (*unerlaubt*) conduct and claims to insurance benefits), including all outstanding balances from current accounts. We accept said assignment.

The Client may collect the receivables assigned to us on its account in its own name so long as we do not revoke its authorization to do so. Our right to collect the receivables shall not be affected thereby; however, we ourselves shall not assert claims to the receivables and shall not revoke the collection authorization so long as the Client duly complies with its payment obligations.

To the extent that the Client still engages in a manner contrary to the contract – including, but not limited to, the extent to which it is in default with the payment of a payment receivable – we shall be able to demand from the Client that it (i) disclose the assigned receivables and the respective debtor to us, (ii) notify the respective debtors of the assignment, and (iii) hand over to us all documents and all information which we require to assert the receivables claims.

11.4 The Client shall always perform processing or refashioning of the Proviso Goods for us. If the Proviso Goods are processed with other items not belonging to us, we shall acquire co-ownership in the new item proportionately to the value of the Proviso Good (final invoice amount inclusive of value-added tax (*Umsatzsteuer*)) to the other processed items at the time of processing. Apart therefrom, the same shall apply to the Proviso Goods as to the new item arising from the processing.

If the Proviso Goods are inseparably combined or commingled with other items not belonging to us, then we shall acquire co-ownership in the new item proportionately to the value of the Proviso Goods (final invoice amount inclusive of value-added tax (*Umsatzsteuer*)) to the other combined or commingled items at the time of the combining or commingling. If the Proviso Goods are combined or commingled in this manner, such that the item of the Client is to be viewed as the main item, then the Client and we are hereby in agreement that the Client shall transfer proportionate co-ownership in this item to us. We accept said transfer.

The caused sole ownership or co-ownership in an item shall be preserved for us by the Client.

11.5 In the event that the Proviso Goods are distrained by third parties or there are other encroachments by third parties, the Client shall have to advise such third parties as to our ownership and shall have to notify us in writing without undue delay, such that we shall be able to enforce our ownership rights. To

the extent that the third party is not able to reimburse us for court costs or for extrajudicial costs arising in this context, the Client shall be liable therefor.

- 11.6 If the Client so demands, we shall be obligated to release the collateral to which we are entitled to the extent that its realizable value exceeds the value of our open receivables against the Client by more than 10%. In so doing, however, we shall be allowed to select the collateral to be released.

§ 12 Prohibition of assignment

Any assignment to third parties of receivables of the Client against us shall be precluded. Section 354a of the *Handelsgesetzbuch* (the Commercial Code) shall not be affected.

§ 13 Tools

To the extent that tools are fabricated or procured by us for deliveries to the Client, such shall also remain our property, if the costs of the tools are completely or partially paid by the Client. The tools shall be used exclusively for deliveries to the Client, so long as the Client fulfills the contractual duties it has to us. If twenty-four (24) months have elapsed since the last delivery or if the procurement contribution by the person or party placing the order is amortized, then we shall also have the right to use the tool for other purposes or to scrap the tool.

§ 14 Place of performance

The place of performance for our deliveries shall be the works or the warehouse from which the goods are kept ready for pick-up or are shipped. For this purpose, such shall also be able to be the works or the warehouse of a third party. The place of performance for payments shall be Vogt, Germany.

§ 15 Final provisions

- 15.1 To the extent that the contract or these GTC contain any loopholes, such loopholes shall be deemed closed by those legally effective provisions to which the contractual partners would have stipulated in accordance with the economic objectives of the contract and the purpose of these GTC, had the contractual partners been cognizant of the loopholes.
- 15.2 If the Client (i) is a merchant (*Kaufmann*), (ii) is a legal person under public law or an investment fund (*Sondervermögen*) under public law, or (iii) has no general venue in the Federal Republic of Germany, then the venue for any disputes arising from the business relationship between the seller and the Client shall be at the Vogt, Germany, or the seat of the Client, at the discretion of the seller. In the event of any legal disputes against the seller Vogt shall be deemed to be the exclusive place of jurisdiction in such cases. Mandatory statutory provisions governing exclusive venue shall not be affected by this provision.
- 15.3 All relationships between the seller and the Client shall be governed exclusively by the law of the Federal Republic of Germany. The United Nations Convention on Contracts for the International Sale of Goods dated 11 April 1980 shall not apply.